

NIMBYism and Legitimate Expectations¹

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Abstract:

An increasing portion of contemporary politics revolves around a set of claims made by those (typically derisively) referred to as NIMBYs. Despite its practical significance, NIMBYism has not received significant attention in academic philosophy. I attempt a charitable but limited reconstruction of NIMBYism in terms of legitimate expectations. I argue that, despite NIMBY expectations being somewhat vague and at least moderately unjust, they may be legitimate. This does not imply that they are decisive, or entail a conclusion about their overall normative force. I close by developing some tentative details in institutional design, focusing on the possibility of monetary compensation as a way of recognizing, but limiting the force of, NIMBY expectations.

An increasing portion of contemporary politics revolves around a set of claims made by those (typically derisively) referred to as NIMBYs. NIMBY stands for Not In My Back Yard. NIMBYs paradigmatically reject policies that they believe would adversely affect them, despite approving, or at least not disapproving, of relevantly similar policies elsewhere. Two policy arenas are of special interest. The first is climate change. Responding adequately to global warming requires significant expansion in non-carbon-emitting energy production; NIMBYs may recognize this general fact, but resist any local development of wind, solar, or nuclear energy for various local environmental reasons. The second is housing policy, and in particular the construction of dense housing such as apartment buildings, or even moderately dense ‘missing middle’ housing such as duplexes or rowhouses. The two issues relate because dense housing is itself an important response to climate change. But the focal point of the housing issue is swiftly-rising prices to rent or buy housing in (otherwise) thriving cities, and is

¹ My thanks to Allen Buchanan and Luke Golemon for reading earlier drafts of this essay.

therefore a question of distributive as well as environmental justice. United States housing policy will be the framing context of this essay.

NIMBYism has not received significant attention in academic philosophy, particularly not in the most prominent venues. But, in addition to its interest as a topic in applied political philosophy, NIMBYism implicates multiple pressing theoretical questions. In moral theory, NIMBYs press the limits of acceptable partiality to self and to compatriots.² In political philosophy, NIMBYism raises issues of group rights, especially the right to exclude, and the force of legitimate expectations. The overlap between moral and political philosophy is not incidental. Feldman and Turner have made the only explicit defense of NIMBYism that I'm aware of. They argue that NIMBY preferences don't reflect "especially badly on one's character" (2010: 256). I agree, at least for some NIMBY preferences, although I will rely on a different argument. But a character judgment is not ultimately what we want: NIMBYs make claims (and exercise powers) to exercise control over their domains, and we need to assess the status of those claims.

The aim of this essay is to give those claims a charitable philosophical grounding. I don't believe that any plausible case can be made for exclusive local control over housing, climate, or any other policy which is important to justice. So I set that thesis — we could call it strong philosophical NIMBYism — aside. But I do think that a weak philosophical NIMBYism is plausible, which holds that NIMBY claims are (highly defeasibly) *relevant* to justice. Given the tendency to dismiss NIMBYs outright as selfish, racist, or simply recalcitrant, this is no small point. The basis for weak philosophical NIMBYism is that NIMBYs may have legitimate expectations which are upset by changes in (e.g.) housing policy, even changes in the name of justice. The main intervention of this essay is to argue for an expanded notion of legitimate expectations (LEs) which makes room for some NIMBY claims. The role of legitimate expectations is to represent an emergent property which should be considered in the public policy of a just state: a legitimate expectation has some moral force beyond the independent merits of whatever states of affairs are expected.

² See Feldman and Turner 2010; 2014. The literature on acceptable partiality is vast; one canonical text is Scheffler 1994.

Existing accounts of legitimate expectations tend to be quite limited on at least one of two dimensions: LEs are restricted to domains of explicit, institutionalized endorsement, restricted to expectations which conform with justice, or both.³ I will offer several arguments for an expanded notion. One desideratum is to give legitimate expectations a distinctive functional and conceptual role, which they do not obviously have on restrictive accounts: if expectations are only legitimate when they are fully just, then they could effectively be dropped in favor of only talking about justice; if expectations are only legitimate when they reflect explicit legal or social entitlements, they could effectively be dropped in favor of an analysis just in terms of those prior entitlements.

The expanded account of LEs is grounded on intuitive ideas about planning and practical agency. A standard part of practical agency is the making of long-term plans, which serve as commitments that anchor routine deliberation. These commitments then yield reasons: we have reasons to *keep* our plans.⁴ Our plans are inevitably shaped by the basic structure of our society. The idea is that morally reasonable plans formed under a basic structure which is, in turn, not egregiously unjust, can constitute legitimate expectations. The vague normative terms in that construction can be schematically cashed out in terms of character: the content of the plans doesn't display bad character, and the institutional context of the plans isn't so unjust such that it displays bad character to rely on it.⁵ A substantive moral account of this would go far beyond the scope of this essay, but the schematic is sufficient for dialectical purposes. Some plans are clearly morally bad and should not be treated as morally salient. But if we insist that only plans which fully conform with justice are legitimate, then no plans at all will be legitimate in nonideal theory, and, as we'll see, few plans would be secure even in ideal theory.

³ For examples, see, respectively, Melenovksy 2020 and Moore 2017.

⁴ See Rawls for a basic intuition about the importance of plans (1999: 358). Michael Bratman (1987) has prominently advanced a sophisticated planning theory of agency which yields emergent reasons from plans and intentions. Joseph Raz (1990) views some such commitments as generating exclusionary reasons in their favor; see Adams (2021) for recent discussion. I am *not* committed to an exclusionary reasons analysis — indeed the opposite (see Quigley 2023). The argument here only requires that plans generate *some* reasons.

⁵ The reference to character is shared with Feldman and Turner (2010). But the standard for character will rely proximately on the ideas about planning, rather than on ideas about partiality to self and loved ones. But the accounts are compatible.

