Introduction: Property and Human Rights in a Global Context

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I. ENGAGING PROPERTY WITH HUMAN RIGHTS: A CLASH OF PARADIGMS?

PROPERTY AS A human rights concern is manifested through its incorporation in many international/transnational instruments, including the Universal Declaration of Human Rights (UDHR, 1948), the European Convention on Human Rights (ECHR, 1950), the African Charter on Human and Peoples’ Rights (ACHPR, 1981) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007). Property-related cases have been considered by the European and the Inter-American Court of Human Rights as well as the African Court on Human and People’s Rights. Yet, for the most part, engaging the right to property with human rights entails a clash of paradigms: The former concerns ‘the self-regarding impulse towards personal appropriation’, whereas the latter engages ‘an other-regarding vision of the intrinsic merits of strangers’.¹

Property is mostly governed by domestic law, while human rights law situates in a different, international, territory. Acceptance of the right to property as a human right is controversial, as it is often argued that protection afforded to property does not really concern rights and entitlements based on claims regarding dignity and equality.² As Samuel Moyn points out, ‘Not surprisingly, it is probably the right of possession that has been the

¹ We would like to thank Alison Clarke for her helpful comments on this chapter.

² This may be more true of common law legal systems than of civil law systems where property is enshrined as a constitutional right. See eg, Art 14(2) of the Basic Law of the Federal Republic of Germany (‘Property entails obligations. Its use shall also serve the public good’); Art 42(2) of the Italian Constitution 1948 (‘Private ownership is recognized and guaranteed by the law, which determines the manner of acquisition and enjoyment as well as its limits, in order to ensure its social function and to make it accessible to all’).
most frequently asserted and doggedly fortified right in world history, albeit typically within legal systems that made no real claim to base entitlement on humanity. Further, compared to other fundamental rights such as the right to life and the right not to be enslaved, the right to property as a human right ‘seems less worthy of protection’. The distinction between property and humanity, alongside the dichotomy between domestic and international or between private and public, leads to the disengagement between property and human rights: these two areas lack shared jurisprudential concerns, substantive connections and a common language. For jurisdictions where the ‘rule of law’ is well developed and property institutions are fully established, such disengagement between property and human rights is not regarded as a major concern. For example, the Law of Property Act 1925 enacted in the UK ‘contains little which could be confused with the positive protection or reinforcement of basic concepts of human freedom, dignity and equality’. As a result, the promoting of the engagement between property and human rights is often conceived as a worthwhile enterprise only for underdeveloped countries, in particular those with a colonial past, or for countries emerging from regimes characterised by misuse of state power and abuse of the rule of law.

Yet, in the context of globalisation, human rights law is increasingly engaging with the core fields of private law such as contract, tort and property, and the boundaries between public and private law are shifting. For example, while the English common law has historically protected private rights such as property rights almost on its own, the passing of the Human Rights Act 1998 makes an important step by directly incorporating the ECHR into UK law. While seminal work has been written on some of these developments, there is still a lack of in-depth examination of the...
relationship between property (especially beyond the traditional forms of property that are tied up with the image of land) and human rights in different social, cultural and political contexts and at the global/transnational level.10

The term ‘globalisation’ refers to ‘an aggregate of multifaceted, uneven, often contradictory economic, political, social and cultural processes’.11 These processes have been galvanised by the rise of new networks of political and economic actors, such as transnational corporations, supranational organisations and non-governmental organisations, bringing about the emergence of a new global culture and, at the same time, the marginalisation of many local cultures.12 And each of these transformations has been associated with new, newly applied, or newly revised, laws—local, national, transnational and international. As a result, the traditional distinctions between domestic and international and between private and public are no longer sufficient to capture the complexity of a multiplicity of norms emerging in globalisation, cutting across the boundaries of the nation states. More recently, attention has extended to the study of ‘global governance’, in particular contemporary shifts of power and decision making from nation states to regional, international or transnational sites of governance.13 These various ‘sites’ provide potential arenas for both conflict and engagement between property and human rights.

