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Legitimate Expectations and Land

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Abstract: This paper focuses on land as a domain in which legitimate expectations can give rise to entitlements. The central argument is that people are connected to other people and to projects, which are symbolically and materially rooted in particular places. This gives rise to an interest – an interest that is sufficiently weighty that it imposes obligations on other people – to protect stability of place. There are two ways in which legitimate expectations structure argument about land. It justifies liberty rights to remain in a place, and not be removed or expelled from it, independently of the coercion that often accompanies forcible expulsion, and argue for rights of return as a second-order right when this right has been violated. I also argue that passage of time in a changed context can affect people’s legitimate expectations, and so their entitlements.

Keywords: legitimate expectations, land, property, justice

In this paper, I examine the idea of legitimate expectations and the role that it plays in two related arguments for rights to land or place. Most discussions of legitimate expectations in political theory take as their starting point Rawls’s account, which appeals to the idea of expectations developed under a just political and legal system, and have extended this idea to justify compensation and ‘grandfathering’ clauses (Rawls 1971; Meyer and Sanklecha 2014; Stilz 2011). The concept is also used in applied ethics and transitional justice, to justify a transitional justice principle, in relation to such thing as climate change policy (Green 2013). It is also deployed in law, where the idea of reliance is used to justify a claim to compensation when legitimate expectations are not met (Brown 2011). I do not reject these uses of the term, but I argue below that each understands it quite narrowly, and misrepresents the complex interaction between expectations and entitlements.

In focusing on land as a domain in which legitimate expectations can give rise to entitlements, I broaden our usual understanding of the role of legitimate expectations. I do not reject the above uses and their rationale, but I argue that

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we can appeal to legitimate expectations in a wider set of contexts. Rawls, for example, argues that the rules of legal or political institutions give rise to legitimate expectations, an argument that I accept, but I go further than this in arguing that, in certain contexts, social norms and widely held but non-political or non-legal norms and practices can give rise to legitimate expectations. My understanding is also broader than is usually deployed in legal compensation cases, where there is a quite precise account of reliance, and a requirement to identify a specific duty-bearer that has induced reliance, from whom compensation can be claimed.

In the territorial rights literature, in which my argument is situated, legitimate expectations are appealed to, but in a way that involves a much broader account of reliance, and the duties in question are not necessarily duties of compensation (for frustrated expectations) but more general duties that arise from rights, where rights are conceptualized as protecting interests that are sufficiently weighty to hold others under duties.

Another related theme of this paper concerns whether appeal to the concept of legitimate expectations (in any form, and on my more expansive reading) is a plausible vehicle for arguing for territorial rights, by which I mean, in the first instance, a liberty right to remain in a particular place, where particular place doesn't necessarily mean one's property but refers also to one's community or broadly conceived place of residency, and generates a right not to be removed or expelled (see Moore 2015, especially chapter 3; Stilz 2011, 2015). In addressing this question, I consider objections to any appeal to legitimate expectations, and also objections to how that argument operates in relation to land or territory.

1 What are 'legitimate expectations'? – and what does 'legitimate' mean?

Before I begin, it is important to address some preliminary conceptual and normative questions: What are legitimate expectations? *How* can they give rise to claims of justice, or entitlements?

The term 'legitimate expectations' has both epistemological and normative dimensions.¹ Let's look at the epistemological axis first. In ordinary language,

¹ For a similar treatment of epistemological and normative dimensions to the concept – and a similarly cursory treatment of the epistemological dimension – see Meyer and Sanklecha (2014).

we use the concept to refer to something that we expect will happen in the future, for which there are good grounds. When an expectation satisfies this epistemic threshold – it is an expectation for which there are good reasons – we can call it a ‘reasonable expectation’. In that usage, it is different from a ‘bare expectation,’ which is purely subjective, and for which there may or may not be any supporting evidence. Legitimate expectations are reasonable expectations (the epistemological condition has to be satisfied), but the term ‘legitimate’ suggests a somewhat moralized dimension to this concept. A legitimate expectation, on my view, arises from the operation of rules, practices, policies, norms and conventions; and is moralized in the sense that these cannot be contrary to objective justice.

Does a legitimate expectation arise only when the expectation is supported by justice?

On one view, an expectation is ‘legitimate’ if it refers to an action or practice or policy that is required by justice. This could apply to a policy or an action that is straightforwardly required by justice, or, as in Rawls’ and Allen Buchanan’s accounts, an expectation that arises from institutions that are justified on grounds of justice. Rawls for example, defined legitimate expectations as expectations that are defined by the rules that operate in a just legal order. Rawls writes:

A legal system is a coercive order of public rules addressed to rational persons for the purpose of regulating their conduct and providing the framework for social cooperation. When these rules are just they establish a basis for legitimate expectations (1971, p. 235).

Rawls’s discussion of legitimate expectations is in a section on the rule of law, which reflects his view that legitimate expectations can arise only through the provisions – public policies, laws and rules – of a legal order. Buchanan, drawing on Rawls, also argued that a legitimate expectation is an expectation of benefits that people have, and can be called legitimate if it arises through the operation of just institutions (1975; see also Brown 2012). This understanding is like Rawls’ in so far as it is tightly linked to the idea of substantive justice – though Buchanan recognizes that this account is problematic when rules change as a result of a deeper, or new, understanding of justice (pp. 420f).

The tight link between justice and expectations raises the question of the weight that we should give to the idea that it is an ‘expectation’ rather than the fact that it is straightforwardly required by justice. The fact that it is an ‘expectation’ does seem to do some work on this analysis, but it is fairly minimal. Presumably, the person who has the expectation knows what justice requires

and expects that justice will be done – and so acts on that knowledge. It's bad to deny a person what they are entitled to on grounds of justice, but worse to deny the person what justice requires when he or she has formed the legitimate expectation.

This doesn't seem like a complete account, however. Sometimes people form expectations that are neither contrary to justice nor required by justice. These may be reasonable – perhaps they arise from the operation of institutions that solve coordination or other problems, or, as I will go on to argue, from social norms or conventions. In this sort of case, what's doing the work is that it's an expectation rather than that it's a requirement of justice (even if the expectation wouldn't be 'legitimate' if it was *contrary* to justice). My account therefore inverts Rawls's theory of how legitimate expectations arise: for Rawls, an expectation is legitimate if it arises through the rules embedded in the operation of just institutions. I take it, though, that part of the claim being made is that, in cases where individual A has a reasonable expectation, and organizes his or her life around that expectation, the frustration of that expectation is harmful. Yet, reasonable expectations can arise not only through the legal or political order but through less formal norms and practices. Moreover, by focusing on justice – indeed, defining the expectation as arising through the operation of objectively just rules – Rawls does not do enough to focus on the person with the expectation, and the force of that in generating the entitlement.

