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# Promise and Perils of the International Human Right to Property

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# Promise and Perils of the International Human Right to Property

Anna Dolidze\*

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## I. INTRODUCTION

I found John Sprankling’s *The International Law of Property* in the domestic law section of my university library. I assume that, most probably, once the librarian came across the book and saw the word “property” in the title, he or she filed it in the domestic law section alongside other books on servitudes, covenants, and trusts. As far as a lawyer or a law librarian trained in a North American law school is concerned, a book with “property law” in its title belongs in the municipal law section. This anecdote illustrates the significance of *The International Law of Property* and its contribution to the world of scholarship. The book creates a whole new field of scholarship and of practice. The path so far has been uncharted. Although lawyers might have encountered various international law principles related to ownership, the realm as a whole has been regarded within the ambit of state sovereignty.

In this article I would like to first offer a brief overview of Sprankling’s book and explain the contribution it makes to international law scholarship. I would also like to build on Sprankling’s “cautious optimism” in relation to the potential of the international law of property. This article highlights aspects of the development of the international human right to property that are often overlooked. These aspects will be helpful in interpreting the right to property as well as advocating for the implementation of this right. Specifically, we have to take into account the fact that the international human right to property resulted

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from the universalization of a particular moment in European history.<sup>1</sup> Furthermore, the international human right to property is based on one of many conceptions of property. And, its further endorsement can lead to the silencing of other possibilities to express grievances and to debate policy solutions.

Property rights are typically depicted as being within the exclusive jurisdiction of the state to create and define. Property law and sovereignty are considered inherently entwined, therefore leaving no room for the plausibility of international law of property to exist. However, Sprankling argues that this is not the case in reality. The “property rights of individuals, businesses, and other private actors” are becoming increasingly impacted by international law, which in itself creates an international property law that can act in concert with the property laws of independent states, or in opposition to them.<sup>2</sup> Sprankling’s book provides a detailed investigation into the development of an international property law regime.<sup>3</sup> It aims to create a basic definition of international property law to serve as a foundation for the subsequent arguments.<sup>4</sup> It also demonstrates the influence of major political, economic, and technological changes over the last forty years on the evolution of international property law.<sup>5</sup>

Some of these changes include: the rise of international human rights law and the recognition of a human right to property; the shift of many socialist states to free market economies that embrace personal and private property; and finally, many property owners and their investments increasingly transcend borders, creating the “need for international coordination and protection” of property owners given globalization.<sup>6</sup>

Sprankling suggests that title to deep seabed minerals, security interests in aircrafts, and rights to satellite orbits are all examples of property that have come about at a global level and necessitate international regulation and cooperation.<sup>7</sup> He argues that “[i]nternational law protects rights that arise under municipal law through uniform rules that safeguard human rights and foreign investments.”<sup>8</sup> Further, it establishes international standards that harmonize property rights in areas such as intellectual property, genetic resources, and cultural objects. He contends that “treaties, customary norms, general principles, arbitral and judicial decisions, and soft law instruments” have all worked together to produce a substantial body of property law that merges both public and private law

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1. See JOHN G. SPRANKLING, *THE INTERNATIONAL LAW OF PROPERTY* 10 (2014) (discussing the Universal Declaration of Human Rights, which was adopted in 1948).

2. *Id.* at 2.

3. *Id.*

4. *Id.* at 21; see also *id.* at 21–42 for a definition of international property law.

5. *Id.* at 3.

6. *Id.*

7. *Id.*

8. *Id.*

concepts.<sup>9</sup> “Private actors are subjects of this law, either directly or indirectly through a state intermediary.”<sup>10</sup> Finally, he submits that on account of the aforementioned reasons, the historic separation between international law and municipal law is becoming irrelevant.<sup>11</sup>

The author has done a herculean job of mapping property concepts that are dispersed in areas that are greatly distinct—such as intellectual property law, law of the sea, and space law—and organizing the norms in a very coherent and logical way.

Sprankling’s main argument is that international property law should be conceptualized as a distinct category of international law.<sup>12</sup> Sprankling’s argument makes at least two kinds of contributions to international law.

