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Introduction

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Symposium—The Promise and Perils of an International Law of Property

Introduction

In March 2015, the McGeorge Global Center for Business and Development hosted a unique event, the first dedicated to critically examining the emergence of an International Property Law.

The scholars in this symposium brought insight to and reflected on Professor John Sprankling's seminal book in the field. *The International Law of Property* is certain to impact the field of property and international law for many years as the ideas in the book are examined through a variety of lenses, including intellectual property, environmental law, space law, and human rights law.

The title of the symposium, *The Promise and Perils of an International Law of Property*, illustrates the mixed possibilities of this new development in history—toward international norms and beyond domestic rules creating property rights. Property as a human tool can be used in a variety of ways. It can be used to distribute scarce goods in a manner that is efficient. However, care must be taken to ensure such distribution is also just. Property can be used as a weapon against fellow men, such as where the right to exclude invades a need to be included. Implications are wide and run through concerns for fair access to intellectual property, natural resources including biodiversity and water, land and even celestial bodies of outer space. The contributions in this symposium speak to these possibilities.

There was significant discourse on the promise side of the rise of an international property law. For her part, Professor Dolidze builds on Professor Sprankling's "cautious optimism" for an international law of property, and yet she looks carefully at the possibility and potential negative consequence that formulating an individual right such as a human right to property may have for characterizing and resolving grievances in alternative ways. From a different perspective, Professor Antkowiak looks at the right to property in the Inter-American Human Rights system, and specifically to the violation of Indigenous communal property rights in authorization of the Nicaragua trans-oceanic canal project. I am also hopeful that a renewed sense of common purpose through recognized international property rights could help in the development of biodiversity conservation in marine areas beyond national jurisdiction. Furthermore, Leslie Tennen's essay focuses on outer space as a unique medium in need of a unique legal regime (distinct from those on Earth) and observes that private development of celestial bodies is still feasible regardless of conceiving of these objects as the common heritage of mankind.

The articles in this symposium also fundamentally grapple with the complexity that the label "property" and associated paradigms present. It is a

reminder to consider how something becomes property in the first place. Jacquelyn Jampolsky takes on the task of explaining this in the context of how natural resources are put into the framework of “property” in order to facilitate land management, introducing her article with the recognition that . . . “[a]ny discussion of property law necessarily assumes that property exists, in some independent medium, capable of being adjudicated.” Professor McCaffrey also examines and questions how water as a public good becomes a property right—which he describes as a “misnomer” given its inherent qualities and evanescent nature. He concedes—perhaps—the existence of rights in water, and rights to use water, but doubts the private ownership right of the water itself. Professor McCaffrey’s essay documents the emergence of a human right to water, a natural resource that is undeniably fundamental to life, and how this right can be implemented progressively. Professor Drexl similarly grapples with the nature of intellectual property, discussing the tension between property claims on IP and the regulatory character of IP at a time where it is clear that intellectual property now touches the everyday lives of people in all reaches of the world.

The symposium keynote set the stage for a robust examination of the future implications of an international property law, tethered to history and a sense of the past. Professor Mirow asserts that the paradigm shift Professor Sprankling identifies in his book is consistent with the overall direction of history and of the rise of the global legal order, with people at the center of this structure. As Professor Mirow notes, “[i]t is perfectly appropriate that property is a component of this new order.” We hope these symposium essays, much like Professor Sprankling’s book, expand understanding of the inter-relation of people, resources, and property in the global legal order.

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