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Tola Amodu

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London School of Economics and Political Science
Law School

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Hope in Property (or The 'Hopefulness' of Property)?

Tola Amodu*

Abstract: Hope is arguably a basis for understanding law broadly defined and has utility in shaping expectations or at least anchoring the 'not yet'. In this way hope becomes the intercessor between aspiration and realization; one of the accepted functions of the law.

Property law broadly defined, remains primarily a response to individual claims. Yet these same property rules – especially those anchored in the common law tradition, have historically been sufficiently malleable to accommodate, 'a future we can only imagine' (n 17 below). The paper focuses on whether we might use the construct of hope to (better) understand land law rules in the quest for a more inclusive meaning of property law.

Keywords: the architecture of hope in the construction of land law, regulation, renters' rights

* Associate Professor in Law, University of East Anglia.

I. INTRODUCTION

Connotations of 'the law' conventionally enlist notions of order, right and even, at the margins, punishment.[1] At its most expansive, law is seen as a vehicle for problem solving on an individual or collective basis – enabling the frictions arising in any given society to be smoothed over, or at least accommodated in a fashion that gives stability to existence, whether by framing expectations or signalling modes of acceptable or unacceptable behaviour and so allowing the planning of life in commune.[2] Rigid and hierarchical notions of the law are relatively rarely associated with hope. Hope implies a more flexible, potentially inclusive (anyone has the capacity to hope) and ultimately heterarchical vision where the routes to participation are not necessarily hermetically sealed.[3] It may seem confounding to link hope to the law and property law in particular. Property and the expression of its ownership through established rights, appears to foreclose opportunities for those not holding property to access the domain and hence hope to participate in the given arena.[4] This contribution considers how hope might enable a better understanding of the construction of property law (especially housing law broadly defined). The paper begins by outlining both hope and property law for the purposes of exposition, before moving on to consider how ideas of hope might be accommodated in the given context and the potential value of doing so.

II. WHAT IS PROPERTY (LAW)?

Property law is often associated with the tangible. Having something and being able to exclude others is a foundational concept to which scholars have become increasingly attached.[5] What can be the subject of the identifier 'property' and the recognition of interests as proprietary are not always the same thing. The rights of interest holders and the consequences flowing from these can present challenges to

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[1] John Austin's conventional interpretation of law as the command of the sovereign (John Austin, *The Province of Jurisprudence Determined* (first published 1832) (Wilfrid E Rumble (ed), Cambridge University Press 1995)), through to H L A Hart's positivist vision of law in T*he Concept of Law* (Leslie Green, Joseph Raz, and Penelope A Bulloch (eds), 3rd edn, Oxford University Press 2012) as a body of rules seem to illustrate this well.

[2] A pragmatic view often linked to the process or adjudication. Contract Law can be viewed as the archetype for resolving disputes. In the international law context see M Patrick Cottrell and David M Trubek, 'Law as problem solving: standards, networks, experimentation, and deliberation in global space' (2012) 21(2) Transnational Law and Contemporary Problems 359, 362.

[3] One established conception of property rights rests on the *numerus clausus* signifying that the category of rights is defined and closed.

[4] See the discussion of property insiders and outsiders in Lorna Fox O'Mahony and Mark L Roark, 'Property as an Asset of Resilience: Rethinking Ownership, Communities and Exclusion Through the Register of Resilience' (2023) 36(4) International Journal for the Semiotics of Law 1477.

[5] Thomas W Merrill, 'Property and the Right to Exclude' (1998) 77 Nebraska Law Review 730; Thomas W Merrill and Henry E Smith, 'Optimal Standardization in the Law of Property: The Numerus Clausus Principle' (2000) 110 Yale Law Journal 1; James Penner and Henry Smith (eds), *Philosophical Foundations of Property Law* (Oxford University Press 2013).

divining the significance attached to property in society. Land Law, as historically conceptualised, has often focused on alienation and control.[6] With control comes an ability to exclude others. This is not the only interpretation and others have moved from conceiving the distinctiveness of a private law claim to the thing itself (as a right *in* rem) to the more inclusive vision of the Progressive Property School, which sees property as both a right and a responsibility.[7, 8] Defining property rights and interests in a range of ways, from the 'bundle of sticks' to Merrill and Smith's information theory and beyond, pose questions regarding how those interpretations can accommodate the (ideological) aspirations for a room, if not a place of one's own.[9] If these foundational doctrines present challenges, when aligned with contemporary expectations, the notion of hope emerges as a potentially important facet in the shifting ideas of property law doctrine.

