The Essence of the Trust and the ambiguity of the notion of property
(Interview with Professor Paul Matthews)

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[Introduction]

This is a transcript of an interview with Professor Paul Matthews on “the essence of the trust and the ambiguity of the concept of property”. Professor Matthews is an authority on English trust law, and he is also deeply versed in the trust systems in civil law countries and offshore jurisdictions. The meeting was held in August 2010 at the “North Restaurant” which is located very near the Royal Mile in the center of Edinburgh. (Watanabe)

Watanabe: Professor Matthews, thank you so much for taking your precious time to meet with me during your vacation. Usually you are working in London. So I feel it more than accidental to have a chance to meet you in Edinburgh today, for me who have a strong interest also in Scottish law of trusts. Please allow me to excuse for my unpolished style to make an interview before the delicious dishes and wines…

First, I would like to ask you how to introduce trusts in civil-law jurisdictions. As you know, there are various ways of introducing the trust in civil-law jurisdictions. One is the French way, to make legislation. Another is the Italian way, to introduce the trusts substantially as an outcome of the interpretation of articles in the Hague Trust Convention.

And, as you know, there are some other approaches, for example, trust-like protected funds for commercial purposes. And there are also the approach for the European uniform trust law, or some other approaches. Which way do you think is the best?

Matthews: The problem for me in responding to that is that in a way, I need to know what your concerns are. I need to know what your agenda is. I need to know what the most important thing is from your point of view. There are a number of different ways of doing this. But they all respond to a different agenda.

For example, to introduce trusts in to France requires you to introduce a structure from the beginning. And this is what they have done with the fiducie. But they need to introduce the structure at the beginning. Otherwise they cannot even discuss the question. They have problems of existentialism. They have a problem of “If it doesn’t exist, we can’t talk about it.”

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The English, on the other hand, are very pragmatic, and they say, “We don’t need to discuss the concept. We’ll just discuss the practical effect.” And I think that in Italy they are more pragmatic than the French. So they didn’t need to have the structure in the system before they discussed it. It was enough that there was a legal obligation on the judges by virtue of the Hague Convention to recognize the foreign trusts.

And this was enough for them to be exposed to the effects of a trust, and little by little to absorb the culture of the trust.

So if you know what a trust is by its effects, then maybe you are not afraid of it, and you can approach it and maybe introduce some features of it into your system without going to the lengths of the French, who must automatically introduce the whole system from the beginning. For them, it’s a different a priori approach. You have to have the whole thing.

If you look at other civil-law countries, like Japan or China, you will see that the trust occupies a marginal position. It is out at the edges of the legal system. It is not in the middle. It is right at the edge.

And I think that there, you can look at the trust from a pragmatic point of view, and you can say, “Look, it has this effect. Is this a good idea?” “Yes.” “Do we need this?” “Yes.” “Then let us recognize this effect.”

So it is a good idea, perhaps, to begin with some of the effects of the trust, like the segregation of assets. And this is the way that the South Americans have begun to understand the trust: the segregation of assets. And, of course, in the Roman law, which was the ancestor of the civil law, the important thing was to allow assets to be kept segregated from the claims of creditors.

So I think it depends on what you want. If you want to introduce the effects of the trust, you don’t have to introduce everything at once. You can introduce the people to the effects of the trust before you introduce them to the concept. That’s my answer to your question. It is a difficult question, because it has a different answer for every society.

Watanabe: In France, the trust has been introduced by legislation. But, as you well know, it is very limited.

Matthews: Yes, but they have amended it several times. They are very clever, in one way. They know their own limitations. They know their own problems. They know that they are very conceptual. So they introduce a concept, and then when they have become used to the concept, because the French are very conservative, much more conservative than the English, almost reactionary, they look to see, “Does it exist? If it exists, you can discuss it,” and when they see that the trust exists, they say, “Do we need to modify it,” and they say, “Yes, we need to modify it,” and they can modify it.

This is very French. They have modified the fiducie three or four times even in the last three years.