The first contribution is what Sprankling calls “jurisprudential.”<sup>13</sup> It is on a conceptual level. The contribution harmonizes concepts that are dispersed across various areas of international practice.<sup>14</sup> For instance, thanks to the contribution, we are getting clarity in relation to the nature of security interests in international law, e.g. security interests will be treated under the same standard, whatever the area, space or maritime law perhaps with specifications. Furthermore, creating an international law of property will improve authority and legitimacy of international law as it will add consistency to the rules and their interpretation. An example is the right to use property in environmental law and in investment law.

*The International Law of Property* will also help clarify the rights of entities in relation to the areas that are highly contested, for instance, global commons like airspace, arctic, etc. As the rights in relation to the access to the global commons are being contested, it is highly important to monitor the development of international law across various commons regimes. Such monitoring can help us borrow norms across regimes in order to enhance consistency.

However, in addition to delineating the international property law, Sprankling does a great service to the property law community as he provides the background and history of property law both in Roman law and in English law.<sup>15</sup> The history of property principles helps clarify these concepts as well as show that property law principles have been historically travelling across continents.

It should be noted, however, that the author is far away from any kind of triumphalism in relation to property under international law. On the contrary, he

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9. *Id.* at 4.

10. *Id.*

11. *Id.*

12. *Id.* at 349.

13. *Id.* at 348

14. *Id.*

15. *Id.* at 4–14.

maintains that a balance must be struck between public policy and those affected and also between regulation and the robust property rights.<sup>16</sup>

I agree with the author's cautious optimism. Building on his propositions, I will advance three points of caution in relation to the international human right to property.

## II. Pervasiveness of Human Rights Discourse

The first note of caution relates to the dominance of human rights discourse as a vehicle for expressing a variety of grievances. Human rights language is indeed very influential. As Nobel Prize laureate Elie Wiesel remarked in 1999, “[h]uman rights today have become a secular religion.”<sup>17</sup> But it also should be approached cautiously, so as not to follow on what is called “human rights triumphalism.”

So far, David Kennedy has advanced the most powerful critique of the human rights movement.<sup>18</sup> Although human rights are renowned for having made an immense positive impact on the international community, David Kennedy suggests there are other ways of thinking about human rights in his article, *The International Human Rights Movement: Part of the Problem*. His article presents a short list of pragmatic questions that have been raised about human rights by Kennedy and others who believe that the human rights movement may be a greater part of the problem in today's world than the solution.<sup>19</sup> “Pragmatic evaluation means specifying the benefits and harms that might attend human rights initiatives in particular cases,” like the benefits and harms of time and conditions.<sup>20</sup> As a result, he acknowledges that there are a few criticisms he fails to address, such as those that are not cast in pragmatic terms as well as those that could be answered by intensifying ones commitment to the human rights movement in rights making and enforcement.<sup>21</sup> Kennedy looks at the possible costs of the system, in particular circumstances and under certain conditions, as either potential misuses or as outcomes that may be made more likely by the human rights machinery.<sup>22</sup> Kennedy emphasizes that all of his arguments are hypotheses that lack empirical evidence. Further, he states that even if these

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16. *Id.* at 358.

17. Interview with Elie Wiesel, Remarks at Millennium Evening, *The Perils of Indifference: Lessons Learned from a Violent Century* (Apr. 12, 1999), [www.pbs.org/eliewiesel/resources/millennium.html](http://www.pbs.org/eliewiesel/resources/millennium.html) (on file with *The University of the Pacific Law Review*).

18. See David Kennedy, *The International Human Rights Movement: Part of the Problem?*, 15 HARV. HUM. RTS. J. 101 (2002).

19. *Id.* at 101.

20. *Id.* at 102.

21. *Id.* at 106.

22. *Id.* at 104.

potential costs were demonstrated, they would still need to be weighed against the “very real accomplishments of the human rights movement.”<sup>23</sup>

