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The Narrow Approach to Substantive Legitimate Expectations and the Trend of Modern Authority

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In the recent Privy Council decision of *United Policyholders Group v Attorney General of Trinidad and Tobago*, Lord Carnwath supplied an interesting and helpful discussion of substantive legitimate expectations. This case note reflects on Lord Carnwath's conclusions and how they speak to important current debates about the doctrine. In particular, it will be argued that Lord Carnwath's conclusions provoke reflection on: (a) the status of the seminal *Coughlan* case in contemporary thinking about the doctrine; (b) how far claims about the advent of the protection of substantive expectations representing a worrying expansion of judicial power have been properly investigated; (c) whether it is necessary to reflect deeply on the theoretical basis of the principle; and (d) the defensibility of the 'trend of modern authority' to interpret the dicta in the *Coughlan* case 'narrowly'.

Key words: substantive legitimate expectations; judicial review; judicial power; common law; Privy Council

1 Introduction

The doctrine of substantive legitimate expectations in English and Welsh public law has, for the most part, been the product of the Court of Appeal. It was the Court of Appeal—consisting of Sedley, Woolf, and Mummery LJ—that controversially pronounced the existence of the *substantive* dimension of the doctrine.¹ It was also the Court of Appeal—often through the judgments of Laws LJ—that refined the contours of the doctrine in the subsequent decade and a half.² Whether the Court of Appeal deserves praise or blame, or both, for its handiwork has been a matter of intense debate in the UK, Commonwealth jurisdictions, and beyond.³ But where was the UK Supreme Court during all of this?⁴

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¹ *R v North and East Devon Health Authority ex p Coughlan* [2001] QB 213 (Court of Appeal (CA)).

² *R (Nadarajah) v Secretary of State for the Home Department* [2005] EWCA Civ 1363 (CA); *R (Niazi) v Secretary of State for the Home Department* [2008] EWCA Civ 755 (CA).

³ See generally: Mark Elliott, 'From Heresy to Orthodoxy: Substantive Legitimate Expectations in English Public Law' in Matthew Groves and Greg Weeks (eds), *Legitimate Expectations in the Common Law World* (Hart Publishing 2017); Paul Craig, 'Substantive Legitimate Expectations and the Principles of Judicial Review' in Mads Andenas (ed), *English Public Law and the Common Law of Europe* (Key Haven 1998); Christopher Forsyth, 'Legitimate Expectations Revisited' (2011) 16 *Judicial Review* 429.

⁴ Or its predecessor, the judicial House of Lords.

On occasion, the highest court has heard arguments about substantive expectations and, on even rarer occasion, it had provided some *obiter* comment.⁵ Nonetheless, since the seminal Court of Appeal case of *R. v. North and East Devon Health Authority ex p Coughlan*, where the doctrine was introduced,⁶ the Supreme Court has not provided a comprehensive review of this area of law. It would perhaps go too far to suggest that there is a paralysis in the Supreme Court when it comes to reflecting seriously upon the common law grounds for substantive review (despite the issue being expertly avoided in recent cases).⁷ It is clear, however, that the law relating to substantive legitimate expectations—much like the idea of common law proportionality—merits a long overdue authoritative review. While the UK Supreme Court has not yet conducted such a review, the Privy Council—consisting of Supreme Court Justices Lord Neuberger, Lord Carnwath, Lord Mance, Lord Clarke, and Lord Sumption—confronted the issue of substantive legitimate expectations head-on in *The United Policyholders Group v Attorney General of Trinidad and Tobago*.⁸ In the absence of any clear statement from the Supreme Court on substantive legitimate expectations, the judgment in this case—particularly that provided by Lord Carnwath—offers an especially useful and interesting discussion of the present state of the doctrine.

In this case note, the conclusions reached in Lord Carnwath’s judgment are analysed in the context of important current debates about the doctrine. In particular, it is argued that they provoke reflection on: (a) the status of the seminal Coughlan case in contemporary thinking about the doctrine; (b) how far claims about the advent of the protection of substantive expectations representing a worrying expansion of judicial power have been properly investigated; (c) whether it is necessary to reflect deeply on the theoretical basis of the principle; and (d) the defensibility of the ‘trend of modern authority’ to interpret the dicta in

⁵ *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2008] UKHL 61 (House of Lords (HL)).