In an age of acquisition, it is natural to want and to have. But we might ask what happens when individually or collectively we cannot have, nor have any prospect of acquisition? However, there are defects in seeing property purely in this light. How should we, and indeed can we account for those who have been dispossessed collectively or individually? The scarcity of the resource results in a binary of 'insiders' and 'outsiders', each located both physically and metaphorically in silos divorced from the other.[10] Yet, contemporary living demands a level of stability where the 'haves' and 'have nots' co-exist and collectively benefit from the asset in question.[11] Current policy attempts to reconfigure the residential property landscape show this well.[12] Further the question of how it is possible to cater for a measure of fluidity between both 'camps' is a pressing concern in many Western jurisdictions. The threat and fear of homelessness looms large in both the individual and the collective psyche. It brings with it notions of shame – shame that a society can allow this to happen in late modernity and for those most intimately affected. To make sense of property, and especially land, the notion of common or public

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[6] See William Blackstone's 'sole and despotic dominion', *Commentaries on the Laws of England, Vol II Of the Rights of Things* (1766) (A facsimile of the first edition 1979). This view has been criticised by many not least for the representation of a potentially unachievable paradigm. See e.g. Alison Clarke, 'Justifying property: looking beyond the Blackstonian paradigm of private ownership by a self-interested autonomous human individual' in Chris Bevan (ed), *Research Handbook on Property, Law and Theory* (Edward Elgar 2024).

[7] Gregory Alexander, Eduardo Peñalver, Jospeh Singer and Laura Underkuffler, 'A Statement of Progressive Property' (2009) Cornell Law Faculty Publications 11.

[8] As Dagan suggests – embracing a multiplicity of human values (distribution of scarce resources, conceptions of community and social responsibility, Hanoch Dagan, 'The Craft of Property' (2003) 91(6) California Law Review 1517, 1519 and 1561-62.

[9] To misquote Virginia Woolf and veer to popular film…

[10] See n 3; see also the spatial metaphors deployed by Blomley, Nelken and other legal geographers, e.g Nicholas Blomley, 'The Boundaries of Property: Complexity, Relationality, and Spatiality' (2016) 50(1) Law and Society Review 224; the prevalence of gated communities – Rowland Atkinson and Sarah Blandy (eds), *Gated Communities* (Routledge 2005).

[11] Both benevolent and instrumental readings of society demand levels of stability that eliminate or at least confine any propensity towards disruption. It is in everyone's interest that the prospect of inclusion (often made manifest through aspirations as to, in this instance owning property) and thus hope is maintained, even if that hope is very remote indeed. This may be one explanation for the continuing cross-party discourse of the expansion of home ownership.

[12] See the Renters' Rights Bill progressing through Parliament: Renters' Rights HC Bill (2024-25) [127].

goods together with how best to embed societal differentiation, need somewhere to be accounted for.[13] Could this be achieved by deploying the idea of hope?

It should be self-evident that while conceptualisations of property (and the associated law), will invariably shift according to state-driven responses, these may or may not coincide with popular sentiment.[14] Further, the open texture of language feeds into property's conceptual 'elusivity and chameleonic' characteristics, giving rise to a malleability that should give a provisionality and indeterminism to doctrine that could, and arguably should, lead to more inclusive understandings grasping the nature of property, rights and the underpinning of associated values.[15] Spaces can emerge to allow creativity in both thought and action. However, to do so, a lens is needed to capture the disparate visions of what might be meant by property, doctrinal law and how to draw in both its tangible and aspirational elements. A subsidiary question might be whether property is a vehicle for, or indicator of progression to an end state (and thus a process) or an end in itself.[16] If the former, it is profitable to think about how best we might accommodate this view. This may be where ideas of hope may assist us in creating a new space to explore the possible.

III. THE VALUE OF HOPE

In an age of crisis, being able to make sense of place, space, and the broader world become crucial to the maintenance of the self, interpersonal relations, and indeed societal stability. Functions of the law can help to cement these ideals. They include, as mentioned above, the managing of expectations, problem-solving, and ultimately when called upon to do so, giving redress. Hope can reinforce and serve as a foundational ideal. 'Hope' may emerge as the 'glue' holding these disparate parts together.