Kennedy believes that people use the language of human rights in a variety of ways, such as speaking instrumentally or ethically.<sup>24</sup> Thus, “people in the movement will evaluate risks, costs, and benefits in quite different ways,” making human rights a vocabulary.<sup>25</sup> In thinking pragmatically about human rights, Kennedy evaluates “whether the vocabulary or institutional form of the movement, in particular contexts, makes particular types of ‘misuse’ more or less likely.”<sup>26</sup> Finally, he claims that he will analyze human rights in comparative terms, for instance, “how the costs and benefits of pursuing an emancipatory objective in the vocabulary of human rights compare with other available discourses” like alternative vocabularies and institutions or with other political or legal emancipatory rhetoric.<sup>27</sup> Throughout his evaluation, Kennedy uses the term “emancipation” “to capture the broad range of . . . benefits people of good heart might hope to make of human rights.”<sup>28</sup> The costs to be considered are ethical, political, philosophical, and aesthetic.<sup>29</sup> He uses a bad effect to mean influencing someone to act, influencing them to omit to act, or thinking in a way that counts as a cost, such as creating stereotypes of women.<sup>30</sup> However, Kennedy concludes his introduction stating that, in weighing initiatives pragmatically, it is often more useful to focus on “distributional consequences among individuals or groups” than “cost and benefits.”<sup>31</sup>

Furthermore, Kennedy argues “the transformation of political questions into legal questions, and then into questions of legal ‘rights,’ has made other forms of collective emancipatory politics less available.”<sup>32</sup> “In some places, human rights implementation can make a repressive state more efficient.”<sup>33</sup> “Human rights can and has also been used to strengthen, defend, and legitimize a variety of repressive initiatives by both individuals and states. The recent embrace of human rights by international financial institutions” may also serve this negative function.<sup>34</sup> Kennedy claims that these difficulties are particularly hard to overcome because the human rights movement remains tone-deaf to the mistaken assumption that a bit more human rights can never make things worse.<sup>35</sup> Finally,

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23. *Id.* at 102.

24. *Id.* at 103.

25. *Id.*

26. *Id.* at 104.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.* at 104–105.

31. *Id.* at 105.

32. *Id.* at 123.

33. *Id.* at 124.

34. *Id.*

35. *Id.* at 124–25.

he suggests that, “in many contexts, transforming a harm into a ‘human rights violation’ may be a way of condoning or denying rather than naming and condemning it.”<sup>36</sup> “Doing so can be a way of doing nothing, avoiding responsibility, simultaneously individualizing the harm, and denying its specificity.”<sup>37</sup>

Furthermore, Sidonie Smith and Kay Schaffer’s work shows that humans construct narratives in line with the expectation of an international human rights movement.<sup>38</sup> The authors show how personal narratives of suffering are produced and disseminated in the context of the working global market.<sup>39</sup> Stories of other’s suffering are at the center of the human rights movement, which is not outside of the influence of commercialization.<sup>40</sup> Clifford Bob’s scholarship has underlined the influence of Western non-governmental organizations in driving the human rights discourse and in formulating indigenous grievances in line with the expectations of the humanitarian industry.<sup>41</sup>

Furthermore, the discourse of human rights is pervasive. Lately, human rights discourse has permeated fields, which had been subject to different logics. For instance, on October 30, 2013, in the case *The Arctic Sunrise (Kingdom of the Netherlands v. Russian Federation)* before the International Tribunal for the Law of the Sea, Greenpeace International, the coordinating body of the Greenpeace organizations and the operator of the M/Y *Arctic Sunrise*, submitted an amicus curiae brief.<sup>42</sup> Prominent international law Professor Philippe Sands QC, the general counsel of Greenpeace International Jasper Teulings, and lawyers Simon Olleson and Kate Harrison wrote the brief.<sup>43</sup> The brief aimed at assisting the Tribunal in adjudicating the Netherland’s request for provisional measures.<sup>44</sup> The brief argued, *inter alia*, about the applicability of international human rights law in general and the International Covenant on Civil and Political Rights in particular to the maritime dispute at hand.<sup>45</sup>

Another example is the field of refugee law. Previously, refugee law and human rights law occupied separate realms. Bhupinder Chimni put forth an analysis of human rights specifically in relation to refugee law, indicating the

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36. *Id.* at 124.

37. *Id.*

38. KAY SCHAFFER AND SIDONIE SMITH, HUMAN RIGHTS AND NARRATED LIVES: THE ETHICS OF RECOGNITION 1 (2004).

39. *Id.* at 1–2.

40. *Id.* at 1.

41. Clifford Bob, “Dalit Rights are Human Rights”: Caste Discrimination, International Activism, and the Construction of a New Human Rights Issue, 29 HUM. RTS. Q. 167, 188 (2007).

42. The “Arctic Sunrise” (No. 22) (*Kingdom of the Netherlands v. Russian Federation*), Case No. 22, Order of Nov. 22, 2013, 22 ITLOS Rep. 1.