Rawls' account is valuable insofar as it captures the idea that a legitimate expectation is not solely connected to the individual's subjective motivational set: it is not something that the individual wants for him or herself, but rather is typically mediated in some way. For Rawls, legitimate expectations are acquired through the laws and policies embedded in the institutions of justice; whereas, in my account, expectations can also develop through the operation of widely held social practices or social conventions. In neither case do we refer to something as a legitimate expectation if it is purely subjective, even if it (the expectation) is fervently believed by that person.

What about an alternative view (to Rawls's emphasis on justice) that holds that a legitimate expectation is any expectation of benefit that is reasonably held under accepted legal rules? This has the advantage of reflecting the assumption of many ordinary people that the institutions and practices that operate as a backdrop to their lives are morally valid. They do not normally subject every policy or law or practice to critical scrutiny, accepting most of them as having some kind of normative authority.

One problem, though, with the above account is that it may be too permissive: it is consistent with egregiously unjust practices and law. To see this, consider the case of a slave-holder in the Ante-bellum South, who holds

property (slaves) under the law.² It's true that the slave-owner was operating under legal rules, but we also think that many people have the capacity to reflect on and critically engage with the practices of their society, and that the slave-holder ought to have done so with respect to a practice that involved relations of domination and subordination, serious exploitation, and the denial of many other norms that were accepted as part of natural law in that society. There was also an on-going debate at least from the eighteenth century about the morality of the practice.³ I take it that we wouldn't want to define a legitimate expectation in such a permissive and non-moral way that slave-owners would be entitled to some relief, to some compensation, for the abolition of slavery. On the contrary: it is reasonable to think that the slaves are entitled to compensation for many years of domination and exploitation under slavery!

What, then, ought to count as the appropriate normative baseline for 'legitimate' expectations? I have argued that a non-moral, purely legalistic, baseline is not sufficient: it fails to incorporate any normative content into the idea. I also suggested that the idea that the expectations must instantiate full justice – or, as in Rawls's formulation – that people 'can only acquir[e] ... claims to a social product by doing certain things encouraged by just social institutions' – is too demanding.⁴

An intermediate position relies on the idea that there are many social conventions, laws and practices that are permissible; that are neither required by deeper justice nor egregiously unjust. In the background is a view of

² I owe this example to Fergus Green (2013). For a range of legal examples, see Daphne Barak-Erez (2005).

³ It might be thought that my formulation here gets the right result (no compensation for slave-owners) but for the wrong reason. The right reason is that slave-owners shouldn't be compensated because their expectations were illegitimate whether people widely thought so or not. I agree: in cases where an immoral norm is instantiated in the society we can have a reasonable expectation but not a legitimate one. But I also think that in many cases of unjust norms, there is significant controversy about the norms themselves, because people are aware of the domination and injustice that surrounds their practice. This is Doris Lessing's point about Rhodesia, where she argues that whites were obsessed with their relationship with blacks, in part because they knew they were oppressing them, and knew that blacks knew too; and it permeated all the relations in the society (see Zvomuya 2016).

⁴ See also Rawls (1971, p. 13). There he assumes a just legal system, though his argument about people doing things under rules and having expectations of fair treatment under these rules is compatible with mine. Meyer and Sanklecha develop a similar intermediate position in dealing with this tension. They distinguish justice-based accounts from normative authority-based conceptions of legitimate expectations, to arrive at a middle position (see Meyer and Sanklecha 2014, pp. 375 ff.).

political communities that have jurisdictional authority and self-governing powers, which allow them to create rules to govern the collective life of their community. The state establishes (its own brand of) justice within its territory through the legislation, adjudication and enforcement of the rule of law, but it is constrained by universal principles, such as respect for basic human rights. Thus, while laws themselves have some kind of content-independent authority, as the rules that citizen co-create together, they are constrained by, at the minimum, universal negative duties (such as a no harm principle) or basic rights, which may include substantive claim rights. This means that rules or policies or practices that are egregiously unjust, that violate basic human rights, or some kind of moral minimum, cannot establish legitimate expectations, but that many laws which represent the agreed practices or policies of a certain way of organizing human life and are not objectively unjust can give rise to legitimate expectations. Moreover, as I argue below, legitimate expectations can be acquired by social conventions, not only laws; and this argument – which inverts the basic Rawlsian relationship between law and expectations – represents an important departure from many treatments of the topic in political theory.

2 How can ‘legitimate expectations’ create entitlements?

This section addresses the question of why we might think that legitimate expectations give rise to moral claims. What are the precise mechanisms that generate entitlement?

The section above distinguished between epistemological and normative dimensions of the concept, but this distinction should not be over-stated: it is probably not a good idea to simply set aside the epistemological axis entirely and assume that the person’s expectation is reasonable, in order to focus on the moralized sense of ‘legitimate expectation’. This is because some reasons for thinking that an expectation is reasonable – for example, the person in question received a promise or contract or assurance by a legitimate government body – also represents a reason why we think that the expectation-bearer has an entitlement, so the two cannot be conceived of as entirely separate.

Promises or contracts are the standard way of creating an expectation in private law, but a parallel situation can arise when the government makes a public announcement, or policy change, or creates a new category of benefit, which then creates expectations on the part of individuals, and the individual

then acts in ways that create a reliance interest.⁵ This is standard case in law, where a legitimate expectation can give rise to a compensation claim. Consider, for example, the case where the central government announces new money for the construction of a brand new school; the school board then tears down the existing infrastructure and embarks on this construction; and then the government changes its mind and fails to release the new money. Its actions, its statements have not only created expectations but a reliance interest, such that the school board is now harmed by the failure of the government to make good on its announcement.⁶ In the law of most European states, legitimate expectations are protected in administrative law only when there is a reliance interest to the benefit expected, and the reliance interest is created by state policy and/or explicit state assurance.

The emphasis in law on a reliance interest recognizes that it's not the fact of expectations themselves that give rise to entitlements, but the idea that it is reasonable for people to develop projects and aims against a stable background of rules or practices, and these projects involve costs – both opportunity costs and sunken investment costs – which can give rise to a claim.⁷ If the claim is to compensation, it is also important to identify a duty-bearer, an agent – either individual or collective – from which the compensation can be claimed, and that agent is the one who induced the reliance interest.