The state should not, however, generally disregard the planning agency of citizens, in theory or in practice. (This is the intuitive moral premise of the essay: it will only be defended by examples. Denying it seems very strange. If, however, this essay simply advances the dialectic to the direct consideration of this question, I'll consider it a success.) So there must be some standard for plans between fully conforming with justice and seriously immorality: it is that standard which I call out with the (otherwise) vague references to good character. The substantial conclusion then depends on arguing that NIMBY expectations are the kind of thing that must be at least possibly legitimate, if plans are to be taken seriously at all. As I will be at pains to emphasize, the charity of this NIMBY reconstruction depends on its modesty: legitimate expectations are not decisive, else we hold progress toward justice hostage to life plans established under injustice. But legitimate expectations can matter without being decisive. We must mind those left behind. I close with some speculative discussion of compensation schemes for NIMBY expectations to reflect this conclusion in a more practical light.

1: The Nature of Legitimate Expectations

There has recently been a fair amount of discussion about the role of legitimate expectations in political philosophy.⁶ This picks up on a notable role for legitimate expectations in *A Theory of Justice*.⁷ The concept of legitimacy can play two roles: one regarding the nature of the expectation, one regarding the justice of the expectation. Some expectations come from interpersonal interactions, while others come from social practices and rules, and yet others simply arise in the course of life. Melenovsky, for instance, is tightly focused on expectations founded on entitlements from social rules, while Hsieh follows Rawls in a looser domain of activities “encouraged” by institutions.⁸ It isn't clear whether there is a distinction in principle between the import of institutional expectations and non-institutional expectations.⁹ A second axis is the standard of justice in play for either the practice in general or the specific expectation at hand. Rawls discusses expectations grounded in institutions required by justice, while Moore somewhat expands the scope by considering also expectations

⁶ Brown 2012; 2017; Melenovsky 2020; Moore 2017; Meyer and Sanklecha 2014.

⁷ Rawls 1999; see also, for an early discussion of Rawls's view, Buchanan 1975.

⁸ Melenovsky 2020, 11; Hsieh 2000, 103.

⁹ See Breakey 2022 for a helpful general discussion.

grounded in institutions which are “neither contrary to justice nor required by justice.”¹⁰ Matravers extends the scope further to consider expectations formed under unjust institutions, whether or not the particular expectations in question are unjust.¹¹ The NIMBY case involves expectations which have at most been “encouraged” by the state, rather than explicit entitlements. Further, the expectations in question are at least modestly unjust. The idea that NIMBYs have some legitimate expectations therefore involves a permissive stance on both axes. The goal of this section is to argue in general for a permissive account of legitimate expectations, and in particular that some NIMBY expectations qualify as legitimate on such an account.

1.1: State-Encouraged Expectations

Early discussions of legitimate expectations took a relatively expansive view of the nature of legitimate expectations. Rawls granted that individuals acquire rights on the basis of acting in ways encouraged by the state, and Buchanan’s early discussion of legitimate expectations concerned examples that don’t clearly involve entitlements.¹² In particular, Buchanan gives the example of a state-sponsored program to incentivize the training of more medical technicians. Eventually, that program is scrapped as (for whatever reason) sub-optimal or obsolete. But at any given time there will be a number of people ‘in the pipeline’ for that program, who undertook certain preparatory paths in anticipation of entering into medical technician program (1975, 421). Not only does this materially harm those in the pipeline, it “undercuts [their] effectiveness as rational planner[s] and executor[s] of plans” (420).

The underlying motivation here is that people build life plans on the foundation of salient social facts. When those facts change, life plans are disturbed and perhaps overturned completely. This harms planners who appear to have acted without malice or special negligence, but merely accepted certain social patterns and policies as premises in their long-term practical deliberations. Now, life plans

¹⁰ Moore 2017, 231-2. A reviewer suggests that Rawls may not be committed to *only* viewing expectations grounded in requirements of justice as legitimate. This raises a matter of textual dispute — Buchanan (1975: 421) clearly reads Rawls as having the restrictive view — but this isn’t necessary to resolve for the substantive argument here.

¹¹ Matravers 2017

¹² See Rawls (1999, 313). Buchanan’s critical point is that Rawls is only discussing expectations that derive from institutions that are themselves legitimate, and thus expectations have no residual force when changes to institutions are required by justice. This pertains to the second axis of legitimacy, to which I turn below.

are disturbed in all sorts of ways, and, though this is always a meaningful harm, it is not usually of particular concern in liberal political philosophy. Even Buchanan's scenario would be entirely normal in the private employment market. What makes it distinctive is the involvement of the state. *Caveat emptor* may be an appropriate maxim in the market, but seems intuitively inappropriate for the government with respect to its citizens. Why?

The state forms the basic structures of society, in which all citizens must form their plans and goals. Buchanan's basic point is that sometimes state structures, which serve as the background for private interactions, must themselves change. The idea behind legitimate expectations is that special care must be taken in such circumstances. The goal of the state is to provide certain goods to its citizens, largely amounting to the pursuit of their life plans; accordingly, the state should not overturn those plans without due consideration. The private market economy is an indirect mechanism, overseen by the state, for pursuing that goal, but the market itself is unconcerned with preserving plans (or anything else). This yields a general state concern for stability, which seems plausible — I do not hold that life plans *only* matter when the state itself encourages them. But attempting to generally preserve life plans, or else compensate their frustration, would be intractable, and likely counterproductive. However, attending to life plans encouraged by specific state actions is not intractable, and failing to do so flouts the basic concern of the state for its citizens. A contrast: if a private firm attracts workers with a pension plan for retirement after twenty years, but then conducts mass layoffs fifteen years into its existence, there is largely nothing to be done about it; but state should always have the capacity and the reason to preserve or compensate plans, and it would be inappropriate for the *military* (say) to en masse dismiss soldiers who are nearing their twenty years as a cost cutting measure.