43. *Id.*

44. *Id.* at ¶¶ 1, 12

45. *Id.* at ¶ 18.

blurred boundaries between refugee law and human rights law, and relates to the turn to the interests of globally expanding capitalism.<sup>46</sup>

Although international refugee law and human rights law were established in the same decade, they developed as two autonomous fields. Sadako Ogata, the former United Nations (UN) High Commissioner for Refugees noted that the relationship between human rights and humanitarianism began to thaw around the 1990s.<sup>47</sup> “Not until 1990,” Ogata remarked, “did High Commissioner for Refugees ever address the Human Rights Commission, and such was the perceived divide between human rights and humanitarianism.”<sup>48</sup> Ogata explained that the Cold War caused the division.<sup>49</sup>

However, after the end of the Cold War, the two fields gradually fused. Bhupinder Chimni indicated that during the Cold War, refugee law was only concerned with individuals that crossed the state boundary. However, after the Cold War the fusion of refugee law with human rights law allowed industrialized states to interrogate the internal conditions within states and to use the refugee plight for political purposes.<sup>50</sup> Nevertheless, multiple voices have argued that refugee law, including the Refugee Convention should be interpreted in light of the international human rights law.<sup>51</sup>

This instance serves as an example of a phenomenon of the pervasiveness of the human rights discourse. Human rights law and human rights discourse permeate numerous legal fields that previously were separate from claims under human rights law.

Thus, taking into account the above-stated critique, once we start formulating property law issues in the language of the human right to property, we will indeed see how claims and grievances which were contested—for instance as issues of social justice—will be formulated as individual rights. The process can cancel any other potential ways of expression that these grievances might have.

This critique is clearly manifested in the realm of property in particular, as issues of economic and social policy become formulated as a human right to property. The following are examples from the jurisprudence of the European Court of Human Rights, where questions that were originally issues of social and economic policy are couched in terms of human rights claims.

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46. B.S. Chimni, *Globalization, Humanitarianism and the Erosion of Refugee Protection* 3 (Refugee Stud. Ctr., U. of Oxford, RSC Working Paper No. 3, 2000).

47. Sadako Ogata, *Human Rights, Humanitarian Law, and Refugee Protection*, in *HUMAN RIGHTS AND HUMANITARIAN LAW: THE QUEST FOR UNIVERSALITY* 135 (Daniel Warner ed., 1997).

48. *Id.*

49. *Id.*

50. Chimni, *supra* note 46, at 10.

51. See generally MICHELLE FOSTER, *INTERNATIONAL REFUGEE LAW AND SOCIO-ECONOMIC RIGHTS: REFUGE FROM DEPRIVATION* 1, 6 (2009).

For example, in *Bäck v. Finland*, the Court allowed intervention by the governments of the Netherlands, Norway, Sweden, and the United Kingdom.<sup>52</sup> The applicant had agreed to serve as a guarantor on a loan to N.<sup>53</sup> The debtor could not pay off his debt and applied for debt adjustment in 1995.<sup>54</sup> In 1993, in response to the financial crisis leading up to the high volume of unpaid debts, Finland had adopted legislation allowing the write-offs as long as the debtor met certain conditions, including following a payment schedule.<sup>55</sup> Based on this legislation, the Finnish courts adjusted N's debt, which substantially reduced the amount that Bäck could recover from N.<sup>56</sup> The applicant, a Finnish national, alleged that Finland's actions violated his right to peaceful enjoyment of property under the Convention.<sup>57</sup> The judgment summarized the arguments of all interveners.<sup>58</sup> The Netherlands, Norway, Sweden, and the United Kingdom all indicated that their respective countries possessed domestic legislation allowing for debt adjustment.<sup>59</sup> More specifically, the Netherlands pointed out that it had passed the relevant act in 1998.<sup>60</sup> Norway specified that the Norwegian Debt Settlement Act was passed in 1992.<sup>61</sup> The Swedish government mentioned that the Swedish legislature adopted a similar act in 1994,<sup>62</sup> and the United Kingdom's brief generally described the debt cancellation system in the United Kingdom.<sup>63</sup>

In its assessment, the Court touched upon a number of legal issues raised by the applicant's claim, including the applicant's allegation that the Finnish debt adjustment act had a retroactive effect because it applied to contracts concluded prior to its entry of force.<sup>64</sup> The Court indicated the measure was valid.<sup>65</sup> Nevertheless, the Court observed that in remedial social legislation and particularly in the field of debt adjustment, the legislature should be able to take measures that affect the execution of previously concluded contracts in order to attain the aim of the policy adopted.<sup>66</sup>

In *Carson and Others v. the United Kingdom*, the applicants' collective claim provided that the United Kingdom's government's failure to uprate their pensions

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52. *Bäck v. Finland*, No. 37598/97 Eur. Ct H.R. 1 (2004).