Watanabe: To my understanding, French fiducie has mainly used for the purpose of . . .


Watanabe: It’s not competing with common law trust, I think.

Matthews: It doesn’t compete, because as it stands it isn’t good enough. So they have had to modify it. They have made some changes to it. And they need to make some more changes. It is not yet competitive with the trust.

Maybe in another 20 years it will be more competitive. But the French need to become used to it. They need to grow up with this in their pockets. At the moment the lawyers who understand the fiducie
are very few. But in 20 years’ time there will be a lot of lawyers who are happy with the fiducie. And they will say, “Okay, we know what this can do. We want to do more.”

We say in English, “You can’t run before you can walk.”

**Watanabe:** If so, it may be wiser to go the Italian way, to get the effect of the trust.

**Matthews:** For the Japanese and the Chinese, as well, the Oriental countries, I think that’s true. I treat Japan and China and Taiwan very similarly, because they all have strong influence from the German legal system. And they all have a trust law that is similar and does similar things.

So I think, although the systems are not the same, although their mentality is not exactly the same, still they have some similarities. And I think that they should think carefully about introducing the effects of the trust.

**Watanabe:** In Japan, for good or bad, we have not had so much discussion about the essence of beneficial rights.

**Matthews:** No. I think that in China, on the other hand, they have a lot of discussion on this, because they have seen many scandals. In Japan you are lucky. You didn’t have these scandals. But a scandal is a good thing in one way, because a scandal promotes the discussion. But in Japan you have a very regulated system. So you don’t have so many problems. In China they didn’t have the regulation that was necessary. So they had a lot of problems.

**Watanabe:** In Japan we still have no answer about what is the essence of beneficial rights. Japanese private law has been based on the civil law system, but it doesn’t have a long tradition. Because of this, in introducing the trust in Japan, it may be that there has been little problem.

**Matthews:** Yes. I think for me the sensible thing would be to discuss the position of the beneficiary as a right that is expanded. In other words, it is a right against the trustee. But the question is “It is also a right against who else? Which other people?” And you should look, then, at the people who are third parties, who deal with the trustee, and say, “Well, in what circumstances are there third parties that deal with the trustee? And in what circumstances are they concerned about the rights of the beneficiary?”

In Scottish law and in English law and in American law this is an important question. And it is an important question, or it should be an important question, in other legal systems. For example, forget trusts. Think about contract law. Suppose that you and I have a contract, and a third party is coming to talk to you. Why should a third party be concerned about a contract between you and I?

Well, for most of the time the third party is not concerned. But maybe there are some cases, rare cases, where the third party should be concerned, where it is right that the third party should respect the contract between you and me.

The third party knows that we have made a contract. He knows that I am relying on the contract. He knows that I will suffer great loss if you don’t fulfill the contract. And this third party deliberately makes you breach the contract with me. Then he should have some responsibility toward me.

So with the trust it’s the same question. But it’s a little bit more complex, and it is a little bit more far-reaching. It goes further. But it’s the same question.

In Japanese law, I’m sure there must be some circumstances in which a third party who deliberately helps you breach a contract with me bears some responsibility toward me directly.

Do you follow that argument that I’m making?

**Watanabe:** Okay. I understand.
Matthews: And contract is just as important in a civil-law country as in a common-law country. So you should start by thinking about this.

Watanabe: Do you mean the issues on the third party?

Matthews: Yes, the third party. You say, “Why is he concerned?” That’s my view.

Watanabe: Getting back to my first question, to get the effect of the trust, is it wiser to take the Italian approach than to take the French approach?

Matthews: The Italian way relies upon the marketplace. The French way relies upon on the legislature. So it depends upon whether you have confidence in the market or you have confidence in the legislature.

You’re a Japanese person. You should choose.

Watanabe: But, for example, Professor Maurizio Lupoi, as you know, have insisted that Article VI of the Hague Convention stipulates, “A trust shall be governed by the law chosen by the settlor.” And he insists that under this article of the Hague Convention, Italian people can set Italian interests substantially.

