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# Property as Fetish and Tool

## Duncan Kennedy on Property, the Commons, and the Law

Duncan Kennedy had some interesting things to say about our conceptions, and misconceptions, of property during the Spring 2014 Conference put on by *Unbound: Harvard Journal of the Legal Left*. The title of the conference was "This Land is Your Land: Remaking Property After Neoliberalism." Kennedy's comments run until 47:30.

This Land is Your Land: Remaking Property After Neoliberalism P...



**Carl Lisberger:** Good morning, everyone. I think we're gonna get started. Thanks everyone for coming... I want to welcome everyone to "This Land is Your Land: Remaking Property After Neoliberalism". The conference is a project of Unbound, Harvard Journal of the Legal Left, which is a student-run and -edited journal here at the law school that is a nonhierarchical editorial collective of which I am a member. My name is Carl Lisberger, by the way.

We're very happy to have you all here, and we're very happy to thank the sponsors of this event including the Milbank Tweed Fund at the law school, the Institute for Global Law and Policy, and especially Professor [Duncan] Kennedy, who is a great great friend of Unbound, the Harvard Law Forum, and we would also like to thank the Harvard Law School Dean of Students' office and all of the staff at the law school that make everything possible. At the outset, I do want to say that we are recording the event, and we do hope there will be a lot of audience participation, but you should be aware that you will be recorded- you can see the camera up there- and we're hoping to put the video online to share with all of our friends all around the world who weren't able to be here today. One bit of correction: we weren't able, unfortunately, to have one of our panelists join us today- Asad Farooq was unable to secure a visa to travel from Pakistan, but we're very lucky to have Irina Ceric to join us in his stead later this afternoon.

So, I want to say a little something before we begin about Unbound and our role at the law school and the about the spirit with which this conference was conceived. Unbound occupies a pretty unique place at the law school. We try to live up to the left in our name, and we try to be an oppositional, rebellious, imaginative voice and force here at the law school with regard to conservatives, with regard to law and economics, but also with regard to liberals and liberal constitutionalism. The past few years that I've been here have been a really exciting time for Unbound. It feels to all of us like we're living in a moment when it's possible to question things that it hasn't been possible to question for a long time. And we think that the left- there's a really great opportunity for the left- and especially for the legal left- to contribute to that moment and to help make a better world possible and to maybe fulfill some dreams that a lot of us on the left have had for many years that have been dormant.

So, the way that the conference has been organized is that we're gonna have some remarks at the beginning by Professor [Duncan] Kennedy [...] and we are then going to have three panels. The panels are going to be moderated by Unbound-affiliated people, who are going to be very active both with the panelists. And then we're going to, after about 30 or 45 minutes, open up to the audience. So, we haven't asked anybody to prepare any remarks. We don't expect long presentations; we really want this to be a conversation that flows naturally from the panel out to the audience, so everyone should feel very free to engage and ask challenging questions, but we do ask that everybody, when you are making your remarks or making your intervention, that you keep it short

and punchy and conversational because we think that that's going to contribute to the kind of day that we want to have here.

So, I want to thank Duncan Kennedy for agreeing to make these remarks this morning. He is a really great friend of Unbound, he's one of our faculty advisors, and, he doesn't anymore, but he used to teach a 1L property class here at the law school. So imagine, if you will: think back to what it would be like to show up here at the Harvard Law School, and you're sitting down in your property class and this is your professor. So, for today, unfortunately we don't get to take 1L property with him, but we have him to talk to us about property this morning. So, Professor Duncan Kennedy, I'm going to turn it over to you.

**Duncan Kennedy:** Thanks Carl.. So it's really incredible to be here. There's nothing like a legal left event from my point of view. Since I was in law school, these are- for me- the most important thing that happens in the professional milieu in which I've been working all this time. So it's just fantastic to see so many people here, to see so many people that I know, so many people that I've admired and am interested in, and what I'm going to do is I'm actually going to- I hope- talk for a little more than 20 minutes and then leave time for a discussion, which I imagine, in the spirit that Carl was describing, is discussion as opposed to simply questions and answers. In fact, maybe it shouldn't be questions at all... Not questions, so maybe when I finish my remarks we should say there should be no questions, only statements: powerful, affirmative, controversial statements, which can be directed at me or at anybody else.



photo by Quinn Dombrowski

So, my remarks, very simple four ideas... So the idea would be something like property as fetish and as tool. Right wing fetish, left wing fetish, right wing tools, left wing tools. So, this is a lawyer left as opposed to a classic political-theoretical left angle on it.