53. *Id.*

54. *Id.* at 2.

55. *Id.*

56. *Id.* at 3.

57. *Id.*

58. *Id.* at 5–7.

59. *Id.*

60. *Id.* at 5.

61. *Id.*

62. *Id.* at 6.

63. *Id.* at 7.

64. *Id.* at 15.

65. *Id.*

66. *Id.*

in line with inflation violated their property rights and the prohibition against discrimination under the Convention.<sup>67</sup> Thirteen applicants had spent most of their working lives in the United Kingdom and had emigrated abroad, including to South Africa, Canada, and Australia, upon retirement.<sup>68</sup> Their pensions, however, had remained fixed while they lived abroad.<sup>69</sup> The applicants argued that their pensions would have grown had they been uprated correspondingly with inflation.<sup>70</sup> In both cases, questions of social economic policy were advanced as human rights claims and particularly as claims to property.<sup>71</sup>

This issue of the dominance of human rights discourse and the potential elimination of other ways to express grievances and contestation might be particularly relevant for states that face an urgent need for social economic reforms. As a very large number of countries grapple with basic questions of economic prosperity, they might need to engage in fundamental restructuring of the economy and the pervasiveness of the human rights discourse. Particularly, they might need to restructure based on their tendency to formulate all claims as human rights claims, which can eliminate the possibility of balancing individual rights with the objectives of public policy.

### III. THE HUMAN RIGHT TO PROPERTY IS BASED ON A PARTICULAR VISION OF SOCIETY

Human right to property is based on the culture of individual rights, which originates from a specific historical context. Historian Samuel Moyn argued that property as an individual right is a universal concept that developed through specific historical circumstances.<sup>72</sup> Property as a right first appeared in article 17 of the Universal Declaration of Human Rights Declaration.<sup>73</sup> Article 17 states “everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.”<sup>74</sup> Article 1 of Protocol No. 1 of the European Convention, which is the first international treaty to enshrine the right, provides for the following, “[e]very natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to conditions provided for by law and by the general principles of international law.”<sup>75</sup>

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67. *Carson & Others v. the United Kingdom*, No. 42184/05 Eur. Ct. H.R. 1, 2 (2010).

68. *Id.* at 3–6.

69. *Id.*

70. *Id.*

71. *Id.* at 1.

72. SAMUEL MOYN, *THE LAST UTOPIA: HUMAN RIGHTS IN HISTORY* 7 (2010).

73. *The Universal Declaration of Human Rights*, UNITED NATIONS, <http://www.un.org/en/documents/udhr/index.shtml> (last visited Sept. 30, 2015) (on file with *The University of the Pacific Law Review*).

74. *Id.*

75. Convention for the Protection of Human Rights and Fundamental Freedoms art.1, Mar. 20, 1952, 213 UNTS 221 (emphasis added) [hereinafter Convention for the Protection of Human Rights].

In fact, the notion of property as an individual legal entitlement is just one way of conceptualizing what property is. As Harold Demsetz famously remarked, “[i]n the world of Robinson Crusoe property rights play no role.”<sup>76</sup> A number of approaches, including the social-obligation theory and personhood theory explained below, illustrate the intrinsic connection between property and the community in which it is placed. “One may say that in fact the concept of property as a subjective right disappears, to be replaced by the concept of property as a social function,” remarked French scholar Leon Duguit in 2013.<sup>77</sup> Duguit’s conception of property’s social function became very influential in Latin America and served as a foundation for the drafting of constitutions in a number of countries, including Chile.<sup>78</sup> For Duguit, property’s social function was an observable phenomenon.<sup>79</sup>