Matthews: Yes. They can, because they can choose every element to be like Italy except the governing law.

Watanabe: Yes, for example, trust assets exist in Italy . . .

Matthews: And trustee, trust law, beneficiary. It’s all in Italian. It’s only the governing law that is foreign.

Watanabe: Yes.

Matthews: Well, that’s fine. But that is because the Italian system has not produced legislation to deal with the trust, only to recognize and to ratify the Hague Convention. That’s all.

It depends upon what you want. It depends upon what you think is better. And I think Professor Lupoi was quite right. Italy could not have easily produced a high-quality trust law internally which would have been accepted by the Italian professionals, but it was pragmatic enough to accept the effects of a foreign law that was recognized by the Italian presidential decree. Quite different.

In contrast, the French would have been very introspective and existentialist, and they would have said, “Oh, we don’t know what this is.” And so, no.

I think that the Italians have looked at it in the correct way and said, “You look at effects.”

I think Japan is also quite pragmatic, because it accepted the civil-law system less than 100 years ago. And before that, there was a well-developed system of law. And I think they could accept some changes now in terms of the effects of foreign law.

After all, Japan is a very capitalist society, and has an important marketplace. It is one of the biggest financial markets in the world. So it can accept this.

But I don’t think it is necessary to change the law and to have an internal law that would be like that of America or England. It would not be sensible.

I think that Japan could look at the effects of the trust and absorb the effects of the foreign law more easily like Italy than like France, to change the law.

Watanabe: But I suppose they can introduce Japanese-style detailed trust-law legislation.

Matthews: You could, yes.

Watanabe: Because, as you said, if we carefully analyze the trust law, it doesn’t conflict with the basic principles of civil law. So they can introduce trust-law legislation in civil-law jurisdictions, like Japan.

Matthews: They could. But I think it would be better for them to experience the trust idea first and to absorb some aspect of the trust culture into their psyche, into their heads, before the introduce legisla-
And I think maybe in 10 or 20 years’ time someone will say, “Okay, now it’s time for professionals” (the lawyers, the judges, when they have had experience with the trust and know what it is) “to introduce some legislation.”

That’s my feeling. And I think they are right to go slowly, because it’s easier.

In France, at the time that the fiducie was introduced, the Socialist party was completely against this legislation. They didn’t want it at all.

Watanabe: For tax reasons?
Matthews: They said for tax reasons. But I think it’s because culturally it was impossible for them. They could not understand it. It didn’t fit with their culture. It didn’t fit with ownership. It didn’t fit with some of the things. And, of course, therefore, “It didn’t fit with tax.”

But if it is allowed to grow from the fiducie for a generation, or two generations, then the attitudes of the politicians will have to change.

I think it in the future it will be amended and amended and amended to become wider and more useful.

Watanabe: But, as you said in your excellent article, it is possible even for French people to get almost full effect of trust.

So I suppose what matters is the big difference between Anglo-American trusts and civil law trusts, is whether they have a practical mind in law or not.

Matthews: Yes, exactly. Yes, the pragmatic approach is what counts. I agree. And the trustee has to have a very clear idea that he is the owner but that he is using this property for the benefit of somebody else. That is what counts.

And that is something that you get with experience and not because somebody tells you.

Watanabe: I suppose the constructive trust is a good example. As you well know, in England the constructive trust has been admitted very flexibly.

Matthews: Yes.
Watanabe: But in Scotland it is very limited. Also in Japan, it is very rare for constructive trusts to be admitted. I suppose in most of the civil-law or mixed legal jurisdictions, it is very rare for constructive trusts to be admitted.

Matthews: But there is a big difference because between the constructive trust in America and the constructive trust in England. In England a constructive trust arises only in a limited number of fixed situations. In America, a constructive trust can be imposed by the court whenever the court thinks that the remedy should be a proprietary remedy.

That is very different, because from an English perspective we would say, “Look, you cannot lose your property unless the law says you lose your property.” You cannot lose your property just because the judge thinks that you should lose your property. But in America it’s different. They have a different approach.

