

## Expectations as Property

Friday and Saturday, May 19<sup>th</sup> and 20<sup>th</sup>, 2017  
Center on Global Legal Transformation  
Columbia Law School  
Case Lounge

The notion of expectations is central to (at least) Anglo-American and Anglo-American influenced property regimes. First, the notion often serves as a *normative justification* for granting property rights, alongside, for example, possession and use. Second, and relatedly, courts and arbitral tribunals have constructed expectations (for example, of future earnings) as actual *objects* of property, to be protected much like a car or a piece of land. They have not necessarily done so by explicitly declaring that claimants have property rights in expectations, but instead, by precluding measures that interfere with such expectations, or by awarding damages for such interference (on par with damages awarded for interference with more “material” objects of property).

In this workshop, we hope to bring together scholars interested in two questions. First, what are the (doctrinal, representational, technical, material, calculative) *processes and practices* by which expectations come to be afforded “property-like” legal protections? Second, what are the *implications* – political, social, economic – of affording expectations such protections? Does such protection systematically advantage or disadvantage particular groups? Does the protection of expectations serve as a neutral proxy for more insidious forms of legal preference? In considering these questions, we hope to think beyond what is usually considered “property law”, to more generally consider instances in which expectations – constituted and treated as valuable (and value-able) assets – form the basis of claims to compel or circumscribe governmental conduct.

Our motivation for organizing this workshop has much to do with the role that expectations have come to play in investor-state arbitration, particularly in the last fifteen years. In this context, arbitral tribunals have repeatedly required states (often, in the global South) to compensate investors (often, from the global North) for measures (including the passage of new health, safety and environmental regulations) that allegedly interfere with such investor’s “legitimate”, “reasonable”, “distinct” or “investment-backed” expectations. In so doing, these tribunals have both normatively grounded their decisions in the existence of, and participated in the creation of, a property (or “property-like”) interest in expected future income streams. Provoked by these decisions, we hope to bring investment law scholars into conversation with scholars who have critically considered the roles of expectations in other contexts and areas of law.



## Schedule

All events will take place in Case Lounge (7th Floor, Jerome Greene Hall, Columbia Law School, 435 West 116<sup>th</sup> Street).

### **Friday, May 19th**

**8:30am – 9:00am:** Breakfast available

**9:00am – 9:10am: Welcome**

- Katharina Pistor
- Freya Irani

**9:10am – 10:45am: Institutionalizing Expectations in Constitutional Moments**

- Antonio Azuela (*Expectations as Property in the New Political Constitution of Mexico City*)
- Menaka Guruswamy (*'Lower-Casteness' as Property: How the Indian Constitution Emancipated 'Expectations'*)
- Daniel Hulsebosch (*Constitutional Commitments and International Expectations: Evidence from the American Founding Period*)

**10:45am – 11:00am:** Coffee break

**11:00am – 12:45pm: Whose Expectations? Property, Race and Colonialism/Settler Colonialism**

- Alyosha Goldstein (*By Force of Expectation: Colonization, Public Lands, and the Property Relation*)
- Cheryl Harris (*Expectations and Property: Afterlives of Slavery and Settler Colonialism*)
- Freya Irani (*Destabilizing Stability in Investment Law and Beyond*)
- Audrey McFarlane (*The Dark Side of Expectations*)

**12:45pm – 2:00pm:** Lunch

**2:00pm – 3:30pm: Debating the Scope and Foundations of Legitimate Expectations – Part 1**

- Rose Cuison Villazor (*DACA as Property*)
- Jeremy Waldron (*Illegitimate Expectations*)
- Gregory Alexander (*Responding to Jeremy Waldron's Illegitimate Expectations*)

**3:30pm – 3:45pm:** Coffee Break



**3:45pm – 5:15pm: Debating the Scope and Foundations of Legitimate Expectations – Part 2**

- Thomas Ackermann (*Managing Expectations In and Beyond Markets: The EU as an Example*)
- Eva Pils (*Expectations? Conceptualising the Problems of China's Have-nots*)
- David Super (*Enforceable Expectations and Equality: Lessons from U.S. Public Welfare Law*)

**Saturday, May 20<sup>th</sup>**

**9:00am – 9:30am: Breakfast Available**

**9:30am – 11:00am: Creating and Recognizing Investor Expectations as Property: The Role of Courts, Arbiters and Scholars**

- Lise Johnson (*Legitimate Expectations and Estoppel Against the Government: Norms of Investment Law and Their Policy Implications*)
- Kate Miles (*Expectations: A History of Constructs in International Law*)
- Muthucumaraswamy Sornarajah (*Legitimate Expectations as Property: Views From Arbitration of Investment Disputes*)

**11:00am – 11:15am: Coffee break**

**11:15am – 12:15pm: Open Roundtable: Questions, Research Agendas**