In their study of the social-obligation norm of property, Gregory Alexander and Eduardo Peñalver point out that the conceptions of community and an individual’s relationship to the community are embedded in theories of property.<sup>80</sup> Examining the works of major property theorists, including the work of Hegel, they show how property has been imagined and conceptualized in the context of the owner’s relationship with the community.<sup>81</sup> Gregory Alexander and Eduardo Peñalver note, “property and community are deeply intertwined.”<sup>82</sup> Contributors to the volume *Property and Community* emphasize the rights and obligations that property owners owe to the community in which they are placed.<sup>83</sup>

Elinor Ostrom’s work on the commons and the management of common pool resources is an example of property management where individual entitlements do not exist.<sup>84</sup>

#### IV. INTERNATIONAL HUMAN RIGHT TO PROPERTY ORIGINATED UNDER SPECIFIC HISTORICAL CIRCUMSTANCES

The drafting of the human rights document took place between 1947 and 1950 in a specific global context.<sup>85</sup> The first international human rights documents emerged in the aftermath of Nazism, on the one hand, and the fear of

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76. Harold Demsetz, *Toward a Theory of Property Rights*, 57 AM. ECON. REV. 347, 347 (1967).

77. Martha Minow, *Origins of the Social Function of Property in Chile*, 80 FORDHAM L. REV. 1183, 1183 (2011).

78. *Id.* at 1183–84.

79. *Id.* at 1192.

80. See GREGORY S. ALEXANDER & EDUARDO M. PEÑALVER, *PROPERTY AND COMMUNITY* xviii (2010).

81. *Id.* at 128.

82. *Id.* at xxxiii.

83. *Id.* at xxxiii.

84. Lee Anne Fennell, *Ostrom’s Law: Property Rights in the Commons*, 5 INT’L J. OF THE COMMONS 9, 10 (2011).

85. See Convention for the Protection of Human Rights, *supra* note 75.

spreading communism on the other.<sup>86</sup> As Samuel Moyn notes, human rights were a *cause célèbre* of the European conservatives in Europe.<sup>87</sup>

The right to property was not included in the initial draft text of the European Convention.<sup>88</sup> Although initial drafts leading up to the Convention referred to the right to property, due to political tensions in the drafting process, the drafters decided not to include the provision in the Convention.<sup>89</sup> Instead, they included the right to property, alongside the right to education, in a separate Protocol No. 1.<sup>90</sup>

The European Movement Convention, drafted by the advocates for the unification of Europe, served as the first draft.<sup>91</sup> Some members of the Committee objected to the inclusion of the right to property in the Convention, maintaining that measures adopted by states in relation to property should have been considered in the context of a particular country's social economic circumstances, and an international institution would not be adequate to evaluate these circumstances.<sup>92</sup> The critics were in the minority and the majority opted to include the right because it was important "for the independence of the individual and of the family."<sup>93</sup>

The Committee promised that additional rights, including the right to property and education, would be included in the Convention later.<sup>94</sup> On August 7, 1950, after a series of debates and amendments, the Committee of Ministers approved the Convention text.<sup>95</sup> The First Protocol to the European Convention was concluded on March 20, 1952.<sup>96</sup>

Shortly after the Convention was signed, negotiations opened again. This time, the negotiations concerned those rights that were the object of the most energetic debates in the Parliamentary Assembly and were omitted from the original text, including the right of property, freedom of education, and the right to free elections.<sup>97</sup> "Another committee of experts was set up to draft an additional Protocol to the Convention on these items. It encountered special difficulty with the article on the right of property and the question of indemnity

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86. See MOYN, *supra* note 72.

87. *Id.* at 71.

88. European Convention on Human Rights, Dec. 10, 1948, CETS no. 194.

89. See *infra* text accompanying note 92.

90. Convention for the Protection of Human Rights, *supra* note 75.

91. European Movement Convention, Dec. 10, 1948.

92. JONAS CHRISTOFFERSON & MIKAEL RASK MADSEN, *THE EUROPEAN COURT OF HUMAN RIGHTS BETWEEN LAW AND POLITICS* 23–24 (2011).

93. *Id.* at 24.

94. *Id.*

95. William K. Coblentz & Robert S. Warshaw, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 44 CAL. L. REV. 94, 97 (1956).

