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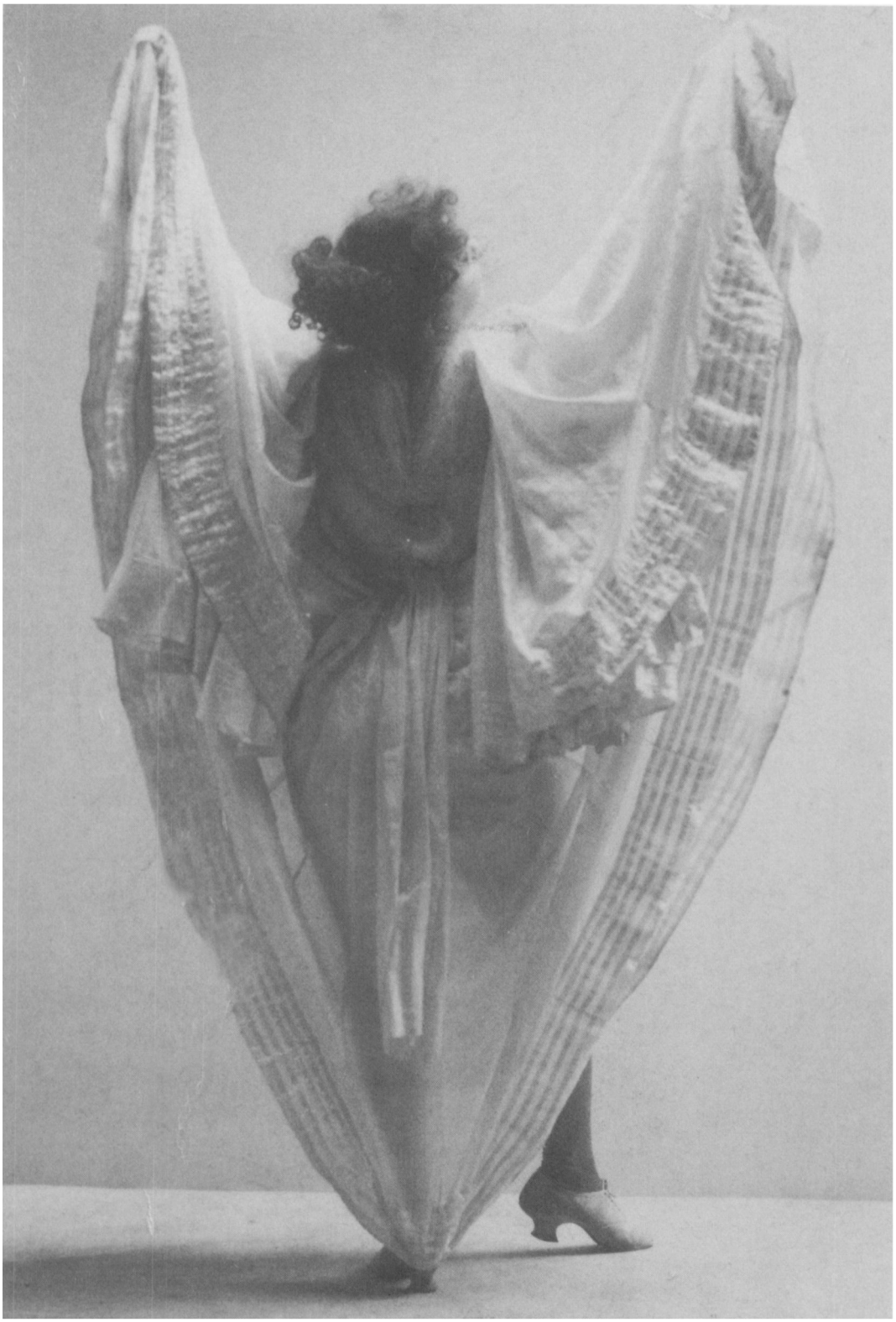

Photo 1. Loïe Fuller in a studio session promoting the Serpentine Dance *in* Uncle Celestin, *February 1892. No photographic credit. Jerome Robbins Dance Division, New York Public Library for the Performing Arts, Astor, Lenox and Tilden Foundations.*

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White Womanhood, Property Rights, and the Campaign for Choreographic Copyright: Loïe Fuller's *Serpentine Dance*

Anthea Kraut

In 1892 Loïe Fuller, often figured as one of the "mothers" of modern dance, brought an infringement suit in New York against a chorus girl named Minnie Renwood Bemis in an attempt to enjoin Bemis from performing a version of the *Serpentine Dance*, which Fuller claimed to have invented.[1] The dance, distinctive for its use of yards of illuminated silk fabric, made the American-born Fuller famous in Europe and spawned a host of imitators on both sides of the Atlantic.

Intent on staking her proprietary claim on the dance, Fuller took the precaution of submitting a written description of it to the U. S. Copyright Office. Ultimately, however, the judge for the U.S. Circuit Court denied Fuller's request for an injunction on the grounds that the *Serpentine Dance* told no story and was therefore not eligible for copyright protection. Although Fuller clearly regarded her expressive output as intellectual property, dance at the time lacked legal recognition as a copyrightable category in its own right and merited protection only if it qualified as a "dramatic" or "dramatico-musical composition."

The precedent set by *Fuller v. Bemis* remained in place in the United States until the 1976 Federal Copyright Law explicitly extended protection to choreographic works. The case therefore figures prominently in historical accounts of the campaign for choreographic copyright in the United States. Typically, the court's finding that the *Serpentine Dance*, with its manipulations of fabric and light, was too abstract to count as dramatic is taken as evidence of Fuller's pioneering modernism.[2] Conventional wisdom holds that it was

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not until "abstract" modern dance won wider legitimacy in the mid-twentieth century that Congress saw the need to add choreography as a classification of copyrightable work, relieving it from the "dramatic" requirement (Arcomano 1980).

Yet the case of *Fuller v. Bemis* is significant for reasons beyond its insistence that dance tell a story. As an early attempt by a white woman to use the legal system to secure ownership of a choreographic work, Fuller's infringement suit also has much to tell us about the relationship between race, gender, and property rights in American dance. Viewed from this perspective, the lawsuit offers a case study of a white, female, early modern dancer's endeavors to harness the racial privileges of whiteness and establish herself as a property-holding subject. Accordingly, this essay approaches the circulation of the *Serpentine Dance* and Fuller's lawsuit against Bemis as the story of a gendered struggle to attain proprietary rights in whiteness.

In invoking an affinity between whiteness and property, I draw on the work of scholars like Cheryl Harris, whose groundbreaking 1993 article "Whiteness as Property" asserts that historically, U.S. law has "accorded 'holders' of whiteness the same privileges and benefits accorded holders of other types of property," including the right of possession and disposition, the right of use and enjoyment, and the right to exclude others (1731). This conflation of race and property undergirded the conquest and seizure of Native American land and the institution of chattel slavery and, Harris maintains, has continued through to the present, albeit in subtler forms. More than a racial identity, Harris shows, whiteness has been legally constructed as a property interest. In a related vein, George Lipsitz's 1998 book *The Possessive Investment in Whiteness* argues that "whiteness is invested in, like property, but it is also a means of accumulating property and keeping it from others." Discriminatory home-lending practices, unequal educational opportunities, and intergenerational transfers of wealth, Lipsitz demonstrates, have all worked to sustain racial hierarchies and protect the "cash value" of whiteness (vii–viii).