The idea of hope has a long philosophical, and indeed political philosophical tradition, and it is useful, perhaps to explore how far a notion of practical hope can reference the functional and the normative aspects of our understanding of property [law doctrine].[17] In terms of aspiration, it is relatively easy to factor in hope when viewing property as an asset. Seeing property as a 'thing' lends itself to an association with acquisition. Certainly, the policy stance of successive governments has

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[13] Alexander and the Progressive Property School (n 7) and Blandy et al.'s notion of enduring property rights (n 10).
[14] See for example the cracks emerging in residential rental property reforms.
[15] Bevan (n 6).
[16] We might say that historically it has been the latter.
[17] The phrase practical hope is used here to underline the pragmatic aspect of hope theory, in contrast to its religious connotations. It is used here to connote the deployment of hope by rational agents, who are goal-directed or instrumental in their behaviour, as opposed to being seemingly pursuing aimless wish fulfilment. Mattingly uses hope as a practice to examine participants' actions, interactions and challenges in participation, describing hope as follows, '*hope lives in an uncertain place …it points to a future we can only imagine*': Cheryl Mattingly, *The Paradox of Hope: Journeys through a Clinical Borderland* (University of California Press 2010) 15.

reinforced, if not strongly encouraged, the link between status and ownership. This is perhaps the bedrock of the Western liberal tradition of thought. As Dagan tells us, to be the author of one's own destiny is often taken as a fundamental right, marking out an autonomy essential to self-determination.[18] That autonomy, or at the very least the prospect of it, needs to be available to all. Any 'lock out' can ultimately challenge collective stability.[19] Appeals to hope could give an account of that collective glue mediating action and future prospects.[20] Hope, in other words, offering an 'horizon of possibility', is justified by its correctly grasping facts about the world and enabling their potential.[21] Hope, as some identify, can have an instrumental value, in the sense of galvanising action.[22] It is also central to human agency and to major life projects.[23] Without hope, being able to assess, evaluate, and deliberate on the possible may be difficult, if not impossible. Like law, we might see hope as having a contribution to selection; eliminating what might never be achieved while giving some purchase to a prospect of achieving a goal, often through forms of collective action, where the emotional heavy lifting associated with securing political or legal change is simply too much for the individual.[24]

For psychologists, hope is a 'positive motivational state' based on both agency – goal direction – and planning to meet those goals.[25] It has 'cognitive, motivational and affective components', which are positive, goal-oriented, flexible in outlook, persistent and creative in the pursuit of solutions.[26] While psychologists see meaning in life as encompassing key experiences including purpose, coherence (or comprehensibility), and existential significance (or mattering), at an individual level, we might hypothesise that this can be extrapolated and usefully deployed as a lens to interpret broader society.[27] A society becomes meaningful and purposeful where, at an institutional level there is coherence to its aims and purposes which are future-focused and made apparent to all.[28] The centrality of 'experience of purpose' to

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[18] Dagan (n 8).

[19] The denial of expectations both ideological and economic may be two reasons galvanizing renting reform

[20] As Camus would state, we cannot live without hope. See Albert Camus, *The Myth of Sisyphus* (Justin O'Brien tr, Penguin 2000).

[21] In particular, Ernst Bloch in *The Principle of Hope* (Basil Blackwell 1986), describes hope as always related to the 'not-yet-conscious' that in turn reflects 'objective possibilities' citizens need hopes to be motivationally capable to engage in the risky activities necessary to pursue societal change, and because hopes for a more just future can support their self-respect under unjust circumstances, institutions of transitional societies must supply the 'institutional bases of hope'.

[22] Luc Bovens, 'The value of hope' (1999) 59 (3) Philosophy and Phenomenological Research 667.

[23] Michael Milona, 'Discovering the virtue of hope' (2020) 28 (3) European Journal of Philosophy 740; and 'Philosophy of hope' in Steven van den Heuvel (ed), *Historical and multidisciplinary perspectives on hope* (Springer 2020).

[24] ibid 112 discussing social and politic hopes.

[25] C R Snyder, L M Irving and J R Anderson, 'Hope and health' in C R Snyder and Donelson R Forsyth (eds), *Handbook of Social and Clinical Psychology: The Health Perspective* (Pergamon Press 1991) 162, 285–305, 287.

[26] Megan E Edwards et al, 'Hope as a Meaningful Emotion: Hope, Positive Affect, and Meaning in Life' (2025) Emotion (OnlineFirst).