I don't intend to argue, beyond these appeals, for why the state should (at minimum) be concerned about life plans which the state itself has encouraged. I think few, if any, would dispute the intuitive pull of that claim. But the tractability of the idea can be challenged. Melenovksy (2020) takes a restrictive view on legitimate expectations, holding that only social entitlements ground legitimate

expectations (though these may not always be legal entitlements). This denies that the state encouraging or incentivizing some course of action grounds any claim against the state.

Melenovsky's reason is that a principle which grants normative force to expectations which have merely been encouraged has a tendency to "over-generate moral claims" (12). He lodges objections against Hsieh (2000) in particular, although Hsieh's examples are similar to Buchanan's. His argument is that there is no determinate standard for what expectations have been encouraged. Hsieh's example concerns Betty, who took out significant loans to pay for medical school in anticipation of receiving a high salary as a doctor. If healthcare laws are in the interim reformed such that doctor salaries plunge, Betty is left in the lurch. Melenovsky grants that this gives a "reason to avoid" such policies, but denies that Betty has any relevant moral claim (2020, 11-12).¹³ His reasoning is that there is no principled limitation on which sorts of expectations have been suitably encouraged:

If Betty worked to develop new medical technology but someone patented the tech before she did, then it would seem like she has a claim to the patent because she did the research encouraged by the existing patent arrangements. If Betty was encouraged to take Advanced Placement tests in high school because she thought it would get her into an Ivy League school, then—according to Hsieh's view—it seems like she would have a claim to a spot in an Ivy League school because she did what was encouraged by the arrangements. (2020, 12.)

This is a slippery slope objection. It seems implausible that Betty has a legitimate expectation to get into an Ivy League school, so if that result is entailed by Hsieh's view, we are pressured toward the social entitlement view in favor of the mere encouragement view of legitimate expectations. In general, if all state actions equally encourage a huge variety of plans, then there is no way to distinguish a specific, tractable set of plans which warrant special concern or compensation.

As always, the question is how slippery the slope actually turns out to be. Is there a reasonable basis for distinguishing cases such as the medical technician, the soldier planning to retire, and (I'll claim) the homeowner from cases like Ivy League expectations?

¹³ It's not clear whether a reason to avoid a policy would also mean a reason to 'grandfather in' or otherwise compensate those who are harmed. If so, little of practical importance would ride on this point.

A somewhat glib response is that legitimate expectations must also be *epistemically* reasonable. Expecting Ivy League admission on the basis of AP scores fails that test. The general concern is deeper, however: states do encourage very broad courses of action, for example by subsidizing student loans. (This is especially notable because I'll invoke *home* loan subsidies below.) This encourages certain kinds of plans, which often enough are foiled. Claims for special concern on this basis are less intuitively compelling, and certainly do seem practically intractable. Here is my proposal: we can array state encouragement of actions on a spectrum, ranked by the specificity of the plans which are encouraged. Subsidizing medical technician training puts people onto a quite clear path, as do pension guarantees after twenty years of military service. A college education, however, is closer to an all-purpose good. Individuals start college with specific plans (at least sometimes), but education, at least at the undergraduate level, is convertible to a wide range of options. The fact that one particular plan doesn't pan out is, from the perspective of state policy, no special failure.

This doesn't posit a *categorical* difference between various forms of state encouragement. But, in this case as in many others, the lack of some categorical threshold should not be paralyzing. (A familiar case: day fades gradually into night, but we still distinguish the two.) There is a general basis for acknowledging some claims and dismissing others, and it relates back to our original principle of respecting planning agency. There will be borderline cases. Hsieh's example of medical loans, for instance, seems somewhat unclear, because one might think that the expectation that doctors will be highly paid is no different than the expectation that CEOs will be highly paid. The state does assure high doctor salaries in a meaningful sense, however, by highly regulating medical practice and capping the number of medical residency positions which allow entry into the field. Some vagueness at the boundary is to be expected: Melenovksy's own account will inevitably face its own marginal cases — as will all accounts — with respect to which social expectations are counted as mutually recognized, and what exactly the attendant entitlements are taken to be.

The question, then, is where NIMBY claims fall on this spectrum. There is a good case to be made that the state encourages a specific form of long-term planning with respect to homeownership.¹⁴ The basic structure of the housing market is characterized by public institutions which permit and encourage widespread homeownership. The typical 30-year fixed interest rate mortgage is a public artifact, not the result of a free market process. Without implicit public subsidy, many fewer people would be positioned to take on massive loans without crippling interest rates. The entire system is backstopped by the public financial institution Freddie Mac. Further, the mortgage interest tax deduction additionally subsidizes home loans, especially for taxpayers who make enough money, and own an expensive enough home, to fully take advantage of it. Given that standard mortgages are on a 30-year term, this is an explicit inducement to long-term planning around residence. These explicit provisions are symbiotic with a public culture in which home ownership is a paradigmatic marker of success. The cliché American dream involves a white picket fence: that fence is owned, not rented.

Just as a medical technician program would not specify a particular salary, there is no explicit assurance that one's neighborhood will have stable characteristics. But taking up a career path only makes sense if it will yield a viable income, and taking up a 30-year mortgage would make relatively little sense if no expectations could be formed about the medium- and long-term future. The density of population in a neighborhood, the quality of its school district, its approach to and achievement of public safety, the availability of parking (on one hand), or its walkability and public transit (on the other) are all salient to a decision about where to move and build a life. Further, local control over zoning regulations has generally reflected these priorities, giving residents significant control over what kind of housing can be built in their locality, among other regulations: NIMBYs are typically taking advantage of these legal provisions. In this sense there is an established social entitlement: but the dispute then becomes whether local zoning processes must themselves be reformed. There is no meta-entitlement against such laws being changed. But mortgage, tax, and zoning provisions all encourage the expectation of continuity sufficient to ground long-term life plans.