So, property as fetish: what I mean by that is property as a slogan deployed in debate about what to do about policy, about law, or also about utopian reform--that is, what to demand. So, as fetish means when you want to argue, say, for limited equity cooperatives as a mode of housing policy, you say: "This is an alternative form of property. We need new forms of property. The limited equity housing cooperative is a new form of property. We need it." Or, on the right, if you are basically

representing the interests of intellectual property in the core countries, you argue that the Global South must recognize property rights and intellectual property. The global south countries- India, China- have failed to recognize property rights.

This is fetishistic argument. It suggests that the category “property” has a particular kind of content that can guide us in deciding what we want to do. On the right, it tends to be highly naturalistic. So, the basic background idea in an [intellectual property] debate would be: “Look, there’s this thing called intellectual property. It is intellectual, and it is property, and it is there--even in China.” The problem is it’s not “recognized”, so the discourse of recognition is the fetish discourse. So, the thing to be recognized is already there: it’s intellectual property. It’s a construct that is both legal and material or conceptual and relational. We all know what it means. What it would mean would be they have to adopt the regime of intellectual property that’s characteristic of the core capitalist regimes brought into being by their economically dominant elites.

So, property’s there. That’s the fetishist idea. It needs to be recognized. Here’s why it’s a fetish: what is to be recognized is a construct--a specific idea about property characteristic of intellectual property in the Global North which is not at all anything natural. This is obvious. It’s a very complicated product of legal change, lobbying, advocacy, economic power exerted in different directions by conflicting intellectual forces which are also political and economic forces in the Global North. So, that means to recognize that the formula “recognize intellectual property rights” as a demand made of China just means recognize the one particular form of intellectual property that evolved in the capitalist north, core countries as though it were something that wasn’t just the contingent, interest driven product of that historical process.

So, fetishism here refers to the idea of turning something that is a complicated social construct into something like an object so that the language of recognition is the language of the objectified item that is now taken into account, understood, and protected. So, that’s right property fetishism.

The fetishist dimension of it, first, is its artificiality, its contingent character, its social construct character, its product of economic struggle character. But the second aspect is an idea about the way the right fetish works, the conservative fetish works. So, here it would be something like: “Well wait a minute. Isn’t it right that capitalist regimes have produced intellectual property, which is a really contingent idea. It doesn’t have to be intellectual property. It doesn’t have to have any particular character, but, in the capitalist west, an idea that is very coherent--the product of interests in the capitalist north-west-- has come into existence. So it may not be natural, and recognizing represents a big choice--to recognize that particular thing as intellectual property.





via Wikipedia

For example: drug patents. A particular regime governing access to drug technological innovation over time. [It] would be: [...] “totally, you don’t have to have it. You could have many different regimes, but western capitalism produced an idea of property that makes a lot of sense.” So, this would be to acknowledge its contingency. It’s not a thing. It’s a construct. We admit that. Fine. But it is a coherent thing. We can understand it, we can use it. We will be able to figure out what the regime will require by referring to the idea of capitalist intellectual property. And that will allow us to understand it from the left, to understand it from the right, and

understand what happens, which is either it gets adopted or it doesn’t get adopted. Recognized or not recognized. This is second degree fetishism.

It’s second degree fetishism, and here would be a summary of the critique... I think it’s in the Grundrisse. [...] In there, Marx says that if you look at ideology, by which he means liberal ideology, its only coherence, studied in detail, is that some interest is served by every item of the incoherent whole. So, the only logic of it is the logic of the interests that are constructing it. It’s contradictory.