What though of cases which are not entitlements based on law, nor on explicit promise, but on the fact of expectation? This brings us to a consideration of the precise way in which an expectation can be said to give rise to an entitlement. There are broadly speaking two views about the mechanisms: the Humean view, which focuses on how expectations themselves generate entitlements, and the Rawlsian view, which suggests the reverse: that entitlements generate expectations, so expectations are not foundational.

In this paper, I will adopt a modified Humean view, based, not on a faithful reading of Hume, but on an analysis of how an expectations argument functions in the case of land, and the limitations or inadequacies of the Rawlsian view in that case. It is, I forewarn, a *modified* Humean view, in the sense that, while Hume explained the psychology of expectations well, he had difficulty explaining how exactly this gives rise to an entitlement. To do this, we need to rely on

5 There is of course some debate on whether the government has to actively encourage an expectation – e. g., by declaring a policy – or whether it can be based on good (reasonable) guesses about what governments aim to do. For a discussion of the concept in English public law (which requires active encouragement), see Sales and Steyn (2004, p. 564).

6 This example is similar to the ones in Alex Brown (2011).

7 For a good discussion of this, see Meyer and Sanklecha (2011).

an interest theory of rights – a theory that wasn't yet developed – and show that human beings have a strong interest in having stable background conditions to their lives, to have future-oriented projects, and that this story can explain how legitimate expectations can give rise to entitlements.

One of the innovative aspects of Hume's argument is his claim that uninterrupted use or access to a thing generates an expectation of continued use and access into the future through the psychological mechanism of Association. This was part of a carefully worked out psychology of action, which relied on an explanation of how sentiments and expectations can develop. Hume begins with the psychological fact of association and suggests that this gives rise to a normative expectation. This psychological association applied to the person P who was making use of object O, but it was also used to explain how social conventions can develop. For example, if we see person P continually carrying object O, it then seems right to us that P rather than anyone else should continue to possess O, so we invent a rule to that effect. The rule arises from the psychological association (together of course with the belief that we need to have some rule for assigning objects). For Hume, continued use and access generated both associations and normative claims, by the person in question and by others. He then goes on to show that rules about property – he lists occupation, prescription, acquisition and succession – arise in this way.

The problem with Hume's account is that there is a gap between his psychological theory – his view that people will infer from past use that they will be able to use the thing into the future – and the claim that this generates an *entitlement*. At times, Hume bridged this gap through the argument that it was useful or wise for the political order to enforce people's widely held sentiments and beliefs in the law, so that the government order is not operating purely coercively. The link between the two – the moral sentiment which we might think of as a reasonable expectation and the normative claim or entitlement – is a commitment to the idea that human institutions ought to promote the well-being of those who are subject to them, which means that, even though entitlement to resources or to land and property is an artificial convention, a good political order would be structured in ways consistent with human psychology, including the mechanism of Association.⁸

⁸ Bentham followed Hume to some extent in appealing to the role that expectations play in people's lives as part of a general utilitarian argument that legislators should attempt to secure people's expectations, and that failure to meet expectations detracts from the greatest happiness of the greatest number. Bentham's position relies on two assumptions that are both defensible. The first is a relatively sophisticated view of human beings, not usually associated

Sidgwick, too, made much of expectations, and did so in a way that also relied on certain claims about human psychology. Justice, Sidgwick argued, is often ‘held to prescribe the fulfillment of all such expectations (of services, etc.) as arise naturally and normally out of relations, voluntary or involuntary, in which we stand towards other human beings ... ’ (1963/1874, p. 269). Why is that?

Sidgwick explains:

... [T]he ordinary actions of men proceed on the expectation that the future will resemble the past: hence it seems natural to expect that a particular man will do as others do in similar circumstances, and still more, that he will continue to do whatever he has hitherto been in the habit of doing; accordingly his fellowmen are inclined to think themselves wronged by his suddenly omitting any customary or habitual act, if the omission causes them loss or inconvenience (1963/1874, p. 270).

The basic idea is that expectations form an important part of the way that we go about living our lives. Frustrated expectations or upset expectations, then, seem like a *pro tanto* harm and so ordinary people feel that they are wronged by the frustration of their expectations. As it stands, though, this argument again explains the psychology of frustrated expectations but fails to go the extra

with utilitarianism: this is that people are not just motivated by the pursuit of pleasure and the avoidance of pain, but are likely to develop medium and long-term projects which require some stability in the background framework of their lives. The idea is that people advance their welfare and that of others through the pursuit of specific projects and aims, and these projects require that we are able to form expectations about what people are likely to do, which are in turn structured by the background rules that govern the society. The second assumption is that pain, frustration and suffering are experienced more intensely than satisfaction, and so should be given a significant weight in the utilitarian calculus. This suggests that frustrated expectations are to be taken more seriously than the mere failure to confer a good on someone. While these two assumptions are plausible, and probably implicit in any argument that gives credence to legitimate expectations, it is the explicit endorsement of utilitarianism – to act in accordance with the greatest happiness of the greatest number – that confers a normative dimension to the argument. If we are not utilitarians, the argument fails, at least as stated, to explain entitlements. It is also problematic for reasons outlined by Jeremy Waldron (1990), viz., that the interest in stability that Bentham recognized people had was not really compatible with the aggregative logic of utilitarianism. Although utilitarians made expectation-based arguments, many of them assumed – but were not entitled to so assume – that the aggregative calculus applied only at the level of rule-making, but not at the level of individual decisions. Since it is not clear what level of generality the utilitarian calculus should be aimed at, whether it applies to individual acts or to rules, the argument is unclear – indeed, the argument about the need for stability only works if we assume that the utilitarian calculus applies to rules. This is a specific instance of the much-discussed complaint about the inherent instability of rule-utilitarianism.

step to explain entitlements – although, as I argue below, it's possible to extend that argument by imagining what he could have said.⁹

If both Hume's and Sidgwick's ideas are problematic, should we then adopt the opposite, Rawlsian account of legitimate expectations, which describes legitimate expectations as expectations that result from the operation of the rule of law, that is, the rules, norms and practices of a legal and political order?

Jeremy Waldron, in his book *The Right to Private Property* (1990), presses this view, against the broadly Humean account, that entitlements cannot be grounded on expectations, but that expectations arise only once people have such entitlements. He advances the argument through the example of entitlement to property (a topic which is close to the territorial rights literature discussed in the next section).

Waldron begins this section by citing Bentham (who was in some ways sympathetic to Hume's argument), but who nevertheless criticized Hume's argument from Association, on the grounds that 'a feeble and momentary expectation may result from time to time from circumstances purely physical' but that 'a strong and permanent expectation can only arise from law' (1931/1843, p. 113). Bentham went on to argue that, outside of the law, a man will not expect to keep the deer he had killed, nor the acorns he has gathered, or if he does, it does not extend beyond his own estimation of his own ability to defend them, but this does not show that he is *entitled* to them.

