

Data: The Measure of A Property Challenge

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In the *Star Trek The Next Generation* episode “The Measure of A Man,” Data is put on trial about whether he is a sentient being. Picard’s defense is among the best legal arguments in the history of science fiction. No one would question the excitement of the argument for Data’s sentience for other legal strategies, right? No one but lawyers that is, lawyers tend to get excited about legal nuances.

A Matter of Jurisdiction

First, let’s focus on the fact that Starfleet is a military organization. Military courts do not have general jurisdiction, but limited jurisdiction. In the US, Article I, Section 8 of the Constitution establishes the power to create a military code and the Uniform Code of Military Justice (UCMJ) codifies that section. The UCMJ § 803 grants jurisdiction over “a person who is in a status in which the person is subject to this chapter and who committed an offense against this chapter.” The most important word here is “person,” it is about people who are or have been in the service or the reserve. Under Article 139 (10 U.S.C. § 939) property-related claims can be brought to the court, but then both parties must be subject to the military code. That is a general tenant of military justice: it applies to military personnel. Commander Maddox contention that “Data is a machine” actually challenges the very jurisdiction of the military court. The case should be a matter for a civil court, and the other party is overlooked in the proceedings.

A Matter of Property

Maddox contents that Data is “the property of Starfleet,” but is he?

Dr. Noonian Soong, a private citizen, built Data with his own funding. It follows that Data is the property first and foremost of Dr. Soong. Even if Dr. Soong is presumed dead, ownership of Data would be part of his estate. The Fifth Amendment will protect the Soong’ claim to Data against governmental or military appropriation without due process. In *Star Trek*, we never heard about an equivalent of condemnation proceedings regarding Data to use the power of eminent domain. Nor is Data abandoned. Data’s career in Starfleet clearly shows that he is a machine that can maintain itself without its creator’s supervision. Leaving Data to function autonomously on a planet is not an intent to relinquishing property claims but an intent to let Data function as designed. We learn in an episode about two years later (Brothers, Season 4, Episode 3) that Dr. Soong was still alive at the time of the proceedings and had the ability to recall Data to him at any time. Dr. Soong was still the owner of Data during the proceeding and has not in fact intended to relinquished all property claims as the recall mechanism shows. The least we should do is to try and find the other party before we simply assume him dead or assume abandonment.

Starfleet’s one and only claim of ownership over Data is based on Data’s decision to join Starfleet and become an officer. Starfleet cannot have it both ways: they cannot argue that Data is under Starfleet’s control and jurisdiction because he is a sentient Starfleet officer and that Starfleet can dismantle Data as he is not a sentient being. Either Data is a sentient being and can, therefore, leave Starfleet, or he is the property of a private citizen and cannot be expropriated without due process.

Starfleet’s goal to dismantle Data could very well be construed as property crime from theft to vandalism. Picard seems duty-bound to fulfill the superior order. That is similar to the UCMJ Article 92 that criminalizes the disobedience any lawful order. However as the Court of Military Appeals held in *United States v. Keenan*: “the justification for acts done pursuant to orders does not exist if the order was of such a nature that a man of ordinary sense and understanding would

know it to be illegal.” Picard may very well refuse to hand over Data based on the unlawfulness of the order to expropriate private property without due process.

A License to Command

Our argument, however, establishes an uneasy truth. Starfleet might have stolen Data and used a machine without the consent of its creator which could make them liable for gold-pressed damages. Our client Data would like to continue to serve in Starfleet. Can we both claim that Data is a machine, but he could still have autonomy in contracting with Starfleet his services?

In today’s High-Frequency Trading (HFT), algorithms of traders are already buying and selling stocks. Buying and selling stocks are property transfers. Although the traders have created the programs and therefore expressed a general will to contract, there’s no individual intent for each property transfer. In 2010 Flash Crash was a trillion dollar stock market caused in part by HFT. No trader claimed that they are not liable for the trades of their programs. The creators of the programs felt legally bound by the contracts formed by their programs. I propose a theory of attribution here. The acts of computer programs are attributed to the legal or natural personality that created the program as the programming itself is a representation of their will.

Even if Data is considered a machine and has no natural personality, he may have the ability to form contracts as those contracts are attributed to Dr. Soong. Data’s act of joining Starfleet can be construed as an implied or expressed license to use him. However, under which terms? Both Dr. Soong and Data conceive Data as a sentient being. Starfleet trained him like any other officer. He receives medals as if he were an officer in the fleet. If joining Starfleet is the basis for the license then the obligations and rights of Starfleet against its officers must be its terms. Starfleet has a license to command but not destroy Data.

I believe that Data is a sentient being and as such a Starfleet officer. However, even if Starfleet maintains that Data is a machine, Starfleet has only a license to use him as if he were an officer of Starfleet. An officer cannot be ordered to undergo a medical proceeding that may kill him. Whether or not Data is sentient, Starfleet must treat him as a man, and therefore he has a right to refuse the proceedings.

“The Measure of a Man” is a brilliant episode and it questioned the rights of AIs and that almost 20 years ago. However, Picard’s defense was not the safest path to victory ignoring the inherent flaws in Maddox argument. Nevertheless the episode is more relevant than ever. We are in the age of emerging AI and how we treat them will define our humanity. If others consider AIs as property, let us make sure that property law will protect their sentient rights rather than enslaving them. As Guinan pointed out to Picard:

“CONSIDER THAT IN THE HISTORY OF MANY WORLDS, THERE HAVE ALWAYS BEEN DISPOSABLE CREATURES. THEY DO THE DIRTY WORK. THEY DO THE WORK THAT NO ONE ELSE WANTS TO DO BECAUSE IT’S TOO DIFFICULT OR TOO HAZARDOUS. AND AN ARMY OF DATAS, ALL DISPOSABLE... YOU DON’T HAVE TO THINK ABOUT THEIR WELFARE, YOU DON’T THINK ABOUT HOW THEY FEEL. WHOLE GENERATIONS OF DISPOSABLE PEOPLE.”

It is our legal challenge to prove to Guinan that we are better than that.