In this collection, we do not propose that the human rights paradigm is the ideal approach to property questions, nor do we focus on the question usually raised in the studies of the interplay of these two fields: ‘Are human rights and property rights compatible?’ Indeed, as Fiona Macmillan argues, ‘if everything that seems a good or fair or morally defensible thing automatically becomes a “human right” then every so-called human right is reduced to the symbolic and legal significance of the most banal and the very idea of “human rights” as the unsurpassable moral high ground, the trumps of trumps, disappears’.14 Instead, we look at the ways in which the process of globalisation has altered the scope or the ‘reach capacity’ of both fields, transcending some of the entrenched territorial and normative

Dickson, ibid, in particular ch 12 ‘Property, Education, Elections’; TRG van Banning, The Human Right to Property (Antwerp, Intersentia, 2002) and AR Çoban, Protection of Property Rights within the European Convention on Human Rights (Surrey, Ashgate, 2004); Gray (n 1).

11 F Snyder, Global Economic Networks and Global Legal Pluralism (Florence, European University Institute, 1999).
12 ibid, 7–8.
boundaries such as local versus global, private versus public, legal versus illegal/extralegal, as well as the shifts in the power relationship between different actors (for example, property owners and non-property owners). These transformations have given new impetus to the emergence of alternative normative frameworks within each area and hybrid normative frameworks that straddle both areas. Indeed, ‘dichotomising human and property rights is misleading’ (Wardhaugh in chapter 8), for globalisation has galvanised a new era of interface between the two areas, in particular with the emergence of international intellectual property law,\textsuperscript{15} the growth of the global market and international trade,\textsuperscript{16} and the movements for recognition and protection of indigenous land and resource rights and indigenous culture and customs at the national, transnational and international levels.\textsuperscript{17} Developments in these areas point to a need to re-evaluate the engagement between property and human rights beyond the current studies that focus on the national and European contexts.

II. THE CONCEPTS OF PROPERTY

There are different understandings of the concept of property. It could refer to things, relations, or the relations between persons with respect to things.\textsuperscript{18} The orthodox view of property speaks to the most cited, classical, liberal concept of private property defined by William Blackstone, as ‘the sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe’.\textsuperscript{19} Such a perception of property as ‘exclusive rights of possession, use, and disposition’\textsuperscript{20} has been strengthened by the economic analysis of law, which argues that property rights must be ‘strong and clear’ in order to preserve a well-functioning market and thereby promote economic growth.\textsuperscript{21} In such an analysis, the scope of property is reduced to wealth or ‘assets’. Accordingly, the purpose of property is limited to promote ‘the predictability and certainty of protecting the individual owner’s rights of

\textsuperscript{16} eg, Cottier, Pauwelyn and Bonanomi (n 10); Graber and Burri-Nenova (n 10).
\textsuperscript{17} eg, F Lenzerini, \textit{The Culturalization of Human Rights Law} (Oxford, Oxford University Press, 2014).
exclusion and alienation primarily for wealth-maximization purposes’. As a result, other forms of property holding such as communal property, public and open access property have been largely ignored, and common-pool, public and open access resources are increasingly being enclosed by both the market and the state and being transformed into commodities. Property lawyers who endorse this approach are primarily concerned with sustaining a market which allows for the transfer of property, setting aside issues concerning the morality of such a market. In their view, the concept and value of property is tied up with this market. In this way, as Beltráñ argues in chapter 5, they conflate two different issues: Acknowledging humans’ entitlements to some forms of property or proprietary interests is one thing; allowing the free transfer of some kinds of property on the market is something quite different. That said, the liberal conception of property remains influential in theoretical analysis and has been deeply embedded in many development projects promoted by the World Bank and International Monetary Fund. Furthermore, the liberal conception of property enshrines ‘efficiency’ but largely ignores ‘equality’ in the use and allocation of property rights. In so doing, it overlooks the question of who wins and who loses in the process of appropriation and development and the necessity of looking for alternative property regimes and paths of development.