Waldron cites this passage and elaborates that a

'principle of respect for expectations, and the concomitant idea of identifying with a property cannot be the *foundation* of a principle of entitlement; such a principle must already be generally respected before the relevant expectation can come into play' (1990, p. 197, italics added).

An expectation can only develop if a person has reason to believe he could or should remain in indefinite control of the land or the object. Indeed, Waldron argues, pressing the point, it is unlikely that people will identify with their land,

⁹ A similar argument is advanced by Olivecrona, in an innovative interpretation of Locke's labour theory, where he argues that the deprivation of goods or resources or things that we have come to possess cannot be cashed out in simple economic terms: it is experienced as a deprivation because we come to associate certain objects as part of ourselves, and their deprivation as an attack on the person. He argues that this attachment is common with particular pieces of land: 'The feeling of unification with the physical thing varies according to circumstances. It is strongest with regard to things in daily use which are dear to us for sentimental reasons. The farmer feels united to the soil in which he works. The town dweller has a similar feeling for the house that is his own; something of himself sticks in that house where he has been living so long with his family' (1974, p. 224).

unlikely that they will assume continued access or independent control, unless they are already in a legal relation with respect to it. Like Rawls, then, Waldron argues that it's not expectations that give rise to rights but that rights or entitlements under the rules give rise to expectations.

Is there a way to rescue Hume's argument? Is the basic Rawlsian formulation – that legitimate expectations are any reasonably held expectation that is encouraged by existing just arrangements – the better view?

First, I think it's clear that some expectations do arise from the rules or laws of a society. While these rules do not have to be rules of justice, they ought not to be contrary to justice (to be legitimate in the right way). Rawls can accept this to some extent. We ought not to assume that Rawls held a monistic account of justice; in many areas of life, there may be no uniquely 'just' rule on a particular matter. However, once we concede this, we can see that the main normative consideration underlying the entitlement is not the objective justice of the rule but an appeal to fairness, or fair treatment of the people who operate under the rules.

To see this point, consider the following example of the requirements that a student has to have in order to be admitted to a university. Suppose society A requires that all students have to take A-levels, and write exams on the basis of this; and society B has an international baccalaureate system. Either system – A levels or IB assessment – is fine: there are advantages and disadvantages with each, but it would seem permissible for different states or different jurisdictions to have different requirements for this sort of thing, and no reason to think that one is uniquely required by justice. Now, let us imagine a case where a state permits both kinds of systems – some schools use A levels and other schools follow an IB curriculum and both are accepted as prerequisites to get into university. Even though both systems are acceptable, we would still think that there is a problem if the state suddenly announced that no IB certificates will be accepted. This rule-change seems to place an unfair burden on all those pupils who worked hard under an IB system, and did so at a time when both kinds of systems and both requirements were acceptable. Since either is consistent with justice, the problem with the sudden change is that it severely disadvantages one group of people who couldn't be expected to foresee this big change in the rules by which they live their life, and have incurred costs – at the minimum, opportunity costs – by orienting their lives to a rule or policy that has now changed. This seems unfair. Even if there are good reasons for the rule to change, it seems that the individuals in this position should be protected: that the implementation of the new rule should have some kind of adjustment period ('grand-fathering' clause) so that the person is not made to pay these costs without the corresponding benefit, or, where that is not possible (let's say in a

different sort of case), then, the unlucky individuals should be compensated so that the burden is shared. This seems not a requirement of ideal justice, but a requirement of fairness in so far as the person had reasonable expectations that the IB certificate would count as a prerequisite to get into university.

Now that we can see that the central normative claim is one of fairness, we can see that we do not need to assume – though Rawls did – that legitimate expectations are induced solely by a legal or political order. What about cases where people operate peaceably for multiple generations with a particular land-tenure practice, which is not explicitly written into the legal code of the society, but then, that system is overthrown to make room for a different regime, with a different ideological bent and different land tenure practice? This was the situation of indigenous people in pre-colonial North America, who held land under their own rules, even if they weren't embedded in a particular legal regime, and the rules operated at a less formal, indeed unwritten level. They could not claim to have legitimate expectations induced from a just legal order, characterized by the rule of law, as Rawls seems to assume. Yet, we may still think that the people who held land in a usufruct system had rights to that land that were not unjust, were widely accepted in these indigenous societies and the individuals in that situation had legitimate expectations of continued use and access. They were *legitimate* expectations, not merely reasonable ones, because the individual in question had developed reliance interests in the continued use of that land, and it is unfair to those individuals if these practices and rules change suddenly. The harm involved is only that of frustrated expectations, but the change in system represents a serious loss to the interests of the person, given that s/he had oriented her life in accordance with the *status quo ante*. Just as with the A-levels and IB schools case, we might think that the reliance interests that the person had, and their reasonable expectations in the stability of the practice, justifies, at the minimum, that the individuals harmed by this change would be 'grand-fathered' so that their entitlements were recognized, or – depending on the kind of land use rights they had – incorporated in the new legal order. This precise argument is not found in Rawls, who links legitimate expectations to the rule of law, but it is an extension of the core idea that it is unfair if rules and practices change suddenly, in ways that seriously disadvantage people living under them.

The view that entitlements are the creatures of the state has a very long lineage, from Hobbes to Bentham, Murphy and Nagel, but it is not true that the only source of norms upon which expectations could reasonably develop originate with the state. People engage in group-level cooperative activities, in which all members of the group share a similar understanding of the rules, and this rule-governed activity may involve basic ideas, including ideas of property and

territory, which I will focus on shortly. No doubt the state is useful to address problems of free-riding and cheating, but it is not necessary to have a state to have norms of control over a piece of land, or group-based expectations of residence in a village. These require only fairly stable norms that can arise through social and/or collaborative activity, where individuals participate in distinct roles and have shared goals. And these social norms can give rise to an expectation, even when the person is not physically in possession of the land, and even when s/he does not have a legal claim to it.¹⁰ This was, I've argued, true of indigenous people, who had entitlements to land on which they lived, even when that entitlement was not encoded in a legal order, defined by the rule of law.