¹⁴ I mean "encourage" to mean something like "make laws which predictably incentivize and thus lead to" a given kind of plan. I don't mean to reify the state into a collective agential actor with intentions, although nothing I say is incompatible with that kind of view. Thanks to a reviewer for requesting clarification here.

The distinction between owning and renting offers a useful illustration of the interests in question. Claims for neighborhood stability are by no means limited to home owners — such claims, made by or on behalf of renters, are central to debates over neighborhood gentrification.¹⁵ I obviously cannot say anything substantive here about the gentrification issue. But a useful observation for our purposes is that gentrification claims seem always to be made in conjunction with independent claims about distributive and/or racial injustice. It seems odd to make *freestanding* stability claims on behalf of renters. While obviously renters can and do remain for long periods — and the issue is somewhat complicated by, e.g., rent control policies in some cities — the nature of renting is precisely to avoid commitment to a particular place, while the nature of owning is to make such a commitment. Making a long-term commitment to a place creates investment in the nature of that place. State encouragement of home ownership therefore has a fairly specific and tractable, although schematic, form: it encourages the formation of place-based life plans, which will routinely be frustrated if the nature of one's community is significantly changed. As I will continue to emphasize, this doesn't entail much about the strength of NIMBY claims: but I think it does show that they make sense.

This seems to me a sufficient dialectical response: a standard view of legitimate expectations includes expectations which are merely encouraged by the state; there is an intelligible distinction between specific and general expectations, such that our account of legitimate expectations does not spiral out of control; and NIMBYs can make a plausible case that the specific formation of long-term plans around neighborhood character are encouraged by the state.

I would like to venture somewhat further now, and ask whether the central concern here is fully gotten at by arguments about job training programs or mortgage interest deductions. These remarks are not strictly necessary for the argument, but I believe they strengthen the intuitive position beyond a dialectical response to restrictive views on the provenance of legitimate expectations.

We can begin with a bit of potted history: the publicly regulated mortgage system to which I just averred wasn't created by accident. It was created as part of the New Deal response to the Great Depression, in order to counter a housing crisis. Previous to the Depression, many people owned

¹⁵ Thanks to a reviewer for suggesting this comparison.

homes in the ephemeral sense that they held mortgages on which they paid the interest, but made no dent in the principal. Long-term fixed rate mortgages were introduced to offer protection against future economic changes while giving a plausible path to eventually paying off the loan. The system encourages home ownership, but the very existence of the system reflects a deeper point. It would have been equally possible to address the proximate housing crisis and then prohibit or regulate large and risky mortgages, thereby encouraging renting rather than owning.

Perhaps this was a mistake, all things considered. But it fits a broader public commitment to long-term life plans. Significant choices in life, prominently including where we live and what we do for a living, are formative on our character and the character of our lives. Often this is a subject of explicit planning, but often enough not: one way or another, our lives take shape, and their trajectory cannot be changed on a dime without major upheaval.¹⁶ A social emphasis on home ownership can be (partially) understood as an emphasis on stable life plans. In the case of establishing fixed term mortgages, Freddie Mac, and the whole scheme, there is actual *promotion* of the conditions for stable life plans, and therefore encouragement for a particular kind of plan. But there are also cases which mainly protect already established plans. This comes clear in cases of professions which are devastated either by turns in the market, technological progress, or especially changes in public policy. The idea of a “just transition” for coal workers combines all three: their industry is fading in the free market due to the falling costs of renewable energy and natural gas, and this process has been, and should continue to be, accelerated by public policy. It’s a stretch — though not entirely baseless, given energy subsidies — to claim that the state has encouraged coal working careers in any very distinctive way. But the loss of one’s entire industry in mid-career is a serious harm: job retraining programs have both a prudential and moral logic to them in all such cases, but the idea that the state in particular is encouraging their dislocation lends additional force. (We might also reference, on the other side of the climate coin, proposals to protect or compensate those who are dislocated from their homes by climate changes such as persistent flooding.)

¹⁶ This is reminiscent of communitarian writers such as Charles Taylor. The similarity is not incidental, but I mean to be saying something rather platitudinous, and not married to any deep theory. Platitudes, of course, do not hold for *everyone*. But they hold for most people.

In general, it does not seem that the case for public consideration of stable life plans is constrained to plans which have been encouraged by the state. So there may be a case for an even more permissive construal of legitimate expectations, which holds, for instance, that there is a legitimate expectation that the state not *interfere* with established life plans. I don't argue for that stronger position here. But the entire idea of legitimate expectations appears importantly linked to the importance of stable life plans.

1.2: *Unjust Expectations*

The last section argued in favor of the conventional Rawlsian view that legitimate expectations can be grounded by the state merely encouraging certain choices. Then I argued that the state has encouraged life plans around homeownership in a relevant way. The next point goes further: I wish to argue that even expectations grounded by unjust institutions can be morally significant.¹⁷

It clearly is not the case that *every* expectation encouraged by the state is legitimate. There are both epistemic and moral conditions on any expectations having normative force. I largely set aside the exact epistemic requirements. It's generally clear that totally unreasonable expectations don't have the normal force of planning agency: my expectation that I will win the lottery warrants no special concern when my plans on that basis are foiled. This is true for a private lottery, and also seems true for a public lottery, even if the state in some sense can be said to encourage the idea that buying lottery tickets is a reasonable way to spend one's money.¹⁸ I take it to be a shared presumption across theorists that only epistemically reasonable expectations can qualify as legitimate, whatever the precise standard of reasonableness.

