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Property and privatisation in *RoboCop*

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Abstract

The 1987 film RoboCop *is not just a science fiction action story; it is also a critique of the neoliberal resurgence in law and politics at the end of the twentieth century. In particular it critiques the privatisation of police services, and the expansion of private property claims to cover a cyborg policeman, notwithstanding its human components. I connect the critique in the film with the broader academic literature dealing with the privatisation of police forces and the expansion of private property claims, particularly copyright and patents. Finally, I consider whether, as a result of the neoliberal expansion of private property rights over the last few decades, the law could now justify a private property claim over a cyborg like the one in the film.*

I. Introduction

The eponymous central character in the 1987 film *RoboCop*[1] is a cyborg (i.e. a combination of mechanical and human biological elements) which is created to be a super-policeman. In the course of the film, the memories of Murphy – the human being whose body parts were used to create the cyborg – come to the surface of RoboCop's awareness. Consequently RoboCop engages in a quest to learn the truth about Murphy's life, and ultimately identifies with him and exacts revenge for his death. It is therefore understandable why themes of personal identity, bodily transformation and doppelgangers appear in the commentaries written on *RoboCop* by film scholars (see, for example, Telotte, 2001, 1991; Codell, 1989). But in this paper the political and especially legal issues that are raised in the film are my exclusive focus. Notwithstanding its violent action, humour and science fiction genre, *RoboCop* is a pointed satire and critique of the neoliberal politics which were dominant in 1980s America. The two main legal issues the film deals with are the privatisation of public services and the extension of private property rights, both of which are intimately connected with neoliberalism.

The final quarter of the twentieth century saw the rise of 'neoliberalism', 'neoconservatism' or 'the new right' (Harvey, 2005). This resurgence of classical liberal ideas followed a long period (roughly from the 1930s to the oil shocks in the 1970s) when, as a result of the Great Depression and the two World Wars, classical liberalism and laissez-faire economics had been eclipsed by other political philosophies and government policies. These other approaches stressed greater government action to achieve desired social outcomes, rather than leaving this up to the invisible hand of the market-place. They also stressed provision of benefits to people by virtue of citizenship, rather than by purchase in a market transaction. Sometimes these claims were advanced through a property analysis, as in Charles Reich's 'The New Property', where he argued that American citizens should be given private property rights in government 'largesse' so as to ensure that they had the resources needed to live secure, independent and free lives. (Reich, 1964).

The neoliberal resurgence or 'counter-revolution' (Cockett, 1994) returned to classical liberal ideas of limited government, unregulated free markets and the sanctity of private property. In particular, neoliberalism recommended that the state be shrunk, and that private enterprise provide many of the services that the state had provided hitherto. Even if it was appropriate for citizens to

1 *RoboCop* (1987) Orion Pictures Corporation. Directed by Paul Verhoeven.

receive some service without paying for it through a market transaction (such as primary and secondary education or police services), neoliberals argued that the state should not provide such services directly, but should instead purchase them from a private provider (see, for example, Dalziel and St. John, 1999, 86–89). Neoliberalism also emphasised the importance of private property, but not the kind of private property which would be consumed by the owner in order to live the kind of life Reich valued. Rather, neoliberalism valorised property which was used in the production of goods and services for sale in the market, with the assurance that the wealth this generated for its owners would eventually 'trickle down' and benefit everybody else. This insistence upon the importance of private ownership of productive property led to a proliferation of private property claims that extended into more and more areas of life. These claims included both extensions of existing private property rights and also the assertion of private property rights over things that had been held in common previously, or were not considered capable of being owned at all. The result was that more areas of life were subject to the rights of private property owners to exclude access unless it was paid for through a market transaction.

II. *RoboCop* and neoliberalism

In the future world depicted in *RoboCop*, neoliberal ideas have become completely dominant. Early in the film we are shown a board meeting of Omni Consumer Products (OCP), where we learn that OCP has become very successful through its ability to move into government services which have been privatised, such as hospitals, prisons and space exploration. We also learn that OCP has now been given a contract to 'fund and run the Detroit Metropolitan Police Department'. Taking over the police function in the city dovetails nicely with another OCP project – the elimination of 'old Detroit' and its replacement with 'Delta City', which OCP will build and own. This private urban renewal project requires crime in old Detroit to be eliminated so as to make the area safe for the millions of workers who will construct Delta City.

A senior president of OCP, Richard Jones, explains that the corporation has been working on a way to fulfil its policing contract more efficiently by developing a robot which will be superior to a human police officer. It will work twenty-four hours a day and will have superior firepower. He introduces a squat, lumbering 'self-sufficient law enforcement robot' called 'Enforcement Droid 209' (ED209). Jones explains that ED209 is 'currently programmed for urban pacification', but that OCP expects to sell it to the military for other purposes. (Later in the film Jones declares 'we [i.e. OCP] *are* the military', indicating that privatisation has expanded into that area, too.) However, ED209 behaves disastrously in its demonstration to the board, killing an employee. This allows an OCP junior executive called Morton to advance his RoboCop project, which involves a cyborg rather than a robot. The head of the OCP board approves the project, much to the anger of Jones. We then learn that Morton has already arranged for police officers who would be 'prime candidates' to have their body parts incorporated within the cyborg to be assigned to dangerous precincts. The RoboCop project can start 'as soon as some poor schmuck volunteers!' Earlier in the film we have seen that when Murphy was asked how he came to be transferred to the dangerous Metro West precinct, he replied: 'Beats me. OCP is moving a lot of new guys up here.'

After Murphy is blown to bits by a sadistic old Detroit criminal gang led by Clarence Boddicker, we see him being worked on in hospital, and then declared dead. But after the screen goes blank, we are given a series of disconnected point of view shots in which we realise that the RoboCop scientific team is working on him. At one point Morton tells the team to remove the arm which they have saved, because the goal is 'full body prosthesis'. As a member of the team says: 'He signed the release forms when he joined the force and he's legally dead. We can do pretty much what we want to.'

When RoboCop is unveiled, it is much more human in appearance than ED209. It has Murphy's face, but it is impassive and the eyes are covered by a visored helmet until the final climax of the film.

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The rest of the body is metal, while the voice is unemotional and machine-like. RoboCop's movements are not smooth, but rather segmented and machine-like as well. However, it has a digestive system, and eats a 'rudimentary paste' which is like baby food.