96. Convention for the Protection of Human Rights, *supra* note 75.

97. THE CONSCIENCE OF EUROPE: 50 YEARS OF THE EUROPEAN COURT OF HUMAN RIGHTS, available at [http://www.echr.coe.int/documents/anni\\_book\\_chapter01\\_eng.pdf](http://www.echr.coe.int/documents/anni_book_chapter01_eng.pdf).

for expropriation.”<sup>98</sup> “However, a text was approved by the Committee of Ministers in August 1951 and signed, after consultation of the Assembly, by all the member States of the Council of Europe on March 20, 1952.”<sup>99</sup>

The process of drafting and adopting the Convention was related to the internal political processes within the United Kingdom, which lead to advocating for the Convention.<sup>100</sup>

The Labour Party won the 1950 general election, but only by a slim, five-seat majority.<sup>101</sup> Twenty months later, the Labour party called for another general election on October 25, 1951, with the hope of increasing its majority.<sup>102</sup> Additionally, the King George VI vocalized concerns about leaving the country to go on his Commonwealth tour in 1952 with a government that had such a weak majority.<sup>103</sup> At this time, the Labour government had implemented most of its 1945 manifesto that focused on nationalization.<sup>104</sup> The first organization nationalized was the Bank of England, which private individuals owned since 1694.<sup>105</sup> The next organization nationalized was Cable and Wireless Ltd., which was the dominant force in long distance communications in Britain.<sup>106</sup> Afterward, the government nationalized the coal industry, railways and iron and steel industry.<sup>107</sup>

The Conservative and the Labour parties entered the campaign strong. The Conservatives had recovered from their defeat in the 1945 election and had accepted most of the nationalization that took place under the Attlee government. Their campaign focused on the potential future of nationalization of other sectors and industries. The campaign was supported by the Labour party and opposed by the Tories.<sup>108</sup>

Throughout the 1951 campaign, the Conservative party prospered.<sup>109</sup> The Conservative party won the overall 1951 election with a total of 321 seats and a majority of sixteen seats.<sup>110</sup> The Labour Party lost to the Conservative party and

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98. *Id.*

99. *Id.*

100. Coblenz & Warshaw, *supra* note 95, at 103.

101. Derek Brown, *1945-51: Labour and the Creation of the Welfare State*, *GUARDIAN* (Nov. 17, 2015), <http://www.theguardian.com/politics/2001/mar/14/past.education> (on file with *The University of the Pacific Law Review*).

102. *Id.*

103. *Id.*

104. *Labour Party Election Manifesto, 1951*, POLITICAL RESOURCES, <http://www.politicalresources.net/area/uk/man/lab51.htm> (last visited Oct. 18, 2015) (on file with *The University of the Pacific Law Review*).

105. Brown, *supra* note 101.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *1951 General Election Results Summary*, UK POLITICAL INFO, <http://www.ukpolitical.info/1951.htm> (last visited Oct. 2, 2015) (on file with *The University of the Pacific Law Review*).

Winston Churchill replaced Prime Minister Clement Atlee.<sup>111</sup> Churchill personally spearheaded the drafting and the adoption of the Convention, as Conservative ideals found themselves translated into the most contested articles of the Convention.

## V. CONCLUSION

Sprankling's *International Law of Property* makes a significant contribution to both international law and property law scholarship. The book opens up a dialogue between these two fields of law, showing their similarities. As the book maps, interprets, and systematizes various property related concepts that were hitherto dispersed in international law, it argues that a new category of international law scholarship and practice needs to be created.<sup>112</sup> The international human right to property is one part of the emerging international law of property.<sup>113</sup> As a human rights historian Sam Moyn states in his book, *The Last Utopia, Human Rights in History*, "it is probably the right of possession that has been the most frequently asserted and doggedly fortified right in world history, albeit typically within systems that made no real claim to base entitlement on humanity."<sup>114</sup> An international human right to property has been asserted in many contexts where basic entitlements to livelihood have been challenged.<sup>115</sup> However, at the same time, we have to be aware that while we are gaining much with the advancement of the human right to property, we are also losing something. We are restricting ourselves to one of many visions of what property is in society and particular historical circumstances that triggered the formulation of the international human right to property.

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111. *Id.*

112. SPRANKLING, *supra* note 1, at 397

113. *Id.*

114. MOYN, *supra*, note 72, at 17.

115. *Id.* at 21–22.