Building on and extending these analyses, American studies scholar Eva Cherniavsky has recently proposed that one of the key protections afforded to whites—during slavery but also, arguably, in its wake—is an "inalienable property in the body" (2006, 84). That is to say, whereas racialized and colonized persons are characteristically rendered "fully open to capital" and "susceptible to abstraction and exchange" as commodifiable objects, white persons are granted the rights of "possessive individualism" (89). As proprietors of their own personhood, whites are sheltered "from the invasive forces of capital," such that "[they] may commodify [their] bodily or intellectual labor, but not [their] flesh" (84). For Cherniavsky, then, the "status of the body (the difference between selling one's bodily labor and becoming a salable body in which others may traffic)" has been a key site of racial division, one with enormous implications (85). In the formulation of modern liberal-democratic theory, with its roots in seventeenth-century conceptions of the individual as the "proprietor of his own person or capacities," whiteness equals property ownership equals proper subjecthood (MacPherson 1962, 3).[3]

Bringing arguments about the property interests that inhere in whiteness to bear on Fuller's pursuit of copyright protection opens up new vantage points on both. Because the property at issue for Fuller was choreography, and therefore literally corporeal, her case

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lends itself well to analysis in terms of property rights in the body and their attendant racial politics, an angle that Fuller scholars have yet to pursue. At the same time, Fuller's status as a white female dancer seeking ownership rights over embodied artistic work productively complicates the correlation between whiteness, proprietorship, and personhood in several respects.

For one, the judge's refusal to grant copyright protection to Fuller makes plain that property rights did not automatically extend to anyone with white skin. Far from a universal reality, the right to own has undeniably been inflected by class and, for white women like Fuller in the late nineteenth and early twentieth centuries, especially by gender. As scholars like Grace Hong have observed, possessive individualism has been "an institution of whiteness *and* masculinity, subtended by bourgeois domesticity" (2006, 5; emphasis added). Eva Cherniavsky likewise notes that "White women's juridical and social self-possession is . . . historically belated and decidedly tenuous when measured against the legal and conventional protections extended to white men" (2006, xxv). Relegated to the private sphere, stripped of legal rights independent from those of their husbands under nineteenth-century coverture laws, denied the franchise until 1920 in the United States, middle-class white women were long considered objects rather than subjects of property and have long been exchanged *as* property by men (Brace 2004, 189–99; Rubin 2006).

Nonetheless, as Cheryl Harris stresses in "Finding Sojourner's Truth," the patriarchal system that emerged out of slavery was a thoroughly racialized one, and white women's oppression was by no means identical to that of African Americans. Even when excluded from the public sphere, white women were still considered "within the polity" and were afforded a "derivative relationship" to white male power that was denied others (1996, 321, 322). Historian Louise Newman has shown that white women activists in the late-nineteenth-century United States measured their rights not only against white men but also against those of men and women of color, especially former slaves and immigrants. In their fight for equal political rights, white women "thought of themselves as widely different from white men in sexual terms," yet as "fundamentally similar to white men in racial-cultural terms" (1999, 10). Parsing white women's relationship to property rights hence requires factoring their shifting positionality vis-à-vis both white men and nonwhite men and women.

Like other middle-class white women at the turn of the twentieth century, Loïe Fuller had access to some of the "racial-cultural" privileges of whiteness without full access to propertied subjecthood. While the rash of imitation *Serpentine Dances* threatened to nudge her closer in the direction of the sexualized, racialized, exchangeable commodity, copyright was the mechanism by which Fuller strove to move herself closer to the status of the possessive citizen-individual. Fuller's case thus offers a window onto white women's historical negotiation of property rights. It also demonstrates that white privilege, like hegemony in general, has been neither monolithic nor a foregone conclusion but, rather, continuously asserted and contested.

There are two additional sets of issues raised by Fuller's copyright campaign that scholarship on whiteness and property rights has not yet fully accounted for. One set has to do with the nature of copyright as a branch of intellectual property law. A form of protection granted to "original works of authorship," copyright, as scholar Jane Gaines

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has written, is essentially about the "double movement of circulation and restriction"—the authorization of certain copies and the prohibition of others—within an economy of reproduction (1991, 9).[4] Literally the right to copy, copyright depends upon and executes a separation between the author and her work, even as it secures her ownership rights over that work; copyright simultaneously tightens and loosens an author's relationship to her cultural production. How, then, could a white woman like Fuller use the instrument of copyright to ensure the "inalienable property in the body" that white privilege was supposed to guarantee, when the very copyright she sought required alienating herself from her embodied creation?[5]

The other set of questions has to do with the particular complications dance poses to thinking about property rights in the body as a site of racial privilege. Cherniavsky argues that the mechanical reproduction of cinema, allegedly "the first medium in which whiteness [as a commodity-image] . . . circulates independently of white persons," jeopardized the privileged status of white bodies, particularly those of white female stars (2006, 127–28). The commodification and circulation of images of white female bodies, in other words, created certain fault lines in the figuration of whiteness-as-property-ownership. But what are the implications of white women's bodies, rather than their iconography alone, being made open to capital? What bearing did the liveness of the performing body have on white women's relationship to commodification on the one hand and possessive individualism on the other? Unlike a mechanically reproduced commodity like film, the property in question in Fuller's case—the *Serpentine Dance*—was disseminated both independently of the "originating" body (as when the dance was reproduced by performers other than Fuller) and via that body (as when Fuller herself was caught up in the transactional flows of the commercial theater).[6] Fuller's image—the representation conveyed by the *Serpentine Dance*—was thus an embodied one but also capable of being dis-embodied (or re-embodied by another). This duality raised the stakes and amplified the complexities of trying to control the traffic in her image, and thus protect her subject status, by controlling the circulation of her choreography.

Dance not only circulates differently from other forms of property; it also has an exceptionally complicated relationship to commodification. In his discussion of the historical difficulties facing those who have tried to assess what a dancer produces and how to assign market value to it, Mark Franko describes dance as "the artwork least suggestive of itself as a stable object or product" (2002, 2). Indeed, this lack of fixed object status proved another challenge to dance's copyrightability.[7] But if we understand commodities as "goods or services that are, or could be, bought and sold at some point," Fuller's *Serpentine Dance* might be thought of as both good and service: the choreography was a good bought by producers that required the rendering of a service—dancing (Ertman and Williams 2005, 3). Because the good arguably could not exist without the service, it would seem impossible to commodify (and copyright) the Serpentine choreography without implicating the (white, female dancing) body in the commodification process.[8] The solo *Serpentine Dance* thus muddied distinctions between labor and product, dancer and dance, not to mention those between choreographer and dancer, intellectual and bodily labor, idea and expression.[9]

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The paradoxes and predicaments of Fuller's case, therefore, were manifold. As a performer selling her live enactment of the *Serpentine Dance* in the theatrical marketplace, Fuller's body circulated in commodity form. Unlike a mechanically reproduced image detached from its embodied source, however, in the moment of performance Fuller existed as flesh and image, artist and commodity, labor and product all at once. Yet, in attempting to protect her performing body from becoming fully open to capital by asserting property rights over her image and choreography, Fuller registered the alienability of her corporeal work, marking a (fraught) separation between her laboring body and her choreographic output. Attending to and teasing apart these contradictions, this essay highlights the instabilities inherent within the project of securing subjecthood by claiming intellectual property rights in the body.

Doing so, finally, enriches our understanding of the raced and gendered nature of the formation of American modern dance. As dance scholars have demonstrated in the past two decades, white female dancers like Isadora Duncan, Ruth St. Denis, and Martha Graham (considered the other "mothers" of modern dance) overturned gender hierarchies to claim leadership positions as choreographers on the public stage, even as they actively reinforced racial hierarchies.[10] On the one hand, these white women "projected a kinesthetic power that challenged male viewers to see the female dancer as an expressive subject rather than as an erotic object" (Manning 1997, 163); on the other hand, they relied on essentialized racial distinctions between their own "universal" artistry and the putatively "primitive" dance practices of nonwhite subjects, often while claiming the right to represent those subjects in their choreography. Actually, to state it in these terms—to imply that the gendered and raced dimensions of early modern dance were parallel rather than inextricably linked operations—misses the point. Differentiating themselves from racialized, sexualized dancing bodies is precisely what *enabled* these white women to gain legitimacy for themselves as artists (not objects) on the theatrical stage. This was equally Loïe Fuller's goal. Yet her pursuit of copyright protection indicates that race and gender influenced more than the representational conventions and discursive strategies of early white modern dancers; these same axes of difference also critically shaped these dancers' efforts to position themselves as propertied subjects, entitled not only to wear the mantle of artist but also to own the products of their intellectual and bodily labor.