A more sophisticated framework to understand the meaning of property is through the ‘bundle of incidents’ proposed by Anthony Honoré (see further considerations of this framework in Allain’s and Beltráñ’s chapter in this collection). It should be noted that Honoré’s analytical framework is of ‘ownership’, not of ‘property’ in the broad sense. As Honoré himself admits, the subject of his analysis is still within the ambit of ‘the “liberal” concept of “full” individual ownership’, but at the same time, he emphasises that ‘the thesis of this essay [must not] be confused with the claim that

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23 Public property (eg public access to the highway) is not the same as the state property and also different from public ownership. See also Clarke’s discussion in s II of ch 1.
26 See eg, Allen’s chapter in this volume on the tensions arising from the constitutionalisation of property rights which have fundamental impact on the redistribution of wealth and social justice in India and Philippines.
28 ibid, 107.
all systems attach an equal importance to ownership in the full, liberal sense or regard the same things as capable of being owned’. Stephen Munzer contends that the idea of property along the lines proposed by Honoré is not attached to any ‘particular economic or cultural data’, based on any specific societies, and therefore it allows for variation in terms of ‘who may own property, which incidents comprise ownership or other property interests, and which things can be owned’. By focusing on property encompassing relations among people with respect to things, Honoré’s analytical framework enables us to observe and describe what kinds of claim-rights, powers, liberties and immunities are involved in these relations. Honoré’s conception of ownership is flexible and inclusive, and may be applied to different social settings in a global context.

Honoré’s ownership paradigm is particularly useful when dealing with some of the paradoxes concerning what may constitute property and the identities of its owner(s). With the rapid development of science and technology, it is no longer clear what constitutes ‘things’ and where to draw a line between ‘persons’ and ‘things’. The controversy surrounding property in human bodies is an epitome of such blurred distinctions. Likewise, ambiguity may arise as to who—whether individuals, groups or mankind—may own property. Here, we can employ a distinction drawn by Honoré between ‘having a right to’ and merely ‘having’. This distinction implies that property could mean both rights and interests attached to ‘the thing’ and ‘the thing’ in its material form; focusing on the former may help us circumvent the impossible task of exhausting the list of things that may constitute property. Exploring rights and interests extended over the thing also helps to distinguish ‘full ownership’ from ‘limited property rights’. Put another way, having a collection of rights in the ‘bundle’ over a thing may constitute property, but it does not necessarily amount to full ownership. This is, as Beltrán discusses in this collection, helpful in deciphering the complexity of recognising property in human bodies. Notice, also, that Honoré’s approach implies that various persons can have a collection of incidents, and therefore ‘it breeds error to assume that some one person has to be the owner, then to launch a search for that person, and finally to announce the consequences of his or her ownership’. 

29 ibid.
30 Munzer (n 18) 26.
31 ibid, 27.
33 Honoré (n 27) 114.
34 Munzer (n 18) 23.
Honoré’s framework allows various persons, who are not necessarily the owner, to claim proprietary rights or interests over a thing. This may potentially help to recognise claims made by ‘non-property owners’, such as indigenous peoples who hold no formal title over their land and cultural resources. Even without formal title, indigenous peoples may nevertheless carry out a duty of care, that is, ‘non-owners’ fiduciary obligations’, toward land and cultural resources, which may be considered as ‘a stewardship model of property’.36 Joseph Singer and others develop Honoré’s concept of property, seeing property as social relations, encompassing entitlements and obligations.37 This view ‘honors the legitimate interests of both owners and nonowners, in furtherance of various human and social values, potentially including nonmarket values’ (emphasis added).38 Such an expansion of the scope of property opens up possibilities of engaging property with humanity.