We then see a series of incidents in which RoboCop's superiority as a crime-fighting device is demonstrated. However, we also see evidence that Murphy's memories are still present in RoboCop. The cyborg twirls its gun before holstering it, just as Murphy did, and it also has a nightmare-like experience where Murphy's murder is relived. During this episode the normally impassive face of the cyborg distorts and shows fear and anger. As it leaves the police station after this incident, Murphy's previous work partner says to the cyborg: 'Murphy. It's you.' It is in response to this event that Morton makes a powerful private property claim over RoboCop on behalf of OCP: 'He doesn't have a name. He's got a program. He's product. Is that clear?'

In the course of its crime-fighting duties, RoboCop identifies one of the gang who killed Murphy, and is then able to identify the other members from police records. The records also provide it with a picture of Murphy and Murphy's old home address. The cyborg goes to the address and experiences memories of Murphy's wife and child. RoboCop proceeds to hunt down and kill members of the gang, and in so doing learns that the leader of the gang, Boddicker, works for Jones, the senior president of OCP. Boddicker acts as 'muscle' for Jones, and kills Morton on Jones's command. The parallels between the criminal Boddicker and the corporate high-flyer Jones are made clear in the film.[2] Boddicker even uses the same phrase in his drug dealing activities that Jones uses in the corporate boardroom: 'Good business is where you find it.' But when RoboCop tries to arrest Jones, it is unable to do so because Jones has programmed it to shut down if it tries to arrest a senior officer of OCP. At this point in the film Jones makes the same emphatic private property claim over the cyborg that Morton did earlier: 'What did you think? That you were an ordinary police officer? You're our product, and we can't very well have our products turning against us, can we?' It is only when Jones is fired by the head of the board of OCP in the climax of the film that RoboCop is able to shoot him. As it leaves, the cyborg (without its visored helmet and with the eyes visible) identifies itself as 'Murphy'.

In this film we therefore see many of the elements of neoliberalism as I described it earlier. OCP specialises in making money from the privatisation of services previously provided by the state, and OCP also makes private property claims over new kinds of subject matter – a municipality (Delta City) and the cyborg. I now want to argue that the film contains a critique of neoliberalism in general, and of OCP's privatisation of police functions and its private property claim over the cyborg in particular.

III. *RoboCop*'s critique of neoliberalism

A general critique of the neoliberalism which was dominant in America in the 1980s can be seen in the TV news segments of the film. These are used effectively to provide information and advance the plot, but they also show us advertisements and news stories which present the neoliberal politics of President Ronald Reagan in a poor light. Reagan greatly increased military spending, and was happy to fund new weapons systems. This is critiqued in an advertisement for a family game called 'Nukem!', which is sold with the catch-line: 'Get them before they get you!' There is also a news report of the 'Star wars' missile defence system favoured by Reagan misfiring and destroying a city on earth. In the commentaries which were added as extras to the 1998 Criterion Collection DVD of the film, the executive producer, Jon Davison, explains that the head of the board of OCP was 'modelled after Reagan', and that 'the corporate boardroom is slightly modelled after the Reagan White House'.

2 Thus, this film conforms to the individualistic conventions for representing corporate misconduct on film that are discussed in Robertson (2005).

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The privatisation of state services that is the life's blood of OCP is always presented in a bad light in the film. Jones tells Boddicker that the building of Delta City by OCP, which is presented in the boardroom as socially beneficial private urban renewal, will bring in millions of workers from whom money can be made through drugs, gambling and prostitution. He says it will be 'virgin territory for the man who knows how to open up new markets'. The provision of military hardware by private corporations is presented as a scam. Jones berates Morton for causing the defective ED209 project to be abandoned with these words: 'I had a guaranteed military sale with ED209. Renovation programs. Spare parts for twenty-five years. Who cares if it worked or not?' In his contribution to the commentaries on the 1998 DVD, Edward Neumeier, the co-writer of the film, says that this careless attitude of military contractors in the 1980s worked its way into other parts of the American productive economy and led to shoddy goods being produced. (He gives the example of American automobiles). Most importantly, the privatisation of the Detroit Police Department is presented as a failure. A constant theme in the film is the dissatisfaction of the human policemen and policewomen at the cost-cutting of OCP, and the failure to provide them with the resources they need. We learn that officers are constantly being killed, and that backup is insufficient. There is talk about a strike by the police from the very first scenes at Metro West Precinct, and such a strike does eventually come about. The human police are shown as having a public service ethos, while OCP only wants to cut costs to increase profits. Indeed, the project to make robotic or cyborg police officers by OCP is a reflection of its desire for greater efficiency and also to avoid having to deal with troublesome humans and their trade unions.

Similarly, the film is unsympathetic to OCP's private property claim over the cyborg. For OCP, the cyborg is simply their product; something they made and own and will sell for a profit. But the audience has been shown material which emphasises that the human being Murphy is somehow continuing to exist, or has been brought back from the dead, through having his brain and other body parts incorporated into the cyborg.[3] The film is therefore designed to make the audience very uneasy about the appropriateness of the private property claim over RoboCop. In his DVD commentary on the film, co-writer Neumeier says he was aware of the expansion of biotechnology patents and the trade in human body parts (both of which will be dealt with in more detail later in this paper), and so it is not unreasonable to read the film as challenging the appropriateness of these practices.

Although *RoboCop* foregrounds and critiques two important neoliberal claims which have implications for law – the privatisation of policing and the expansion of private property rights into novel areas – these issues have also been dealt with more systematically by academic authors. It is to that body of work that I will now turn in order to flesh out the critique presented in the film itself.

IV. Privatisation of policing[4]

Neoliberalism supported the privatisation of police services, but it certainly did not invent the practice, which has much older origins. Spitzer and Scull explain that:

> 'Much of the policing in England and America during the eighteenth and first half of the nineteenth century . . . took on the character of a contractual arrangement negotiated between

3 Indeed the Director Paul Verhoeven says in the commentary on the DVD that he saw the film as telling a Christian story about crucifixion and resurrection.

4 Because I focus exclusively on privatisation of policing, I will not deal with privatising other aspects of law enforcement, such as prisons or prosecutions in the courts. For more on these topics see Moyle (1994) and Bucy (1996).

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> clients or victims who sought protective, investigative, or enforcement services, and independent agents who were willing to supply such services in return for a fee, reward, or share of recovered goods.' (Spitzer and Scull, 1977, p. 20)

They report that this often led to corruption, as the private investigators colluded with thieves to steal items, and would split the money received for returning them. But the development of a more detached and professional public police force later in the nineteenth century was not, they argue, simply a reaction to this property theft problem.