Treating Fuller's campaign for choreographic copyright as the undertaking of an ambitious white woman to mobilize the privileges of whiteness in a male-dominated marketplace, the remainder of this essay queries how Fuller struggled to capitalize on her dance's circulation rather than "becoming a salable body in which others may traffic" (Cherniavsky 2006, 85). First, I situate Fuller's practice in the context of the gendered economic relations of production that governed the late-nineteenth-century theater. Next, I examine the lineage of Fuller's *Serpentine Dance*, including the oft-neglected Indian dance sources to which it was indebted. I turn then to Fuller's reaction to the "theft" of her choreography and the claims she made in her infringement suit against Minnie Bemis. I conclude with a discussion of the outcome and effects of the legal decision, and of Fuller's persistent efforts to secure property rights in her bodily image and choreographic labor.

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These efforts have much to tell us about how assiduous and contradiction-filled the fight for the entitlements of whiteness could be.

"Singular Migrations of Personality": Conditions of the Dancing Body's (Re)Production

When Fuller toured U.S. and London vaudeville, burlesque, and music hall circuits in the 1880s and 1890s, stage dancing was hardly a respectable art form. With "feminized spectacle" in ascendancy, theatrical dancing on both sides of the pond was seen primarily as "a form of female erotic display performed by women of questionable moral status"; even "ballet girls" were morally suspect (R. Allen 1991, 96; Koritz 1995, 2). Accompanying its lack of repute, dance also lacked autonomy as a medium. Instead of standing on its own, dance appeared in mixed theatrical revues alongside musical and dramatic routines (Koritz 1995, 16). Bearing little if any relationship to the content of surrounding acts, individual dance numbers were inserted into a variety of stage productions, not unlike exchangeable commodities. This lack of autonomy facilitated dance's circulation: a given dance specialty could appear on multiple programs and, if necessary, be replaced without disrupting the overall coherence of a show.

This was precisely the situation with the *Serpentine Dance*. Fuller initially developed the dance in the context of an 1891 play called *Quack, M.D.*, in which she played a widow who underwent hypnosis. As Rhonda Garelick writes, "The part was so small that Fuller's name did not appear in the program, she had to provide her own costume, and she was left to devise her own brief dance number" (2007, 28). When the play closed some weeks later, Fuller "was left with her new routine and nowhere to perform it" (Current and Current 1997, 32). She proceeded to audition the dance for Rudolph Aronson, the theatrical manager of New York's Casino Theatre, and was soon performing it between the acts of a musical comedy called *Uncle Celestin*. Fired from that production after demanding a raise, Fuller found work performing the *Serpentine Dance* as an entr'acte number in the musical *A Trip to Chinatown* (Sommer 1998, 91–92).[11]

Because dance occupied such an "incidental" position in theatrical productions, performers seeking to maximize profits could arrange to perform the same dance in between the acts of concurrently running shows. For example, as the *New York Times* reported, in one week in 1893 Fuller was slated to appear "with apparent simultaneousness, at three different theatres, to wit: between the acts of 'Fanny' at the Standard Theatre, between the acts of 'Panjadrum' at the Broadway Theatre, and, finally, between the acts of a play unknown at a theatre hitherto unidentified, in Boston" ("La Loie" 1893, 9). While the reporter marveled at how Fuller's "small if lively body" was capable of such "singular migrations of personality," Fuller had a matter-of-fact explanation for how she could appear at three different theaters on the same day. "At each house," she stated, "I shall have awaiting me a separate and distinct set of costumes, accessories, properties, gasmen, stereopticons, and other necessary articles. So that the same identical dance, under the same identical conditions, will be repeated in each theatre." Even as the reporter voices skepticism about the reproducibility of dance, given its dependence on live(ly) bodies,

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Fuller assures him that with the right planning and resources, stage dances are as portable as the dancers who execute them. For Fuller, "migrations of personality"—the circulation of her dancing self through the sale of her bodily labor—were a means to increase her exposure and her revenue.

The problem, as Fuller also indicated to the *Times* reporter, was that her migrations were dependent on the male managers and producers who presided over dancers' contracts. Describing her scheduled engagements, Fuller refers not to the names of productions but to the theatrical management of each venue: "On Monday next I intend to perform at a theatre to be hereafter decided upon by, and under the management of, Mr. McDonald and Mr. Drohan; at the Columbia Theatre, in Brooklyn, under the management of Mr. Charles Frohman, and at the Broadway Theatre, in this city, under the management of Mr. Benjamin Franklin Stevens." When asked why she was not planning to appear at the Standard Theater under the management of J. M. Hill, who had also advertised her performance, Fuller explained that her own manager, Robert Grau, had leased her to Colonel Hill without her approval or signature, and that she therefore did not intend to honor the contract. (A follow-up article reported that she had changed her mind and would be appearing at the Standard after differences over the contract had been "amicably adjusted" ["Loie Has Changed Her Mind" 1893, 5].) This threat to ignore her contract—a simultaneous flouting of the law and upholding of its letter (quite literally) through her insistence on the presence of her signature—is a testament to Fuller's frustration with the terms of her participation in the labor market, as well as to her resourcefulness in using whatever capital she possessed to try to re-negotiate those terms.

Even after she had become a major attraction as "La Loïe," Fuller thus felt herself constrained by the (white) men who monopolized the means of production of commercial theater and controlled the traffic in female performers.[12] Early in her career, Fuller had attempted to assume the position of producer herself and mount plays on her own, but without adequate financial backing, she had to resort to contracting her labor to male theatrical managers (Current and Current 1997). As the above incident suggests, she frequently butted heads with those managers. Her autobiography is full of similar conflicts and confrontations over the stipulations of her employment contracts (Fuller 1913). These contracts were essential to the allocation of both economic and cultural capital, for their provisos not only set a performer's salary but also determined what kind of billing she received. And lacking sufficient bargaining power, Fuller often found it difficult to receive artistic credit for her choreographic work (Albright 2007, 27). Her dispute with Aronson over the terms of her engagement in *Uncle Celestin*, in fact, centered around the issue of credit. Fuller had agreed to accept a salary of fifty dollars a week if she were also featured in publicity placards. While lithographs for the show did advertise the *Serpentine Dance*, they failed to mention Fuller by name, and her attempts to reach a deal with Aronson failed (Current and Current 1997, 41; Fuller 1913, 38–40). He promptly hired the chorus girl Minnie Bemis to replace her, setting off the chain of events that led to Fuller's lawsuit. Though Fuller was prepared to orchestrate her own "migrations," to be summarily exchanged for another white female body was a blow she could not abide. The patriarchal structure of the commercial stage, which governed the conditions and contractual rela-

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tions under which dance was (re)produced, is thus key to understanding Fuller's turn to the legal arena to grant her (racial) claim to self-possession.

