

The Other Thing Professors Do: Reflections on Duncan Kennedy as a Teacher

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Much has and will be written about Duncan Kennedy as a scholar.¹ That is all for the good: Duncan is a towering figure in legal scholarship and his work has opened up numerous paths of critical inquiry that will continue to bear fruit for a long time to come. But contrary to the desires of many professors, scholarship is but one part of the job. Between time spent reading and writing, professors occasionally teach. And while some people, including some of his former students, know Duncan primarily as an academic and a scholar; for me, Duncan is first and foremost a teacher and a mentor.

I thought about writing this tribute as a parody: a parody of myself and of other “Duncanites.” There is a lot of material to work with. When I helped organize a “ClassCrits” conference at my school, I noticed after one panel that not only were three former Duncan students, now male professors, all standing together at the front of the room, but also they all were wearing the same thing. The combination of a tucked-in button down shirt, relatively tight designer jeans that looked worn but had never been on a farm, and casual-yet-expensive brown shoes was vintage Duncan. And it is not limited to fashion, in article after article, former Duncan students show their fixation with ideas Duncan published decades before as they part of an ongoing quest for approval from the master.² There is a member of my own faculty who adds a “-ian” to the end of every word in an effort to prove that he or she has read more theory than the rest of the faculty: as in, “while I appreciate your attempt to merge Rawlsian and Dworkian thought, in the end it ends up being Hohfeldian in its simplicity and Foucaultian in its application.” The point of such contributions, and it would be fair to call them Kennedy-esque points, is either to beat the audience into submission or to delight in one’s own brilliance. Add in a couple random “dialogue” elements akin to some of Duncan’s more esoteric writings³ and top that off with a few cheap shots about being a “tenured radical”⁴ and you have the receipt for a decent parody article. But as I have already written one parody article,⁵ and one that Duncan strongly suggested I not publish, I will now drop my shield and be honest about what Duncan means to me.

¹ See, e.g., Motoaki Funakoshi, *Taking Duncan Kennedy Seriously: Ironic Liberal Legalism*,

² My own contribution to this line of scholarship is Ezra Rosser, *Destabilizing Property* (unpublished manuscript) (forthcoming Connecticut Law Review), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2581710.

³ See Peter Gabel & Duncan Kennedy, *Roll Over Beethoven*, 36 STAN. L. REV. 1 (1984).

⁴ See Richard Posner, *The Problematics of Moral and Legal Theory*, 111 HARV. L. REV. 1637, 1667 (1998)

⁵ Ezra Rosser, *On Becoming “Professor”: A Semi-Serious Look in the Mirror*, 36 FLA. ST. U. L. REV. 215 (2009).

Teaching can complement scholarship, but it often competes with it. It is for that reason that I am especially appreciative of Duncan's embrace of the teaching part of being a professor. All too often, I meet former students of great scholars and hear from them how this-or-that academic giant was uninspiring as a teacher and frequently showed up under-prepared to class. That was not Duncan, and I can say that having only actually taken one of his classes, Housing Law. At the time, Harvard offered two housing law classes: a great, practical class taught by David Grossman and the more theoretical class taught by Duncan Kennedy and Jeanne Charn. Duncan led the first class session and the reading focused on the development of Boston, detailing how suburbs grew as the streetcar system expanded.⁶ Having just transferred from Georgetown to Harvard, I did not yet know about Harvard's anti-gunner norm, so when Duncan asked who could summarize the reading, I raised my hand. After I spoke, Duncan praised my contribution publically, which was a big ego boost for a transfer student coming from a lower-ranked school, and he told me to stop by his office.

At the time I did not fully appreciate the effort involved, but when I went to his office, Duncan turned fully away from his desk and asked me about myself. Now that I am teaching, I am much more aware of the many demands on professors that make getting to know students as individuals difficult. As I left his office, he handed me a bound collection of many of his articles and suggested that I check them out. I am embarrassed to say that I did not; it wasn't until long after I graduated that I actually read most of them. But at the time, and I would even say today, that didn't really matter. What mattered was that Duncan made the effort to establish a human connection with his students. And that connection improbably endured; again, thanks almost entirely to Duncan despite the fact that I had much more to learn from Duncan than vice versa.

After I graduated, I continued to list Duncan on my list of references but just before my third year on the AALS market, Duncan scolded me for doing everything wrong in my job hunt. I wasn't keeping my mentors informed, I wasn't listing Property as the class I most wanted to teach (I kept listing Federal Indian Law in that position), and I wasn't writing about things that would make for a well-received job talk. I didn't change everything after the scolding—as a member of the hiring committee at the school that eventually hired me stated my job talk, on the Cherokee Right to a Congressional Delegate, was terrible—but I would not have gotten my current job without Duncan's mentoring. What is remarkable about his mentoring is that Duncan dedicates so much time to it. All professors have students who are our groupies, who take every class we teach and who afterward we basically have to mentor. And between lefty law students and theory-obsessed S.J.D. candidates, Duncan attracts his share of groupies. But to do so much to mentor a student who he had for one class and, being honest with myself, whose classroom contributions were mostly confined to the first session of that one class, is surely the sign of a professor who takes seriously the teaching part of the job.

⁶ SAM BASS WARNER, *STREETCAR SUBURBS: THE PROCESS OF GROWTH IN BOSTON, 1870-1900* (1962).

This brief essay has been a bit too much about me and about my relationship with Duncan. The typical retirement celebration article avoids that trap by having scholars cloak their appreciation in scholarly mumbo-jumbo. And there is value in such contributions, the main message of which seems to be that the retiring person leaves behind an academic legacy. Such contributions also are a way of *very subtly* expressing love. I am now a father of a five-year old, Mateo, and I will say I prefer the more direct approach. There are few things I love more right now than when Mateo gives me a big hug. Professors, even professors who assume the mentoring role, are not parents, but in terms of both career and intellectual curiosity, the good ones take on a quasi-parental role. Duncan is not my colleague nor am I his peer, but I do hope this essay is read as a big hug to him and as an expression of my appreciation for the fact that as a professor he is more than a scholar, he is also a wonderful teacher.