> 'Unlike their pre-industrial predecessors, market societies were extremely allergic to collective disorder. In both England and America the establishment of municipal police systems were intimately linked to threats to public order . . . In Baltimore, Philadelphia, New York and Boston alone, there were at least thirty-five major riots during the period 1830–1860. These disturbances . . . gave decisive impetus to the search for an effective means of securing domestic tranquillity. This search culminated in the development of the first centralized systems of policing in the United States between 1845 and 1858.' (Spitzer and Scull, 1977, p. 21)

However, this was not the end of all private policing. The birth of industrial capitalism brought labour militancy and many strikes at the end of the nineteenth century, and private police, such as the Pinkertons, were hired to disrupt labour union organising and to break strikes (Spitzer and Scull, 1977, p. 22). This only declined in the 1920s and 1930s when 'public enforcement proved more attractive than private arrangements from the point of view of both legitimacy and costs' (p. 23). Spitzer and Scull end their article by noting that as the twentieth century unfolded, private policing again became important. Maintaining social order became a more complex activity as capitalism developed, and consequently the police were called upon to perform many 'human service' functions that reduced their ability to respond to pure crimes. Their ability to respond was also reduced by the fiscal restraints placed upon the entire public service sector in the neoliberal period. As a result, they say, it again became rational for wealthy businesses and individuals to pay for private investigators and providers of security to deal with the matters that the public police were not able to deal with. This covered such profit-harming activities as pilferage, inventory losses, wilful neglect of machinery, pre-employment background checks of employees, surveillance of business and residential premises, etc. (pp. 24–26).

Spitzer and Scull identified factors in the late twentieth century which reduced the ability of public police forces to provide businesses with the full range of services they desired. The neoliberalism which became dominant in the same time period provided powerful arguments why using private police to fill that gap was a good thing and should be extended. Philip Fixler and Robert Poole, both of whom were associated with neoliberal think tanks,[5] argue that not all services provided by police are what economists call 'public goods', that is, something that is consumed collectively and from which non-payers cannot be excluded. They argue that many police services are private goods which should be paid for by those benefited, such as 'police escorts to a funeral, or providing traffic direction at a construction site that blocks a lane of traffic' (Fixler and Poole, 1988, p. 109). They provide a useful taxonomy of three different ways in which policing could be privatised:[6]

5 In Fixler and Poole (1988), Fixler is identified as the 'director of the Local Government Centre, a research institute that studies privatisation at the local and state government levels. Fixler also edits *Privatisation Watch*, the nation's principal monthly newsletter on privatisation.' Poole is described as 'president of the Reason Foundation, a free-market-oriented think tank. He was the first person in the United States to promote the concept of privatisation of government services.'

6 See also Stewart (1985, pp. 758–765) for a different taxonomy of types of public/private cooperation.

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> 'The traditional form of public service – and the general assumption for all police functions – has the government providing the funding via taxes and directly providing the service using government employees, but private mechanisms may be used in either or both of these areas. Thus, if government produces the service but charges individual users, in proportion to their use, the funding – but not the delivery – of the service has been privatised via user fees. On the other hand, if government retains the funding responsibility, collecting taxes to pay for the funds, but hires the provider in the marketplace, we have the form of privatisation known as contracting out. Finally, if both the funding mechanism and the service delivery are shifted to the private sector, we have the most complete form of privatisation, referred to as service shedding or load shedding.' (Fixler and Poole, 1988, p. 110)

They go on to give examples of how all three of these forms of privatisation have been put into practice in the United States. For example, user fees are charged by police for providing security for parades, responding to false burglar alarms and even policing private shopping malls (Fixler and Poole, 1988, pp. 110–111). Contracting out has been used for the provision of 'communications system maintenance, police training, and laboratory services; food provision and medical care for jail inmates; and radio dispatching services' (p. 111). Contracting out has also been used for more serious matters such as security for public buildings and grounds, and court security (p. 112). They even report some cases where 'local governments have contracted for regular police service and even their entire police force' (p. 113). They lament the fact that such bold and comprehensive contracting out experiments have not lasted long, and explain this as due to poor laws and the self-interested efforts of police unions (pp. 113–114). The third form of privatisation involves vesting in private personnel the powers to arrest and search and use force that public police officers enjoy. These private police are then hired by private individuals or organisations to exercise those powers in the interests of the hirer alone. This can be seen in the ability of security guards in retail stores to detain, interrogate and fine shoplifters (Davis, Lundman and Martinez, 1991).

Where does *RoboCop* fit into this privatisation taxonomy? It would be a version of the second 'contracting out' category of privatisation which Fixler and Poole described and which has also been endorsed by other commentators (Stewart, 1985, p. 764). According to such authors, the *RoboCop* scenario is not just an imagined 'science fiction' future but a present that is already with us. As noted earlier, Fixler and Poole have found a few examples where municipalities tried to contract out for the *entirety* of their police services, just as Detroit did in the film. They admit that so far it is more common for municipalities to provide the most important police services themselves by using public police officers, and only contract out subsidiary or less crucial functions to private personnel. However, they see no good reason for this timidity, and would presumably applaud the wisdom of the full contracting out policy depicted in the film.

It is interesting that the situation in the film does not reflect the pure purchaser/provider split that Fixler and Poole imagine would apply in a contracting out scenario. Instead of the city of Detroit contracting with OCP to provide a full police service, which would involve OCP providing its own employees who would perform the policing functions, the film seems to leave the police officers as public servants employed by the city. OCP seems to have only a management contract, under which it is paid a fee by the city to meet the payroll and organise the activities of the public police force. The reason for the departure from neoliberal orthodoxy here is presumably the need to create in the film a dramatic tension between a public service ethos and a corporate profit motive. This clash is made more prominent in the film if the police force remains public servants rather than OCP employees.

The academic debate over whether police services should be privatised is still ongoing. Some endorse the practice by stressing the benefits of a more efficient use of scarce public resources. (Fixler and Poole, 1988; Stewart, 1985). But a counter-argument is that when police services are provided or arranged by a for-profit corporation, there will be a strong incentive to reduce costs so as to increase

profits. The provision of public services is not the central goal for such an organisation, but only a means to achieve the central goal of making a profit. Because policing tends to be very labour intensive, the major way to reduce costs is to reduce labour costs, either by replacing people with technology (as seen in *RoboCop*), or by reducing staff qualifications and training. Consequently, private providers might be able to offer police services at a lower cost than public providers, and therefore seem more efficient, but only because they are offering a service that is different in kind, and is of a kind that does not maximise public safety.