"A Bit of the Nautch Dance": Serpentine Sources

A thorough appraisal of Fuller's proprietary claims must also attend to the ambiguous racial sources of her dance. To tease out these sources, it is helpful to look more closely at Fuller's choreography for the *Serpentine Dance*, this time turning to the textual description she recorded and submitted for copyright registration.[13] (That this description reads like instructions for re-creating the solo dance, complete with directions for stage lighting, indicates the paradoxes of copyright; the very act of protecting the work was also a vehicle for its reproduction.) Fuller's version of the solo dance was comprised of three tableaus, each commencing with a dark stage, building to a "graceful climax," and ending with the dancer executing an eye-catching pose. In between, the dancer moved (at times with waltz-like steps) up- and down-stage and performed a series of turns, all the while manipulating the ample material of her dress, such that, when combined with the effects of colored lighting, her body seemed to appear and disappear as images of flowers, butterflies, and waves materialized and faded away. For example, in Tableau 1, the soloist "dances down center to footlights, followed by several whirls or turns which bring dancer back to center. (All this time the dress is held up above the head. . . .) She makes two turns, dropping dress, which the two whirls or turns bring into place. She takes dress up at each side, turns body from side to side, swinging dress from one side low in front to high at back, forming a half-umbrella shape over the head." Later, the dancer "gives a rounding, swerving movement that causes dress to assume the shape of a large flower, the petals being the dress in motion."

As other Fuller scholars have noted, though Fuller claimed the dance was a completely original creation, her use of fabric owed much to skirt-dancing, a dance genre popular on music hall and vaudeville stages in the late nineteenth and early twentieth centuries. First introduced around 1876 at London's Gaiety Theater by the ballet dancer Kate Vaughan and later made famous by Letty Lind, the skirt dance was a solo form in which a female performer used a flowing skirt to accentuate her turns and kicks (Fellom 1998, 605). While Vaughan and Lind's skirt dancing won them celebrity status, economic success, and praise for their embodiment of feminine grace, as the dance spread, it developed an association with the erotic spectacle of burlesque, and it is clear that Fuller sought to distance herself from the run-of-the-mill skirt dancer.[14] Fuller had, however, performed as an actress and dancer at the Gaiety Theater in 1889, giving her plenty of opportunity to absorb Lind's style; she may even have replaced Lind for a time in the musical *Carmen-up-to-Data* (Sommer 1975, 55–56; Current and Current 1997, 30–31). The prototype for the *Serpentine Dance* that Fuller performed in *Quack, M.D.* on the heels of her London engagement was "essentially a modified skirt dance" (Sperling 1999, 54). Eventually, scholar and Fuller reconstructor Jodi Sperling observes, "By adding substantially more fabric to the width of the skirt and introducing novel lighting effects, Fuller shifted the skirt dancer's emphasis from displays of pretty refinement or leg-revealing suggestion . . . [to the creation

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Photo 2. "Out of the Sinuous Folds." Sketch drawing of Fuller performing the Serpentine Dance. *"A Wild Whirl of Skirts,"* Sunday Advertiser, *February 21, 1892.*

of] abstract visual imagery" (1999, 53). Dance scholars are no doubt correct to point out the ways in which the *Serpentine Dance* evolved out of and departed from the skirt dance. Yet their insistence on Fuller's aesthetic elevation of the popular dance makes them complicit in the project of disassociating her from the sexualized, laboring bodies of the variety stage.

Furthermore, in placing so much emphasis on the skirt dance as predecessor, scholars have largely neglected the debt Fuller's choreography owed to Nautch dancing, the generic, colonialist term for Indian dance in the nineteenth and early twentieth centuries.[15] Reports of how Fuller fortuitously "discovered" the possibilities inherent in skirt manipulation vary widely, but they are marked by a recurrent Indian motif. One of Fuller's later imitators claimed that she and Loïe had both modeled the fabric that became the basis for the *Serpentine Dance* off the costumes used for a musical revue called *The Nautch Girl* at the Gaiety Theater in London. In interviews with journalists, Fuller adamantly denied this account and offered up her own origin stories. First she maintained that her skirt was "an old Hindoo costume" presented to her by a British officer stationed in India. She subsequently claimed that it was a leftover Oriental costume used in a production at London's Savoy Theater and, shortly thereafter, that it was "a Nautch girl's dress" from Calcutta sent to her by a friend (Current and Current 1997, 59–60). In her 1913 autobiography, she described the fabric as a "Hindu skirt . . . sent me by my two young officers" (28). Eventually, she dropped the Indian references altogether, asserting that the skirt material was "yards and yards of cheese-cloth" rummaged up in an old trunk in a London hotel garret (Current and Current 1997, 60–61).

The accuracy of any of these accounts aside, there are documentable links between Fuller's *Serpentine Dance* and the traffic in Orientalia that characterized high and low culture alike in turn-of-the-century Britain and America. Fuller herself performed in Orientalist fare in the United States and Europe. In 1887 in New York, she assumed the title role in *Aladdin's Wonderful Lamp*, a pantomime adaptation of *The Thousand and One Nights*.

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Among the show's fourteen dance numbers were an Indian "nautch" dance and a "Veil of Vapor Dance," in which Fuller performed "behind a translucent 'curtain' of steam over which colored lights were projected" (Garelick 2007, 25–26).[16] Spectators duly detected the influences on the *Serpentine Dance*: describing Fuller's 1892 performance in *Uncle Celestin*, a reviewer for the *New York Blade* wrote, "in the limelight it seemed as though the great skirt had a million folds and every one a yard. . . . When she came back . . . she twirled the skirt on both arms—she wound it up and her figure showed out clear through the white. *That was a bit of the Nautch dance*" (qtd. in Sommer 1975, 57; emphasis added).

This critic's framing of Fuller's performance reveals that, above and beyond her use of "Hindoo" fabric, the *Serpentine Dance* bore the "kinesthetic traces" of Nautch dancing (Srinivasan 2007, 8). As Priya Srinivasan argues, Indian dancers who traveled to and performed in North America under the name Nautch beginning in 1880 left their mark on American modern dance, one that historical accounts have failed to acknowledge. Her work focuses on the encounter between the white modern dance "pioneer" Ruth St. Denis and a group of Nautch dancers who performed at Coney Island in 1904, but her statement that "The labour of Nautch dancing women . . . haunts American dance histories through the very basic dance principles of movement[:] spiral turns and whirls" could apply equally to Fuller (2007, 8). The exposure of her figure through the translucent silk, the whirls and turns detailed in her copyright registration: these are among the core elements of Fuller's "signature" dance.[17] Circulated through the bodies of touring Indian dancers and adapted for Orientalist-themed Western stage productions, Nautch dancing, as much as skirt dancing, must be recognized as an important source from which Fuller drew to create her *Serpentine Dance*.

This Eastern influence is hardly surprising given the role Orientalism played in the emergence of white modern dance. As revisionist dance historians like Srinivasan, Yutian Wong, Jane Desmond, and Amy Koritz, building on the work of Edward Said, have pointed out, early modern dancers such as Ruth St. Denis and Maud Allan, whose choreography took on Oriental subjects, simultaneously enacted and distanced themselves from the East and thereby carved out a space for themselves as white female performers on the public stage (Srinivasan 2007; Wong 2002; Desmond 1991; Koritz 1997). By adopting Eastern themes, these women displayed their mastery of the Oriental Other; by emphasizing the aesthetic and spiritual dimensions of their danced "innovations," they displaced any suspect eroticism onto the racialized East. In doing so, early modern white female dancers buttressed white supremacy and legitimized their artistic practice.

