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# The Absurdity of Property in the Person

Jane M. Gaines\*

I had some reticence about doing a talk about legal culture because my work had moved so far away from it in recent years. In the process of rethinking a book that was published in 1991,<sup>1</sup> however, I was surprised to discover some carry-over issues, as most scholars must find when they undertake this exercise. But my new area of interest seemed to be so far afield from the earlier one. In 1991, I had been working on the most banal objects of consumer culture—t-shirts and key rings—and now I was working on the legacies of slave culture in the representation of blacks in early United States cinema. The thread, I think, has to do with a fascination with the way things that are originally unpropertylike become property. Corollary to this is the probability that human beings, when defined as property, will defy attempts to turn them into things, will chafe against all of the constraints that this entails—from the transfer of ownership to bodily violations. It is a stretch to go from the absolutely crass and apparently inconsequential topic of licensed character merchandise to the unquestionably serious history of human enslavement and liberation. The connections may not be immediately obvious, particularly given the unfettered trade and accelerated expansion of the entertainment industry and all of its adjacent and subsidiary industries, including advertising and merchandising. The surface distinction concerns me less than the shared legal and philosophical underpinnings—the assumptions about property that literally hold these high-flying and wild-riding industries together and the way litigation threatens to make parts of them come unglued at the same time that it glues them back together pretty much as they were.

When it comes to entertainment law, I really am an iconoclast: My interest in legal culture has been motivated by an interest quite unlike—indeed significantly unlike—the interests of the legal profes-

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1. JANE GAINES, *CONTESTED CULTURE: THE IMAGE, THE VOICE, AND THE LAW* (1991).

sion. What attracted me to the doctrines of entertainment law was something that struck me as nonsensical in the case law, something that, on closer examination, I had been working on already for several years in my life as a film scholar. Certainly, I had found humor in some of the cases that I studied in my book, *Contested Culture: The Image, the Voice, and the Law*.<sup>2</sup> For instance, what originally fascinated me about the “Dracula” case, in which Bela Lugosi’s relatives tried to enjoin Universal Films from using his image on posters, key chains, and cocktail stirring rods,<sup>3</sup> was the idea that Lugosi could return from the dead to claim his rights. The legal question presented was: Did Lugosi’s privacy rights survive him?<sup>4</sup> If they did, Lugosi would, in effect, return from the dead to reestablish his claim to his image, thereby warding off Universal Pictures, his former employer, like a charm. A similarly absurd issue arose when Jacqueline Kennedy Onassis’s lawyers argued that the look-alike hired by an advertising agency to appear in an ad for Christian Dior clothes invaded Onassis’s “right of privacy.” Did Jackie Onassis have the right to enjoin the body of a woman who looked like her merely because she looked like her?<sup>5</sup> My interest in “look-alikeness,” as well as “sound-alikeness” in the case of Nancy Sinatra’s voice,<sup>6</sup> was in part an attempt to consider similarity in a philosophical way—to look at the ramifications of the assumptions that not only underlie entertainment law but also provide a foundation for copyright law. Whereas the general public may think that copyright law is all about similarity, it is, as we know, actually all about and only about copying. Yet these questions of similarity and the right to copy, even the problem of the posthumous privacy right, are only surface questions, surface indicators. In retrospect, I think, in writing a book about the consequence of the seemingly inconsequential object of entertainment law, I was really trying to probe something else, and I will get to that something else below.

The promise, or, one might say, the allure of cultural studies for me has always been the possibility of reading the whole of the culture in the smallest of its parts. From the first time I read Roland Barthes’s *Mythologies*, one of the foundational texts of cultural studies, I was intrigued by the idea that one could take the political temperature of the most banal of objects—for Barthes, it was steak and chips, the

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2. *Id.*

3. *See* *Lugosi v. Universal Pictures, Inc.*, 139 Cal. Rptr. 35 (Cal. Ct. App. 1977), *vacated*, 603 P.2d 425 (Cal. 1979).

4. *See id.* at 36.

5. *See* *Onassis v. Christian Dior-New York, Inc.*, 472 N.Y.S.2d 254 (N.Y. Sup. Ct. 1984).