Honoré’s approach to property is not without criticism. For example, James Penner argues that the notion of property as a ‘bundle of rights’ is ‘a kind of deficient concept, whose persistence in the language is to some extent inexplicable’.39 Penner’s concern lies in the fact that it is not clear which of these incidents/rights are essential and can constitute property when grouped together, although Honoré’s framework entails that a collection of a certain number of these incidents may amount to property. However, Honoré does rank these incidents and regards the right to possess, that is, ‘to have exclusive physical control of a thing’, as ‘the foundation on which the whole superstructure of ownership rests’.40 Other incidents such as the right to exclude others, the right to use, the power of alienating, and an immunity from expropriation are considered as ‘cardinal features of ownership’.41 That said, it is not easy to pin down the power to exclude and the power to transfer in property relations concerning resources that are shared or collectively-owned, or resources that are closely linked to personhood or group identity. Indeed, Honoré’s conception of property is still closely attached to a model of individual ownership, and it needs to be modified to reinterpret the meaning of ‘possession’ and to encompass other rights such as the right to access or the right not to be excluded.42

36 Carpenter, Katyal and Riley (n 22). See also Macmillan’s chapter in this volume.
38 Carpenter, Katyal and Riley (n 22) 1027.
40 Honoré (n 27) 113.
41 ibid.
42 See eg, CB Macpherson’s famous tensions between property as a right to exclude and property as a right of access. CB Macpherson, ‘Capitalism and the Changing Concept of Property’ in E Kamenka and RS Neale (eds), Feudalism, Capitalism and beyond (London, Edward Arnold, 1975) 105–24.
With modifications, Honoré’s framework may be applied to a full spectrum of property—private, communal, state and public. The introduction focuses on communal property, as it has an uneasy relationship with human rights law (see section IV below; see also chapters 1, 2, 10, 11 and 12).

‘The commons’ is often used interchangeably with ‘communal property’, and is often seen as a system opposite to private property, and can be defined as ‘a diversity of resources or facilities as well as property institutions that involve some aspects of joint owners or access’. The commons links to the question of the manner in which a resource can best be managed. For some people, the commons is often regarded as open to many users without regulation. As a result, each individual exploits the resources to maximise his or her own benefits without thinking about any adverse long-term impact on the resources. Such overuse of resources leads to what Garrett Hardin calls ‘the tragedy of the commons’ (for some discussions on ‘the tragedy of the commons’, see Pontes in chapter 6), for ‘freedom in a commons brings ruin to all’. To overcome the tragedy of the commons, some solutions are offered, either to reduce the resources to private ownership, or to transfer them into state ownership. However, these solutions neglect the role of cooperation or communal rules in managing shared resources. Furthermore, if the solution is privatisation, and if it goes too far, resources can be underused, leading to what Michael Heller calls, ‘the tragedy of the anticommons’. In this situation, too many owners block each other, and diminish possibilities that can lead to innovation.

The term ‘the commons’ is ambiguous between two types of meaning: The resource itself and the ways in which people utilise the resource. Its meaning also depends on the context. In intellectual property discourse—for example, in ‘the digital commons’—it usually refers to open access resources, or open access resource use; whereas in land and environmental discourse, it usually refers to limited access resources, or limited access resource use. The ambiguity of the term ‘the commons’ is manifested in Hardin’s analysis, as he conflates two distinct categories of the commons.

43 ‘Communal property’ is a better concept, as it encompasses three important aspects: The resource which is used communally or collectively; the institution of governing the resource; and communal property rights or communal property holdings, when we refer to the rights held by the community.
49 Thanks to Professor Alison Clarke for raising this point.
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The first is ‘open access common property’, ‘where everyone in the world has a right to use the resource, in the sense of a right not to be excluded from it’. Examples given by Hardin—including an unregulated public right of access to Yellowstone Park and an unregulated right for herders to breed in a pasture ‘open to all’—can fit into this category and reinforce a link to tragedy. However, Hardin overlooks the second type of commons—‘group access common property’ or ‘limited access common property’, where a group of commoners can exclude outsiders but cannot exclude each other within that group. Group access commons can have effective rules of managing resources (see some examples discussed by Clarke, Fikre, Macmillan, Nsoh, and Xu and Gong in this volume), as Elinor Ostrom demonstrates in her work, these common property rules are usually based on trust and mutual reciprocity. The extent to which property may effectively engage with human rights largely depends on the ‘reach capacity’ of property and whether it is open to embrace diverse forms of property beyond simple private ownership.