Here we see how the property functions of whiteness facilitate the dynamics of appropriation. In a discussion of "the property of enjoyment" that complements Cheryl Harris's, Saidiya Hartman explains how the right to use and enjoy became an "inheritance of chattel slavery" for whites (1997, 23–24). Citing *Black's Law Dictionary*'s definition of the term "enjoy" as "to have, possess, and use with satisfaction; to occupy or have the benefit of," Hartman demonstrates how the property expectations of whites under slavery encompassed the presumption of ownership of African American cultural displays. This logic also underwrote the institution of blackface minstrelsy, in which white men appropriated and stereotyped their own racist versions of black music, song, and dance—a tradition that

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continued for many years after the abolition of slavery.[18] Likewise, when early white modern dancers took on Eastern themes, they were exercising their right "to take delight in, to use, and to possess" nonwhite expressive practices. The complement of the right to enjoy was the right to exclude: only those who were excluded from full white subjecthood, and thus rendered objects, were capable of being possessed and "enjoyed" as property. As Srinivasan demonstrates, the right to exclude was literalized in the United States through increasingly restrictive anti-immigration laws that targeted Asians in the early twentieth century (2007, 29–30.) Once barred from U.S. shores, Indian dancers were likewise prevented from contesting the use of their dance material by white women. In this way, the property-like rights of whiteness directly affected how Nautch dancing circulated, with white Western bodies becoming the privileged consumers and interpreters of Oriental dance.

Yet for white female dancers, the act of seizing "representational control" of the East was not without its risks. As Amy Koritz writes, in order for a Western woman to "retain the privileges of her ethnicity, she cannot be too closely identified with the Orientalized subject" (1997, 144). Thus, early modern dancers adopted methods like extracting select Eastern movement motifs (recall Fuller's "bit" of the Nautch dance), abstracting and aestheticizing them, and/or combining them with Western "expressive" styles, all the while wrapping their resulting choreography in the discourse of the modern and the artistic.[19] But the task of preserving a safe distance from their nonwhite subjects could be difficult when white women were not in command of the (re)production of their choreography. Even as they claimed ownership of Eastern "raw materials" through their choreographic practice, that is, these women's dancing bodies became products subject to alienation and exchange by men. As much as Fuller's white skin gave her the privilege to control what she embodied on stage, she had much less control over how her bodily representations circulated in the theatrical marketplace. As discussed above, the traffic in her choreography, just as for Nautch and skirt dancers, was regulated by contracts and dependent on the investments and inclinations of male managers and producers. How, then, could a white female dancer trying to situate herself as a proper(tied) artist ensure that the capitalist market would differentiate between her position as a possessive individual and that of racialized and/or sexualized subjects who were so susceptible to commodification? For Fuller, I want to suggest, the proliferation of the *Serpentine Dance* threatened to obscure the distinctions between her "legitimate" choreography and commercial versions of Nautch and skirt dancing. The unchecked circulation of Fuller's dance and image alongside these commodities called into question the extent of her hold on white property rights.

"They Had Stolen My Dance": Theft, Personhood, and Proprietorship

Fuller's alarm over the replication of her choreography is evident in her description of the events leading up to her lawsuit against Minnie Bemis. Having arranged to perform her newly worked out *Serpentine Dance* as a specialty act in the production *Uncle Celestin* at the Casino Theater for a rather middling salary, she eagerly awaited the debut of adver-

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tising placards for the show, on which she was to be featured. On February 16, 1892, the day after the show opened in New York following a six-week tour, Fuller woke up to find

> the whole city . . . plastered with lithographs, reproduced from one of my photographs, representing me larger than life, with letters a foot high announcing: 'The Serpentine Dance! The Serpentine Dance!' But there was one circumstance came near giving me heart failure. My name was nowhere mentioned. (Fuller 1913, 40)

Furious over the lack of attribution, Fuller resigned from *Uncle Celestin* and secured a new contract with a manager at the Madison Square Theater. In no time, she learned that Aronson, her former manager at the Casino Theater, had employed the chorus girl Minnie Bemis to continue performing the *Serpentine Dance* in her stead. Her reaction to the news is telling:

> They had stolen my dance.
>
> I felt myself overcome, dead—more dead, as it seemed to me, than I shall be at the moment when my last hour comes. My very life depended on this success, and now others were going to reap the benefit. I cannot describe my despair. I was incapable of words, of gestures. I was dumb and paralyzed. (Fuller 1913, 41–42)

Fuller came in for a similar shock several months later when she arrived at the Folies-Bergère in Paris in hopes of securing an engagement. "Imagine my astonishment," she writes, "when, in getting out of the carriage in front of the Folies, I found myself face to face with a 'serpentine dancer' reproduced in violent tones on some huge placards. This dancer was not Loie Fuller. Here was the cataclysm, my utter annihilation" (1913, 53).

What strikes me about these passages, however hyped for dramatic effect, is the way Fuller portrays the theft of her choreography as the dispossession of her very personhood. For her, the dissemination of her image without her control, and the inability to "reap the benefit[s]" of what she considered her artistic "discovery," amounted to a kind of obliteration of the self. Robbed of the power to capitalize on her dance or contain its reproduction, Fuller senses herself transformed from subject to object. Her description of this loss of control over her bodily labor resonates with Cherniavsky's claim that, under the logic of possessive individualism, being rendered "open to capital" amounts to "a missing or attenuated hold on interior personhood" (2006, xx). The inability to contain the circulation of her bodily image—her "migrations of personality"—left Fuller feeling deprived of a core, inalienable self and signified her vulnerability to the "invasive forces of capital" from which white (masculine) subjects have generally been protected (Cherniavsky 2006, 89).

Suing Bemis, who, after replacing Fuller in *Uncle Celestin*, went on to perform the *Serpentine Dance* at the Madison Square Roof Garden, was in part Fuller's answer to this attenuation of subjecthood. Originally filed in May 1892, and argued before Judge E. Henry Lacombe in the U.S. Circuit Court in New York on June 18th of that year, Fuller's copyright infringement case made three interrelated claims. The first was that the *Serpentine Dance* was a dramatic composition and that Fuller's copyright registration of it was therefore valid. This assertion was crucial since dance itself was not a protectable category.

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Citing precedent that defined a drama as "a composition in which the action is not narrated or described, but represented," and that "movement, gesture and facial expression . . . are as much a part of the dramatic composition as is the spoken language," Fuller's lawyer maintained that her creation was a dramatic composition under the meaning of the law—that the "incidents, scenes and tableaux of [the *Serpentine Dance*] . . . consist[ed] of a series of fantastic, graceful, unique, harmonious and highly pleasing dances, each of which portrays or represents different characters, and all of which appeal to the sense of the beautiful and the aesthetic emotions" ("Copyright—'Dramatic Composition'—Stage Dance" 1892).

Equally important, Fuller's lawyer contended that the *Serpentine Dance* was "entirely novel and unlike any dramatic incident, scene or tableau known to have been heretofore represented on any stage, or invented by any author, before [she] invented and composed" it. This disavowal of antecedents positioned Fuller in a class apart from the skirt and Nautch dancers who functioned as exchangeable commodities on the commercial stage, despite her indebtedness to them. Touted as "one of the most novel, attractive, and graceful and unique and beautiful incidents and productions ever represented on the public stage," the *Serpentine Dance*, the lawsuit implied, was the work of a creative genius ("Copyright—'Dramatic Composition'—Stage Dance" 1892). To make her case against Bemis, in other words, Fuller claimed the status of the white Romantic artist. Reaching its apotheosis in the late eighteenth and early nineteenth centuries (although I would argue it still holds sway in modern dance), the Romantic notion of originary authorship constructs the artist as a singular visionary whose work is by definition new and unique rather than imitative or derivative (Woodmansee and Jaszi 1994, 3). Scholars like Martha Woodmansee have shown how this modern conception of the artist as genius emerged when shifts in production, distribution, and consumption in the late eighteenth century created a need to "'rescue[. . .]' art from determination by the market"; the idea that creative inspiration emanated from the interiority of a solitary self insulated authors from the mass public on whom their economic survival was increasingly dependent (1994, 33). Just so, Fuller's insistence on limning her choreography as "novel" and "unique" was meant to signal her distance from the chorus girls, skirt dancers, and Nautch dancers of the commercial stage.