So, the law of intellectual property in this thing is internally completely contradictory. It’s not that there’s a capitalist conception of intellectual property. The actual capitalist law of intellectual property in effect in the Global North is a hodgepodge. It’s a non-coherent, internally contradictory collection of rules, some of which emphasize, say, protection for inventors, and some emphasize competition. Some emphasize a goal of legal certainty. Some emphasize a goal of legal flexibility. Some emphasize internalization of costs. Some emphasize non-internalization of costs; that is, freeing preferred activities from bearing the burdens of cost. So, it’s just not coherent. It is comprehensible as the outcome of a long series of fights in which people would gain by, say, forcing very extensive protection of drug patents [to] beat the people who would gain by restricting protection of drug patents. That produces a law of patents as part of [intellectual property].

So, this basic idea is the fetish. The right-wing fetish has two levels. The first level is thinking it’s an object and recognizing it as though it’s the same everywhere- conceptually, identically- and the second level of fetishism is to believe that it’s internally coherent and therefore could be conceivably explained by, say, “the interest of capital lead to a particular conception.”

So, up to now, it's been the right fetish. Left fetishism is closely related to right fetishism of property according to me, and I've just given you an example of how left fetishism of property works . [...]

[F]rom Marx's Book One, Volume One of Capital, Marx already strongly attacks first level property fetishism. He argues very convincingly that liberals, captives of liberal ideology, believe in the naturalness of the commodity form, and that value--that is, the product of transactions within the commodity form--is a natural product of the things of the economy. No. It's relative to a particular conception of property. The commodity is a social construct . There's nothing inevitable about the commodity form. So, he's totally defetishizing the first level. And he would never say capitalists require the recognition of intellectual property. He would say of a particular form, the commodity version of intellectual property.

But a basic left lawyer critique of Book One, Volume One of Capital is he does do left fetishism of the second level, and we of the left historically have done it over and over again, which would be to believe that intellectual property as it's being imposed on the Global South is internally coherent. So that we can understand the form--which is really incoherent--we imagine it's coherent and it's the product of capital understood, in a more abstract way, or the interest of the capitalist class. So, [allegedly] at this level of fetishism, leftists fetishize property when they believe that there is a coherent concept of property put into effect by a [incomprehensible] of class interest and then played out in practice. Whereas this left lawyer critique says, "No, property is just a bundle of rights." The [intellectual property] regime is not internally coherent at all. It is being imposed by power on the Global South. It's being imposed by force, basically... ultimately. That's true. But what's being imposed is incoherent. What's being imposed is not anything that has a logic that either responds by its logic to the interests, or an internal coherence that will allow us to say it's all the same thing.

So, a basically incredibly contingent regime, which is also internally incoherent is now being imposed by force. So, the left error here which we have, I think, made constantly on the left is to actually believe that the system has a level of coherence at this top conceptual level of property that, according to this critique, it does not have.

So, that's the end of the first part. Where you go from there traditionally in the legal left is "property as a tool." [...] The concept has no internal coherence. Property is just a bundle of rights. It is the tool for the forceful configuration of social relations at retail. In other words, property is a tool by which people with state power organize social relations from the most minor one at the level of what can be done with your car when it's booted, and it's taken to the city car park, and you're going to have to ransom it to get it back. Property concepts are the tools that organize the relationship.



I just thought of that example. It's a really amusing example. Obviously, it's based on real life experience. You obviously can hear I wouldn't produce that example if my car had not more than once been towed and I had not more than once found myself in constant tense confrontation with a person who is asserting strong property rights of a particular kind in my car. And the car might be damaged in the process by the tow truck, if that is how it was damaged.



photo via [geograph.org.uk](http://geograph.org.uk)

So, at this micro level, property is the tool through which rules are articulated that govern the question of what the guy can do after he tows the car and whether I can get any money if, without being able to prove what happened, there's a big, big dent in the fender, up to the level of AIDS drugs in Africa. At every level from that car towed to the question of the availability of AIDS drugs in Africa, the tool, property, is just the language in which the rules that are used by some power to organize the relationship. It doesn't have to be state power in the strong sense but in the Althusserian sense. So, the state power could be the power of USAID governing what programs can get the AIDS drugs, what their policies have to be about, say, chastity. But the property rules are now- -this is not looking at them in the fetish ways--they are just the law. They're just the crudeness of particular legal rules being adopted one after the other.