The contentious question concerns the moral requirements for legitimate expectations. Buchanan's original objection to Rawls concerned a subset of unjust institutions; in particular, institutional features that at one point *were* just, but which justice now requires alterations to. The justice of the change doesn't alter the fact that individuals like Betty may be harmed in the transition.

¹⁷ Melenovsky (2020), for instance, maintains that a practice must be "morally justified" for its legal rules to ground legitimate expectations (14-16). His view is therefore demanding on both possible roles of 'legitimacy', although he remains (admittedly) vague on the relevant standard of morally justified practices. I consider a range of possible weaker views below.

¹⁸ Thanks to a referee for raising the lottery example. Notably, the state encouragement to lottery participation also does not have the specific character discussed above.

For Buchanan, what all this indicates is that Rawls requires a “theory of institutional change” (1975, 422). I go beyond Buchanan’s discussion in two ways. First, Buchanan’s (explicitly preliminary) proposal construes the difference principle as fundamentally distributing long-term expectations or life prospects; this emphasis on long-term expectations grounds an important valuation of institutional stability, which insulates Rawls from the objection that institutions (either at the level of particular laws or the basic structure of society) will change willy nilly all the time (423). Even if we grant that long-term expectations are part of the currency of distributive justice, however, that only mitigates rather than solves the problem. Even if we value stability, justice will surely require institutional change *sometimes*, so the question about transition costs remains. I attempt to answer that remaining question. Second, as mentioned above, Buchanan both follows Rawls and anticipates the subsequent literature in his focus on institutional change in ideal theory (422).¹⁹ So by stipulation the relevant expectations are of morally faultless origin. But the problem of transition costs seems the same whether we are discussing ‘maintenance’ of ideal institutions or the implementation of (more) ideal institutions, so it seems we should be concerned with unjust expectations as well, as I will be.

Meyer and Sanklecha (2014) develop a view which relaxes the ideal theory condition, but still places important justice constraints on which expectations are legitimate (and, therefore, which expectations are eligible for compensatory justice) (386-7). Their view is complex and I cannot consider its details here. The following summary will have to do. They begin with the observation that a Rawlsian requirement that legitimate expectations are those formed under a just basic structure seems to immediately entail that no actual expectations have *ever* been legitimate (378). This seems implausible, because the importance of expectations to practical agency obtains in the real world, not just in ideal theory. However, not all epistemically reasonable expectations are normatively important: we should thwart the thief who steals a car and (reasonably) believes he has gotten away with it, and “the harm caused by frustrating the thief’s expectation does not seem to count normatively” (370-1). They rightly set out to develop a moderate view which lands between these two poles.

¹⁹ Brown (2017) says that Buchanan is developing a problem in nonideal theory, and to that extent isn’t precisely discussing a Rawlsian principle (441). But this is incorrect. Buchanan’s plausible claim is that institutions require changes even in ideal theory — to keep up, for instance, with technological changes.

They suggest a moderate procedural answer in which an expectation is legitimate only if it falls within a range of possible policies which might be licensed by a reasonable conception of procedural justice.²⁰ The underlying idea is that it isn't reasonable to expect individuals to form expectations which correspond to the specific outcome of procedural justice; but individuals can be expected to form expectations which fall within the *boundaries* of procedural justice. Now, exactly how wide those boundaries are is up for debate: if the range of possibility were very wide, it would permit quite unjust expectations as legitimate; if the underlying value (say, utility) dictated precisely one outcome, the procedural aspect of the proposal wouldn't reduce its demandingness.

They offer some considerations to narrow down the scope of legitimate expectations (385-6). These rule out many unjust expectations, but at the risk, I think, of being overly demanding about citizens' sense of justice. Having one's expectations fall within to the possible range of procedural justice outcomes is still a fairly high standard, given conditions of pervasive injustice. It's true that those underlying values permit various instantiations, a point to which I return momentarily. But, given that we have now moved to nonideal theory, it's unreasonable to expect many to generally adhere to even quite general principles of justice, sufficient to reliably apply those principles in particular cases in which their diverse personal interests are at stake. The concern here is that Meyer and Sanklecha have not really avoided the objection they themselves put to Rawls: that, in nonideal conditions, hardly *any* expectations will turn out to be legitimate.

Feldman and Turner (2010) raise a relevant comparison to reasonable partiality: we grant that acting partially to favor oneself and loved ones is eminently reasonable in ordinary life, but partiality will routinely conflict with principles of justice in nonideal circumstances which, to raise just one obvious point, fall short of any remotely egalitarian standard of distributive justice.²¹ So while the moderate procedural justice standard will see some additional expectations as legitimate, this won't apply to very many (or many of the most important) expectations in societies (like all existing societies) which systematically fall short of even the procedurally permissible range of justice. This applies to

²⁰ They emphasize that it is the underlying substantive considerations that govern the outcomes of procedural justice that do the normative work here (387).

²¹ See Murphy (2000) for discussion of related matters.

distributive justice, to climate justice (Meyer and Sanklecha's concern), and to housing policy (which, it seems to me, surely has not been designed in a procedurally reasonable manner). So most expectations, even those held by individuals of good character in some of the best existing states, will turn out to be illegitimate. This conflicts with the idea that states should generally have at least some regard for the planning agency of their citizens.