6. *See* *Sinatra v. Goodyear Tire & Rubber Co.*, 435 F.2d 711 (9th Cir. 1970).

wrestling match, and the face of Garbo.<sup>7</sup> The goal was to get the cultural artifact to relinquish its political secret—to wrestle with it until it could be made to give up that secret. It was not, however, that each object contained a different secret. And here I have to say that the secret that was withheld by each discrete object was always the same—the appeal of cultural studies at its inception, really, was that its analytical powers were such that *every* object of consumer culture could be made to tell us that it was the product of capitalism. It could even tell us, in a microcosm, how capitalism worked. Frustrated after years of trying to make works of literary and cinematic fiction say something profound about the culture from which they grew, actually to say something political, when these works were often so stubbornly resistant, I turned to reading case law.

Reading entertainment law was an epiphany. There I found the history of U.S. consumer culture laid out before me—from turn-of-the-century photography to serial television. But instead of popular culture's ubiquity and familiarity, I found unfamiliar mechanisms: Case law, I found, reveals the *machinery* that produces familiarity and popularity, the machinery that produces the seal of ownership and the promise of profit, and that guarantees the circulation of photographs and sound recordings. I thus decided to frame *Contested Culture* with the 1884 case involving copyright in the photograph of Oscar Wilde<sup>8</sup> and to end with the many trials of DC Comics in its attempt to control the Superman character.<sup>9</sup> It seemed to me that entertainment law is the place where capital exposes itself, which saved me the difficult work of forcing it out, of making it visible in cultural artifacts. In entertainment law, the economic motive is written all over the face of things, as opposed to the way it appears in narrative fictions—in disguised and inverted forms. This is not to say that legal doctrine is not itself either disguised or inverted—only that it disguises differently. Reading the face of capital is a significant exercise as we look back over the great century of consumer culture, an epoch anticipated by two ground-breaking turn-of-the-century critiques: Georg Simmel's *The Philosophy of Money*<sup>10</sup> and Thorstein Veblen's *The Theory of the Leisure Class*,<sup>11</sup> two books to which I would like to return at the end of the century because of their remarkable foresight. Providing

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7. See ROLAND BARTHES, MYTHOLOGIES 15-25, 56-57, 62-64 (Annette Lavers trans., 1972).

8. See *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884).

9. The cases that I studied spanned 43 years, starting with *Detective Comics, Inc. v. Bruns Publishing, Inc.*, 111 F.2d 432 (2d Cir. 1940), and ending with *Warner Brothers, Inc. v. American Broadcasting Co.*, 720 F.2d 231 (2d Cir. 1983).

10. GEORG SIMMEL, *THE PHILOSOPHY OF MONEY* (David Frisby & Thomas B. Bottomore trans., Routledge & Kegan Paul 1978) (1907).

11. THORSTEIN VEBLLEN, *THE THEORY OF THE LEISURE CLASS* (Transaction Publishers 1992) (1899).

premonitions of the midcentury critical developments that culminated in the Frankfurt School, Simmel and Veblen wrote about consumer culture when it was still strange, when, in Veblen's term, it could still be understood as "conspicuous." At the end of the century, looking back, we see in the developed West nothing but consumer goods—everything is commodified, or, in the terminology of Georg Lukács, Simmel's student, everything is *reified*.<sup>12</sup> In a recent article, Michael Denning, looking at this same development, noted the absolute totality and omnipresence of the commodity, exclaiming: "All culture is mass culture under capitalism"<sup>13</sup>; "the fact is that mass culture has won; there is nothing else."<sup>14</sup> *Reification*, once a process we hoped could be reversed, is complete. Acts of consumption may be flamboyant, but they no longer stand out conspicuously. Rather, they blend in with other highly visible acts of consumption.

It is all well and good to proclaim at the end of the great century of consumer culture that everything is commodified and that nothing has been left out. We sort of know this already, but when we see it in print we think: "What is to be done?" There is in Denning's statement a doomsdayism that makes us sit up and take notice. Yet there is also a problem for those of us in cultural studies in declaring the victory of mass culture, since cultural studies is premised on the possibility of resistance (however slight) to this process of the commodification of everything.<sup>15</sup> Consider something that may not have occurred to you as yet. If mass culture has won, what are the implications for cultural studies? Is the complete victory of mass culture the end of cultural studies? The answer to this question is "no," but only because cultural studies is premised on the existence of resistance *to* coincident with the domination *of* capitalist consumer culture. The theory has been that the more things are commodified, the more resistance to the process is produced. The growth of mass culture has meant that people in the Western world find it increasingly difficult even to imagine goods and relations that are not commodified, let alone to act to counter the process. In the light of the "victory" of mass culture, we need to invigorate the cultural studies methodology in two particular directions: first, by expanding the definition of "resistance" to include more and more individual and

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12. See GEORG LUKÁCS, *HISTORY AND CLASS CONSCIOUSNESS* (Rodney Livingstone trans., 1971).