So, this is property as tools. It's easier to see than with fetishism: left tools and right tools. So, at the tools level, without, I would say, much ideological deception, right wingers devise over and over again new regimes of legal rules to protect interest that they get enforced through state power or things like state power--like USAID is like state power--or the international financial institutions: the IMF or the World Bank. They're sitting there trying to figure out what rules we should demand and enforce. For example, we're going to give money for health in Africa, so should we demand--now this will produce a new set of institutions which will be, let's say, clinics. The condition of the creation of the clinic, of the exercise of the rights of the people in the clinic, might be conditioned on user fees. You can't get the service unless you pay a user fee, getting rid of the prior regime in which "no user fees" was a major dimension of the understanding of the way in which the property is--actually, the drugs will be dispensed. So [...] property is just the tool that will be used in constructing a regime that does have user fees or deductibles for access to antiviral drugs or it won't.

On the left wing side, the same thing. So, the left pushes also for its programs using legal constructions of the programs whether they are practical or utopian. So, in the battle, say, about low income housing law, the left, in the '60s and '70s, pushed for a non-disclaimable warranty of habitability and then for dozens of other rules about housing that would let poor tenants resist landlords trying to evict them and also maybe get the poor tenants better housing, without such large rent increases that they would end up consuming less than they started with. Legal rules--property rules--here are being deployed by legal services lawyers, incredibly creatively, in a way that's not that different from what drug company lawyers do or what IMF lawyers do when they are using the tool of the property concept to develop their programs.

So, that's right fetish [and] left fetish, but now I have to put the two back together. So, in the struggle, let's say, to change property rules in the interest of poor tenants and poor neighborhoods and poor homeowners and poor homeless people--when you widen the scope a little bit--a basic question arises: is this a new conception of property? So, one big left slogan used to be "a right to housing." That was a very basic idea of the '70s. We have a new conception: a right to housing. So, as opposed to housing being just a property interest of an owner, we will recognize a right to housing and that will be--now this was a classic idea--a reformist idea which was actually not a radical idea. In many ways, it was a liberal idea, but it also could be made a radical left idea under some circumstances. So, there the idea is we're going to have a right to housing. That means the landlord's interest is going to be put severely into question from a lawyer's point of view. It didn't mean abolishing the landlord's property rights. It involved dramatically complicating the landlord's rights by creating a basis to change the bundle so that many sticks in the bundle that once belonged to the landlord are now going to belong to the tenant.

So, the right to housing would mean not you can stay however long you want for life without paying rent. The right to housing did not mean that once you become a tenant you can stay for life without paying rent. It just didn't mean that. It meant that it was going to be much harder to kick you out, and you could not pay rent on many more grounds, and maybe there would be a state obligation to really provide shelter if you were made homeless. But [...] it was not a revolutionary new regime. It implied a new way of negotiating the elements in the bundle.

So, I would say that that example is typical. I don't think that there are, on the left, alternative visions of property that are other than the vehicle through which left policy is carried out in a situation of ideological conflict with the right fetishized property rights that are in effect. In other words, I don't think we





photo by Ben Outram

have, and I don't think we're going to have, an alternative conception of property. I think that we should accept that we're in a situation where property is a tool to pursue left projects--now here's the last thing I'm going to say--which are not defined in terms of alternative conceptions of property but which are defined in terms of more concrete objectives like better housing conditions, both physically better housing conditions and better social conditions of participation, less power for landlords, more power for tenants, and now I'm going to finish with my example.

So, I'm an advocate of limited equity cooperatives as an alternative form of housing. It's not an alternative form of property, but it's an alternative form of housing, and that's an aspect of the general left--I'm just a faddist--interest in common forms of property, collective forms of property. So, the limited equity co-op is a way to organize low-income housing, and I'm not going to do the technical discussion really at all, but basically the idea is the occupants are, on one level, property owners, but their equity is limited in the following way: if they sell the unit, which is like a condo unit, if they sell the unit they don't get its market value. They get what they paid for it plus some time allowance.