Finally, Fuller claimed the corresponding entitlements of Romantic authorship: the right of ownership and the right to profit from her intellectual labor. As Mark Rose has argued, "the distinguishing characteristic of the modern author . . . is proprietorship; the author is conceived as the originator and therefore owner of a special kind of commodity, the work" (1993, 1). Just so, Fuller's lawsuit hinged on the contention that her copyright granted her "the sole and exclusive right to act, perform and represent" the *Serpentine Dance* "and cause it to be acted, performed and represented, on any stage or public place, during the whole period for which the said copyright was obtained" ("Copyright—'Dramatic Composition'—Stage Dance" 1892). It was on these grounds that she sought to enjoin Bemis from performing the dance. Fuller's invocation of property rights, made at a time when American women were not yet enfranchised citizens, was thus also an attempt to claim the white male privileges of possessive individualism. Aligning herself

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with the capital of the white propertied subject, Fuller sought to shore up her difference from the dancers that circulated as salable sexualized and/or racialized objects in the theatrical marketplace.

"Merely Mechanical Movements": The Legal Decision

Ultimately, Judge Lacombe declined either to award Fuller a preliminary injunction against Bemis or to grant copyright protection to the *Serpentine Dance*. Although made on the basis that her dance was not "a dramatic composition within the meaning of the Copyright Act," his decision was effectively a refusal to extend to Fuller all of the rights that belonged to (certain classes of) white men. The ruling, which was reported in several newspapers, rested on the assessment that "the end sought for and accomplished" by the *Serpentine Dance*

> was solely the devising of a series of graceful movements, combined with an attractive arrangement of drapery, lights and shadows, telling no story, portraying no character, depicting no emotion. The merely mechanical movements by which effects are produced on the stage are not subjects of copyright where they convey no ideas whose arrangement makes up a dramatic composition. Surely those described and practiced here convey, and were devised to convey, to the spectator, no other idea than that a comely woman is illustrating the poetry of motion in a singularly graceful fashion. Such an idea may be pleasing, but it can hardly be called dramatic. ("Copyright—'Dramatic Composition'—Stage Dance" 1892)

Choosing to construe the kinesthetic components of Fuller's performance as "merely mechanical movements," the judge evacuated the *Serpentine Dance* of any meaning. And in denying that Fuller's choreography constituted the expression of meaningful ideas, he concomitantly denied her status as a proper authorial subject entitled to ownership rights in her bodily labor. In short order, the decision demoted Fuller from Romantic artist to little more than a "pleasing" and "comely" feminized object—fully open to capital.

Just how open is made clear by the other lawsuits that Fuller lost in close proximity to Judge Lacombe's ruling. In the months surrounding the "theft" of her *Serpentine Dance*, Fuller was involved in no fewer than three litigation cases. Shortly before suing Bemis for infringement, Fuller filed suit against the New York Concert Company, Ltd., the company that operated the Casino Theater, where she had performed in *Uncle Celestin*, and which was run by the producer Rudolph Aronson. Seeking one thousand dollars in damages, Fuller charged the company with defrauding both her and the public for continuing to use the placards featuring her likeness and advertising her *Serpentine Dance* after she was no longer performing at the theater. The defense countered that Aronson had "originated the title of the dance," that Fuller had "violated her contract in leaving the Casino," and that the company itself was not responsible for her dealings. On June 14, 1892, the judge dismissed the complaint (Current and Current 1997, 40–42). Almost immediately thereafter, Fuller lost a suit filed against her by Hoyt and Thomas, the management company of Madison Square Theater. As the *New York Clipper* reported,

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> LOIE FULLER will be compelled, under a decision made by Judge McAdam of the Superior Court, June 16, to confine her serpentine dance to the few minutes during which she appears in "A Trip to Chinatown." Miss Fuller made a contract with Hoyt & Thomas to dance under their management, but she expressly refused to sign a contract with a clause to the effect that she was to appear with Hoyt & Thomas exclusively. Nevertheless, when she danced at the Amberg[,] Hoyt & Thomas applied for an injunction, and the application for a continuance was argued before Judge McAdam. Juge [*sic*] McAdam holds that Miss Fuller's performance is, according to her own description, "unique," and, being so, the spirit of her employment by Hoyt & Thomas must be that they should be entitled to her exclusive services. (1892, 247)

In addition to highlighting the power of the contract to regulate the circulation of Fuller's image, choreography, and person, these cases point to the ambiguities in the legal reasoning applied to Fuller's situation. While one judge allowed lithographic images of the *Serpentine Dance* to circulate with impunity, another restricted the dance's circulation by confining Fuller to a single theater. While one judge gave no heed to Fuller's claims of uniqueness and thus sanctioned other performers' imitations of the dance, another used these same claims to justify strict limits on the dance's reproduction. Overall, the cases underscore and reinforce Fuller's lack of ownership over her choreographic labor. Without the rights of the possessive individual, her efforts to control the terms on which her dancing body circulated were ineffectual, rendering her "susceptible to abstraction and exchange" in the male-dominated marketplace.

In this context, Judge Lacombe's use of the term "mechanical" to describe Fuller's choreography is especially striking. Calling her movements "merely mechanical" likens them to a mass-produced commodity; they convey no more ideas than a "pleasing" lithographic representation of her and require no greater thought to reproduce. Yet taken together, the three legal cases draw contradictory conclusions about the difference between the commodity image and the live dancing body. When Fuller is the plaintiff, she is granted no more entitlement to limit live enactments of her dance than mass produced images of it. But when she is sued by male managers with a financial stake in her performance, the "uniqueness" and "exclusivity" of her live body suddenly become paramount, justifying restrictions on the *Serpentine Dance*. It would seem, then, that the legal system's answer to the question of how exchangeable Fuller's dancing body was and should be was a gendered one that depended heavily on who was asking and who stood to gain.

Yet to a great extent, the inconsistencies surrounding the reproducibility of Fuller's choreography and image were inherent to her position as a commoditized dancing body. Her refusal to assign exclusive performing rights to the Hoyt and Thomas management company is a reminder that Fuller was invested in her own circulation—she only sought to control its terms herself. And her copyright registration of the *Serpentine Dance*, recall, was as much an acknowledgment of as a response to the dance's ability to be replicated. Arguably, it was the very act of making her white female body available for public consumption that rendered her susceptible to the "invasive forces of capital" and threatened

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her self-possession. By this logic, it is possible to see her copyright claim and associated legal actions as belated attempts to restore a proprietary white subjecthood that had already been compromised (or never fully instated).[20] Likewise, we might view the judicial rulings against Fuller as denying her inalienable property rights to an embodied self that was already alienated. But if these decisions lent legal authority to and compounded a condition that was engendered by the circulation of her live dancing body, that same body provided Fuller with a partial solution that the law refused her.

