Talk the Hague

1. I will discuss a way of thinking about expropriation that has been mentioned briefly earlier in the conference. The basic idea is that expropriation involves a temporary negation of property rules in favour of a liability rule, before property is restored (or not) in the hands of a new owner.
2. The keyword becomes ``compensation’’.
3. Some who endorse this perspective go so far as to say that the compensation requirement is/should be the only practically relevant form of property-specific protection against expropriation.

What does property-specific mean? It means different from what already follows under general administrative law, cf. discussion about procedure and the right to be heard.

1. But is compensation alone sufficient protection against eminent domain abuse?
2. Digression: Stew without meatballs… This might not even be an acceptable way of framing the question in Norway, because there is not considered to be any real risk of such a thing as eminent domain abuse. Such concerns are thought to apply only to ``less developed’’ countries, eg. In Africa. Happy to be here, where a more realistic perspective of ``western’’ expropriation practices is adopted. They can also be highly abusive!
3. The structure of my talk.
4. Some quotations to show different expressions of the compensation-is-everything perspective, in Europe and the US.
5. With such starting points, if compensation fails to protect, the natural solution is to propose compensation reform.
6. Some suggestions from the literature.
7. Some details to consider.
   1. Planning permission/zoning plans – UK law (Land Compensation Act 1961, s. 14-16) (contrasted with Norwegian law).
   2. Hope value – Transport for London – at stake: 608 000 £ or 400 000 £.
   3. No-scheme rules, counterfactuals, expert testimony, future cash-flows.
8. Is compensation reform the answer even to such details? Eg., offseting procedural risk by premiums?
9. How efficient in practice?
10. Norway overview
11. Some legal scholars would say only two exceptions, but categorisation so flawed that I don’t agree that it makes justice to the case law (which is more chaotic).
12. Steinskolen – demonstrates the impact of the no-scheme rule, Lehavi and Licht would seem to provide protection here. But Bell and Parchomovsky would not (the farmer would obviously not be in a position to `self-report’ something so far removed from agricultural value, when agriculture was what he wanted to use the land for).
13. Voss – demonstrates the same as Steinerskolen, but also shows the flaw in Lehavi and Licht’s proposal. Also, illustrates the ridiculous quantitative importance of what might seem like technical details. In addition, what does it say about fairness and propotionality in Norway?
14. Smibelg. Hydropoer is a commercial pursuit now, many local owners (farming communities) undertake their own projects for profit. The expropriating party is a company operating for profit. There is no shortage of hydropower in Norway (about 95 % of domestic electricity comes from hydropower already). That is why these cases arise! They demonstrate also some of the dynamics of compensation disputes, and the inadequacy of the traditional procedure when dealing with a complex value and expropriation situation. Above all else, it highlights how courts can easily `pervert’ abstract principles (at least in Norway, but I suspect, also elsewhere). The appeals court saw an intractable compensation question and took the easy way out – relying on exactly the kinds of rules that are meant to `protect’ the owners, to deprive them of extremely valuable property without even considering what the value actually was. In hydropower cases, rules that ensure benefit sharing and premium payments have been turned completely turned on their head – this is what happens when courts actually begin to put such rules to use, responding, as always, to the pressures of the most powerful and resourceful parties.