III. THE REACH OF PROPERTY

By the early twentieth century, the reach of property and the scope of appropriation were rather limited: The concept of property was tied up with the image of land; the international flow of capital was relatively infrequent; and issues pertinent to property were considered in a domestic context. However, since the second half of the twentieth century, the scope of property has dramatically expanded from land to intangible assets and from the local to the global. As a result, a plethora of treaties, customary norms, arbitral and judicial decisions and soft law instruments have emerged to constitute a new body of law—‘international property law’, as Sprankling calls it. That said, the expansion of property is circumscribed, as Allen points out in chapter 3, by ‘the international convergence on a liberal right to property’, which has been largely driven by ‘the increased flow of international capital into land’. As such, when the liberal model of property is imposed on the local context, it often leads to the expulsion of non-property owners, who do not hold formal title and rely on customary property rights (see some

51 Heller (n 25) 34.
52 Clarke (n 50) 322.
55 The flow of finance capital is less visible, as finance capital has no physical locus. See more discussion in ch 9.
examples given by Fibre, Nosh, Xu and Gong in this volume). To tackle this problem, formalising these ‘extralegal’ or informal property rights may not be the best solution, if—as is generally the case—it is assumed that ‘formalising’ must mean replacing with individual private property rights. For example, Fikre in chapter 11 examines Ethiopia’s decade-old formalisation process that has led to the issuance of holding certificates for over 10 million households. Although the process may enhance tenure security, it may lead to an adjudicatory exercise, acknowledging what already exists on the ground and regularising existing inequities especially in gender relations, rather than correcting them. As a result, the formalisation process may further exacerbate problems of landlessness and inequalities in asset distributions.

Beyond the liberal model of ownership, we need to rethink a number of intricate and complex questions: what (for example, human bodies with strong links to personhood and cultural objects which embody group identity) can constitute property? Who can be property owners? How can property rights be exercised? And to what extent can the property paradigm be stretched? If the narrow, liberal, absolute ownership model remains unchallenged and unchanged in this globalised world, and if privatisation goes too far, global dispossession will become a major problem that threatens human rights. It should be noted that the property paradigm can be employed to tackle dispossession. For example, Allain’s chapter engages with the definition of slavery established in international law by utilising a property paradigm, and therefore gives the definition substance, which helps to hold individuals criminally responsible for this extreme manifestation of human exploitation, and affords human rights protection to its victims. However, we need to distinguish the broad conception of property from simple private ownership, and global dispossession is often associated with an individualist and exclusive model of property, as is the case with the unfettered expansion of intellectual property rights. For example, Macmillan argues in chapter 2 that ‘it is clear that indigenous peoples and other communities in the global south have been victims of the unauthorised appropriation of their intangible cultural property by private interests through the use of intellectual property rights’.

It is time to rethink the relationship between property, the market and human and social values. The fact that some ‘things’ may constitute property does not mean that they can be transferred freely on the market; new mechanisms are needed to govern the market to avoid the situation that monopoly power is handed over to a few powerful individuals and companies. Seeking these mechanisms requires us to re-evaluate the concept of property. For example, we often think of property as (consumer) goods transferred on

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the market, but rarely question the processes through which these goods are made and the societal value of these goods. To elaborate on this point, Dumas in chapter 7 gives an example: the sale of a stolen carpet might be tainted with illegality, whereas the sale of a carpet manufactured under illegal working conditions would not normally raise any issues concerning illegality, whether or not the buyer is aware of the manufacturing conditions. As a result, goods produced under conditions that violate the workers’ ‘fundamental rights’ can be offered and sold legally on end markets. Dumas argues that consumer goods embody social meanings and responsibilities, and the societal attributes of goods have important implications for the ‘legality’ of purchase of goods. He proposes the use of ‘consumocratic law’, as a new mode of governance and an effective mechanism to tackle violations of labour rights (for example, the use of forced labour or child labour in making goods). In his proposal, production and consumption processes are linked together in ways that rehabilitate morality in the operation of markets.