Another defence of privatising policing would be that it has the beneficial consequence of shrinking the state apparatus, and for both classical liberals and neoliberals it is primarily the state apparatus which poses the threat to individual liberty. If the state is reduced in size by privatisation, the argument goes, then the threat of tyranny is correspondingly reduced. But the counter-argument is that the threat to individual liberty has not been removed by privatisation, rather the source of the threat has just been changed from a public power to a private power. Now it is corporations and their employees who are exercising the powers of arrest, interrogation, detention and legitimate force, and individuals have less recourse against private employees than they do against state actors. In most liberal societies, bills of rights give individuals protection against the improper use of police powers by state actors, but these do not apply to the improper use of police powers by private, non-state actors (Becker, 1974, pp. 446–449). Consequently, state-like powers can now be exercised by the employees of private corporations in order to protect corporate private property and profits, but this is not subject to the same limits or public accountability that the actions of public police would be (Davis *et al.*, 1991, pp. 406–407; Bislev, 2004, pp. 292–293).

Finally, there are the problems caused when public police 'moonlight' as private police. James Stewart reports that:

> 'Ironically, one of the largest private security contingents may be off-duty police officers. Many cities permit police officers to work in an off-duty status for private individuals or companies. While it relieves the need for public police and increases police income, moonlighting by police creates a number of problems. Some cities permit officers to wear their uniforms, badges, and guns on the theory that increasing police presence in an area is a public as well as a private benefit. However, these police normally will act only on an employer's premises and won't respond if the public peace is breached in the vicinity . . . [Also] the potential for conflict of interest exists if officers are providing security for entities they are supposed to regulate, such as bars, liquor stores, and toxic waste sites. At worst, this could lead to corruption of public autonomy and justice.' (Stewart, 1985, p. 761)

V. Novel and extended private property claims during neoliberalism

1. A second enclosure movement?

The importance of private property in the classical liberal tradition resulted in a significant increase in private property claims during the neoliberal resurgence. This increase was not limited to taking an existing private property right, such as copyright, and extending its scope. It also involved expanding private property claims into areas where no private property existed before. That is, it involved creating new types of private property rights. Naomi Klein endorsed this description of the process:

> 'The current stage of capitalism is not simply about trade in the traditional sense of selling more products across borders. It is also about feeding the market's insatiable need for growth by redefining as "products" entire sectors that were previously considered part of "the commons" and not for sale. The invading of the public by the private has reached into categories such as

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> health and education, of course, but also ideas, genes, seeds, now purchased, patented and fenced off, as well as traditional aboriginal remedies, plants, water, and even human stem cells.'
>
> (Klein, 2002, pp. xx–xxi)

Some have described this as a 'second enclosure movement' (Boyle, 2003; Bollier, 2002, pp. 44–46). They point to the first enclosure movement in England which was associated with the supplanting of medieval property conceptions by classical liberal property conceptions. In these enclosures, 'which occurred at various times from the late 1400s through the 1800s' (Bollier, 2002, p. 44), customary use rights enjoyed in common by villagers over arable lands, meadows, heaths, moorland and forests were destroyed (Thompson, 1991). Superior feudal magnates realised that the land could be made more productive of wealth if these customary use rights were eliminated, allowing more intensive production of wool and crops for sale in distant markets:

> 'What ensued in the 1700s and early 1800s was a series of 4,000 acts of Parliament authorizing a small number of budding capitalists to seize some seven million acres of common lands . . . The prodigious wealth-creation of enclosure, which made perfect sense in conventional economic terms, had the tragic side effect of destroying communities and eliminating the independence of tens of thousands of common people. In essence, Parliament has legislated into being a new social system, built in significant measure on the privatisation and consolidation of resources previously used in common.' (Bollier, 2002, pp. 45–46)

The increase in private property claims during the neoliberal resurgence at the end of the twentieth century is said to resemble this first enclosure movement because it too relies upon state action to move things previously held in common into the sphere of private property, where the right to exclude others is given to an identified owner:

> 'In the new vision of intellectual property, however, property should be extended everywhere – more is better. Expanding patentable and copyrightable subject matter, lengthening the copyright term, giving legal protection to "digital barbed wire" even if it is used in part to protect against fair use: Each of these can be understood as a vote of no-confidence in the productive powers of the commons. We seem to be shifting from Brandeis's assumption that the "noblest of human productions are free as the air to common use" to the assumption that any commons is inefficient, if not tragic.' (Boyle, 2003, p. 40)

A novel feature of this second enclosure movement is that it also uses bodies which stand *outside* the conventional state system to exert pressure to expand private property rights. Stefan Andreasson describes how the International Monetary Fund and the World Bank stress the importance of establishing strong private property rights in the developing world as a precondition to allocating funds to these areas:

> 'In the early capitalist/industrial era, property rights covering basic forms of property were enforced by the Weberian monopoly on the use of violence enjoyed by the state. Today the global reach of property rights is enforced also via the structural power of dominant actors in the international arena, specifically via international institutions like the WTO and the World Intellectual Property Association (WIPO), and policies like the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).' (Andreasson, 2006, p. 6; see also Bollier, 2002, p. 80)

It is this proliferation and extension of private property claims associated with neoliberalism that *RoboCop* points to and critiques when it deals with OCP's claim that the cyborg is corporate property. I will now describe that proliferation and extension of private property claims in more detail, before considering how the private property claim made in the film over a cyborg could fit into the new legal landscape.

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2. Extension of private property claims during neoliberalism

Extension of copyright law

Although copyright long predates neoliberalism, significant extensions of copyright occurred during the neoliberal flowering at the end of the twentieth century. The amount of material subject to copyright was expanded, as was the time for which copyright would last. Christopher Sprigman describes the changes in the United States of America (Sprigman, 2004). He describes how, under the first American statute dealing with this matter in 1790, copyright did not arise automatically. Instead, for a copyright to come into existence an author had to register it, and give notice by marking published copies of the work with the '©' symbol. Any copyright so created lasted for fourteen years, and could be renewed for another fourteen years if the author survived to the end of the initial term. This gave a total possible period of protection of twenty-eight years, but not all works produced received this protection. Many were not copyrighted initially, and of those that were, only 15 percent were reregistered for the renewal term (Sprigman, 2004, p. 519). Sprigman explains this as reflecting the judgment of the creator(s) of the work that it did not have significant commercial potential, and so it was allowed to remain in, or quickly return to, the public domain. This was the legal situation which remained largely unchanged until the neoliberal reforms which altered it fundamentally:

> 'In a process that began in earnest with the Copyright Act of 1976 and culminated in successor legislation like the Berne Convention Implementation Act, the Copyright Renewal Act, and the Copyright Term Extension Act, Congress pared back, and in some instances entirely discarded, copyright formalities. Under current law, copyright arises the moment an original piece of expression is fixed in a "tangible medium of expression." Registration and notice, though encouraged, are not required as conditions of protection. Renewal is gone altogether. Richard Epstein has aptly characterized these changes as "copyright law . . . flipped over from a system that protected only rights that were claimed to one that vests all rights, whether claimed or not." That is a fundamental shift in any property rights regime, and one that, in the copyright context, represented a break with almost two centuries of practice.' (Sprigman, 2004, pp. 487–488)

As a result of these changes, 'all works dating from 1978 or later are protected for a "unified" term, which is currently set for individual works at life of the author plus seventy years, and for corporate and anonymous works at ninety-five years' (Sprigman, 2004, p. 498). A distinguished group of Nobel prize-winning economists have calculated that 'the copyright term is now sufficiently long that the net present value to the rightsholder of a copyright is practically indistinguishable from what it would be under a perpetual term' (p. 522). Sprigman notes that this 'is an odd development in a country whose constitution specifies that copyrights may be granted only for "limited times"' (p. 522).