So the constructive trust in England is wider than that in Scotland but much narrower than that in the United States. But in England it is still principled. It is based on rules. In the USA, it’s not. It’s based on discretion.

Watanabe: Why do you think there is such a big difference arose between America and the U.K.?
Matthews: Why is there such a big difference? A number of reasons. And there is no one reason. You cannot say that there is only one reason. It is the contribution of many reasons.

One of these reasons is that the histories of Britain and America have been very different. America was the land of expanding capitalism, expanding from the east coast across to the west coast, with all of the enterprise and so on. It’s a very big country, not very regulated.

So the trust was used a lot more, for example, for commercial purposes, more than in England. The trust was used as a mechanism for holding assets to avoid obligations, to avoid tax and other obligations.

In England the trust was used mostly to organize assets for social reasons, for family reasons.

Watanabe: Family trusts?

Matthews: Family trusts. Later, only at the end of the 19th century, at the beginning of the 20th century, then in the first 20-30 years of the 20th century, trusts in England were used to avoid tax. It was later in England than in America. In America it was from the beginning. It was a good way to avoid obligations.

It was used to hold business assets. Not in England. It was used for commercial transactions. The whole history of England and America is quite different. So the trust was adapted to that.

In England it was seen as very much a property transaction. It was about the holding of land, that mattered. Never in America. People didn’t worry about land in America. It was financial assets, not land.

So trusts were about commercial assets. They were not about land. Therefore, the trust in America had the look of something very contractual. It looked like a commercial contract, whereas the trust in England looked like a property conveyance. It was a very different kind of animal.

If you read the American and English documents, you can see that they are different in style and form. The American trust is like a contract. The English trust is like a conveyance, a property document.

So there are lots of reasons.

Watanabe: As you know, in relation to the essence of the trust, recently the notion of patrimony has been prevailing. But that is to say segregated fiduciary patrimony, immunity from claims by the trustee’s spouse, heirs, and personal creditors.

Is the notion of patrimony appropriate for explaining the essence of the trust?

Matthews: No. You have been reading too many Scottish professors’ articles.

Watanabe: If not, why do you think so?

Matthews: First of all, there is an existentialist problem. What is the idea of patrimony? And, of course, today in the civil-law world, even in Scotland, people talk about patrimony as a concept that has always existed. But it’s not true. The concept of patrimony was in effect created by French lawyers in the 19th century.

Watanabe: Do you mean Pierre Lepaulle?

Matthews: Aubry and Rau.

Watanabe: I understand they advocated the notion of patrimoine d’affectation first.

Matthews: The point about patrimony is this: It is a concept that doesn’t exist in English law. It has never existed in English law. So if the segregated property idea works in English law, it does not work because of patrimony. There must be some other reason for segregation of assets.

Patrimony is not the explanation in English law.

There are some Scottish professors who say, “Oh, but patrimony is the explanation for the trust in Scotland.”
Well, okay. Maybe today. But if you look at the beginnings of the trust in Scotland, 300 years ago, there is no mention of patrimony, because patrimony in fact had not been invented yet. It was invented by French lawyers.

But at the beginning the Scottish lawyers did not explain the trust as a patrimonial idea.

**Watanabe:** I agree.

**Matthews:** So if you explain it today as a patrimonial idea, this is a modern idea. Okay, fine. But it is not an English idea.

And I think that the patrimony idea is a good beginning for a civil lawyer, just to explain the effect of the segregation of assets. But I think it is a bad idea for explaining the concept of the segregation. The reason there is segregation of assets is that the trust requires that the assets of the trust be kept separate from the assets of the trustee personally. It does not require that you create a patrimony personal to him and then another personal to the trust. It requires only that you separate these two and that you make the assets of the trust incapable of being attacked by the creditors of the trustee. That’s all.

You don’t need the patrimony idea. The patrimony idea is one way to explain it. But it’s really only a way to explain the effects and not the causes.