Indeed, as Hume saw, some social conventions, including conventions around property, have been incorporated in the legal system, but are not themselves the product of law. Some have argued that social conventions are implicit in the idea of a 'reasonable person' and other fundamental legal concepts, but of interest to us here are cases where conventions seem to apply to property directly, in the form of rules about homesteading, squatters' rights and 'adverse possession'. Both 'home-steading' and 'squatter's rights' embody the idea that possession over time confers rights to the thing. In the case of 'home-steading', the land is either un-owned or owned by the state and the rights are acquired if the person claims and uses consistently this area over a specified period of time. In the case of squatter's rights, possession confers ownership of property that is neglected. The idea of 'adverse possession', which applies strictly to land or real estate, rewards a person who possesses, uses or cares for property (legally owned by another) for a significant period of time by giving them property rights to it. It also prevents litigation over ownership by long-lost owners, because it represents a statute of limitations on rights to neglected or unused property. These practices are formalized in most common law legal systems, and so do not directly contradict the statist view of property, but they

¹⁰ This view, which I shall call the *social convention view*, is supported by recent psychological and anthropological work, which suggests that property norms are understood by very young children, who are unable to explain or articulate the precise basis or theory of property. Chris Bertram has argued, in a very compelling article (2013), that this level of intuitive understanding about a very abstract concept like property suggests that humans have a basic 'grammar' around property in a similar way that humans have a native capacity to learn language. That property is a social convention is fairly undeniable, but it seems that people have a natural capacity to understand property conventions and rules without any tutelage or instruction in this abstract concept, and that relatively complex conventions with respect to property can develop without explicit backing from the state.

represent basic social conventional understandings of the appropriate relationship between a person and thing that can give rise to an entitlement to it.

There is though still a question about how precisely these social conventions (which undoubtedly create expectations) can be said to generate entitlement. And there I've argued that the central concept is a fairness one: that it is unfair when people make investments, in the way that they organize their lives, on the basis of widespread social practices, and then these practices, according to which they have organized their lives, are swiftly altered, and/or not recognized by a legal regime. This is the same kind of harm that is experienced by the person who makes decisions on the basis of state policies (such as pursuing an IB diploma as a basis for further study). However, unlike in legal compensation cases, it is not possible to identify a duty-bearer who has induced the reliance interest: the reliance was a normal or natural result of operating under widely held social practices. And this means that the entitlement can't really be to compensation by a specific person or set of persons, but, in the first instance, for a recognition of the person's rights, which may give rise to a number of different duties on the part of many different agents to respect the right in question. This is the basic idea behind an interest theory of rights.

3 Legitimate expectations and place-related rights

This brings us to a recent, and plausible deployment of legitimate expectations arguments – which follows to some extent some of the arguments about property developed by Hume and others – which appeal to the idea of legitimate expectations, to generate an argument for territorial rights. The main idea is not to show that people have a right to be compensated when their legitimate expectations are not fulfilled (or at least that's not the primary argument), but to explain people's interests in having a stable context in which to live their lives and so generate some kind of right to stability of place. This view focuses on the role of stability of place, as well as social conventions and practices in orienting people, which is an important element of their wellbeing, and a background condition for the exercise of their agency. It is precisely because of this role that their most fundamental expectations that orient them in their projects and relationships ought to be protected. The interest thus identified grounds a claim to a right (on the interest theory of rights), which of course then generates duties on the part of people to respect and/or protect these rights. How does this argument go?

Anna Stilz's formulation is a complex one in so far as she situates her argument in Kantian terms and seems to endorse a legitimate-state form of argument, but also appeals to an occupancy condition which applies to individuals to explain where the state should be located. Of interest to us here is the idea of occupancy rights. She defines occupancy in the following way:

A person has a right to occupy the territory if (1) he resides there now or has previously done so, (2) legal residence within that territory is fundamental to the integrity of his structure of personal relationships, goals, and pursuits, and (3) his connection to that particular territory was formed through no fault of his own. (2011, p. 585)

There are problems with this formulation which I've discussed elsewhere,¹¹ but what's interesting for the purposes of this paper is that the right to occupancy is connected to the importance of place, of residence, to the 'integrity of his structure of personal relationships, goals and pursuits' (Stilz 2011, p. 585). In more recent work, Stilz has focused on the idea that people have place-related projects: their individual agency is bound up with the pursuit of particular aims and projects, which require that they are situated in a particular place. These place-related projects, which are an important component of individual agency, explain the individual right of residency (and that a fundamental condition of a legitimate state is that it is geographically located in areas which its members legitimately occupy)

My discussion of place-related rights in *A Political Theory of Territory* builds on this basic idea but deepens it in two ways. First, on my argument, there are at least three place-related rights: one that apply to individuals and the other two, to groups. Three different, place-related rights are identified: a right of residency, which applies to individuals; a right of occupancy, which applies to groups; and territorial rights, which applies to institutional structures in which groups are self-determining, such as a state (or sub-state entity like a province). The right of residency, which is held by individuals, is justified in two related ways. First, people form relations and attachments with others in a particular place; individual's plans and pursuits depend on a stable background framework, and this is provided by security of place. The right of residency explains

11 The main problem is that it is circular: The legitimacy of the state is partially defined by the occupancy principle, which in turn is defined in terms of legal rights (of residence) in a legitimate state. What looked like a pre-political principle that a rightful authority should uphold is converted into a political status that the state confers on its members. I believe that some of her most recent work is moving away from this statist way of defining occupancy rights, which would correct the problem.

why all individuals have a right not to be expelled from the location of their plans and projects; and is in that sense similar to Stilz's 'occupancy right'.

Second, I argue that there is a collective or group right of occupancy, which isn't a mere aggregation of individual rights of residency. Rather, individuals themselves often think of themselves as members of groups, who share a place-related connection, and see themselves as located within a specific geographical area, which is properly theirs. On my view, the connection that individuals have to a place is not simply a connection forged independently by individuals living in a place, but is a connection experienced by individuals as members of a group, whose members share a geographical location and identity, which is bound up with this location, with each other. Building on this basic idea, but relying on the importance or value of collective self-determination, I argue that territorial rights are justified in places where people have occupancy rights. But there are other rights that follow from this analysis: the right not to be forcibly expelled, for example, which is a wrong not simply because individual rights of residency are violated, but because expulsion can be profoundly disruptive to collective identities of people as a particular kind, which in turn is partly defined by the location of the group. And it can also disempower the group from exercising robust forms of collective self-determination, which require territorial concentration.

Both of these arguments for territorial rights, then, appeal to the basic idea that stability of residence is an important background condition for being able to make plans and have forward-looking projects and relationships. This argument – about the significance of place to people and their interests in living a good life – is historical in the sense that people can only claim entitlement in the place where they currently live (or have lived recently), if they have lived there for a significant period of time.