[27] See L S George, and C L Park, 'Meaning in Life as Comprehension, Purpose, and Mattering: Toward Integration and New Research Questions' (2017) 20(3) Review of General Psychology 205.

[28] We take as a given that effective social cohesion rests on the presence of collective participation, (whatever form that may take) with the prospect of each citizen being enabled to plan for their future.

understanding hope has a certain resonance with how we understand law and its cohesive force.[29] Scholars of regulation have taken up the approach as a means to construct an alternative vision of community, which empowers both ourselves and others.[30] Braithwaite proffers a definition of the 'Institutions of Hope' as:

> sets of rules, norms, and practices that ensure that we have some room not only to dream of the extraordinary but also to do the extraordinary. Institutions of hope move us collectively away from a social script that makes engagement in shaping our futures seem futile toward one in which we are expected to be active and responsible participants contributing to a vibrant civil society.[31]

It is the aspect of collaborative experimentation in problem-solving and goal-setting that might serve to advance more innovative solutions to existing problems, especially those of regulating the private rented sector.

IV. PROPERTY'S INSTABILITY AND THE INSTITUTION OF HOPE

The concept of private property – and indeed all property – is inherently unstable. The recognition of interests as being proprietary can be problematic, reinforcing existing power imbalances and restricting access to the less so. The prism of theory leads often to both disparate and contested visions in the domain.[32] Understandings of property premised upon a right to exclude can yield very different results from a Progressive Property perspective. This in turn will inform how the 'rights' of interest holders are perceived and the consequences flowing from this. Tensions arise for those having property and those who do not, dependent upon which definition is deployed. Thus, as Bevan identifies, property law is a useful but problematic label.[33] Any asserted distinctiveness seeing property law as a separate private law claim overlooks the power of property as fact, right, and responsibility".[34] As identified by Bevan, the object of property and the recognition of proprietary interests do not necessarily align. On a broad reading, every member of society has an interest in property, broadly defined, but that does not equate to the existence of a proprietary right or interest for all. Each interpretation may have its relative merits, but

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Friction can occur where that opportunity is attenuated. This can be costly to society and its smooth running. In the extreme, regimes that frustrate these opportunities can fail.

[29] Snyder's, "hope theory" expounded in the 1990's. Charles Snyder, *Handbook of Hope: Theory, Measures, and Applications* (Elsevier 2000).

[30] See Valerie Braithwaite, 'Collective Hope' in Valerie Braithwaite (ed), *Hope, Power and Governance* (2004) 592 The ANNALS of the American Academy of Political and Social Science 6.

[31] ibid 7.

[32] See Section II above.

[33] Bevan (n 6).

[34] ibid. note Lisa Austin's critique of the public/private divide, 'The public nature of private property' in James Penner and Michael (eds), *Property theory: Legal and political perspectives* (Cambridge University Press 2018).

something more is needed to capture the instability of property law, where understandings of the object of property and an acceptance of the nature of a proprietary interest do not always easily align. For example, a right of occupation founded in contract law is not itself recognised as a proprietary interest and yet few would challenge how closely it is associated with property. It is in essence hope which might enable greater credibility in the task of accounting for the role and function of 'property' broadly defined in contemporary society.[35] Here is where classical notions of property doctrine perhaps fall down. The contest between the earlier stated binary – effectively the distinction between any representation of wealth and aspiration – has yet to be bridged. To do so, something more is needed.

Property rights are only enabled through a complex state architecture requiring a degree of acceptance among all. This scaffolding, to be effective, needs both legitimacy and a measure of stability that gives all some tangible aspiration including self-determination rights.[36] That might be captured in the idea of hope. Through hope, all in a given community are invested in achieving a 'better way' – in which all can participate potentially. Seeing hope as a practice invites consideration of society's participants' actions, interactions and even what might be a challenge to participation. This collective element anchors and solidifies a participatory aspiration, which could provide further cohesive force. Given that some define hope as 'positive goal-orientated motivational state that is based on a self-derived sense of successful agency thinking (goal-directed energy)', arguably there is scope to align hope with more fundamental and inclusive understandings of property that can accommodate aspiration and expectation.[37]