⁶ *Coughlan* (n 1). Some refer to Sedley J’s judgment in *R v Ministry of Agriculture, Fisheries and Food, ex p Hamble (Offshore) Fisheries Ltd* [1995] 2 All ER 714 (QB) as the seminal case in the development of substantive legitimate expectations. However, that judgment, despite its influence, was a first instance decision that was overruled and condemned as ‘heresy’ in *R v Secretary of State for the Home Department, ex p Hargreaves* [1997] 1 WLR 906 (CA).

⁷ *Keyu v Secretary of State for Foreign and Commonwealth Affairs* [2015] UKSC 69 (Supreme Court (SC)); *Youssef v Secretary of State for Foreign and Commonwealth Affairs* [2016] UKSC 3 (SC). See generally: Jake Rylatt and Joe Tomlinson, ‘Something New in Substantive Review’ (2016) 21 *Judicial Review* 204.

⁸ [2016] UKPC 17. The Privy Council has dealt with some important legitimate expectations cases throughout the life of the doctrine, an important recent example being *Rainbow Insurance Company Limited v The Financial Services Commission and others (Mauritius)* [2015] UKPC 15.

the Coughlan case in a ‘narrow’ way. It is argued that Lord Carnwath’s judgment ultimately reveals an approach which is—in view of present discussion, experience, and knowledge—both pragmatic and justified.

2 The *United Policyholders Group* Case

The *United Policyholders Group*⁹ case concerned a challenge to a decision from the Court of Appeal of Trinidad and Tobago. The appellants were holders of life policies which were issued by an insurance company. That company ran into trouble following a banking crisis in 2009. In 2009, the then government provided assurances that all terms and conditions contained within extant life policy contracts would be fulfilled. These assurances were the basis upon which the appellants claimed to have a legitimate expectation when, following the 2010 election in Trinidad and Tobago, the new government failed to follow through with its predecessor’s promises. The appellants argued the new incumbents were legally bound, due to the doctrine of substantive legitimate expectations, to act in line with the initial assurances.

That argument succeeded at first instance in the High Court but was unsuccessful in the Court of Appeal. Thus, it fell to the Privy Council to answer two questions: (a) did the former government’s 2009 assurances give rise to a legitimate expectation; and (b) if so, could the new, post-2010 government lawfully not honour those assurances? It was unanimously concluded by the Privy Council that the appeal was to be rejected. On the first question, the Privy Council held that the appellants had a legitimate expectation, as a result of the previous government’s assurances, that the new government would ‘make good the deficit in [the insurance company’s] Statutory Fund ... and [the insurance company] would be placed in a position to fulfil all of its obligations including that of the claimants’.¹⁰ This was the case because the macro-economic implications of the assurances did not affect the question of whether a legitimate expectation arose or not. Instead, those implications fell to be assessed as part of the second question, ie whether it was permissible for the government not to adhere to their prior promises.¹¹ The crux of the failure of this appeal was thus held to

⁹ *United Policyholders* (n 8).

¹⁰ *ibid* [51]; see generally [41]–[51].

¹¹ *ibid* [49]–[51]. Though this will not be discussed here, this part of the judgment seems to illustrate the Privy Council favouring the ‘question of fact’ view of legitimacy over the ‘normative’ view of the same. For discussion, see: Jack Watson, ‘Clarity and ambiguity: a new approach to the test of legitimacy in the law of legitimate expectations’ (2010) 30 *Legal Studies* 633.

be related to the second question. The 2009 government's assurances had clear and severe macro-economic and macro-political implications. Given this finding, and the further finding that appropriate attention was indeed given by the new government to the existence and effect of the assurances before they were abandoned,¹² the Privy Council held that the respondents could resile from the legitimate expectation lawfully.¹³

Lord Neuberger gave the lead judgment in the case but it is Lord Carnwath's judgment, which provided a detailed review of the substantive legitimate expectations doctrine, that will be the subject of careful reflection here. Though Lord Carnwath thought that it was 'not the occasion for detailed reconsideration' of the doctrine, he did add some forty-two paragraphs of concurring judgment 'to offer some thoughts as to the present state of the law'.¹⁴ After recognising that the doctrine is a source of 'continuing controversy' and considering the extensive academic debate surrounding it,¹⁵ Lord Carnwath traced the doctrine from its procedural origins in Lord Denning's judgment in *Schmidt v Secretary of State for Home Affairs*¹⁶ to the present day—covering everything from the pre-*Coughlan*, 'not quite' substantive expectation cases¹⁷ to the more ethereal excursions of Laws LJ in examining the underlying values of the doctrine.¹⁸ This review of the case law will be a useful source of learned and comprehensive analysis for practitioners and academics alike, especially in the conspicuous absence of comprehensive Supreme Court comment in this area. Following his review of the case law, Lord Carnwath went on to reflect on the doctrine and made multiple comments about the nature and development of the doctrine. Here, three of Lord Carnwath's conclusions are brought into focus.