At this point one might object that this argument shouldn't be conceptualized as a legitimate expectations argument at all. After all, if people have the interests described, and the interests are strong enough to ground certain rights, why bother appealing to people's (legitimate) expectations to explain the entitlement?

The answer is that, while the right does indeed appeal to a conception of significant human interests, these interests, and especially their interest in residency *in a particular place* cannot be explicated without reference to their future-oriented expectations, their projects and commitments, which in turn are structured by norms and conventions in the society that they live in and the individual right-holders or individual members of the occupancy group. The interest-based argument explains that people have place-related interests, and does so by showing that they typically have developed a symbiotic relationship

with their environment, which is not just a moment by moment relationship, but involves planning ahead in the expectation that the plans can be brought to fruition. The interest-based argument shows why people have a generalized interest in living somewhere, but in order to understand where the person has this entitlement, we need to appeal to the expectations that they have developed, which rely on the norms and social conventions that operate in a particular place, which have structured their choices and commitments.

If this is a legitimate expectations argument – as I've argued it is – it is different from the standard legal version of that argument. First, in legal cases, which make use of legitimate expectations to ground a claim of compensation, the compensation is not for the expectation itself, but to address the reliance interest that the person has. In the school boards example that I discussed earlier in the paper, compensation is related to the reliance interest that the policy generated – specifically, the school board's investment in the new school. This meant that those boards that hadn't actually gone ahead to knock down old buildings, but just had a bare expectation that they would get additional money, ought not to be compensated, but those boards that had sunken costs in the new policy would be compensated, and the level would be determined by the reliance interest. Second, in legal compensation cases, the expectation cannot be simply generated from wide spread social practices, but it must be possible to identify an agent, individual or collective, who has induced the reliance interest. This is because it is important to identify a duty-bearer, who has induced the reliance interest, and from whom compensation can be claimed.

Is there a parallel in the case of land or territory that is taken? Here we are not talking about the loss of property: it is uncontroversial that people who are expelled from their property are entitled to compensation for its value; this does not require a special legitimate expectations argument. What, though, about the case where a person who does not hold real estate is expelled from an area of land? Reliance is an important part of the argument, but the reliance is more global and less specific, pointing to the way in which people, to be oriented to the world, and have specific projects and plans, rely on certain background conditions, which are unavoidably place-related. The interest grounds moral rights (of residency and occupancy). To be converted into rights with coercive teeth, these moral rights need to be recognized by a legal order, which confers civil rights to reside or live in a place, and social rights to participate in the political order, and human rights not to be forcibly expelled or 'ethnically cleansed' from an area and to be collectively self-determining there. But people's entitlement cannot be cashed out solely in legal terms – they are rights, not because the legal order created them, but because these interests are sufficiently weighty that they can

hold others under a duty to respect them, and a just (domestic or international) order would be organized to realize these rights. The duty, then, is not primarily a duty of compensation, and it does not require that we are able to identify and hold accountable the specific person or agent that induced the reliance interest: rather, we recognize that most people have these place-related interests, and have developed in the course of living their lives, to rely on some fundamental conventions and also security of place. Accordingly, the duty in question is a duty to respect each person's liberty to remain in a place, not to be unjustly expelled, to have security of access and control over the place and so on.

The central duty, then, is a duty to respect this right; and in cases where it is not respected – as in the wrongful expulsion of a person from a particular territory – the interest generates a right of return. Compensation may come into it in cases where neither restitution nor return is possible. Note here, though, that this compensation is not a direct effect of sunken costs. Since almost all our future-directed commitments assume that the person operates in a particular place, it's hard to calculate 'reliance loss' – i. e., the sunken costs associated with the particular projects that the person has; and the obligations that are triggered by this interest are manifold, not confined to just compensation claims.¹²

4 Objections to the above

At this point, the argument must confront at least three powerful objections. The first two of these objections can be posed more generally, to any legitimate expectations argument that is not tightly connected to the inducement of a reliance interests (that is, a legitimate expectations argument that relies on the social conventions as the source of the expectation); and the third one is connected specifically to this argument as it applies to land.

4.1 Status quo bias and distributive justice

In the previous section on place-related rights, I argued that over time people build up expectations around resources and land that are under their control. These expectations about control over resources and land structure people's choices, plans and relationships, and explain why they have a strong interest in security over place.

¹² See here Jeremy Waldron (1989). Waldron advances a 'wave of duties' conception in the case of a violation of rights, on an interest theory of rights.

One might, however, object that place-related expectations have a serious status quo bias, which can make them counter-intuitive. Consider, for example, a very rich person, who is accustomed to living in a large mansion, with extensive woods and fields, which he uses for his fox-hunting get-togethers. Does this person have entitlements to the land, independent of the property right that he or she may have? How does this person's relationship to land differ from that of a reindeer-herding Sa'mi who also claims entitlement to large swathes of land? Doesn't the legitimate expectations argument have the counter-intuitive consequence that it legitimizes unfair allocations simply on the grounds that people have come to expect them?¹³

One way to respond to this objection is to clarify that the place-related rights that territorial rights arguments confer are not *property rights*: they are rights of access, liberty rights to be located in a particular place, conceived of broadly as a geographical location of the person's plans, projects and relationships, and a right not to be expelled or removed from that place. The argument links people to the particular community location that live in (if they came to reside there, not unjustly) because that is where the person can pursue relationships that matter, and the broad opportunity sets that the community offers. It does not confer a special right on a particular individual to particular objects, over which he or she has exclusive use, nor does it give the person the right to retain objects that are connected to specific plans and projects, so that in fact these arguments do not apply to this kind of case.

The objection however raises an even more serious issue about the scope of people's entitlements and possible counter-intuitive distributive unfairness. This is a serious concern, which I share, but I think this is based on a misunderstanding about how legitimate expectations arguments work. It assumes that any reasonable (in the sense of epistemically valid) expectation can give rise to entitlement no matter how extensive, as long as it is reasonably held. But there's no reason to think that legitimate expectations arguments do not have an implicit scope limitation. The crucial feature – for being a legitimate expectations argument – is that the entitlement is grounded, not in fairness or fair treatment, but in the expectation, and would not exist except for the historically-induced reasonable expectation – but the scope of the entitlement can be limited by consideration of fairness. Moreover, this is not an *ad hoc* appeal to the value of fairness, in an attempt to make the legitimate expectations argument more plausible. I argued earlier that the kinds of expectations that can give rise to entitlements or rights are not only reasonable expectations in the sense that they satisfy an epistemic

¹³ This point is made by Lea Ypi (unpublished manuscript). The example comes from her though it was also put to me, independently, by Alan Patten more than four years earlier.