13. Michael Denning, *The End of Mass Culture*, *INT'L LABOR & WORKING CLASS HIST.*, Spring 1990, at 4, 8.

14. *Id.*

15. For one of the best statements of the significance of the concept of resistance in cultural studies, see Stuart Hall, *Notes on Deconstructing "The Popular,"* in *PEOPLE'S HISTORY AND SOCIALIST THEORY* 227 (Raphael Samuel ed., 1981).

institutional developments; and second, by undertaking a more systematic study of the stages in the process of commodification over the last century.

In an effort to take up the second of these challenges and to look at a crucial moment in the process of commodification, I decided to center my study of entertainment law on the midcentury transformation of the right of privacy into the right of publicity. Fortunately, I was able to pinpoint this transformation and isolate it in a single case (which, by definition, is always a cumulation of case precedents). Here, I located the moment where in *Haelan Labs v. Topps Chewing Gum*,<sup>16</sup> Judge Jerome Frank declared that baseball players had rights of privacy that became the very publicity rights used to publicize their images on baseball cards. This seemed totally absurd and absolutely amazing: The same right that could shield or protect an individual from the public eye could be turned inside out and used for purposes of celebrity promotion—to produce the individual as a popular public figure and, further, to produce that popular celebrity as a commodity. Judge Frank, circumventing the question of the seeming impossibility of transferring a personal right of privacy (the right to be let alone), declared that he found in operation a “new right” that might be called a “right of publicity.” He acknowledged the capital investment in career building, evidenced by the sports celebrities’ practice of trading on exclusive rights to their own names and likenesses, whether for advertising endorsements or other commercial artwork.

In the words of Melville Nimmer, *Haelan* was one of a significant line of cases that began to show that “publicity values [were] emerging as a legally cognizable right protectable without resort to the more traditional legal theories.”<sup>17</sup> Here, Nimmer’s enthusiasm for trends in the law that would favor growth in the entertainment industry is barely concealed. The key question for me, however, is always which came first—the right or the economic value of that right. Historically, U.S. courts have equivocated in unfair competition disputes, in an endless postponement of resolution: The law creates the right, the right creates the value, the value creates the right, the right preexists in the property, which is recognized by law, which is none other than the right itself. The circularity of rights discourse can verge on nonsense. One of the legal realists (whom I like to invoke whenever possible) noticed the nonsensical nature of the circular reasoning characterizing unfair competition law as early as the 1930s. Felix Cohen remarked, “It purports to base legal protection upon

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16. 202 F.2d 966 (2d Cir. 1953).

17. Melville Nimmer, *The Right of Publicity*, 19 LAW & CONTEMP. PROBS. 203, 204 (1954).

economic value, when, as a matter of actual fact, the economic value of a sales device depends upon the extent to which it will be legally protected.”<sup>18</sup> Suffice it to say that I was delighted to find such contradictoriness in the law—delighted and horrified. The law “purports” to exist in a realm above the economic, and here was unfair competition law clearly evolving in such a way that it would be able to produce economic value.

Also pertinent in my critical reading of entertainment law was the way in which the subject, based on an idea of separate, individualized personhood, could be so crucial in law, almost as though the culture’s privileging of the self (as in I, me, mine) had come to have a perfect equivalent set in legal stone. It seemed as though this discovery of the legal subject (the rights-bearing individual) at the core of copyright and entertainment law doctrine was much more politically significant than that other subject with which literary theory has been so concerned—the transcendental subject who is so often said to structure modes of viewing and to organize all of Western culture. The property-owning subject is far more interesting to me than poststructuralism’s speaking-subject, and this, I think, is because of the way the property-owning subject turns on itself.