As well as vastly increasing the number of works that are subject to copyright (and therefore no longer in the public domain) and increasing the term of protection, Sprigman reports that American copyright law has also broadened 'the rights granted by copyright to cover nearly every conceivable use of the protected work (including the production of derivative works)' (Sprigman, 2004, p. 534). Elaborating this point, Mark Rose writes that '[i]n the early period, protection did not extend to abridgements or translations, and the right protected was specifically the right to print and publish. Today, protection extends to every kind of derivative that may be produced from a work, and the right protected is not merely the right to print but to make copies of any kind including photocopies for one's own use' (Rose, M., 2003, p. 86).

Sprigman concludes that as a result of the shrinking of the public domain and the expansion of private property rights, copyright is now a major barrier to future innovation and discovery:

> 'Today copyright law has emerged as the principal barrier to the creative reuse of a large amount of material that under the former conditional copyright regime would not have been subject to

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> copyright in the first place. The majority of creative works have little or no commercial value, and the value of many initially successful works is quickly exhausted. For works that are not producing revenues, continued copyright protection serves no economic interest of the author. But in an unconditional copyright system, commercially "dead" works are nonetheless locked up. They cannot be used as building blocks for (potentially valuable) new works without permission, and the cost of obtaining permission will often prevent use. In such instances copyright is radically unbalanced: its potential benefits are depleted, and it therefore imposes only social costs.' (Sprigman, 2004, pp. 489–490; see also p. 514)

Extension of patent law

Patent law in America extended its scope in the period of neoliberal resurgence, just as copyright law did. The general principle of patent law is that 'a property right, in the form of a patent, is available to one who invents a machine or device or possibly a process that is new, useful, and nonobvious, but is not available to one who simply has a terrific idea for a machine' (Levmore, 2003, p. 189). The patent gives the property owner a twenty-year period when he or she has a monopoly on the use of the machine, or device or process, but when the patent expires whatever it covered becomes part of the public domain. However, in the United States the traditionally understood boundaries of patent law were expanded by a number of Federal Circuit decisions in the last decades of the twentieth century. Steve Seidenberg reports that:

> 'The Federal Circuit created special rules that made it easier for patent holders to obtain treble damages in lawsuits against infringers, and that allowed them to almost automatically obtain injunctions against alleged infringers. The court also made it harder to challenge the validity of patents. And it expanded the boundaries of what could be patented, bringing in such things as biotech, software and business methods, including a few types of legal strategy.' (Seidenberg, 2008, p. 59)

Computer programmes: A number of American decisions changed the status of computer programmes from 'mere ideas' to things capable of patent protection. In *Diamond v. Diehr*,[7] a process for curing synthetic rubber was held to be patentable in spite of the fact that the process involved the use of a computer program. This was followed in *In re Alappat*,[8] where the Federal Circuit held that a 'general-purpose display using programmed mathematical formula to smooth waveform was not "[A] disembodied mathematical concept which may be characterized as an 'abstract idea,' but rather a specific machine to produce a useful, concrete, and tangible result"' (Dratler, 2003, p. 834, n. 37).

Business methods: In *State Street Bank v. Signature Financial Group*,[9] the *Alappat* decision was extended to overturn the earlier prohibition on patenting business methods (Boyle, 2003, p. 39, n. 26). In that case, the 'inventor' had written a computer programme to manage a certain type of investment vehicle. There was no great novelty in the programme; it simply made the arithmetic calculations required by the SEC and other legal authorities for this type of investment. Dratler notes that:

> 'The claims, however, were not limited to any particular programming methods; they were broad enough to cover any computer program used in any manner to control that type of business. The district court, recognizing this point, invalidated the patent as directed to unpatentable subject matter, but the Federal Circuit reversed. Since the type of business involved could hardly be run today without programmed digital computers, the result of this decision was to give the inventor of nothing a twenty-year monopoly on a type of investment vehicle: a business method.' (Dratler, 2005, p. 303)

7 450 US 175 (1981).

8 33 F.3d 1526 (Fed. Cir. 1994).

9 149 F.3d 1368 (Fed. Cir. 1998).

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As a result of the decision to allow patenting of business methods, the US Patent and Trademark Office has granted more than fifty patents since 2003 covering specific tax strategies alone (Seidenberg, 2008, p. 61). Dratler concludes that:

> '[T]he PTO is issuing, and the courts are upholding, patents on too many things that are not "inventions" in any way that makes economic sense. Furthermore, they are allowing alleged inventors to claim such non-inventions so broadly that their patents, in effect, give them business monopolies of the type that have been prohibited in Anglo-American law since the English Parliament enacted the Statute of Monopolies in 1623.' (Dratler, 2005, p. 307)

However, it appears that the US Supreme Court is now moving to rein in the Federal Circuit's expansive approach towards patent rights. Seidenberg reports that in 2006 and 2007, the Supreme Court made five rulings that cut back patent protection. The case of *Laboratory Corp. of America Holdings v. Metabolite Laboratories Inc.*[10] is especially significant:

> 'Justice Stephen G. Breyer, dissenting with Justices John Paul Stevens and David H. Souter, suggested that it might be time for the court to cut back on patent rights. "Too much patent protection can impede rather than 'promote the progress of science and useful arts,' the constitutional objective of patent . . . protection," Breyer wrote. Then, taking explicit aim at *State Street Bank*: "That case does say that a process is patentable if it produces a 'useful, concrete and tangible result.' But this court has never made such a statement, and, if taken literally, the statement would cover instances where this court has held the contrary."' (Seidenberg, 2008, p. 60)

Seidenberg notes that the Federal Circuit appears to have absorbed the message. In September 2007 the court in *In re Comiskey*[11] threw out an attempt by Stephen Comiskey to patent a business method, namely a method for using mandatory arbitration to resolve disputes relating to wills and contracts. The court held that the claim related to 'unpatentable mental processes' (Seidenberg, 2008, p. 59). So it may be that the neoliberal property rights tide is starting to recede slightly in this area.