¹² *ibid* [60]–[78].

¹³ *ibid* [52]. For judicial discussion of how such 'macro-economic implications' affect the assessment of legality in substantive expectations cases, see: *R v Secretary of State for Education and Employment ex p Begbie* [2000] 1 WLR 1115, 1130.

¹⁴ *United Policyholders* (n 8) [80].

¹⁵ *ibid* [79]–[81].

¹⁶ [1969] 2 Ch 149, [1969] 2 WLR 337 (CA).

¹⁷ *R v Secretary of State for the Home Department, Ex p Asif Mahmood Khan* [1984] 1 WLR 1337 (CA); *R v Secretary of State for the Home Department, Ex p Ruddock* [1987] 1 WLR 1482 (QB).

¹⁸ See for instance: *Nadarajah* (n 2).

3 Coughlan's Broad Discussion and Narrow Outcome

Lord Carnwath observes that his 'review of *Coughlan* and the later cases reveals a striking contrast between, on the one hand, the relatively narrow scope of the actual decision in that case, and, on the other, the wide-ranging and open-ended nature of the legal discussion'.¹⁹ This statement raises interesting questions.

First, how far is the judgment in *Coughlan* paradigmatic of the doctrine as it stands now? Nowadays, the status of *Coughlan* as a seminal case *vis-à-vis* legitimate expectations and public law is firmly entrenched. This is evidenced by how many key student and practitioner texts still portray *Coughlan* as the paradigm instance of the application of substantive legitimate expectations. This is also evidenced by how Hughes, in a recent collection on the topic of *Landmark Cases in Public Law*, offers the following analysis of the case's stature:

[I]t is fair to say that *Coughlan* identified the boundaries of legitimate expectations, is part of the development of modern broader principles of administrative law, that it set out some guidance, which needed to be refined in subsequent cases (and will continue to be refined), and that it marked a clear turning point in history. Thus *Coughlan* can be seen to be a lighthouse beaming across the water—providing a level of protection not seen in other cases. It can also be seen to be a flag staking out uncharted territory. And finally it can be seen to be a red and white buoy bobbing along in the sea of administrative law, supporting its own weight, with its head firmly above the water, yet open to new currents and direction.²⁰

Putting aside the case's status in the modern history of public law, what does the judgment in *Coughlan* really tell us about how the doctrine is actually applied by the courts? I would suggest the correct answer to be: 'not much'.

The *Coughlan* decision—or at least how it was expressed in the 'wide-ranging and open-ended' judgment—was potentially a high watermark for judicial interventionism in this area.²¹ The vast majority of substantive legitimate expectations cases since could be considered as centering on routine bureaucratic issues, in contrast to the high-stakes issues in

¹⁹ *United Policyholders* (n 8) [110].

²⁰ Kristy Hughes, 'Coughlan and the Development of Public Law' in Maurice Sunkin and Satvinder Juss (eds), *Landmark Cases in Public Law* (Hart Publishing 2017).

²¹ *United Policyholders* (n 8) [110].

Coughlan.²² In addition, the decision in the case itself—despite the Court of Appeal’s claim that the implications of their decision were ‘financial only’ being slightly glib in the highly polycentric context of health resource allocation²³—was narrowly confined to a particular set of facts. As Lord Carnwath explains:

[T]he court emphasised in its application of legal principle to the facts, *Coughlan* concerned an express promise by the authority for its own purposes, made in unqualified terms to a small group of people with whom it had an established relationship, and relied on by them, and given for the specific purpose of persuading them to move out of premises which the authority wished to have available for other purposes.²⁴