**Watanabe:** In your article you pointed out the recent confusion of the notion about patrimony. One is special estate. One is substantial legal entity. The notion is confusing.

**Matthews:** Yes.

**Watanabe:** Which notion do you think is better? Special estate, or?

**Matthews:** Again, the trouble is that from an English perspective, we don’t have a conceptual approach to these questions. From an English point of view, we simply rely on the idea of conscience, on the idea that a person can be the owner of a thing and yet have an obligation to a third party to use this property, to devote this property to the benefit of someone else.

That is the real approach the English lawyer takes. So it doesn’t depend on patrimony. It doesn’t depend on a special estate. It just depends on the notion of an obligation owed to a third party.

In a way, the whole idea of a trust depends upon seeing the obligations that are owed to the beneficiary as combining, coming together, and representing a protection for the beneficiary, which from his point of view means that he has a right of property, because when we use the term “right of property,” what do we mean? Well, we mean many things. But one thing we mean is that my rights are valid against many people.

And that is true of a situation where many people owe duties to one person. For example, if you say, “I am the owner of a piece of land,” then many people owe a duty to me. What duty? Well, the duty not to trespass, not to interfere with the land.

Well, if you have a situation where a trustee is the owner of some property, some land, and he owes to me a duty to manage the land for my benefit, and if other people (third parties) have a similar obligation to me, then my rights are not just rights against this trustee. They are rights against many people. They are in this sense rights of property.

So in England it is not conceptualist. We can say it is property. In civil law, which is conceptualist, they say, “Oh, but this does not satisfy the requirements of property law. So it is not property.”

And this brings me to the argument for my paper in Montreal\(^1\), which is about the different meanings of the word property.
Watanabe: It’s the ambiguity of property as you said in your article.
Matthews: That’s exactly right, the ambiguity of property.
Watanabe: I agree with your view totally in your excellent paper.
Matthews: Well, it would be nice if some other people could agree with it, as well!

But there we are. That is the nature of academic discourse, is that you have to convince other people.

Watanabe: I think I understand your view on patrimony. But the patrimony theorists place emphasis on segregation. They think segregation is the essence of the trust.
Matthews: Yes. But it’s true. But just because the same thing appears in two places doesn’t that the two things are the same. For example, a train can travel very fast. A bullet can travel very fast. But it doesn’t mean that every train is a bullet or that every bullet is a train. They have one characteristic that is similar. But it doesn’t mean that they are the same idea. You have to look at more than just one characteristic.

Although in Japan a very fast train is called a Bullet train.

Watanabe: Yes, we call it Shinkansen. I suppose it’s the best train in the world.
Watanabe: So what do you think about the essence of the trust? The existence of a beneficiary?
Matthews: This is much more difficult. I think that for me, you begin with an historical analysis that unless there was a beneficiary to complain, the legal owner would continue to be the legal owner. And the legal owner could do what he liked, because there was nobody to complain.

So for a trust to exist initially, at the beginning, there must have been a beneficiary, a person. In the 20th century some offshore trust jurisdiction said, “We can have trusts without beneficiaries.” So they said, “But there must be someone who can complain, someone who can take the property from the trustee.” And this must be not a beneficiary, because there is no beneficiary. But it can be the enforcer.

And there are many trust lawyers who think this is a good argument. David Hayton is one.

But for me, the problem is that once you divorce the enforcement of the trust from the enjoyment of the trust, you change the nature of the trust. You change the institution from a property institution, where the enjoyment belongs to a person who enforces it, to a mechanism that is more like a contract for the benefit of a third party.

And I think that there is nothing wrong with a contract for the benefit of a third party. But I don’t think it’s a trust. That’s all. I think that the essence of the trust resides in the fact that the person who enjoys the property also enforces the obligation. It’s a simple point.

And I don’t think it gets better if you try to analyze it very profoundly. I don’t think that it becomes clearer or easier if you go deeper.

Either you accept the difference between a trust and a contract for the benefit of a third party or you don’t.