Biotechnology: Andrew Chin describes the practice of the Federal Circuit regarding biotechnology patents as follows:

> 'To many observers, the past twenty-five years of intellectual property jurisprudence appear to have installed the *en masse* patenting of DNA molecules as a fixture on the biotechnology landscape. Since the U.S. Supreme Court's 1980 *Diamond v. Chakrabarty* decision, in which the Court ruled that a genetically-altered bacterium is a "nonnaturally occurring manufacture or composition of matter" eligible for a U.S. patent, the issuance of patents on genetic material has become commonplace. Decisions of the Federal Circuit, established in 1982, have consistently held that "isolated and purified" DNA molecules excised from genes are patentable if they are useful, novel, nonobvious and adequately disclosed. Accordingly, in recent years the burgeoning biotechnology industry has filed thousands of patent applications, and the Patent Office has issued thousands of patents, claiming millions of DNA molecules.' (Chin, 2005, p. 846)

One source of new biotechnology patents is the traditional knowledge of indigenous peoples. Once these peoples have discovered that a particular plant has beneficial and useful properties, then pharmaceutical companies can identify, isolate and patent the active ingredient in those plants. This process takes something out of the commons, and turns it into a piece of private property, from which non-owners can be excluded unless they pay a price. Some have described this as 'biopiracy':

10 126 S. Ct. 2921 (2006).

11 499 F.3d 1365 (2007).

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> 'Biopiracy is rooted in the Western concept of *Terra Nullius*, meaning that if a corporation or other organization (usually from the North) "discovers" useful plants, micro-organisms or other items that do not "properly belong" to anyone else (but may have been used by indigenous populations for ages) it can turn these items, or their specific usages, into "inventions" that become legal property and thus more costly or not available for others to use.'
>
> (Andreasson, 2006, p. 15; see also Bollier, 2002, pp. 79–83)

Another source of new biotechnology patents is the genetic modification of plants. In this process, the genetic make-up of a plant is changed artificially so as to introduce more desirable characteristics, and the resulting genetically modified plant can be patented:

> 'Since *Chakrabarty*, the scope of patentable subject matter . . . has been extended to cover an ever-widening range of biological materials that have been genetically altered, purified, or otherwise changed through human intervention into forms not found in nature.' (Chin, 2005, pp. 868–869)

A few large corporations control a large percentage of these genetically modified plants. In order to protect the income stream from the patented seeds, these corporations take legal action against those who use them without paying, even if the patented seeds were blown onto the user's property by the wind. A further protective step which avoids this problem is to genetically engineer the plants so that they are sterile. Such 'terminator seeds' force users to buy a new batch of seeds each season (Bollier, 2002, pp. 75–79).

Biotechnology patents have also been granted over 'one or more specified [human] DNA molecules in "isolated and purified" form' (Chin, 2005, p. 865). A source of biotechnology patents relating to human beings is the human genome. The project of sequencing an entire human genome was completed in 2001 in separate efforts by a government-funded international consortium and by Celera Corporation (p. 863). Subsequently, this knowledge has been commercialised in various ways. 'In Iceland, rights to market the population's genetic code have been purchased from the Icelandic government by a private corporation (Decode), and this corporation has in turn granted a Swiss biotechnology company (Hoffman-La Roche) the exclusive rights to access this data' (Andreasson, 2006, p. 7; see also Bollier, 2002, p. 81).

Some have argued that all of this is improper, because this genetic information is the common heritage of all mankind, and should not be turned into private property for the benefit of a few:

> 'Many commentators have viewed DNA patenting with alarm as a project to confer exclusionary property rights in life itself, including human life. They have described DNA patents in such expansive terms as "patents on life", "patents on the human genome", and patents on the genetic alphabet, and have warned that DNA patents will result in the creation of "patent monopolies". Some critics contend that DNA patenting has the effect of commodifying parts of the human body that, while microscopic in scale, are intimately connected to personal identity . . . Other commentators have argued that the issuance of DNA patents in the United States is contrary to an emerging international consensus that the human genome should be treated as a common heritage of humankind. According to this view, the human genome is not a proper subject for the exercise of national sovereignty because it is a part of every human body and a manifestation of the evolution of the entire human species.'
>
> (Chin, 2005, pp. 862–863; see also Boyle, 2003, p. 37; Bollier, 2002, p. 75)

Another source of biotechnology patents arises from modification of material taken from human bodies. In *Moore v. Regents of University of California*[12] a patient's spleen was removed as part of his treatment for leukaemia. The doctors treating Mr Moore subsequently discovered that the cells of his

12 271 Cal. Rptr 146; 51 Cal. 3d 120 (1990).

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spleen were unusually rich in lymphokines, a type of immune system protein. The doctors were able to cultivate a cell line from the spleen which could be reproduced indefinitely and from which products of immense commercial value could be derived. A patent on this cell line was subsequently assigned to the University of California. When Moore eventually discovered the use which had been made of his spleen he sued, inter alia, for conversion of his private property. He lost at the court of first instance, but was successful at the California Court of Appeals. When the case went to the California Supreme Court, he lost in a 4–2 decision.

> 'Law students across America read *Moore v. Regents of University of California*, a California Supreme Court case deciding that Mr. Moore had no property interest in the cells derived from his spleen. The court tells us that giving private property rights to "sources" would slow the free-wheeling practice researchers have of sharing their cell lines with all and sundry. The doctors whose inventive genius created a billion-dollar cell line from Mr. Moore's "naturally occurring raw material," by contrast, are granted a patent. Private property rights here, by contrast, are a necessary incentive to research.' (Boyle, 2003, pp. 37–38)

3. Novel private property claims during neoliberalism

As well as extending existing categories of private property rights, such as patents and copyrights, the neoliberal period also saw the proliferation of novel private property claims.