Perhaps my interest is not in the legal subject per se, then, as much as in its contradistinction—in the way that *that* subject is set up only to be countermanded, and countermanded by itself. Capital borrows the very entity (the person) that we think of as sacrosanct in order to produce out of it something that turns against that entity (the person). It borrows from us something that becomes quickly estranged from us. And here is where I think Jamie Boyle and, more recently, John Frow<sup>19</sup> are right to stress the significance of *Moore v. Regents of the University of California*,<sup>20</sup> the case in which Moore tried unsuccessfully to regain the rights to his own cell line, which was finally worth about three billion dollars.<sup>21</sup> Moore failed to establish ownership of his own human tissue because, although he had produced it, he had not, as a subject, created anything new out of it. Although the producer of his cell line, he was not the “author” of it. In order to have made his tissue his own property, to establish his right to it, he would have had to mix it with his personal labor. The University of California medical research team had “worked” on his cell line, using

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18. Felix Cohen, *Transcendental Nonsense and the Functional Approach*, 35 COLUM. L. REV. 809, 815 (1935).

19. See JOHN FROW, *TIME AND COMMODITY CULTURE* 154-62 (1997); James Boyle, *A Theory of Law and Information: Copyright, Spleens, Blackmail, and Insider Trading*, 80 CAL. L. REV. 1413, 1508-20 (1992).

20. 793 P.2d 479 (Cal. 1990).

21. See *id.* at 489, 493.

its human labor to “invent” or “reproduce” it, thereby becoming the “authors” of Moore’s cell line. Yet this case seems to fly in the face of common sense. How can another entity exploit parts of the very thing you thought you so indisputably owned—your own body?

It is interesting to move from *Moore v. Regents of the University of California* back to a case like *Gross v. Seligman*.<sup>22</sup> *Gross*’s outcome indicates not a move away from ownership of one’s physical body, but a move away from ownership of one’s creative output in the face of counterclaims based on commerce. Perhaps remembered best as the “Grace of Youth” case, *Gross* involved a photographer-artist who photographed a nude model, sold the photograph in one year, and returned to the successful formula two years later, producing a photograph exactly like the first but with a cherry stem held between the model’s teeth.<sup>23</sup> The owner of the “Grace of Youth” photograph successfully argued that the photographer had “copied” the first photograph and therefore had infringed upon the owner’s copyright. The owner of the photograph argued that, rather than producing something original, the photographer had merely copied the photograph, the copyright in which was now owned by someone else. In fact, however, the photographer had copied his *own* original conception. And it was the fact that he had put his own originality into the work that had made it possible for him to sell the work in the first place. Or, as the copyright premise goes, because of the existence of the right by virtue of the existence of the personal subject, that right can be transferred and ultimately taken away. In other words, the author can lose his right because he has that right.

This problem in the evolution of copyright doctrine has a companion problem in the cult of originality, the cult that promotes reverence for an originary moment as well as the original object of art, such as the signed painting, the first edition book, and the one-of-a-kind artifact. Why, I would like to know, given the reproducibility of culture at this time in history, do we continue to pay such deference to this cult? To me, the challenge to copyright law mounted by digital culture is not nearly as interesting as the way in which the cult of the original has flourished in inverse relation to the scientific developments that should signal its demise. Sotheby’s recent auctions of John F. Kennedy’s personal belongings for fabulous prices and the fantastic financial success of Princess Diana’s castoff dress auction exemplify the survival of the cult of the one-of-a-kind, which exhibits

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22. 212 F. 930 (2d Cir. 1914).

23. See MELVILLE B. NIMMER, CASES AND MATERIALS ON COPYRIGHT AND OTHER ASPECTS OF ENTERTAINMENT LITIGATION—INCLUDING UNFAIR COMPETITION, DEFAMATION, AND PRIVACY 203-05 (3d ed. 1985).



its manifestations in nostalgia culture as well as among fine art collectors. The masterpiece enshrined in the museum still reigns, and the spell of the work of art's "aura" has not been broken by mechanical reproduction as Walter Benjamin hoped it would be.<sup>24</sup> Rather, the principle of originality holds together the possibility of multiplicity. Mass production (multiplicity) is guaranteed (as profitable) by the singularity of the right to copy. As I have written elsewhere in an article on Andy Warhol and the right of privacy: "The formula for celebrity, after all, is that the fame of one depends on the complete obscurity of others. The exclusive right requires their exclusion."<sup>25</sup>