So, if the value of the property has skyrocketed from gentrification, they don't get that. The gentrification value stays in the cooperative. If prices fall, they're going to be cushioned. The institution tries to cushion losses, but it doesn't eliminate losses. So, there's a certain day symmetry. You only get a certain amount on the upside, and you only lose a certain amount on the downside, but you know basically you're not in the condition of the typical homeowner who has equity in the sense that everything that goes up they get and if it goes down they're screwed. It's not organized that way.

Now, I do think the way to think about this is in this alternative form of property, the limited equity co-op, it's not an alternative conception, it's a variant form that already exists all over the U.S. in small pockets. The property conception doesn't tell us how to organize it. So, from a left point of view, once you've set up this form, the limited equity co-op, there erupt a series of violent internal battles within the left in which every issue of social reconstruction is presented inside the alternative form. And here are a couple of examples...

First example is: is the limited equity co-op to be governed according to a radically egalitarian model with a strong emphasis on the most needy, or is it to be governed by a more republican model on which it's understood that the responsible cooperators and whoever set it up need to have a strong, paternalistic governing function for everything that happens in the co-op? If you go one way, you have a radical social experiment in intimate living in the building, but it's possible that it's going to explode--blow up in everyone's face. There's a real possibility that chaos will ensue. Classic problem of the left... Just a fundamental ideological problem about left organization throughout the history of the left.

Second, let's suppose that, you know, you set the thing and it is a situation in which it is in a neighborhood. What are the responsibilities of the cooperators vis-a-vis their neighbors? What's the agenda? So, let's suppose that what's happening is the neighborhood is gentrifying and a lot of people are being displaced. They're being really radically done in by the gentrification process. Some of them are becoming homeless, some of them are being forced to move to Lynn or Chelsea, and they really don't like that, and they're going to lose their jobs, and so on. So, does the cooperative understand itself as an element of the neighborhood political movement against displacement and gentrification, or is the key thing to preserve the gains--the social gains--represented by this unit which is solidarity that works, that's producing a surplus? So, which is more important? Which is more important? The social movement dimension of it or the dramatic increase in the lives of the cooperators dimension of it? What is the level or responsibility at? So, these are internal to this "alternative" conception of property. You've got the alternative conception, but every underlying basic left problem is re-presented inside them.

And my own sense of the possibilities of left thinking about property today is intimately connected with avoiding the fetishism and putting oneself in the situation where it is possible to invent forms of property at the level, say, of drug policy or the level of housing policy, but always understanding we have to fight out our left battles, say, radical egalitarianism versus some kind of more patriarchal, paternalist hierarchy... Radical responsibility of everyone to the larger collective, in this case the neighborhood, or the idea that the left can build enclaves where the key thing is to preserve accomplishments over time.

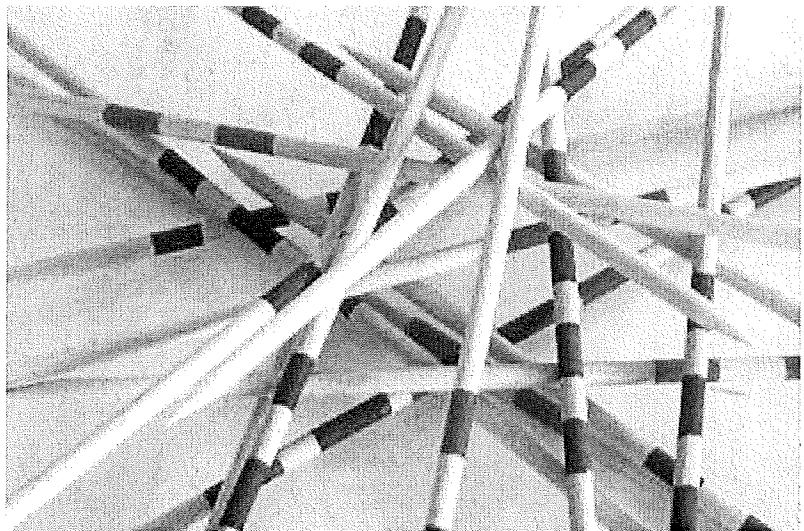
So, that's the end of my remarks. Statements... Please don't ask a question, because I won't have the answer to the question. Yeah. By the way, please say your name. When you start please say your name and your--in France, they would say your "status in civil society" [...]