Res communes

New private property claims have extended into what Roman law called *res communes*, or things open to all by their nature, such as water, air and the fish in the ocean. Private property rights in air have been now created, as well as in fish stocks:

> 'In the last decade, we have seen a much more dramatic turn in the "propertization" of what might seem to be "un-ownable" diffuse resources or *res communes* in the tangible world. Since 1990, the United States has treated the air itself as national property, capping the air's use for certain types of pollution and then granting individually-held Tradeable Environmental Allowances ("TEAs") for limited pollution rights. Other countries, notably Australia and New Zealand, have adopted similar programs for limited but tradeable individual rights in portions of certain fish stocks.' (Rose, C., 2003, p. 94)

Similarly water, which used to be something held in common and available to all for free, has been increasingly privatised and transformed into a commodity which must be purchased in the market:

> 'Two French multinationals, Vivendi SA and Suez Lyonnaise des Eaux, are the dominant leaders in privatised water, owning water companies in approximately120 countries on five continents and distributing water to nearly 100 million people . . . In Bolivia, the World Bank engineered a private takeover of the water supplies in 1998, allowing a subsidiary of the Bechtel conglomerate to sell permits for access to water. Prices rose from 35 to 300 percent, forcing many people to spend nearly half their monthly budgets for water. After a general strike, civil violence, and martial law, protesters forced the government to rescind its water privatisation deal.'
> (Bollier, 2002, pp. 70, 72)

Facts

Facts, which never used to be ownable, are now becoming increasingly subject to private property claims. James Boyle writes that '[b]oth overtly and covertly, the commons of facts and ideas is being enclosed . . . Most troubling of all are the attempts to introduce intellectual property rights over mere

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compilations of facts' (Boyle, 2003, p. 39). He describes how '[t]he European Database Directive does (and the various proposed bills in the United States would) create proprietary rights over compilations of facts, often without even the carefully framed exceptions of the copyright scheme, such as the usefully protean category of fair use' (p. 39). David Bollier raises similar concerns:

> '[T]here is a serious danger if facts – which have never been eligible for copyright protection – can suddenly be owned and removed from the public domain. Much of education, scientific research, journalism, and civic life could not function if *facts* can be owned and their free flow restricted. Yet the privatisation of public facts – sports scores, stock quotes, research data, even news events – is now an imminent reality . . . Database vendors have tried for the past eight years to persuade Congress to give them rights of "authorship" in databases and so enable them to prevent people from extracting or reusing database information.' (Bollier, 2002, pp. 127–128)

As Bollier indicates, this problem is not confined to matters like sports scores. The serious research carried out in universities and other institutions of higher learning is also increasingly subject to private property claims regarding facts. As governments pull back from funding research, and private corporations step in to fill this void, it becomes increasingly common for these private corporations to claim the resulting research data as their private property. If the research data would harm the commercial interests of the funding corporation (perhaps by showing that its product was harmful, or at least not superior to a competitor's product), it has become common for the corporation to insist that the data be suppressed. Even if the university research data which the private corporation has funded is published, it is common for the funding corporation to insist that publication be delayed so that it can apply for any potential patents. This privatisation of research cuts against the academic culture which emphasises placing research results in the public domain. The research results are made available all through publication and thereafter treated as common property. The claims of the private funders of research to control what happens to the research data also conflicts with the academic freedom of university academics (Robertson, 2003; Bollier, 2002, chapter 9).

4. Resistance to novel and extended private property claims during neoliberalism

The neoliberal argument was that private property ensured the most efficient use of resources and the greatest accumulation of wealth for society to enjoy, and so the more of it the better (see, for example, Levmore, 2003). If resources were held in common, rather than as private property, the argument went, they would be subject to 'the tragedy of the commons' in which they are depleted by unconstrained overuse.

But as some of the above-quoted passages have already indicated, not everyone accepted the argument that the proliferation and extension of private property claims in the neoliberal period was desirable. These critics pointed to 'the dangers of monopoly control, of high prices, of restriction of future innovation and so on' (Boyle, 2007, p. 8). Michael Heller and Rebecca Eisenberg argued that while some private property is undoubtedly good, too much private property in the area of science can be a bad thing. They pointed out that the proliferation of private property claims means that those coming later and wishing to innovate find that the material they wish to use as a springboard is already burdened with a multitude of private property claims. Consequently, they have to identify and negotiate with many owners of these pre-existing claims, and this time-consuming and expensive process can retard and even block subsequent scientific innovation (Heller and Eisenberg, 1998). This is presented as just a particular instance of a broader problem with too many private property rights which Heller had identified and called 'the tragedy of the anticommons', a term which refers back to the postulated 'tragedy of the commons' which figures prominently in the neoliberal account (Heller, 1998; see also Boyle, 2003, p. 44).

According to such critics, it is crucial for economic efficiency to keep a large and healthy commons, or public domain, that can be accessed without having to obtain the permission of a

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private property owner. David Bollier identifies a number of areas where such healthy commons are operating well and producing good results (Bollier, 2002, chapters 1, 2, 3). Bollier and others have pointed to the Internet as a prime example where a commons works better than a private property regime. Unlike a meadow, many people using the Internet does not lead to the depletion of the resource, but rather to an enhancement of its utility, just as with a telephone system (Boyle, 2003, p. 41). Initially, those using the Internet conformed more to a gift economy model than a private property model, as evidenced by the use of open standard software that could be freely copied and altered. But recently, strong efforts have been made to change this, and replace open standards with proprietary standards in many areas (Bollier, 2002, chapter 7). However, this move to replace the Internet commons has prompted a robust counter-reaction:

> 'In the cultural context, advocates for a rich and expanding public domain are increasingly deploying voluntary intellectual-property-based techniques to achieve their goals. Most notable to date have been the efforts of the Free Software Foundation (FSF) to promote the use of the GNU General Public License (GPL), a software license that allows free copying and adaptation of copyrighted computer software, but only on the condition that resulting copies and adaptations are licensed on the same generous terms and accompanied by their source code. Thousands of software programs, including the Linux operating system, are licensed under the GPL. Recently, the nonprofit Creative Commons has promoted similar licenses for other types of creative works – photos, film, music, et cetera.' (van Houweling, 2007, p. 25; see also Boyle, 2003, pp. 44–45)

However, it is beyond the scope of this paper to consider in any more detail the arguments for the economic viability and importance of a commons as distinct from both a market economy and a planned economy.

VI. Who owns a cyborg?

Where does OCP's claim of private property ownership over RoboCop fit within the legal landscape transformed by neoliberalism which I have just sketched?

1. Private property claims over detached parts of human bodies

Viewed as a machine alone, the cyborg in *RoboCop* is certainly 'new, useful, and nonobvious', and therefore would be patentable without any problems. The complicating factor is that the cyborg is not totally mechanical, but also has a significant biological component. However, as we have seen, the neoliberal expansion of private property rights has led to biotechnology patents being granted in increasing numbers, and OCP could seek to bring its claim under this head. Recall that in the *Moore* case, a spleen was detached from a living human being and subjected to scientific treatment to produce something new. The California Supreme Court held that the scientists could acquire a private property right (i.e. a patent) in the process by which they created a new thing out of the spleen. Similarly, OCP could argue, it detached body parts from Murphy and performed scientific work on them which transformed them into a new thing over which they could claim a biotechnology patent.