Alternative concepts of property are proposed in this volume. For example, Macmillan’s chapter focuses on the question of whether we need a concept of ‘cultural property’ in order to ensure the protection of culture and cultural heritage, including the cultural heritage of indigenous peoples. It starts from the proposition that cultural heritage must be conceptualised as implicating community rights, transcending the public/private boundaries. It then argues that the community interests in cultural heritage are, by their nature, under threat from the forms of private property that are considered by law to be rivalrous individual rights. To tackle this threat, the chapter analyses the utility of proposals for a stewardship form of property rights and for community property rights; the concept of property needs to be separated from the traditional, narrow model and to embrace the idea of ‘membership’. Because indigenous cultural heritage is associated with group identity, the idea of membership requires the inclusion of the right of access, or at least the right not to be excluded, in a broad and flexible bundle of interests. In terms of property in human bodies, as Beltrán argues in chapter 5, recognising property in the human body does not contradict dignity and human rights; rather, it strengthens the autonomy of people and their control over their own bodies, which are crucial elements constituting dignity and human rights. Pontes, in chapter 6, also gives a similar argument that property permits self-preservation and sustains human flourishing; by engaging property with humanity, appropriation becomes part of humanisation.

57 See also F Macmillan, ‘The Protection of Cultural Heritage: Common Heritage of Humankind, National Cultural ‘Patrimony’ or Private Property?’ (2013) 64 Northern Ireland Legal Quarterly 351; see also Macmillan (n 14).
58 See, eg, Carpenter, Katyal and Riley (n 22).
Apart from the inclusion of human and social values in the conception of property, the role of the natural environment has been increasingly recognised in valuation of land that has been expropriated. Nsoh in chapter 12 argues that the natural environment provides vital ecosystem services, which helps to re-evaluate the question as to what amounts to ‘just and equitable’ compensation that has given rise to litigation under the ECHR. He challenges the current Cameroonian position by which, he says, the existing set of interests and values considered in the payment of compensation do not reflect the true value of the land expropriated. He argues that although not recognised as legal rights under the expropriation regime, customary rights remain part of the land tenure system in Cameroon. The concept of ecosystem services may provide a basis of getting beyond the narrow and artificially created set of ‘commercial’ interests and market values attributed to only a few of the uses and interest in land. It may also help to recognise the different interests that contribute to the value of the land to the customary owners.

Our discussion in this section echoes our suggestion made above that Honoré’s bundle of rights needs to be broadened so as to encompass diverse interests and values—human, social, and environmental—beyond narrow commercial interests and market values. An effective engagement between property and human rights depends on the re-conception of property, for in this globalised world, ‘true freedom ... is born of sharing, not possessing. One can’t really be free if one is unable to share, empathize with, and embrace others’.59

IV. THE REACH OF HUMAN RIGHTS

The right to property was perceived as a natural right in the seventeenth and eighteenth centuries by Hugo Grotius, John Locke and others in Europe, asserting ‘the theory that universal property rights could arise independently of the state’.60 This view persisted into the formulations of the right to property in the American Declaration of Independence (1776, Paragraph 2) and the French Declaration of the Rights of Man and of the Citizen (1789, Article 2), in which the right is vested with private owners against state expropriation.61 Whilst in the period leading up to the twentieth century regulation of property was dominated by domestic laws,62 the natural right to property was ‘revived in the post-World War II era as a part of the

60 Sprankling (n 54) 6.
61 ibid, 6–7.
62 ibid, 8.
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Globalisation has galvanised the international reach of human rights especially when considering issues concerning the protection of the right to property in expropriation, which is no longer an issue that may only be considered at the domestic level. Non-state actors not only increasingly become the victims of expropriation, but also beneficiaries that are exercising the power to expropriate property. The rise of ‘hidden expropriation’ (see Xu and Gong in chapter 10) involves different interests, tensions and conflicts whether at the local, regional or global levels. The lack of a level playing field between competing claimants calls for strengthening the role of the international community and involving non-state actors in establishing global standards and rules to redress those imbalances, taking into account marginalised groups such as minorities and indigenous peoples. Employing the human rights approach has been such an endeavour. Yet in contrast to the recognition of individual property rights in international human rights instruments, treating communal property rights as an actual fundamental human right is highly contentious. Xu and Gong in chapter 10 survey the emerging human rights protection of communal property rights and re-evaluate the content and scope of property rights, powers to expropriate, the legitimacy of expropriation, the state obligations toward property owners, compensation standards, and so on. The global reach of human rights also enables non-state actors—including transnational corporations, other business enterprises and foreign investors—to have a responsibility to respect human rights and legitimate tenure rights (see chapter 9). That said, the reach of the international human rights regime to responsibilise transnational corporations and other business enterprises may be limited, as the motivations of corporate actors to adopt responsibilities posed by the human rights regimes, such as the UN Principles for Responsible Investment and the Guiding Principles on Human Rights, are largely driven by external factors, like establishing a ‘business case’ for making greater profits (chapter 9).