Defining hope that is bound in some way, to a collective response functioning as politically constitutive, reinforces how we understand the law.[38] Legitimacy of action (and thus 'law') is founded on a measure of collective acceptance – the prospect of participating in devising laws, however remote, adds weight to its standing. Similarly, the idea of collective hope offers the tantalising prospect of achieving something. It alludes to a future that can be discerned but is not determined. Within that future is the prospect of a more stable (and potentially inclusive) society. Law, broadly defined, is certainly constitutive of interpersonal relations and has a role in shaping expectations or at least anchoring the 'not yet'. Hope is seen by some as more than wish fulfilment and a motivating influence that makes it more likely that people achieve politically desirable goals.[39] Hope, in other

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[35] For example Hofeld Honoré's 'bundle of sticks' – some would term the substance of property law. However, to critics Penner, Merrill etc – this is simply an agglomeration without meaning. More nuanced visions can be found in Merrill and Smith's information theory and the right to exclude; Lee Fennell's 'stream of property' and of course the Progressive Property School, where conceptually property is seen as more than individualised control, where we must instead look to cohesive social values and relationships (the shaping of community life). See Dagan (n 8) 1519.

[36] See n 8 above.

[37] Snyder, Irving and Anderson (n 25).

[38] Clio Berry, Nishi Acharya, and Lucie Crowter, 'The light at the end of the tunnel? A systematic review of higher education student experiences of hope' (2024) 19(6) PLoS One e0304596.

[39] C R Snyder et al define hope as a positive goal-orientated motivational state that is based on a self-derived sense of successful agency thinking (goal-directed energy): 'The Will and the Ways: Development and

words, is justified by its correctly grasping facts about the world and offering a vision of the possible but not necessarily achievable. It is neither 'fanciful' nor wholly wistful, but something to work towards, but its attainment depends upon other factors – one of which is law. Hope offers the prospect of legal change but at the same time is dependent upon law to secure this. The recursivity of the relation is inherently unstable and indeed contingent.

This prospective 'understanding of possibility' arguably places hope as the intercessor between aspiration and realisation, repeating one of the accepted functions of the law. It signposts or gives us a sense of direction without being determinative. This is the place of the institution of hope and institutional hope. It is a space for participants to effect change, where they are given the tools to do so, through state institutions. The challenge of property law is to see how far the lens of hope can overcome some of the arguably self-imposed limitations of doctrine. It might alert us to the strong role played by state institutions in supporting (or indeed broadening) our present and certainly historic notion of what having property means. Blackstone may have identified the sole and despotic dominion as one feature of property broadly defined, but that idea – if indeed it ever truly existed, was founded upon the powers of Government to support and reinforce it. Is there much to hamper an alternative view? Arguably not where compensation provisions exist for the attenuation of a landowner's rights. If we look back over the emergence of modern land law, it has always been possible to reconfigure the priority of rights and entitlements including how they become recognised. Reference need only be made to the raft of legislation enacted in 1925. Further the development, through the common law, of those interests or rights in land considered worthy of protection, makes more sense if attention is turned to a recognition of aspirations.[40]

Granted, it might be easier to accommodate the relation between hope and law when looking at legislative capacity. I use as an example the challenges associated with enacting changes to the law as a response to crises e.g. renting in the private rented sector, or the terrible effects of the Grenfell Tower disaster, to establish how far associating hope in the domain illuminates the process of enacting change. In each case (and there must be many more) we might visualise the problem as follows:

Validation of an Individual-Differences Measure of Hope' (1991) 60 Journal of Personality and Social Psychology 570. For Spinoza hope has a political significance – note also hope has motivational force, which seem to be aligned to good laws. Benedictus de Spinoza *Ethics: Ethica Ordine Geometrico Demonstrata* (R H M Elwes tr, Floating Press 2016).

[40] By this I suggest making reference to the evolution of prescriptive rights; the acquisition of co-owners rights e.g. *Stack v. Dowden* [2007] 2 AC 432.

Representing the 'problem'

The bridge between classic doctrine and future aspiration is the space of hope. A diagrammatic representation is below.