Perhaps more importantly than these reasons, the courts have now, across sixteen years of case law, set out detailed guidance about how legality is to be determined where a substantive expectation has been disappointed.²⁵ This case-law guidance, consisting of the elucidation of various relevant factors, now bears far more relevance to the practical task of judicial decision-making than a broad, sixteen-year-old judgment. There is a general lesson here about the risk of unthinkingly portraying ‘breakthrough’ cases in the common law as paradigmatic beyond the time of their actual, practical importance. Lord Carnwath appears, however, to attribute some fault to the Court of Appeal for this, stating that: ‘[w]ith hindsight, it appears that the court in *Coughlan* may have been unnecessarily ambitious in seeking a grand unifying theory for all the authorities loosely grouped under the general heading of legitimate expectation’.²⁶ This may well be true but there is certainly also an element here of being realistic about what we can expect of seminal cases like *Coughlan*. Legitimate expectations, like other general principles of judicial review, ‘has not followed inexorably from an agreed set of first principles’.²⁷ Nor could it be reasonably expected to.

²² This is similar to the distinction drawn between bureaucratic and policy judicial reviews in: Peter Cane, ‘Understanding Judicial Review and its Impact’ in Marc Hertogh and Simon Halliday (eds), *Judicial Review and Bureaucratic Impact: International and Interdisciplinary Perspectives* (Cambridge University Press 2004), 18-19.

²³ See generally: Keith Syrett, *Law, Legitimacy and the Rationing of Health Care: A Contextual and Comparative Perspective* (Cambridge University Press 2007).

²⁴ *United Policyholders Group* (n 8) [110].

²⁵ Richard Moules, *Actions Against Public Officials: Legitimate Expectations, Misstatements and Misconduct* (Sweet & Maxwell 2009), ch 1.

²⁶ *United Policyholders Group* (n 8) [112].

²⁷ Paul Daly, ‘A Pluralist Account of Deference and Legitimate Expectations’ in Matthew Groves and Greg Weeks (eds), *Legitimate Expectations in the Common Law World* (Hart Publishing 2017).

Another question is prompted by Lord Carnwath's observation on the 'relatively narrow scope of the actual decision in [*Coughlan*], and... the wide-ranging and open-ended nature of the legal discussion': how should judicial power be measured? Lord Carnwath was entirely accurate in pointing out the dissonance between the discussion in *Coughlan* and the outcome reached in that case. Many critics of substantive legitimate expectations consider themselves as such because they fear that the doctrine represents the judiciary straying beyond their appropriate institutional and constitutional limits.²⁸ In other words, the courts are, from the standpoint of such critics, perceived as inappropriately conducting so-called 'merits review'. Much of that critique is premised on discussions in judgments.²⁹ Certainly, what is said in judgments is of crucial importance in advancing and assessing claims about increased and potentially excessive judicial power. But this is only *one* means of assessing judicial power. Another means is looking at outcomes ie the eventual results that the cases have actually brought about.³⁰ If one was to advance a claim about a legal principle usurping the decision-making powers of public authorities, it would be of great concern—perhaps of greater concern than what is merely said in judgments—to build a detailed account about the extent to which such powers are actually usurped in practice through the outcomes of cases. This is especially so given that one does not have to be a hardline legal realist to acknowledge that the form of common law judgments is a somewhat artificial mode of communication.³¹ There is no detailed empirical study of the impact of legitimate substantive expectations cases—though such a study would be of great value. If one was to venture an observation on outcomes, it would be that it is fairly difficult to find cases where substantive legitimate expectations arguments have succeeded, and more difficult still to find cases where the court have actually directed the public authority concerned to uphold the expectation. In fact, it is highly likely that there are, collectively, more monographs, journal articles, and

²⁸ See for instance: Cameron Stewart, 'Substantive Unfairness: A New Species of Abuse of Power?' (2000) 28 *Federal Law Review* 617; Forsyth, 'Legitimate Expectation Revisited' (n 3). On the idea of the courts having constitutional and institutional limitations, see: Jeffrey Jowell, 'Of Vires and Vacuums: The Constitutional Context of Judicial Review' in Christopher Forsyth (ed), *Judicial Review and the Constitution* (Hart Publishing 2000) 330.

²⁹ e.g. Forsyth, 'Legitimate Expectation Revisited' (n 3); Cameron, 'Substantive Unfairness: A New Species of Abuse of Power?' (n 28).

³⁰ This approach underpins the analysis in Robert Thomas, 'Legitimate Expectations and the Separation of Powers in English and Welsh Administrative Law' in Matthew Groves and Greg Weeks (eds), *Legitimate Expectations in the Common Law World* (Hart Publishing 2017).