To restate a theme that runs through intellectual property doctrine from the 1709 Statute of Anne (that milestone in Anglo-American copyright law)<sup>26</sup> to the phenomenon of Andy Warhol: Multiplicity is guaranteed by singularity. And this is only one place in intellectual property law where the contradictoriness of the law stands out in relief. It has been this contradictoriness that I have found most intriguing in my reading of entertainment law. I am totally fascinated by the way in which the right to be left alone can do an about-face and become the right to promote oneself in the public eye. Of course, it is all about exclusion, or, as another legal realist, Morris Cohen, argued in the 1920s, it is about enforcement: "A right is always against one or more individuals."<sup>27</sup> It is about a negative right that can be turned into a positive right as it turns into a property defense and asserts ownership. The right-of-publicity doctrine still seems to be historically contradictory and my first inclination is to say that the case law here is contradictory because of an interesting clash of values in the society at large. Here is where the values of an earlier society, a society that was aristocratic and circumspect, comes into conflict with the new commercial "tell all" and "show all" society, a clash made manifest in so many right-of-privacy cases just after the turn of the century. The contradictions are still there in the doubleness of the society that wants its privacy as well as its publicity. Why did we express outrage at the publication of the secretly secured photograph of Brad Pitt's private parts as we rushed out to buy copies of the tabloid that ran the photograph? Why were we angered at the aggressive stalking by French paparazzi that contributed to the

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24. See Walter Benjamin, *The Work of Art in the Age of Mechanical Reproduction*, in ILLUMINATIONS 217 (Hannah Arendt ed. & Harry Zorn trans., 1973).

25. Jane Gaines, *Reincarnation as the Ring on Liz Taylor's Finger: Andy Warhol and the Right of Publicity*, in IDENTITIES, POLITICS, AND RIGHTS 131, 147 (Austin Sarat & Thomas R. Kearns eds., 1995).

26. 8 Anne, ch. 19 (1710) (Eng.).

27. Morris Cohen, *Property and Sovereignty*, 13 CORNELL L. REV. 8, 12 (1927).

accident that caused the death of Princess Diana at the same time that we madly continued to collect candid photos of her? Why did Caroline Bessette Kennedy spit in the face of photographers who hounded her at the airport on the way to the funeral of Michael Kennedy?<sup>28</sup> Why did we applaud this at the same time that we regretted that there was no image of it in the tabloids? The contradiction that exists in the society between personhood that is thought to be constituted as a private entity and personhood that is constituted as public and commercial is written at another level and in other terms in case law itself. The right of privacy is used to secure the right of publicity. The one right is sacrificed to the other, and it is the naked absurdity of this that attracts me to entertainment law and to this thoroughgoing transformation of things not property into property by means of a sacrosanct legal convention: the right to property in ourselves.

In conclusion, I want to take this question of the right to property in ourselves in a new direction. I want to suggest how the very principle of property in the self that gives rise to such absurd application has a flip side that is absolutely serious and deeply significant. It was not, however, the serious application of the right to property in oneself, but the apparent inconsistency of the application that first attracted me to legal studies. This inconsistency attracts me because I take the concept of contradiction very seriously, drawing it from Marx who understood the dialectical contradiction of the commodity form that expresses the difference between exchange value and labor.<sup>29</sup> On a larger scale, the concept of contradiction encompasses the tensions between production and consumption, capitalism and socialism, and labor and capital. And I have always had a hunch that on some level, contradiction as evidence of the duality of capital had the potential to stir the masses and awaken slumbering political sensibility. (Or, to perform an automatic critique, as the inconsistencies of capital were figured, its premises would be undermined.) To support my hunch, I quote Louis Althusser, who in his essay *Contradiction and Overdetermination* speaks of the "simplicity of the Labor/Capital 'beautiful' contradiction [that] has answered to certain subjective necessities of mobilization of . . . masses."<sup>30</sup>

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28. See George Rush & Joanna Molloy, *Upset Bessette Fights Photogs Spit for Tat*, N.Y. DAILY NEWS, Jan. 9, 1998, at 14.

29. See, e.g., Jane Gaines, *The Melos in Marxist Theory*, in *THE HIDDEN FOUNDATION: FILM AND THE QUESTION OF CLASS* 56 (David James & Rick Berg eds., 1995).