condition that they are reasonably held, but that they are *legitimate*, and I explicated this in two ways: first they cannot be *contrary* to basic justice; and, second, they contain an implicit appeal to fairness. Indeed, I argued that fairness is a deep principle in any legitimate expectations argument. The underlying value, I argued, with reference to the IB and A levels exams for entry into university, is rooted in an appeal to *procedural fairness*, that is, in not making some people pay big costs for the choices that they reasonably make under the rules and conventions that have applied to them in the past and apply to other people, but which change in unexpected ways. So – the rich man in the mansion is not a good example of the implications of a legitimate expectations argument, because fairness considerations ought to pose a limit to the scope of the entitlements – a limit defined by a theory of fair shares.¹⁴

This more nuanced understanding of legitimate expectations represents a response to Ypi's fox-hunting aristocrat in the mansion objection: it can explain the difference between this (rich) person and the reindeer-herding Sa'mi. Although the Sa'mi have a way of life that does require much larger areas of land than would be required by settled farmers or urban people, they are not taking more than their fair share of all resources, when we consider their way of life in the round. On the contrary: the Sa'mi are pastoralists who have fewer material possessions than most people in the society, and it would be an unfair metric of comparison to focus on the land required rather than all the different types of resources by which we can compare different people's allocations.

4.2 Excessive duties

Another objection to the social convention account of legitimate expectations that I advance above is that this account is problematic because it opens up a wide range of expectations that people may have that are connected to important plans and projects.¹⁵ By including various kinds of social norms as possible

¹⁴ An objection to this move is that there are many different theories of a fair distribution. A Nozickean would not be convinced. That, though, is a separate problem, and is discussed in Meyer and Sanklecha (2014). They address this conflict by appealing to acceptable ranges of distribution (rather than distributive justice *per se*), which allows them to broaden the range of expectations that are considered legitimate while still taking distributive (fairness) requirements seriously.

¹⁵ Some might say that it's problematic also because we would expect (a) more disagreement about the reasonableness of the expectation when they are based on underlying social norms rather than explicit promise or law; (b) uncertainty about *who* should compensate for disappointed expectations that are based on social conventions in contrast to expectations based on law or contract.

bases of expectations, people could end up having a large number of legitimate expectations about many different kinds of things. If this argument is going to work we need a principled or coherent way to distinguish between those reliance interests that we feel ought to be protected and those that we do not think should be protected.

In order to explore this issue, we should consider the domains in which it is expected that people make choices and so have life-plans, and yet, we feel that they should bear a substantial portion of risk, which means that they do not have legitimate expectations of compensation if the benefit that they expect is not realized.

Let's begin with market economies. Almost all capitalist markets assume that people must bear at least some of the costs of their choices. Indeed, capitalism has been identified with 'creative destruction': both its advocates and detractors are familiar with the fact that new technologies, productive innovation, and unanticipated prices can lead companies, indeed whole economic sectors, to go out of business, and to the emergence of an entirely new method of organization or business. People often make choices that were rational when they made them: people invest in education or training for skills that (it is reasonably expected) will lead to a job. However, when they graduate, it may well turn out that the jobs are either non-existent or much fewer than anticipated. This could be for reasons that are unrelated to the agent's decision-making powers – that is, the agent made choices that seemed reasonable, exercised due diligence and so on. Moreover, these disappointed expectations are not trivial: these choices may reflect large sunken costs as well as opportunity costs; and the failure of these plans may be catastrophic for the individual.

A similar point could be made about marriage. People may reasonably expect that marriage is a good plan of life: people who are happily married tend to live longer, be healthier, and marriage, at least for men, is good for their careers. If someone is happy with someone now, and the person seems to have a number of good qualities and basic compatibility, marriage can look like a good step. Yet, it might not turn out well, and that may be for reasons that couldn't be predicted earlier. Indeed, a bad marriage can lead to many years of unhappiness and additional, unnecessary stress.

In neither case do we normally feel that people should be compensated when these sorts of expectations aren't fulfilled.¹⁶ We might think that there

¹⁶ This point is sometimes obscured in normative writing on luck and responsibility that is overly preoccupied with the image of the gambler. See Ronald Dworkin (2002), Kok-Chor Tan (2012), and Shlomi Segall (2009). For a very good and realistic discussion of capitalism and its relationship to luck and agency, see Jeff Spinner-Halev (2017).

ought to be social policies in place that protect people from being fully exposed to grave risk, by providing a basic income or unemployment insurance and/or re-training, but this is normally justified on grounds other than compensation for legitimate expectations.

Why is it that we feel that people should bear significant costs for these risks and that compensation is not appropriate? First, it's not because we think that the decision or choice was unreasonable. In both cases, the decision involved a kind of prediction about the future, which was completely reasonable, given the information at hand. Second, it is not connected to the importance of the interest. In both cases, the consequences of the expectation not being satisfied could be very serious for the disappointed person. People who have invested in a skill in the labour market or a marriage can have a very strong interest in the skill being utilized and the marriage succeeding. Indeed, they probably have as strong an interest in these as I was claiming earlier attaches to residency in a place.

It is however related to our understanding of how the basic structure of society operates, according to which our expectations are mediated. It is a fundamental feature of a market economy – which is the basis of our economic system, and which, properly regulated, is the best system that we have so far, in generating opportunities and wealth, – that the market functions to enable buyer to meet seller, which means that people produce goods or hone skills in order to sell the goods or labour to someone else. There is no guarantee that they will find a buyer. Inherent in this system is that people bear the risk that their goods or their skills will not be required in the market and so people cannot have the *expectation* that they will be compensated for failure.

Similarly, it is a fairly fundamental feature of the institution of marriage in contemporary liberal-democratic societies that it contains a right of unilateral exit. This is necessary to ensure that it is based on love and respect for the interests and autonomy of the other, but there's always the risk that the other will fall out of love, or want to get out of the marriage. It may be important to the success of your life that you stay married to me, but you have no right that I stay. There can't be compensation to the disappointed party when the marriage fails (though there can be just rules of division of assets and some subsidy to a disadvantaged partner for loss of income) but norms of equality, rights of exit, and autonomy are fundamental to our commitment to an egalitarian marriage practice (even if they are not sufficient to ensure that marriages are actually egalitarian).