Moore (2017) proposes an amendment which may help. She suggests an expansion of legitimate expectations to cover not only just expectations, but those which are "neither contrary to justice nor required by justice" (232). The scope of this expansion is ambiguous. Moore foregrounds the wide range of permissible institutions, norms, and conventions which are compatible with "universal principles, such as respect for basic human rights" (234). This can be given a weak or strong reading. The weak reading allows just for the multiple realizability of principles of justice. For some very important questions — most obviously, those regarding the basic structure of society in the Rawlsian sense — justice might require quite specific institutions. But for many other questions, especially the matters of norm and convention Moore mentions, there are many possible realizations of justice which are descriptively different but (roughly) morally equal. (This is suggested by language about any given state having "its own brand" of justice (234).) This expands the realm of legitimate expectations beyond Rawls's original language about the institutions *required* by justice, but it would go no further than Meyer and Sanklecha's principle.

However, it sometimes seems that Moore has something stronger in mind, which would permit not just various roughly equal brands of justice, but moderate *injustice*, as when she says that her moderate position disallows "rules or policies or practices that are *egregiously* unjust" (ibid, my emphasis). But Moore in the same sentence says that conventional practices that "are not *objectively* unjust" (ibid, my emphasis) may ground legitimate expectations. But of course a rule, policy, or practice may be moderately (i.e. non-egregiously) but objectively unjust. It isn't clear how Moore's principle would rule on that quite normal case. The stronger reading addresses the overdemandingness concern, but places a great deal of weight on adjectives like "egregious" to rule out counterexamples of concern, such as the (legally and epistemically reasonable) expectations of slave owners in the

antebellum south (233). Interpretively, I incline to the weaker reading of Moore. The stronger reading, however, is close to the view I will try to articulate below. Before turning to that, we should consider an even more permissive option.

Brown (2017) develops a different approach to legitimate expectations. Brown's view, in essence, takes up the point emphasized by Rawls (and later Hsieh) about the role the state plays in encouraging certain expectations, but strips away the requirement of normative legitimacy altogether. For Brown, "expectations about what governmental administrative agents or agencies will do or not do in the future are legitimate if, and only if, those agents or agencies were responsible for creating the expectations" (2017, 445). This involves a certain authority having been given or having assumed decision-making powers, in ways which Brown elaborates, but he emphasizes that this is "separate from the issue" of "whether or not it and the system of law and government of which it is a part, in general, exhibits *legitimate political authority*" (454, emphasis original). Instead, "legitimate expectations, and any moral obligations and rights as well as any legal effects or relief to which they give rise, are *sui generis*" (449).

This view may be narrower than my own on the appropriate provenance of legitimate expectations: requiring administrative agents to be *responsible* for expectations is a strong reading of the state encouragement idea. But, while I am nonetheless sympathetic to the core of Brown's proposal, he goes quite far in permitting unjust expectations to count as legitimate. Illegitimate political authorities can be responsible for expectations which are unjust in an extreme degree. Consider the expectations and plans of slaveowners in the antebellum south. Brown's strategy is seemingly to focus on the variable weight of legitimate expectations, rather than strictly limiting their scope. He emphasizes that legitimate expectations ground only "prima facie, non-absolute" obligations on the part of the state, and that these may plainly be outweighed by a "pressing public interest" (460). These are plausible and important points, but they still grant that there is some "residue of standing or legitimacy" (*ibid*). It is hard to be sure, given the understandable vagueness in this part of the view, but this apparently holds that (e.g.) the antebellum slaveowning expectations have *some* weight, even if this weight is defeasible

and “*sui generis*.” I believe, by contrast, that we need both scope and weight qualifications on legitimate expectations: all LEs are defeasible, but some expectations are not legitimate at all.²²

This presses us back to idea that, while moderately unjust expectations may be legitimate, egregiously unjust expectations are not. How can we approach such a standard, which respects many actual expectations, even in seriously flawed societies, while not protecting evil expectations? The underlying moral idea, on my view, is the importance of planning agency. Our standard should be such that the normal exercise of planning agency, and the importance of the life plans that thereby arise, are viewed as morally relevant by the state. This indexes the moral standard for legitimacy partially — but not wholly — to the norms and standards internal to the society. I think the crucial intuition can be captured by saying that expectations are legitimate when the expectation-holder has *done nothing wrong* in the forming of their expectation, and subsequently done nothing wrong in investing their agency in life plans which depend on that expectation’s fulfillment.

One part of doing nothing wrong is forming epistemically reasonable expectations. But the important question here is when forming epistemically reasonable plans is morally wrong. The substantive idea is that planning agency is a crucial part of a normal life, and people simply must make plans under the actual conditions of life. Because plans must be responsive to institutional realities, and in particular the reality of unjust institutions, deciding which expectations are legitimate is really about judging the relative importance of respecting planning agency.²³ This opens up a way of articulating when institutions are so unjust that expectations based on them are necessarily illegitimate. When circumstances are sufficiently deeply unjust, we should resist our normal practices of planning. This is

²² A reviewer points out that it may be hard to tell the difference between a legitimate expectation being clearly outweighed and an illegitimate expectation being defeated outright from the start. I have some sympathy to this point: but one of the starting intuitions of the puzzle is that the epistemically reasonable expectations of the thief don’t count *at all*. We could say that they count somewhat — the thief may have formed a life plan — but should be disregarded anyway. Even if we went this route — which does seem to me less intuitive — we would still want a marker for when expectations should be eligible for compensation and when they shouldn’t be. The distinctions made in the text could then be put to that end.

²³ Again, a background idea is that expectations regarding the state have a special status. Building life plans around the state in which one resides is simply inevitable, and generally — and especially perversely — one must *continue* building lifeplans around the law even if the state is demonstrably unreliable. These considerations don’t hold for any particular individual in our lives, but perhaps for the dependence of children upon parents, which in turn *does* seem to ground special claims. But one could develop a view, compatible with the one on offer here, that accords importance to all expectations, formed without serious moral error, which are important to life plans.

a quite demanding task, given the centrality of planning agency to human life. But extraordinary times call for extraordinary measures. (It may be that refraining from the exercise of planning agency is literally psychologically impossible. If so, the best possibility may be striving to hold our plans very lightly: pressing a *claim* about the upheaval of my plans, where that upheaval was essential to rectifying deep injustice, would then be the moral mistake.).