30. Louis Althusser, *Contradiction and Overdetermination*, in *FOR MARX* 87, 104 (Ben Brewster trans., 1969).

Recently, I realized that one of the threads running through my scholarly work has been this concern with the contradictions of capital, which I have considered in relation to silent film melodrama, and in particular to silent films produced by African Americans and Euro-Americans for the all-black theatre circuit in the years before 1927.<sup>31</sup> In film melodrama, the contradictions of capital often take the form of scenarios of extremity: inconsistent action; unjust rule; and unfair treatment. The melos in the drama is often produced by the one hand that doesn't know what the other is doing—whether it is the hand of the state or the hand of the white patriarch. The state says one thing and does another. In the “race” melodrama, the most dramatic example of this is the appalling treatment of human beings as though they were not human beings. Here, the melodrama arises from the attempt to justify the unjustifiable, producing conditions that could not hope to sustain themselves because of the contradiction in their very premises: the confusion arising from the impossibility of being legally neither human nor thing; the patriarchal laws of descent contradicted by capital in the rule that children followed the status of the mother; the contradictory evidence of “blood” that was both visible and invisible in the mulatto; and, during and after Reconstruction, the contradictory hand that held out opportunity for all and withdrew it for some.

The dilemma of the “race” melodrama in U.S. history is of course a dilemma underwritten by the historical fact that the slave *did not* have property in himself, and this, of course, is a branch of the problem I set out to address at the beginning: the problem of property in the self as it is modeled on property in the commodity. Slavery as the extreme form of commodification of the person is not difficult to grasp, particularly as we understand the extremes of commodity culture. I need not dwell on the political and economic equation that historically justified that “peculiar institution” as it is now called. Instead, I want to look to the long, horrid history of the commodification of human beings for another reason—to try to understand the possibilities of “decommodification.” Time and again over the last two centuries, we have seen how, to quote John Frow, “‘The person’ is at once the opposite of the commodity form and its condition of existence.”<sup>32</sup> As is abundantly clear to me from my study of Anglo-American copyright doctrine, the “person” historically

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31. See JANE GAINES, *OTHER/RACE/DESIRE: MIXED BLOOD RELATIONS IN EARLY CINEMA* (forthcoming 1999); Jane Gaines, *Fire and Desire: Race, Melodrama, and Oscar Micheaux*, in *BLACK AMERICAN CINEMA 49* (Manthia Diawara ed., 1993); Jane Gaines, *Mixed-Blood Marriage in Early Race Melodrama*, in *OSCAR MICHEAUX AND HIS CIRCLE* (Jane Gaines et al. eds., forthcoming 1999).

32. FROW, *supra* note 19, at 152.

has been recruited to underwrite the commodity form even as he stands antithetical to it. As the antithesis of commodification, it would also seem that the real historical person is the first place to look for the seeds of resistance to the virulent spread of capital. But when and how, if ever, has “the person” as a construct or as an historical entity ever successfully halted the process of commodification?

One might say that “the person” intervenes to stop the process with every legal assertion of privacy rights, regardless of the outcome of litigation. The case of Jackie Onassis is an example of a public figure who entered into an action on the basis of the “theft” of aspects of personhood, although as a rich and influential celebrity, she hardly typifies the “resistance” we understand as located outside structures of power. Another problem also arises when we look to case law for signs of resistance, since it only gives evidence of skirmishes won and lost and no sense of the battle. On another level, the legal victories of persons against capital immediately can turn into new triumphs for private property. Jackie Onassis’s personal victory over the Dior company that appropriated her image, for example, threatens to remove her image from the public domain of history.

The number of times that case law has come down on the side of commodification in the last century has not dissuaded me from looking for signs of resistance to the inexorable movement of capital into every corner of our lives. I continue to look for aberrations in case law or for ignored or forgotten historical precedent. What has come to my interest recently, however, is perhaps the most important systematic reversal of commodification in the last two centuries, a dramatic reversal because it was, in fact, a wholesale de-commodification of the human being.<sup>33</sup> And I refer here to the abolition of slavery. It may seem a long distance between, on the one hand, celebrity image litigation and, on the other, right of privacy disputes and the systematic treatment of human beings as fungible property. In fact, to mention the claims of the rich and famous in the same context with the greatest human injustice in recent memory seems politically insensitive. But the right to property in ourselves as a legal defense stands at one end of a continuum, with the transfer of property in ourselves and ultimately the loss of property in ourselves in the middle. At the other end of the continuum stands “no right to property in ourselves,” which in its most extreme form is human enslavement. The point is not to miss the legal premise that licensed the slave trade and plantation economics, a premise that is one and the same as the doctrine that guarantees new fortunes in celebrity

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33. See *id.* at 135.

**imagery: property in personhood.**