³¹ See for instance: Dan Simon and Nicholas Scurich, 'Judicial Overstating' (2013) 88 *Chicago-Kent Law Review* 411.

book chapters considering the potential perils of the doctrine of substantive expectations than there are cases where a public authority has been directed to act in line with its earlier representation.³²

4 The Search for ‘Deep’ Constitutional Principle

Lord Carnwath also ventures into more theoretical territory. Among the controversies surrounding substantive legitimate expectations, there has been a persistent strand of criticism that the doctrine suffers from the absence of a clear conceptual footing.³³ In recent years, it has become almost *de rigueur* to suggest that such clarity is lacking. In scholarship, there have been two broad lines of criticism concerning the doctrine’s lack of a coherent conceptual basis. First, it has been suggested that the doctrine’s lack of a clear normative purpose renders it ‘little more than a smokescreen for an erratic and subjective assortment of judicial ideas’.³⁴ Second, it is also suggested that the doctrine would be assisted by identification of some sort of overarching ‘meta-value’³⁵ that would ‘provide invaluable guidance to difficult questions concerning the scope and effect of the doctrine’.³⁶ These strands of criticism—potentially warranting some sort of ‘search for concepts’ in this area—have been reaching, as Daly points out, a ‘crescendo’ in recent years.³⁷ Such concerns have also been reflected in the Court of Appeal. In a 2005 decision, Laws LJ stated that he was left unfulfilled by the present conceptual understanding of the doctrine (as an instrument of fairness that existed to protect against the abuse of power)³⁸ that he had used to reach his eventual conclusion on the lawfulness of the public authority’s actions in that case: ‘I find it very unsatisfactory to leave the case there. The conclusion is not merely simple, but

³² At least in the English and Welsh jurisdiction. See generally: Thomas (n 30).

³³ See for example: Paul Reynolds, ‘Legitimate Expectations and the Protection of Trust in Public Officials’ [2011] Public Law 330; Forsyth, ‘Legitimate Expectation Revisited’ (n 3); Watson, (n 11).

³⁴ Matthew Groves, ‘Substantive Legitimate Expectations in Australian Administrative Law’ (2008) 32 Melbourne University Law Review 470, 487.

³⁵ Daly (n 27).

³⁶ Reynolds (n 33) 330.

³⁷ Daly (n 27).

³⁸ For more detail on this understanding of the doctrine, see: Reynolds (n33); Joe Tomlinson, ‘The Problem with the Trust Conception of the Doctrine of Legitimate Expectations in Administrative Law’ (UK Constitutional Law Blog, 22 July 2016) <<https://ukconstitutionallaw.org/2016/07/22/joe-tomlinson-the-problem-with-the-trust-conception-of-the-doctrine-of-legitimate-expectations-in-administrative-law/>> accessed 18 February 2017.

simplistic. It is little distance from a purely subjective adjudication ... It is superficial because in truth it reveals no principle'.³⁹ For Laws LJ, identification of a clear normative basis, one that 'lies between the overarching rubric of abuse of power and the concrete imperatives of a rule-book',⁴⁰ was required to 'move the law's development a little further down the road'.⁴¹ On this general topic and specifically 'Laws LJ's search for a constitutional foundation for the principle of legitimate expectation',⁴² Lord Carnwath offers the view that:

It may, however, be unnecessary to search for deep constitutional underpinning for a principle, which, on a narrow view of *Coughlan*, simply reflects a basic rule of law and human conduct that promises relied on by others should be kept. This applies in public law as in private law, unless the authority can show good policy reasons in the public interest for departing from their promise.⁴³

The apparent simplicity of this *dictum* belies the strength of the claim it advances.

While it is perfectly valid to reflect upon whether a particular legal principle, new or old, possesses virtue,⁴⁴ to pursue the identification of some sort of overarching 'meta-value'⁴⁵ that would 'provide invaluable guidance to difficult questions concerning the scope and effect of the doctrine'⁴⁶ seems to be misguided for various reasons. It is, as Daly has observed, only normal that the 'doctrine may not map clearly onto the various justifications offered for it from time to time'.⁴⁷ Identifying some sort of meta-value that the doctrine *ought* to serve also risks foreclosing nuanced judicial consideration of the issues presented in a particular case. Furthermore, such a theoretical exercise may be representative of a worrying 'rationalistic propensity among public lawyers to prioritise the universal over the local, the uniform over the particular and, ultimately, principle over practice'.⁴⁸ As such, the solution offered from

³⁹ *Nadarajah* (n 2) [67].

