

## Harvard Conference Explores Property and Values

by Vandana Chak

On December 1, 1995 Harvard Law School hosted a conference on 'Property & Values' sponsored by The Equity Trust, Inc. and the American Bar Association Commission on Homelessness and Poverty. I represented the Henry George School, along with Dr. Ernest Kahn, HGS Director in Sharon, Massachusetts.

The conference addressed the need for an equitable balance of public and private interests in the area of property. Participants could be easily divided into two groups: Academics (professors who were either teaching or writing on the subject of property) and Practitioners (officials of equity trusts and community land trusts).

In the morning session Joseph Singer, Professor of Law, Harvard University, started the discussion by stating that owners, neighbors and community form a triangle in any property dispute. In his view the concept of ownership is misleading to the understanding of property. Even the use of the terms "private" and "public" gives private ownership a bias. Property rights, he asserted, must be understood to be shared, limited and contingent.

Duncan Kennedy, a professor of law at Harvard law School, teaches courses on property, including "Housing and Policy." He is the author of *Neither the Market Nor the State: Limited Equity Housing Cooperatives as a Mode of Privatization*. He favors a structure in which property rights are more than mere tenancy, but less than full ownership. Public housing, he argues, should be managed in a decentralized manner, in which entitlements are entrenched to strike the right balance. He began with the premise that all property is for public purpose and that all must have access to it, implying that moral considerations are paramount in the debate over "takings."

Charles Geisler, a Professor of Rural Sociology at Cornell University, serves on the National Academy of Sciences Committee on Federal Acquisition of Lands for Conservation and the boards of the Equity Trust, Inc. and the *Journal of Rural Studies*. His books include *Land Reform, American Style* and *Property Cultures and Sustainable Landscapes*. The first land use law in the country, he noted, was used to fund educational activities. Then came the railroads who were behind the 'Recreation State' (such as Yellowstone). In discussing Takings, he stated the domain of individual rights is far more important than the distinction between private and public uses. Our examination of the right to housing should also be in this vein, he said.

C. Ford Runge, a Professor in the department of Applied Economics at the University of Minnesota who previously served on the staff of the US House Committee on Agriculture, gave a succinct view of the government actions affecting land and property values. He cited eloquently from empirical studies.

The afternoon session began with David Abromowitz, a partner at Goulston & Storrs, describing the development of the Rose Wharf in Boston which is an example of condominium ownership where individual condominium owner does not have a fee simple ownership right. The leases are long term and renewable. Who therefore catches the value at the end of term? There are issues of resale in such an arrangement that are much like the very reasons why community land trusts are set up: "capital gains" going to the collective rather than to individual owners.

Pamela Jones, an attorney and Executive Director of the New Columbia Community Land Trust, shared some practical experiences. The areas they serve are in marginalized black communities. Their first challenge was to convince the corporate and banking community to take their project seriously. Then they had to effectively edu-

cate the community they were serving about legal concepts of property and leasing.

Darby Bradley, also an attorney and President of the Vermont Land Trust, a statewide organization conserving open spaces and working farm and forest lands, described the rationale for the community land trust—to exist in perpetuity in order to provide affordable housing, effectively taking the community's land off the speculative market. He noted that land trusts can make use of multiple sources of funding, including government.

Frances Ansley, an Associate Professor of law at the University of Tennessee, spoke on the land ownership issues of Appalachia, where 90% of the land is controlled by absentee owners. A quarter of the land in the six states she has studied is used for agriculture and mining, but almost none of it is owned by the workers.

Kennedy, Geisler and Runge all recognized the theories of Henry George. Each stated that they fully supported his premise on land values, and it was the basis of their approach to the subject. Kennedy, however, held that the remedy suggested by George was not workable and that the sort of cooperative arrangements he described would be a better answer.

*Editor's Note: Vandana Chak, a faculty member at the New York HGS, is an attorney and a graduate of Harvard Law School.*