For these institutional practices then, guaranteed success is not possible, and the person ought not to be compensated for the failure of the marriage or the vagaries of the capitalist marketplace. This is built in to the institutional design, and it would be a worse institution if there was this guarantee or

assurance. By contrast, place-related rights of some kind *can* be guaranteed: people have a strong interest in being at liberty to remain in a place, where they have plans and projects and relationships, and they have a strong interest in exercising some control over the place, because control over resources and land is fundamental to the continuing pursuit of their projects and relationships and the exercise of self-determination. There are of course limits to the exercise of jurisdictional control and limits to the right to remain (it could be justified in removing people from a place when staying in place is unsafe or demonstrably in the public interest that the persons move) but these represent limits to the contours of the right, rather than fundamental features of having the right. In this case, then, there are legitimate expectations, grounded in interests, that the institutional order confer security of residence, which doesn't apply to particular jobs or to relationships

In the case of marriage and the market, people have reasonable expectations but not legitimate expectations. The difference here turns on a methodological point about how to reason normatively about institutions: we do not reason directly from a person's well-being interest to rights, but from the well-being interests, broadly conceived, to the ways in which these interests can be protected within broadly justified institutions and practices, and this structures not only entitlements and obligations but also legitimate expectations.

At this point we have a response to the concern that relying on social expectations may open up too many potential claimants, and is an inherently conservative doctrine as a result. That criticism, while plausible at first blush, fails to recognize that expectations themselves are mediated through social institutions which themselves have to be justified.¹⁷ This narrows considerably the range of expectations that could be subject to compensation, and the kinds of duties that people can be subject to, on the basis of these interests.

4.3 Excessive rights and duties (again)

There is a different version of the excessive rights and duties argument, which is not posed as an objection, but as a friendly amendment to the place-related rights argument outlined above. It doesn't deny place-related attachment; indeed, it

¹⁷ I accept therefore the structure of Buchanan's justificatory argument – though I broaden it to include social conventions and social institutions more generally, and I don't think the justification has to take the form that it is required by justice (although of course if we have a broad enough conception of 'justice', to include democracy and other elements, then I could accept that formulation).

agrees with the fundamental direction of the argument from interests to entitlements to the requirement that people should be held under duties to protect the morally significant interests of others, which are partly conceptualized in terms of their expectations and plans. However, if this argument goes through, it potentially could give rise to the criticism that the place-related focus of the argument advanced in section three applies to other place-related rights, and this might turn out to generate excessive duties or to be problematic in other ways.

Cara Nine (forthcoming) has recently advanced the argument that the justification for place-related rights, discussed in section three above, doesn't only generate moral rights of residency and occupancy, which recognizes our attachments to large-scale places, by which is meant cultural homelands or countries as I've defined it, but 'rights to a home'. She supports this with evidence that shows that moving house by itself represents a harmful instance of displacement; that it is not only perceived as stressful, but it leads to a decrease in cognitive functionality, which, she argues, is a *pro tanto* extrinsic harm. Moreover, the kinds of people who are most likely to be adversely affected are already vulnerable and poor; and the place-related rights argument advanced earlier needs to incorporate this evidence.

To some extent, I agree with this argument. I agree that homes may represent objects of place-related attachment and that moving house is stressful. But here note that many of the problems that Nine lists – problems connected to decline in cognitive functioning – are both widely experienced and temporary, especially if the person moves nearby. They are on all fours with the stress attached to home renovation (especially renovating kitchens and bathrooms), and similar too to other major life events, both positive and negative, which can disrupt our cognitive functioning, such as having a baby and the sleep deprivation connected to caring for a newborn. A person can reconstruct their home in a new location, which makes it different from the long-term disruption of relationships and life-projects involved in expulsion from one's community. This I argue has implications for the kind of duties that follow from recognition of this interest; and these duties need not be excessive.

The moral right of occupancy argument, discussed in section three, was used to explain the wrong of expulsion. If that argument and Nine's right to a home argument are parallel, then, it should justify a right against displacement from one's home. But I think there are dis-analogies between the cases, so the rights and duties generated in the 'right to a home' case are weaker than in the case of expulsion from one's community and the rights of occupancy that are violated.

What kinds of rights and duties might be generated by Nine's argument? She is not explicit on this, but if there is a right against the standard case of

such displacement – where tenants are evicted from their homes for failure to pay rent – it would be incompatible with a market economy in rental housing. I think people do have an interest in preventing home displacement, but I think it would be even more harmful if we were to destroy a rental market in housing. (Here I take the view, advanced by Joe Heath, that markets are primarily justified as third-best non-ideal institutional arrangements; that is, that we do need such a market.) This leads me to reject the most stringent view of the right to a home, which would make it analogous to occupancy rights. Nine's argument on the importance of a home does, though, seem to suggest some rights and duties. It could, for example, justify strengthening tenant rights: it would be a good thing to design rules and enact policies that ensure that sitting tenants are protected from rapacious landlords and sudden increases in rent, but a strong right against displacement runs up against what I regard as a morally justified institutional arrangement (rental markets in housing). This is consistent with the interest-based account of rights that she and I both accept. On that argument, the question is not only whether and in what way the frustration of expectations is harmful, but also under which circumstances this harm is morally significant, and I've suggested that it doesn't justify a policy which would have the effect of destroying rental markets in housing (or labour markets), at least not while we live in this world.

5 Conclusion

In this paper, I have defended the idea of legitimate expectations regarding land. I have shown that we have tend to think that legitimate expectations should be respected, in a way that is consistent with a conception of the person as reasonable, capable of moral agency, and also connected to people and projects through various commitments, which are symbolically and materially rooted in particular places. I have argued that individuals have a strong interest – an interest that is sufficiently weighty that it imposes obligations on other people – to protect stability of place, and I distinguished that interest in stability from related important interests (in marriage or in jobs) that we also have interests in.

I defended an account of legitimate expectations that is distinct from justice but is not a mere legal account: I have argued that social conventions can also give rise to legitimate expectations. Indeed, I take it that the main theoretical contribution of this paper is that, through examining legitimate expectations in relation to land, we can see that the relationship between rights and

entitlements and expectations is different from – indeed, the inverse of – the way in which it is typically understood by Rawls and many other contemporary theorists. It is commonly assumed that institutions give rise to entitlements and legitimate expectations, but I argue, *au contraire*, that the existence of legitimate expectations – once these are properly conceptualized and understood – can give rise to entitlements; and that fairness is an important justificatory value in explaining why we give importance to legitimate expectations, and can also set limits on the entitlements generated.

I also address some powerful objections to the legitimate expectations argument, both conceptual and in terms of the implications of the social convention line of argument, and show how my argument can address it. The interest in stability and fairness that underlies the social convention argument can generate a wide range of duties, which is not surprising, if this does indeed represent a morally significant interest of persons, but these may need to be balanced against other weighty interests of the person and the community, and the value of fairness that is also at the heart of the argument.

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