"Sure of My Own Superiority": The Aftermath

In the wake of the *Fuller v. Bemis* decision and the denial of copyright protection for choreography, imitations of the *Serpentine Dance* continued to proliferate. During the summers of 1892 and 1893, the dance became a regular feature of variety shows staged on the roof garden theaters of New York (Johnson 1985, 28). As suggested above, one imitator, named Mabelle Stuart, was already performing the dance at the Folies-Bergère in Paris when Fuller arrived there.[21] Copycats on both sides of the Atlantic were so numerous that, as biographers Richard and Marcia Current write, "'Serpentine' [became] both a specific and a generic term: it referred to a particular dance of Loie's but also to her style of dancing in general" (1997, 51).[22]

Yet despite the diffusion of her signature dance, Fuller soon learned that imitators did not necessarily diminish the value inherent in her own dancing body. In her autobiography, she recounts her experience as witness to Stuart's performance at the Folies-Bergère:

> It would be hard to describe what I saw that evening. I awaited the "serpentine dancer," my rival, my robber—for she was a robber, was she not, she who was stealing not only my dances but all my beautiful dreams?
>
> Finally she came out. I trembled all over. Cold perspiration appeared on my temples. I shut my eyes. When I reopened them I saw there on the stage one of my contemporaries who, some time before, in the United States, having borrowed money from me had neglected to repay it. She had kept right on borrowing, that was all. But this time I had made up my mind to force her to give back what she had taken from me.
>
> Presently I ceased to want to do anything of the sort. Instead of further upsetting me the sight of her soothed me. The longer she danced the calmer I became. And when she had finished her "turn," I began to applaud sincerely and with great joy.
>
> It was not admiration that elicited my applause but an entirely opposite feeling. My imitator was so ordinary that, sure of my own superiority, I no longer dreaded her. In fact I could gladly have kissed her for the pleasure that her revelation of inefficiency gave me. (1913, 53–54)

Cold sweat giving way to calm joy, Fuller undergoes a reversal of the "annihilation" of self that the original "theft" of her dance occasioned. Stuart's "revelation of inefficiency" is, for Fuller, a revelation that while her choreography and image could be expropri-

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ated, her particular corporeality could not. Confident of the "superiority" of her dancing skill—of the sihgular way she performs the *Serpentine Dance*—Fuller's sense of abjection dissolves, replaced by a renewed sense of possessive individualism and subjecthood. Her confidence was borne out when her audition for the Folies-Bergère manager resulted in an offer to replace Stuart immediately. This time, it was Fuller who appeared under her imitator's name until the publicity materials could be changed. Fuller was so well received, she proudly reports, that she "was obliged to repeat *her* [Stuart's] dance four or five times" (1913, 57; emphasis added). In performance, if not in the law, Fuller found it possible to reap the benefits of "originality" by outshining the imitators who gave only a "feeble copy" of the *Serpentine Dance* (Fuller 1913, 56). Accordingly, Fuller began billing herself as "La Loïe Fuller," the "La" signifying her status as "the genuine article" (Current and Current 1997, 51).

However much Fuller touted her ability to capitalize on shoddy imitations, she did not abandon her efforts to contain the circulation of her choreographic work. In January 1893, some six months after the U.S. Circuit Court rejected her copyright claim, Fuller publicly announced her intention to take legal action against anyone who copied her dances on the Parisian stage. Advised by a French jurisconsult of the unlikelihood of winning such cases, Fuller turned to patent law to protect the stage devices she used in her productions. On April 8, 1893, Fuller secured a French patent on a "garment for dancers"—a skirt and bodice with wands attached to the skirt that enabled the dancer to manipulate the material. So began a string of patents that Fuller obtained, not only in France but in the United States and Germany as well, on effects such as a mirrored room and a mechanism that illuminated a dancer's figure from below the stage (M. Harris 1979, 18–19; Current and Current 1997, 61–62).[23]

This switch in strategy—pursuing property rights in her scientific inventions rather than in her artistic work—adds another wrinkle to Fuller's vexed relationship to propertied subjecthood.[24] Thwarted in her legal attempts to own dance itself, Fuller settled for ownership rights over the trappings of production that surrounded and mediated her dancing body. In doing so, she established her status as the subject of property without having to alienate herself from her choreography, as copyright required. But these patents did little to secure for her the property rights *in the body* that were, at least theoretically, a prerequisite of self-possession and yet proved so elusive from a legal standpoint. Little wonder, then, that Fuller continued to sue others for infringement of her choreography as well as her inventions. While in 1894 she threatened an injunction against two producers in New York for "the use of mirrors for scenic effect in dancing," by 1910, Fuller's sense of proprietorship was evidently expansive enough that she sought an injunction against the producers of a "barefoot dance" at New York's Plaza Music Hall ("Theatrical Gossip" 1894, 8; "Reserve Decision" 1910, 9).

Clearly, the pursuit of intellectual property rights, in scientific "discoveries" and in the body, was an ongoing project for Fuller, a means of negotiating and attempting to elevate her station in a crowded theatrical marketplace. The fact that the dancers and producers whom Fuller accused of theft were also white should not detract from the racialized nature of her predicament or her claims. Her concern about who controlled the commodification

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of her bodily labor and her turn to legal institutions to curb the traffic in her choreography cannot be divorced from her status as a white woman. While a tacit correlation between whiteness and property rights surely does not exhaust the range of possible interpretations of Fuller's actions, it does lend critical insight into a defining aspect of her career. Seeking a way to navigate the patriarchal organization of the mixed-race commercial stage, Fuller strove to position herself as a propertied subject and thereby take hold of racial prerogatives typically reserved for white men. To the extent that Loïe Fuller helped inaugurate the modernist movement in dance, she did so as much for her efforts to claim the rights of possessive individualism as for her embrace of "barefoot" dancing.

Sixty years after Fuller unsuccessfully sued Minnie Bemis, the white modern dancer Hanya Holm secured a copyright registration under the category of dramatico-musical composition for her choreography for the 1948 hit Broadway musical *Kiss Me, Kate*. Although it would be another two decades before the 1976 Federal Copyright Law officially extended protection to choreography in its own right, Holm's copyright was widely celebrated in the concert dance community as a long overdue vindication of the rights of the (white) choreographer. The reasons that Holm succeeded where Fuller failed are beyond the scope of this essay.[25] But it is worth noting that in the years between their claims, women had gained the franchise, and modern dance had gained recognition as a legitimate art form, largely through the efforts of white female dancers. Put another way, changes in the status of white women and modern dance in the first half of the twentieth century helped white female choreographers penetrate the terrain of white (intellectual) property rights. This conjunction suggests the continued need for modern dance, white womanhood, and racialized and gendered constructions of property to be thought through together.[26]

Still, despite and because of its failure, Fuller's campaign for choreographic copyright goes a long way in shedding light on the ways the axes of race and gender have shaped the formation of both modern dance and intellectual property rights in this country. On the most basic of levels, Fuller's case points to the importance of thinking of whiteness as more than the absence of racial markings. As an increasing number of scholars have argued, whiteness is a subject position, accompanied and constituted by a bundle of rights.[27] Central to the privileges of whiteness has been a property right in the body, a literal possessive individualism that enabled white persons to sell their labor without selling the flesh that supposedly housed their core self. White women, however, have had a historically fragile relationship to the property rights of whiteness. It was precisely this fragility that propelled Fuller's crusade to win copyright protection for her choreography. Forced to contract her bodily labor out to male theatrical managers, Fuller sought to preserve property rights in her body by asserting ownership over her signature *Serpentine Dance*. The court's refusal to grant her these property rights, combined with her inability to maintain control over the circulation of her dance, occasioned a crisis of subjecthood for Fuller. Her case demonstrates how the granting and withholding of property rights in a reproductive capitalist economy serves as a key mechanism through which the mutually inflected categories of race and gender are materialized.

At the same time, because it played out in the medium of dance, Fuller's case prompts us to think more closely about the idea of property rights in the body. Live dance is

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anything but immune to capitalist exchange, but it does circulate differently from mechanically reproducible commodities. In the case of live choreography, the commodity form is the bodily performance, which cannot be divorced from the bodily labor that produces it. Although reproductions of the solo *Serpentine Dance* occurred both with and without Fuller's own corporeal involvement, insofar as she claimed intellectual property rights in the dance, her white female body was always implicated in the commodity. Yet Fuller also found distinct advantages in the entanglement between performer (laborer) and dance (product). As she discovered, her personal performance style, which could not be alienated from her white female body, lent her enactment of the *Serpentine Dance* a kind of Benjaminian "aura" of originality. Regardless of the legal protection afforded or denied her, as long as she could continue to perform the *Serpentine Dance*, Fuller could stake an ownership claim in the dance *in and through her body*. Property rights in the body, along with their constitutive raced and gendered dynamics, then, are both regulated by and exceed the law. As a consequence, the drama of white women's quest for possessive individualism played out between and across the realms of the embodied and the juridical.