One problem with this analysis is that *Moore* involved detaching a body part from a living human being, while RoboCop was produced, according to OCP, by detaching body parts from a corpse. OCP's claim is that the human being Murphy was killed, and parts of his body were detached from his corpse and incorporated into a product which has both biological and mechanical components. The legal basis for using Murphy's body parts in this fashion appears to be contract. As noted earlier, an employee of OCP says: 'He signed the release forms when he joined the force and he's legally dead. We can do pretty much what we want to.'

This is a complicating factor because it brings into play a much older common law rule that nobody can have a property right in a corpse, only a limited possessory right so as to enable the

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corpse to be properly disposed of (Skegg, 1992). However, an exception to this rule has long been recognised when somebody has performed skilled work upon the corpse and thereby transformed it. In *R v. Kelly* the English Court of Appeal acknowledged that corpses could be property if 'they have acquired different attributes by virtue of the application of skill, such as dissection or preservation technique, for exhibition or teaching purposes'.[13] Jonathan Herring writes that '[t]he position taken in *Kelly* appears to be that a body part is transformed from being *res nullius* to property by the exercise of some skill. The Court of Appeal gave dissection as an example of such an exercise of skill, and if that is correct, then it would seem to mean that all severed body parts could be owned' (Herring, 2002, p. 51; see also Hardcastle, 2007, chapter 5). OCP could seek to base its property claim on this exception to the rule that there is no property in a corpse. The argument would be that they took body parts from a corpse and performed skilled work upon them which radically transformed them into a cyborg – a process involving far more skill than would be required to produce a medical specimen for teaching purposes.

A possible objection to this line of argument would be that the exception to the rule against ownership of parts of dead bodies was intended to protect 'exhibition or teaching purposes', but not the types of commercial applications OCP desires. Both the old common law rule relating to corpses and the exception display a hostility to using body parts from corpses for commercial gain. This hostility is still evident today in the statutory schemes in different jurisdictions which regulate the donation of corpses and body parts after death. These statutes want to facilitate donation, but frown upon trade for profit in human body parts and tissues.

However, OCP's fictional commercial use of cadavers is not very far removed from what is actually happening now, notwithstanding the law. The brutal contemporary reality is that private organ procurement organisations make huge profits from finding and transporting donated organs and tissue for transplantation, cosmetic surgery, commercial seminars in new surgical techniques and even for use in art works (see Cheney, 2006; Goodwin, 2006; Wilkinson, 2003; Harris and Connolly, 2002):

> 'In the cadaver business, suppliers sell bodies and body parts to brokers, who in turn funnel them to buyers. Suppliers include morgues, medical schools, tissue banks, independent companies, funeral homes, and even, on occasion, crematoria . . . [Buyers] include medical associations, major U. S. corporations, researchers, doctors, and hospitals . . . Whereas the [US] Uniform Anatomical Gift Act, approved and recommended for enactment in all states in 1968 and amended in 1987, prohibits buying and selling dead bodies, the law allows companies to recover their costs, which makes life very easy for brokers. By inflating the amount they spend on labour, transportation, and storage of bodies, they can easily hide their profits.' (Cheney, 2006, p. 8)

2. Private property claims over live human bodies

The above first attempt to justify OCP's private property claim over RoboCop is based on the assumption that Murphy is dead, and has not been revived by the creation of RoboCop. This was a crucial assumption, because if the cyborg produced when OCP's scientists combined machinery and human organs was a living human being, a private property claim over it would run afoul of the legal rule that nobody can own another living human being.[14] Although this rule is currently powerful, this is only because humanistic values and a concern with human rights have become prominent in law and society relatively recently. Before this, slavery was an accepted property institution for centuries.

13 [1998] 3 All E.R. 741 at 749–50.

14 However, there is a long philosophical tradition going back to Locke, which is based on the claim that it is possible to have property in one's own body. For a critique of this tradition, see Harris (1996).

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The problem for OCP is that Murphy appears still to be alive in some way, and this is the source of the uneasiness in the audience when the property claim over the cyborg is made. In the course of the film, the audience learns that Murphy's memories are still active, and the cyborg engages in a process of trying to recapture its lost human identity. Eventually a large part of Murphy is recovered, and his values and free will cause the cyborg to rebel against the instructions OCP programmed into it. So it could be argued that the cyborg is really the human being Murphy in another form; it is a vehicle which has allowed him to continue living in a different way. If this is correct, then OCP's private property claim over the cyborg must fail. The extension of private property claims in the neoliberal period never threatened the rule against owning other living human beings.

3. Private property in live non-humans

But OCP could respond that it can distinguish its case from the rule against owning living human beings. Although the cyborg might be a *living* being, it is not clear that it is a *human* being, and it is uncontroversial that it is still possible to own living beings other than human beings, even if they are very similar to human beings, such as the great apes. Similarly, it might be possible to own cyborgs like RoboCop, even if they have a degree of self-consciousness, precisely because they are not fully human. Indeed, even by the end of the film, the process of retrieving lost memories etc. has not resulted in the human Murphy we met at the beginning being present again. This is deliberate, as co-writer Neumeier explained in the commentary: 'In the end I decided that he could not regain himself.' The cyborg still behaves differently from the humans around it, and does not have the same range of emotional responses. Its similarity to humans is helped by the fact that its physical configuration resembles that of a human being, but this is only accidental. If RoboCop was configured like a spider, in order to make it a more effective police officer, the claim that it should be categorised together with human beings for legal purposes would be less powerful.

Whether the law should recognise cyborgs like RoboCop as a new category of thing that can be owned ultimately does not depend upon legal reasoning or conceptual analysis. As we have seen, decisions like this are influenced by broader political and cultural forces. In a neoliberal age, when private property claims are expanding, and the interests of commercial actors in protecting returns from investments are listened to sympathetically, OCP might well succeed. In an age when more humanistic values predominate, the human-like attributes of the cyborg in *RoboCop* might evoke more sympathy. It is clear that the film *RoboCop* wants to emphasise the cyborg's humanity, as do other science fiction films which have dealt with the theme of intelligent machines, such as Ridley Scott's *Blade Runner* (1982), Chris Columbus's *Bicentennial Man* (1999) and Stephen Spielberg's *Artificial Intelligence: A.I* (2001). However, when intelligent robots and cyborgs become reality rather than science fiction, I would bet that commercial considerations will reawaken the same ability to see clear differences between 'us and them' that allowed slavery to flourish for centuries. The clash between human values and corporate profit that is central to *RoboCop* will then be played out for real, and the ending will probably be rewritten.

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