Now, it’s possible to say, “Okay, but with a contract for the benefit of a third party, you don’t have segregation of assets.” And we can test that in the case where the trustee becomes bankrupt, because in the case of the trust, the question is whether or not you allow the creditors of the trustee to take the trust assets for the benefit of the creditors.

It seems to me that at that point you are in the middle between the trust, on the one hand, and the contract on the other. You could say, “Well, we have a strong contract, with segregation of assets.” Or you
could say we have a weak trust, with no beneficiaries. So it’s one or the other.

The question is “Which is it better to say? Is it better to characterize this middle position as a trust with no beneficiaries or as a contract with segregation of assets?” David Hayton would say, “Oh, the most important characteristic of the trust is the segregation of assets. Therefore, it is better to say, ‘This is trust without beneficiaries,’” whereas for me the essence of a trust is the enforcement by the beneficiaries. Therefore, I would say, “Well, it’s not a trust. It’s really a strong contract with segregation of assets.”

Once you reach that point, it seems to me that it is just a matter of words whether you say this is a trust or a contract. You know what the characteristics are of this contract. You know exactly what it consists of, what rights, what duties. And you know it has segregation of assets. And you know it has no beneficiaries. Whether you call it one or the other is just a matter of words.

To me it’s not a trust. To David Hayton it is. For me it’s a contract. For him it isn’t.

Watanabe: I totally agree with you on that point. But, as you well know, there is a big exception: charitable trust.

Matthews: Yes. Well, the charitable trust seems to me to be really not a trust in the sense that we are talking about at all, because it is a structure that allows assets to be devoted to the public benefit. And if it is for the public benefit, then really the beneficiary is the public.

But anyway, it is a public-law obligation, not a private-law obligation, I think. So I don’t think it should obey, necessarily, the rules of private-law trust. I just think it is outside the scope of the trust. It is structure that works in a similar way, like a company works in a similar way, but it’s different.

Nobody says, “Oh, a company is a trust.” It isn’t. But the directors of a company are in many ways like trustees. They have fiduciary obligations toward the company. They cannot make secret profits, and so on.

So we don’t call the company a trust. We accept that it is different animal. I don’t see why the charitable trust should be regarded as the same thing as a family trust. It’s not. It is an institution regarding property that is enforceable by the public for the benefit of the public.

And probably this is the reason I think that the charitable trust is really different from ordinary trust, because historically the charitable trust came from a different background. It came from the ecclesiastic courts, the church courts, and was put into the form of the trust only because the trust already existed, and they wanted to enforce the charitable trust in the Chancery Court. And they already had a trust to do this.

So for myself, I don’t see any problem with the charitable trust. It’s a very different institution from the ordinary family trust.


Matthews: Of course, in the offshore jurisdictions nobody supervises. It’s very bad, because you can misuse or abuse the non-charitable-purpose trusts.

But in an onshore system there should be some regulation to make sure that it happens. And I think that in England they don’t have any regulations, simply because it is not acceptable. That’s my view.

Watanabe: But the trust in the Channel Islands is very moderate, I think. So it is in the middle between English trust and the Caribbean trust.

Matthews: Yes. That’s right. But some offshore countries have very strange animals, the VISTA trust and
the STAR trust.

**Watanabe:** Yes, Trusts in Cayman Islands etc.. By the way, I heard that you substantially drafted the trust law in Jersey. What was the main idea in drafting the Jersey trust law?

**Matthews:** To make money, I think! (Joke).

**Watanabe:** No, no! It's a practical question, a theoretical question.

**Matthews:** I don't think that the Jersey lawyers have really thought at a theoretical level about the trust. I think they have only thought at a pragmatic level.

And, although they accept the civil-law idea of property, I think they have been pragmatic enough to accept that the trust has to work in a practical way. Therefore, they don't worry about the theoretical aspects.

And that's one reason that they don't have a problem with the non-charitable-purpose clause, because they don't see it as an inconsistency, because the whole trust idea is inconsistent with them.