⁴⁰ *ibid.*

⁴¹ *ibid.*

⁴² *United Policyholders Group* (n 8) [118].

⁴³ *ibid.*

⁴⁴ See for instance the justification offered, without further elaboration, for Schönberg's inquiry as being to 'explain why administrative law should protect expectations created by administrative decisions, representations, and conduct': Søren Schönberg, *Legitimate Expectations in Administrative Law* (OUP 2000) 7.

⁴⁵ Daly (n 27).

⁴⁶ Reynolds, (n 33) 330.

⁴⁷ Daly (n 27).

⁴⁸ Graham Gee and Grégoire Webber, 'Rationalism in Public Law' (2013) 76 *Modern Law Review* 708, 708.

such an exercise may provide the attractive impression of structure, clarity, certainty, and comprehensiveness within the doctrine,⁴⁹ but the courts would inevitably move away from such an abstract stricture when ‘seeking to develop a knack and feel’ for how the newly-rationalised version of the doctrine would actually work in practice.⁵⁰ In this respect, Lord Carnwath’s caution that it may be ‘unnecessary to search for deep constitutional underpinning for a principle ... which ... simply reflects a basic rule of law and human conduct’ ought to be heeded.

5 The Trend of Modern Authority

Lastly, Lord Carnwath offers an interesting discussion about what he sees as the scope of the modern doctrine:

[T]he trend of modern authority, judicial and academic, favours a narrow interpretation of the *Coughlan* principle, which can be simply stated. Where a promise or representation, which is ‘clear, unambiguous and devoid of relevant qualification’, has been given to an identifiable defined person or group by a public authority for its own purposes, either in return for action by the person or group, or on the basis of which the person or group has acted to its detriment, the court will require it to be honoured, unless the authority is able to show good reasons, judged by the court to be proportionate, to resile from it. In judging proportionality the court will take into account any conflict with wider policy issues, particularly those of a ‘macro-economic’ or ‘macro-political’ kind.⁵¹

This clear statement of the doctrine is to be welcomed. Indeed, the open recognition of the role of proportionality review in the substantive legitimate expectations context is to be welcomed—that was a matter that Lord Mance, in the 2008 House of Lords case of *R. (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No. 2)*, preferred to ‘reserve for another case’ due to its ‘overtones of another area of public law’.⁵² Beyond such welcome clarity, the introduction of the idea of a ‘narrow interpretation’ of what was said in *Coughlan* is valuable. The courts have, effectively, been operating on the basis of a narrow interpretation of that judgment since it was handed down—a baked-in culture of judicial deference to administration within English public law probably assisted in making this the inevitable course of the *Coughlan* judgment’s trajectory. It is, then, perhaps useful to have a

⁴⁹ Michael Oakeshott, *Rationalism in Politics and Other Essays* (Liberty Fund 1991) 7.

⁵⁰ Gee and Webber (n 48) 715.

⁵¹ *United Policyholders Group* (n 8) [121].

⁵² *Bancoult* (n 5) [182].

label for that practice, one which truthfully reflects how the courts are *actually* applying the doctrine in cases.

Lord Carnwath's characterisation of the 'narrow interpretation' of *Coughlan* as 'the trend of modern authority, judicial and academic' is fair insofar as it is very much the middle ground between sceptics and proponents. A 'trend' is not, however, *consensus*. One's view of whether a 'narrow interpretation' approach to substantive expectations is good or not (and even the prior question of whether it is 'narrow' or not) will inevitably hinge upon how one conceives as the appropriate relationship between the courts and executive. This well-worn observation—that 'behind every theory of administrative law there lies a theory of the state'⁵³—is almost as old as the study of administrative law itself in the English jurisdiction. In terms of how various contested theories of administrative law may offer practical guidance as to the correct approach to substantive legitimate expectations, the profundity of that Sisyphean task is matched only by its uselessness in offering immediate, helpful answers. For now, then, a useful and defensible approach to substantive legitimate expectations must be the aim. With this goal in mind, Lord Carnwath's judgment reveals an approach which is—in view of present discussion, experience, and knowledge—both pragmatic and justified.

Author notes

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⁵³ Carol Harlow and Richard Rawlings, *Law and Administration* (3rd edn, Cambridge University Press 2009) 1; Harold Laski, *A Grammar of Politics* (Allen & Unwin 1925) 578.