What sort of cases do I have in mind? Conditions of profound injustice are doubly different from ordinary injustice. Moore remarks 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” (2017: 233). As a point of moral epistemology, the badness of slavery should not have been difficult to see.²⁴ So moral ignorance is not a plausible excuse for building life plans around slavery. And it is at least plausible to hold that, while morality should not be excessively demanding in ordinary circumstances, it can be quite demanding in moral emergencies.²⁵ So forming and attempting to preserve life plans which depend on and perpetuate profound injustice can be a moral mistake even if planning agency is quite important.

What all this suggests is that the standard for legitimate expectations is tightly tied up with general questions of moral demandingness. The analogy to partiality in ordinary ethics appears apt; we don't ordinarily say that someone has acted badly by failing to donate 10% of their income to effective altruist organizations, but we do say that they act badly by ignoring the drowning child in the pond. Similarly, depending on moderately unjust laws (and attempting to preserve the life plans built on their basis) may not count as doing something wrong, while depending on egregiously unjust laws does. These questions are immensely difficult, which is why I revert to formulations which appeal to what expectations reasonable citizens would form without, perhaps, coming in for any particular criticism for displaying bad moral character.²⁶ But if we hold that ordinary injustices are compatible with

²⁴ And similarly for the original case of the epistemically reasonable thief: it should be obvious to me that expectations formed on the basis of my own clear moral wrong are a bad basis for planning agency. This should be reflected, e.g., in moral emotions like guilt.

²⁵ See, e.g., Ashford (2000).

²⁶ And so we reach a point of consonance with Feldman and Turner's (2010) argument.

acceptable partiality toward loved ones, we may hold in an analogous way that ordinary injustices are compatible with legitimate expectations.

This sketches how we can make a categorical distinction between state-encouraged expectations with acceptable and unacceptable moral content. Exactly how to cash out this standard will depend, among other things, on one's theory of justice. If we have a demanding theory of justice, and a demanding view about individual responsibility under circumstances of injustice, we could still deem NIMBY expectations to be illegitimate. But we might also deem ordinary modes of partiality, and standards of living in wealthy states quite generally, to be illegitimate as well.

But there is still a second level of qualification to be considered. As Brown pointed out, granting a wide scope of legitimacy does not entail that LEs are highly weighty, nor that all LEs have equal weight. The final section of this essay turns to the topic of compensation for NIMBY expectations. The first motivation for considering compensation comes from the point about weightiness: expectations have varying significance, and varying degrees of public interest opposing them. This speaks against assigning uniform weight to LEs, as we would do, for instance, if we held that NIMBY expectations ground a right to a certain form of local control. The second motivation for considering compensation comes from an objection to be discussed presently.

2: Compensating NIMBY Expectations

An objection to my charitable reconstruction of NIMBY expectations might grant its cogency, but press that it is excessively charitable. The real motive force behind NIMBY claims might not lie in the general importance of planning agency, but instead be mainly driven by baser interests, in particular racism. I've argued that there is *a* plausible NIMBY rationale, but should that serve to legitimate claims that may in fact be driven by racial prejudice? I held above that plans premised on the basis of profoundly unjust institutions are illegitimate, because to form plans (or press planning-based claims) that are based in profound injustice is itself to make a moral mistake. All plans premised on profound injustice are moral mistakes. But *some* plans premised on reasonably just institutions are moral mistakes. We saw obvious cases such as the planning agency of the thief. The same would apply

to purely racially-motivated plans. But many cases, including many NIMBY claims, are likely to have mixed motives, including both morally defensible and indefensible elements.

As a matter of principle, I'm inclined to hold that claims which are *in fact* premised on indefensible elements are illegitimate.²⁷ A NIMBY who has no genuine interest in long-term planning, but aims to exclude (e.g.) Black Americans from their neighborhood on the pretense of preserving “neighborhood character” warrants no special consideration. This likely happens sometimes, and may even become fairly transparent. (Consider a case where someone promoting “neighborhood character” can give no coherent rationale, perhaps over a series of cases, for what that character consists in other than whiteness.) But motivations aren't transparent to the state, and often not transparent even to ourselves. Do we therefore risk systematically protecting illegitimate claims under the guise of legitimate expectations?

This problem cannot entirely be avoided, and is by no means exclusive to NIMBYism or legitimate expectations. Just about every public protection also enables wrongs: free speech protects harmful speech, private property protects vicious displays of greed, and so on. But just as private property rights are qualified by public taxation, we should limit the moral damage where possible. The status quo degree of NIMBY protections is, on my view, quite harmful. Zoning policies are typically heavily locally controlled. Further, the people best positioned to influence local politics are affluent and demographically unrepresentative.²⁸ This has led to serious public policy harms, notably spikes in city rents when people seek to move (typically in search of employment) but housing supply is tightly restricted by zoning and various other local approvals. I have no general answer — I suspect there may be no such answer — for exactly how much weight to give NIMBY expectations, but the current situation appears untenable. Local political control is an excessive tool, and a blunt one: it protects all at once planning agency, economic self-interest, and racism, and most empowers those who are most strongly motivated — likely by a combination of all three.

These considerations speak in favor of compensation, rather than control, as a protection for planning agency. (There may be yet further alternatives, but these seem to me the two obvious

²⁷ Thanks to a referee for requesting clarification on this point.