**Michael Hardt:** I'm Michael Hardt. I'm at Duke University, and I'm single. I don't know if they wanted marital status...

**Duncan Kennedy:** Yeah, they do! Citizenship! Citizenship is very important there.

**Michael Hardt:** U.S., yeah... You inspire me to speak in praise of fetishism. I think I'm totally convinced of the incoherence of, for instance, property law in the way you speak of it, and that what's also- I find- very convincing is the way that that incoherence leads to the necessity of using law as a tool for reforms, creating new forms of law, and I think those are all wonderful. Your examples used were wonderful. I don't mean not to support them, but I do think it is possible and useful to think of property at a different level of abstraction in a coherent way. And I'm sure that most of you could give a better definition of the concept than I... something like a monopoly over decision-making and a power to limit access. I don't know, something like how we would define what property does in a generalized way. And the reason I want that is because I find convincing the notion that without that it's difficult to think outside of property and to not only launch a critique of property or thinking about the abolition of property but be able to think about sustainable forms and management of them, of such relationships outside of property relations. So, I'm convinced by your argument and hence want to- I guess- work back against that first point about the incoherence. I guess maybe my point would be that it seems to me I'm convinced of the incoherence at a certain level of abstraction but I'm not convinced of it at a different level, and that it seems to me that that higher abstraction at which point the concept of property does have coherence is a real abstraction and hence could be political useful. That was a statement, right?

**Duncan Kennedy:** Yes, and so I'm not going to respond except to say this: I think you have beautifully defined the profound divide, which is not a divide of solidarity. It's not a divide of admiration between people who are, in the legal terminology, post-Hohfeldian or post-legal realist thinkers about property and people who are not that and reject that idea. So, in the legal world, the question of



via Wikipedia

whether there is this middle-level coherent thing or whether there isn't is an actively debated question since about 1910 [...] it's been actively debated and the debate is still totally alive, and at Harvard's law school there are people who agree with what you just said, and there are people who are just on all left and right who totally disagree with it. [...] So, that's great.

**Michael Hardt:** Sorry- you said “post-...?”

**Duncan Kennedy:** Here’s the name: H-o-h-f-e-l-d. Now, the people who have been my students in the room are grinning. They’re grinning because this idea that “Hohfeld destroys the possibility of a coherent conception at a more abstract level- at exactly the abstract level-” [...] this is part of our discussion. It’s great that you put it that way [...] Not questions. Two more statements...

**Audience member:** [incomprehensible] I’m an LLM student here at Harvard. I’m from South Africa. I just wanted to push back on some of the sentiments that you expressed about the abstraction and kind of seeing it as an abstract idea. In particular, one of the sentiments that I kind of read from what Professor Kennedy articulated more this morning is more that if we accept the fact that property’s a tool for the forceful- is a tool through which rules are articulated, what becomes apparent to me is that those rules are articulated by individuals who are in positions to assert their power. And that power is not power in its pure sense but it actually becomes a tool of subjugation through which rights are articulated for those who are in positions to assert them. And, so, in particular, I think of examples coming out of the occupied territory where our conception of the way that property is realized is defined from a very neoliberal way. It’s inherently linked to capitalism, and that form of subjugation is the way that those rules are formed but for a very delineated and specific group of people, and, therefore, I feel that in responding to the idea that the concept of property should not be an abstract idea is, I believe, that if that power was centralized with one group of individuals and one group only, that will continue to effectively necessitate that those rights be abstract all the time because it’s manipulated and centralized with one group and one group only.

[...]