For Jersey and other such places, they have to adapt their products for the marketplace. If the market wants this, then they will produce it. I think that's the way forward for them. They live through their work.

For England, the trust is perhaps just an institution. For Jersey, it's a means of living. It's a quite different attitude.

**Watanabe:** How about the Chinese trust? As you may know, a Chinese trust can be established without any transfer of property. It's an outcome of the interpretation of Article II of the Chinese trust law.

**Matthews:** But English trusts can be created without any transfer of property, a declaration of trust. For example, I am the owner of this pen. I can create a trust for this pen for your benefit, without any transfer of the pen. So it's the same thing in China.

**Watanabe:** So do you accept such a trust in China?

**Matthews:** I think that is a question for the Chinese, not for me. But for me it would not cause any problem. Of course, in a civil-law system there may be problems about publicity and the rights of creditors. I understand that.

**Watanabe:** But it's not a problem in the U.K.?

**Matthews:** No.

**Watanabe:** Is there no problem also from the point of the registration of trusts.

**Matthews:** No, it's no problem.

**Watanabe:** What about the “bewind” in the Netherlands or in South Africa, which functions like a trust, but ownership of the asset is still held by the beneficiary?

**Matthews:** That's just as in English law. It's like an agent . . .

**Watanabe:** Agent, yes.

**Matthews:** . . . of a principal who owns the property. I don't see a problem with that. It's a different structure. It's not a trust. But it has some similar aspects. For example, it may be that the agent owes a duty to the principal, which is a fiduciary duty, a duty to prefer a principal's interests to his own.

So it's like a trustee.

**Watanabe:** These are a kind of agency.

**Matthews:** Well, why not? Yes.

**Watanabe:** But the Chinese trust can be a kind of trust.
Matthews: A kind of agency. No, because the trustee is the owner.
Watanabe: Yes.
Matthews: And he has to be the owner, I think. It doesn’t work unless he is the owner, because he can sell to a third party, and so on.
Watanabe: I suppose most of your main ideas on the law of trusts can be seen in this paper “Contract, Property and Trust”.
Matthews: I guess so.
Watanabe: Very excellent.
Matthews: Well, very short.
Watanabe: I suppose your Italian article is the translation of this one.
Matthews: To some extent, yes, right. That’s right. It’s a little bit different, especially for the Italian audience. But you’re right. The essence is the same.
Watanabe: Is there anything recently written by you on Italian trusts?
Matthews: By me? No. But by other writers, yes, there are some articles. Most of them are in Italian, because they are written by Italian lawyers.

But there are some things. Most of them are in a journal called Trust e Attività Fiduciarie. Maybe you know this. Some of them are in English.
Watanabe: Yes. I got many Italian and English articles in it at the Italian Universities.
Matthews: Oh, very good.
Watanabe: I just got them… By the way, to conclude, I’d like to ask you how you assess the Hague Trust Convention.
Matthews: It was good for its time. It was a good step forward for its time. I think that 25 years later it is now looking a little bit old-fashioned and out of date.

And I think it would be a good thing if we could have another convention, another international meeting, to discuss what we have learned from 25 years of international cooperation.

One of the problems is that at the time in the 1980s there were really not many lawyers who could discuss the trust at an international level. It really didn’t exist at the international level.

So the discussion among the various countries was rather limited. And I think if we were to negotiate a new convention it could be done at a much higher level, because we have all made progress, and we have all understood more of one another’s systems.

So my verdict, I suppose, is that it was good for its time, but now would be a good time to have a new convention to take advantage of the advances in understanding and in experience that we had.
Watanabe: It was so good today I could get your views on the essence of the trust and hear your candid opinion. Thank you so much indeed, Professor Matthews.
Matthews: Well, this has been a great pleasure.

Endnotes:

1 Paul Matthews, The compatibility of the trusts with the civil law notion of property. (Conference on “The World of the Trust”, Quebec Research Centre of Private and Comparative Law, McGill University, September 23-25 2010).
2 This paper is the material for his seminar which was held in the University of Tokyo in 2002 (unpub-