Notes

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1. Née Mary-Louise and later nicknamed "La Loïe," Fuller had a multifaceted and prolific stage career. Born in a small town outside Chicago in 1862, she worked as a temperance lecturer, playwright, and actress, touring the United States and London with various theater comedies in soubrette and trouser roles before she began performing the solo dances that would make her famous. In 1892 she debuted in Paris, where she was quickly embraced by the emerging Art Nouveau and Symbolist movements and became an inspiration for such artists as Stéphane Mallarmé, Auguste Rodin, and Henri de Toulouse-Lautrec. She later opened her own dance school, experimented with film, and became an impresario for Japanese theater companies and for Isadora Duncan, who, with Fuller, is figured as a "mother" of modern dance. Fuller died in 1928. In recent years, she has received a resurgence of attention from biographers, dance scholars, queer theorists (she lived openly as a lesbian), and performing artists who have reconstructed her most well-known dance works. See especially Albright 2007; Garelick 2007; Sommer 1975; Coffman 2002; Townsend 2001; Latimer 1999; McCarren 1995. This essay draws on these valuable secondary sources, as well as on Fuller's 1913 autobiography, court records, and contemporaneous accounts, homing in on the ways in which race, gender, and political economic considerations underlay and propelled Fuller's pursuit of intellectual property rights for dance.

2. In a Society of Dance History Scholars paper, for example, Jody Sperling dubbed the *Serpentine Dance* "America's first modern dance" (1999, 53). As Rhonda Garelick summarizes, critics tend to regard Fuller "as the earliest manifestation of a vast array of modernist developments, including performing recital dance with no balletic technique, discarding constricting costumes and elaborate stage sets, using classical music for cabaret dance, downplaying narrative, working

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with light and shadow onstage in proto-cinematic fashion, and incorporating electricity and technology into her onstage work" (2007, 9).

3. See also Clarke 1999, 166.

4. As the U.S. Copyright Office states, "It is a principle of American law that an author of a work may reap the fruits of his or her intellectual creativity for a limited period of time. Copyright is a form of protection provided by the laws of the United States for original works of authorship, including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations" (http://www.copyright.gov/circs/circ1a.html; accessed August 10, 2010). For a history of copyright, which arose in Britain and Europe with the invention of the printing press and the rise of the marketplace in the seventeenth and eighteenth centuries, see Rose 1993.

5. My thanks to an anonymous reviewer for helping me clarify this conundrum.

6. The *Serpentine Dance*—performed by both Fuller and her imitators—was also captured on film, including by Thomas Edison (Albright 2007, 188). Several of these imitation *Serpentine Dances* are available on YouTube. On the intersection of dance and mechanical reproduction in the early decades of the twentieth century, see McCarren 2003.

7. A work must be "fixed in a tangible form of expression" to merit copyright protection. ("Copyright Basics," http://www.copyright.gov/circs/circ1.pdf; accessed August 11, 2010). Before the mid-twentieth century, artists trying to secure copyrights for choreography submitted written descriptions of their dances, as Fuller did. But it was not until Labanotation, a system of symbols used to record movement based on the ideas of Rudolf Laban, won acceptance by the Copyright Office as a legitimate means of "fixing" choreography that the government began to grant protection to choreographic works that qualified as "dramatico-musical compositions." By the late twentieth century, video became accessible and affordable enough to serve as the default method of submitting choreography for copyright registration. For more on the issue of fixation for choreography, see Landsdale 1952; Arcomano 1980; Van Camp 1994.

8. As Marta Savigliano has written, "dance requires an enactment, an embodied practice and labor of performance, in order to be" (2009, 165).

9. Under U.S. Copyright Law, only the expression of ideas, and not the ideas themselves, are copyrightable (http://www.copyright.gov/help/faq/faq-general.html; accessed August 11, 2010). The copyrighting of dance, I would also argue, both highlights and vexes the distinctions between work (as the finished product) and labor (as the ongoing process of producing) in the terms that Franko, following Hannah Arendt, lays out (2002, 2). See Srinivasan (forthcoming) for more on dancing bodies as laborers.

10. See, among others, Desmond 1991; Daly 1995; Wong 2002; Manning 2004; and Srinivasan 2007.

11. Opening in 1890 and running for a record-setting 650 performances, Charles Hoyt's musical comedy *A Trip to Chinatown* was a white-oriented show set in San Francisco. Chinatown represented an exotic ethnic locale but was apparently never actually depicted (Haenni 2002, 49n40). Fuller's *Serpentine Dance* bore no relation to the musical's plot.

12. These constraints may have been heightened by the capitalist transformations occurring in stage entertainment in the late nineteenth century. As Bruce McConachie writes, in the 1890s, "group creation gave way to individual production, the 'individual' being either a capitalist or a corporation, the legal extension and enhancement of individual power under capitalism" (1992, 171).

13. The description of the dance that Fuller submitted as part of her copyright registration is included in "Copyright—'Dramatic Composition'—Stage Dance" 1892.

14. See Hindson 2007 for more on the gender ideology of the skirt dancer.

15. See Srinivasan 2007 and Coorlawala 1992.

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16. In her pioneering 1975 article "Loïe Fuller," Sally Sommer writes that the "nautch" dance in this production "used a filmy transparent costume not unsimilar to the one used later by Fuller" (55).

17. See Albright 2007 for a discussion of the *Serpentine Dance* as Fuller's signature.

18. On blackface minstrelsy and its persistence into the twentieth century, see Lott 1993 and Rogin 1996.

19. For example, early modern dancers like St. Denis drew on the "expressive" principles of the American Delsarte system of movement. See Desmond 1991, 33–35.

20. I am indebted to an anonymous reviewer for suggesting this possibility.

21. On June 28, 1892, Fuller secured an immediate release from her contract with Hoyt and Thomas and sailed to Germany and then Paris (Current and Current 1997, 44).

22. The most famous of these imitators was Ada Fuller, who claimed to be Loïe's sister-in-law (Current and Current 1997, 58).

23. In addition, Fuller imposed a policy of strict secrecy on her assistants, refusing to discuss the details of her costumes or lighting effects (M. Harris 1979, 20; Current and Current 1997, 60).

24. I am grateful to an anonymous reviewer for encouraging me to think through the implications of Fuller's turn to patent law for property rights protection.

25. For more on Holm's copyright claim, see Kraut 2009.

26. That is not to say that men were uninterested in winning copyright protection for dance. Prominent choreographers such as Eugene Loring and George Balanchine also tried unsuccessfully to copyright their dances in the years before Holm's registration. (Loring's choreography for *Billy the Kid* was rejected on the basis that the method in which it was recorded—Labanotation—was "not yet recognized as a set system for recording movement," while Balanchine's *Symphony in C*, submitted as a Labanotated score just a year or two prior to Holm's *Kiss Me, Kate*, failed to meet the "dramatic" requirement [qtd. in Lansdale 1952, 21; Arcomano 1980, 59].) In the 1920s, meanwhile, the African American dancer Johnny Hudgins did obtain a copyright in London on a publication that described his comic pantomime acts, although there is no indication that U.S. courts would have upheld it. Notwithstanding these examples, the fact that white women dancers were at the center of the most visible copyright campaigns leading up to the 1976 Copyright Law suggests that gendered whiteness was a driving force behind the pursuit of copyright protection for choreography in the United States.

27. In his valuable survey of the development of whiteness studies, David Roediger (2002) cites the work of W. E. B. Du Bois (1935/1992), Theodore Allen (1994/1997), Alexander Saxton (1990), Ian Haney Lopez (1996), and Cheryl Harris (1993) as among the key thinkers to articulate whiteness as the expectation and exercise of power.

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