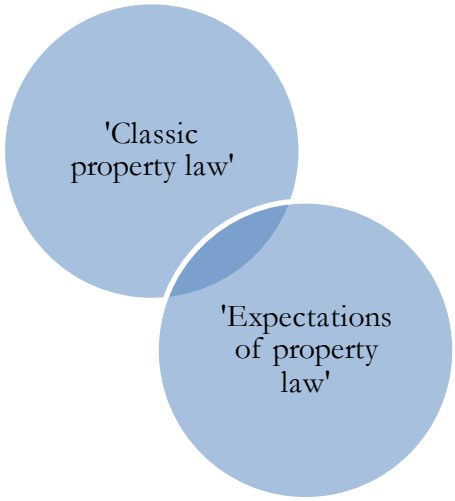

Illustration: Renters' Rights in the private rented sector

One key concern of successive governments has been to promote in policy terms a 'kinder' housing policy that gives private renters more autonomy over the place they rent and further reconfigures provision in the private rented sector in England and Wales to secure enhanced protection for those renting in it. Renting, having a predominantly contractual base, is regulated by statute as opposed to common law property principles. Essentially, the renter-landlord relation is superimposed onto existing land law rules, which reinforce the hierarchy between landlords – who will have some superior claim to the land itself and those contractual rights of renters, which are then bolstered through statutory protection, often covering basic safety rules. The relation between landlord and renter is characterised at its worst by incommensurable ideals – the retention of existing rights in land, opposing the aspiration of renters to have security in their accommodation and to be able to treat this as a 'home' (and with this carrying all of the emotional as well as tangible connotations that come with it). The Renters' Rights Bill has as its stated aim '[making] provision changing the law about rented homes, including provision abolishing fixed term assured tenancies and assured shorthold tenancies; imposing obligations on landlords and others in relation to rented homes and temporary and supported accommodation; and for connected purposes'.[41]

[41] This is its long title. See n 12 above.

As the Deputy PM said in a press release marking the introduction of the Bill, 'We will deliver on our promise to renters and transform the sector into one where families can put down roots, where children can grow up in healthy homes, and where young people can save for their future'.[42]

It could be argued that legislative change gives greater purchase for hope. In the context, this is secured by expanding the parameters within which rights to property broadly defined are recognised. The flipside of this is the attenuation of existing proprietary rights and interests, or at the very least their enforceability. This is not a novel project. Historically, many constraints have existed on landowners, whether in the form of planning law restrictions or the existing statutory regimes applying to housing condition, or even the 'right to rent' provisions limiting those who landowners can rent property to.[43] With the legislative supremacy of Parliament, statute can create or attenuate rights (subject to compensatory measures which infringe rights under the European Convention on Human Rights). This seems to be the approach of both the current and preceding Government when making a commitment to those renting in the private sector. However much of the proposed legislation, in terms of form, operates on the premise of local authority enforcement and ultimately prosecution – an approach that historically has not functioned efficiently or effectively, and indeed has attenuated the hopes of many.[44] Initial research suggests that in East Anglia, for example, few councils deploy their existing powers to protect renters, so it demands a very optimistic view to see how or where real protection will derive from new legislation enacted along similar lines.[45] Instead hope may provide purchase to adopt a different approach – one of encouraging co-operation and collaboration between parties on the sides of renters and landlords.

The property crises – whether in terms of access to property or the safety of the 'thing itself', demand that we take a more sceptical view of property doctrine, if we are to make sense of the legislation proposed – particularly in the field of the private rented sector, which will refine and reshape existing rights by giving greater purchase to how we might envisage a better or at least a different future. We could argue that on this reading law becomes a tool for enacting a hopefulness that is more than ritualistic. Ideas of institutional and more basic hope enable novel thinking. Hope becomes a performative strategy, which can function to enable greater participation *if* institutions are structured in a way that allows this. They are not

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[42] Ministry of Housing, Communities and Local Government and The Rt Hon Angela Rayner MP, 'Press release: Renter protections closer as Bill progresses through Parliament' (GOV.UK, 9 October 2024) <https://www.gov.uk/government/news/renter-protections-closer-as-bill-progresses-through-parliament> last accessed 27 August 2025.

[43] Immigration Act 2014 (as amended)

[44] See for example Drahos identifying, in Braithwaite's words, 'the Achilles heel of hope': 'Trading in Public Hope' in Valerie Braithwaite (ed), *Hope, Power, and Governance* (2004) 592 The ANNALS of the American Academy of Political and Social Science 8.

[45] The responses to Freedom of Information requests made in late 2024, suggest that in the Eastern region, local authority powers exercisable under the Protection from Eviction Act 1977 (restricting the unlawful eviction and harassment of tenants) seem to be rarely used.

always. There is a risk that hope may become hopeless. We may however use the idea of institutional hope to capture a moment to reconfigure law and how we understand it. It is the lens of hope that invites a conceptual reappraisal of property law as conventionally understood. While imperfect, it suggests forms of inclusivity that transcend the stark binary between the haves and have nots.