**Duncan Kennedy:** Name?

**Audrey McFarlane:** Audrey McFarlane. I’m a professor at the University of Baltimore law school. So, is a fetish good or bad? If I was asking a question, I would ask “is a fetish good or bad?” But I’m not asking a question.

**Duncan Kennedy:** So, I won’t give an answer- yes, a fetish is bad.

**Audrey McFarlane:** Perhaps you could make a statement as to why it is bad.

**Duncan Kennedy:** Ok. So, I can make a statement. Now I’m going to make a statement. Is that the idea? I get to make a statement?... so, the statement would be that the fetish is bad on two levels. There are two levels on which fetishism is bad.

The first level is something is treated as a thing of nature when it's a social construct. So, that would be [...] "China needs to recognize intellectual property rights." They're "there"... The question is do we recognize them? So, that's bad because they aren't there. It's not a question of recognizing them, it's a question of enforcing a particular legal regime of intellectual property, not a question of recognizing rights that were there before we enforce it. So, that would be bad fetishism.

And the second bad fetishism is to think that intellectual property--in exactly the way you were suggesting--has a kind of coherence, say, organized around our right to exclude or something like that. So, the second one would be thinking that property is not just a bundle of rights but a right from which the bundle is derived. So, in terms of that law school imagery, is property a right from which a large number of sub-rights--to exclude, to transact, to destroy--derive, or is property a list of things you can do and not do with respect to other people, not things, but with respect to other people, which is just a bundle. So, idea produces the sticks [which] are all arranged--to use a Derridean image: the concept is the center and the sticks are arranged in a beautiful wheel-like pattern which flows from the center, which is a concept of property that is rooted in social practice, or the sticks are just a bundle of sticks! They are what the system came up with over time. And this stick allows you to exclude if you own this kind of property and forbids exclusion if you have that kind of property. And it's just a question of policy-making, precedent, legislation, interest conflict, whether if respect to, say, if you're a landlord, whether you have the right to enter the tenant's premises to inspect them without the tenant's permission.

**Audience member:** [inaudible]

**Duncan Kennedy:** That's the argument, yeah. And she's actually been around the bundle of sticks thing a billion times... You probably teach property.

**Audrey McFarlane:** Yes, I do teach property, so I was struck by the critique of the left not coming up with an alternative conception of property. So, if we're talking about property is socially constructed and we fight about it like it's a real thing when it's whatever we want it to be... I'm just thinking that is that a real critique to say that if you're fighting within the existing social construction to add to it that that's not as good as if you came up with a whole new conception which would also be a social construction?

**Duncan Kennedy:** Now, you, I think, slightly misheard me because I think I was saying what you just said. I think what I was saying was what you just said, and that the desire to orient left activity around an alternative idea of property or an idea of stepping out of the property space all together are not plausible desires unlikely to be realized. So, the basic argument is not that it's impossible but unlikely to be realized given the unbelievably flexible but also omnipresent web of human relations

that will be regulated by the sticks. So, I think I would say exactly what you said. And I think Michael Hardt understood me to be saying that and he was responding and you're quarreling--your fight is with him not me.

**Audrey McFarlane:** Just a statement! Not a fight!

**Duncan Kennedy:** Just a statement!

[...]

**David Bollier:** Maybe I'll delay this because I'm on the next panel [...] My name is David Bollier. I work extensively as an activist and policy person on the commons. And I think it is plausible to, first of all, start this discussion outside the discourse of property and to imagine working alternatives that are not even within the left/right spectrum as the definitional entry point for this discussion, which can then, through the act of social relationships or the act of commoning, which does not start the conversation within the property or legal framework, evolves organically new legal forms of what I call vernacular law, which may or may not intersect or be necessary to intersect with the state or state law--probably ultimately will, often do, sometimes can be empowered by--but are outside of it. And I just wanted to say that as [a] [...] benchmark for further discussion.

**Duncan Kennedy:** Fantastic statement! So, that's great. So, that is again, that there's much similarity- I think- between the angles of you and Michael Hardt. Fantastic. So, I think that I should just stop. Thank you very much for your statements!

*[transcription by Robert Brown]*

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