An emphasis on the global reach of human rights does not mean that we should ignore multi-cultural ‘relativism’ or the local contexts. Instead, the global reach of human rights interacts with the local context and may empower proprietary claims made by local actors. Human rights protection of communal property rights has already been extended to communities

63 ibid, 8. See also Xu and Gong in ch 10.
65 See eg, Lenzerini (n 17).
which embody racial, ethnic or cultural identity such as indigenous peoples. Clarke in chapter 1 argues that such protection should also be extended to unincorporated communities defined solely by locality, that is, to protect customary use of local resources by local communities even where the community has no separate racial, ethnic or cultural identity. This argument speaks to the need to protect ‘group access common property’, discussed above, as a regime where a group of users manage resources collectively. Such a property regime is both exclusive and inclusive in the sense that it excludes outsiders, but at the same time, embraces insiders of that group so that each member of the community regards himself/herself as entitled to use the resource in certain ways in association with other members of the community. Clarke argues that communal resource use of this kind should be the subject of human rights protection of the same kind as that afforded to resource use by private individuals, so that whenever a local community has a customary relationship with the resources it utilises, the state recognises that relationship as proprietary and gives it the same level of protection as private property rights. A human right of this kind, Clarke concludes, would oblige the state to recognise that in certain conditions, norms of collective resource use evolved by communities give rise to legally enforceable property rights held by the community itself in its own right, distinct from and in addition to the individual right that each member of the community acquires to use the resource in common with the other members of the community.

Yet the global reach of human rights should not be overstated, as it can be restricted by the narrow, liberal ‘absolute ownership’ model. Cowan and Wheeler point out the limits of the UN Guiding Principles on Business and Human Rights: they may well regulate the flow of productive capital and hold extraction and garment industries responsible for activities of overexploiting natural resources, but they are less powerful when dealing with the flow of finance capital. The shifts in the role of the neo-liberal state and political economy further strengthen the role of finance capital, which has begun to change the identify of (local) UK social housing as providing affordable accommodation to households in need. As a result, security of tenure has been weakened, and exclusions from social housing have been generated. More perplexing examples can also be found in regimes of protecting cultural property or cultural heritage that ‘the power of the intellectual property system to trump community rights to cultural property is often advanced and, when necessary defended, as an exercise of human rights’ (Macmillan in chapter 2). To effectively engage human rights with the right to property, human rights protection for property ought to extend beyond what is categorised as ‘property’ in the liberal, absolute ownership model.
V. STRUCTURE OF THE BOOK

This collection of essays provides a timely opportunity for examining important theoretical debates and policy issues in an emerging field of study—the engagement between property (from aspects of real property to intellectual property and cultural property) and human rights at the global/transnational level. It starts the conversation between human rights lawyers and property lawyers and explores analytical approaches to the increasing interaction between the two fields. The chapters range across three main themes which also highlight the key theoretical and policy debates in the studies of the engagement between property and human rights: the re-evaluation of the public/private distinction in the law; the tensions between equality (social justice and human values) and efficiency (the market approach) in economic and social development; and the balance between the rights of individuals and of communities. In so doing, the studies adopt a global and comparative perspective by looking at case studies that highlight the most recent development in the engagement between property and human rights in a wide range of countries including India, Philippines, the United States, the United Kingdom and in regions of Africa and Europe.