²⁸ See Einstein, Glick, and Palmer (2019).

options.) This section makes some preliminary observations about compensation for violations of legitimate expectations in the NIMBY case. I don't claim that compensation is the appropriate approach for legitimate expectations generally, though I suspect it often is.²⁹ I also by no means claim, as will be obvious, to give a full account of NIMBY compensation. But it seems to me worthwhile to make a few points about the practical implications of the main philosophical arguments given. These points also mitigate the force of the objection about racist and mixed motives.

The main point in favor of compensation is that it is inherently a scalar mechanism. Protection of NIMBYs through local control protects whatever motives they actually bring to the table, and allows those motives to be decisive in many cases.³⁰ By contrast, a compensation scheme forces the question of how much compensation is warranted. We can at least attempt to calibrate such that we at *most* compensate for the legitimate planning interests that are at stake.

This requires investigation into the general weight of planning agency in the housing context. (The appropriate weight surely varies between domains.) This is a fraught enterprise, but it is unavoidable on any approach to legitimate expectations: it obviously is the case that some public prerogatives can override LEs, so we have to be able to say when public interests rise to that level. I'll suggest that the appropriate weighting may be at least in part best left up to political deliberation. But the conceptual point has more to do with what the appropriate weighting should *aim* to do.

I suggest we should aim to charitably interpret NIMBY motives. On the view developed in this essay, some NIMBY dispositions are justified or at least reasonable. For simplicity, and also to fit with the compensation scheme, let's scale strength of NIMBY disposition with the amount of monetary compensation that would be viewed as a "breakeven" by any given individual. This is of course reductive. But public policy often must be reductive to be tractable. (No one really believes in a dollar value of a human life, but the U.S. government has such valuations — in the range of \$7.5 million to \$10 million.) Let's say (simply making up numbers) that many people could be induced to move for

²⁹ Brown (2011) argues generally for compensation for legitimate expectations. But, as we've seen, Brown's view of legitimacy is different than mine.

³⁰ Some states, including California, are now showing interest in limiting local control. But a state veto on NIMBY interests, while a large improvement on the status quo in my view, may over correct if it ends up giving no credence to planning agency.

\$5,000 or less. Then we bargain with NIMBYs over compensation for a new apartment complex in their neighborhood. This is obviously a much less drastic change than moving yourself. Most people accept a relatively moderate sum; NIMBYs in general, by definition, demand more; but some NIMBYs demand *much* more, say \$10,000 or more.

We can start to outline a scheme on this basis. We first identify the normal range of NIMBY disposition, and identify or stipulate an upper limit to that range. We let that normal range stand for a reasonable valuation of housing planning agency. This normal range can only plausibly be so high in a place like the U.S., where people routinely move seeking better employment prospects. Then we say that people in general are entitled to compensation *up to* that valuation. This only partially compensates the expectations of extreme NIMBYs, who make up the far upper end of the range. But, for one reason or another, such people are by definition idiosyncratic. Such claims are especially ripe for diagnosis as racially motivated, though of course some individuals might be idiosyncratically committed on other, less-objectionable grounds.³¹ But the underlying claim is that the state is ‘on the hook’ for expectations which it encouraged — that claim must be understood with a reasonable sense of how strong its implications can be. When I break a promise, I’m on the hook to apologize and compensate to a certain degree: I’m not responsible for the full cost if the promisee staked some massive bet or emotional investment on my fulfilling the promise, in a way which could not have been anticipated. So my approach would give full compensation to most people, and partial compensation to those with extremely strong motives — who again, will naturally be those we suspect of pernicious motives. The scheme would also over-compensate those with solely or mainly pernicious motives, because as a matter of principle their claims are deemed illegitimate, but that is inevitable given that motives will obviously never be transparent.

Depending on the normal degree of NIMBY dispositions, it may or may not be plausible to offer this kind of full compensation, even given the limitation to expectations of normal strength. That depends on what the normal level is. If normalized compensation is relatively low, full (normalized) compensation may be possible. If it’s high, such that new housing is still significantly deterred, or other

³¹ Thanks to a reviewer for pressing this point.

social costs are incurred (including the expense of the compensation itself), it may be appropriate to only compensate a certain proportion. It seems to me there is no objective standard for what that proportion should be without appeal to a political process. One can imagine a wide range of NIMBY dispositions in different places, as well as a wide range of sympathy for NIMBYs among the wider population of the city, province, or nation. If the suitable political unit — a question for democratic theory — is willing to accept significantly elevated housing costs in order to preserve established ways of life, there seems nothing inherently wrong with that. (Imagine a culture in which people rarely move and highly value local cultural norms.) On the other extreme, a polity might be rather callous to these claims, holding (e.g.) that the expectations, despite their legitimacy (if my view were accepted), would be unjust to give significant weight, since home owners are in general quite privileged to begin with.³² In most cases, I suspect there would be notable but quite limited sympathy, yielding a restricted degree of compensation.

This does not promise to leave anyone fully satisfied. That is, of course, the nature of politics, and especially the nature of institutional change in light of frustrated expectations. Compensation at least provides a way of making tradeoffs legible; and, to the extent that democratic processes provide public justification to political losers in other domains, that justification and recognition could be extended to NIMBYs in this way. This seems to be a significant improvement over the status quo, which is characterized by a great deal of institutional power wielded by NIMBYs on one side, and a great deal of dismissiveness about their claims on the other. My own politics are that NIMBYs should be granted relatively little deference. Perhaps the ultimate result in the U.S. would be more deferential than I personally endorse. I find it hard to predict what would emerge within normatively appropriate deliberation, because the climate of current housing discourse is so dysfunctional. This paper is an attempt at a philosophical intervention into that discourse. But even a nominal, symbolic degree of compensation would constitute sympathy for the NIMBY.

³² Thanks to a reviewer for suggesting this point.

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