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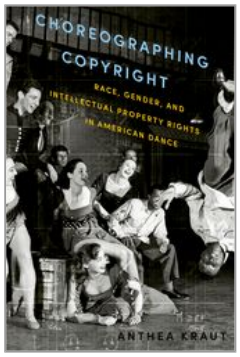

Choreographing Copyright: Race, Gender, and Intellectual Property Rights in American Dance
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Print publication date: 2015
Print ISBN-13: 9780199360369
Published to Oxford Scholarship Online: November 2015
DOI: 10.1093/acprof:oso/9780199360369.001.0001

White Womanhood and Early Campaigns for Choreographic Copyright

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DOI:10.1093/acprof:oso/9780199360369.003.0002

Abstract and Keywords

This chapter recounts Loïe Fuller's pursuit of intellectual property rights in the late nineteenth century. Focusing on the 1892 case *Fuller v. Bemis*, it approaches Fuller's lawsuit as a gendered struggle to attain proprietary rights in whiteness. First situating Fuller's practice in the context of the patriarchal economy that governed the late nineteenth-century theater, the chapter then examines the lineage of her *Serpentine Dance*, including the Asian Indian dance sources to which it was indebted. It also shows how the "theft" of her *Serpentine Dance* occasioned a crisis of subjecthood for Fuller, and how her assertion of copyright was an attempt to (re)establish herself as a property-holding subject. The chapter ends by considering the copyright bids of two dancers

who followed in Fuller's wake, Ida Fuller and Ruth St. Denis, as well as the counter-claims of one of St. Denis's South Asian dancers, Mohammed Ismail.

Keywords: white womanhood, Loïe Fuller, Serpentine Dance, Fuller v. Bemis, Ruth St. Denis, Ida Fuller, Mohammed Ismail

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 her from performing a version of the *Serpentine Dance*, which Fuller claimed to have invented. 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 submitted a written description of it to the United States Copyright Office. Ultimately, however, a US Circuit Court judge 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.[1] Although Fuller clearly regarded her expressive output as intellectual property, dance at the time merited protection only if it qualified as a "dramatic" or "dramatico-musical composition."[2]

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 looms large in historical accounts of copyright for choreography in this country. For dance historians, 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.[3] Conventional wisdom holds that it was not until "abstract" modern (p.44) dance won wider legitimacy in the mid-twentieth century that Congress saw the need to classify choreography as a copyrightable work, relieving it from the "dramatic" requirement.[4]

Yet *Fuller v. Bemis* is consequential for reasons beyond its insistence that dance tell a story. Approached as an originary moment in the story of dance's interface with copyright law,

the case introduces a number of issues that are central to the history of intellectual property rights for choreography: the circulation of dance in an economy of reproduction, the tensions between "originators" and imitators, the patriarchal structure of the theatrical marketplace, the commodification of female bodies, white women's status as possessive individuals, the racial underside of choreographic "innovations," and the ways embodiment and the law operate in tandem and in tension with one another. Close scrutiny of *Fuller v. Bemis*, the conditions that gave rise to it, and the repercussions it had illuminates undercurrents that would remain key to the pursuit of choreographic copyright for the next hundred years.

Exploring all of these issues, this chapter's central argument is that Fuller's lawsuit against Bemis, as well as subsequent attempts by white female dancers to establish themselves as property-holding subjects, must be viewed as part of a gendered struggle to attain proprietary rights in whiteness. While attention to Fuller has surged in recent years, including from biographers, dance scholars, queer theorists (she lived openly as a lesbian), and performing artists who have reconstructed her most well-known dance works, the raced and gendered dynamics of her pursuit of property rights deserve careful examining.[5] (p.45) Doing so opens up a new vantage point on Fuller's significance to the development of modern dance, casting fresh light on the ways in which race and gender mattered to its formation. 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.[6] 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."[7] On the other hand, they relied on essentialized racial distinctions between their own "universal" artistry and the putatively "primitive" dance practices of non-white 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 embrace of copyright suggests 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 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. The assertion of property rights, that is to say, was another—and, for some, a crucial—avenue through which white female dancers negotiated their status.

(p.46) To lay the ground for this argument, I re-visit theories of whiteness and/as self-possession (rehearsed in the Introduction), with special attention to how they apply to white women. I then situate Fuller's practice in the context of the gendered economic relations of production that governed the late nineteenth-century theater and examine the lineage of Fuller's *Serpentine Dance*, including the oft-neglected Indian dance sources to which it was indebted. Next, I turn to Fuller's reaction to the "theft" of her choreography and the claims she made in her infringement suit against Minnie Bemis. A discussion follows presenting the outcome and effects of the legal decision in this and other lawsuits in which Fuller was involved. Finally, I consider the pursuit of intellectual property rights by two dancers who came in Fuller's wake: one of her imitators, Ida Fuller, and Ruth St. Denis, another "pioneer" of modern dance in the United States. Together, these early attempts to use the legal system to secure ownership of a choreographic work have much to tell us about how assiduous and contradiction-filled female dancers' fight for the entitlements of whiteness could be.

White Womanhood and Property Rights

My argument about Fuller builds on the work of American studies scholar Eva Cherniavsky, who herself builds on legal scholar Cheryl Harris's insights about the property interests in whiteness.[8] Cherniavsky's proposition, as discussed in this book's Introduction, is that one of the key protections afforded to whites—during slavery but also, arguably, in its wake—is an "inalienable property in the body."[9] 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."[10] For Cherniavsky, 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.[11] In the formulation of modern liberal-democratic theory, with its roots in seventeenth-century conceptions (p.47) of the individual as the "proprietor of his own person or capacities," whiteness equals property ownership equals proper subjecthood.[12]

Whiteness, however, is far from monolithic, and gender as well as class have complicated the equation between whiteness and propertied personhood. Possessive individualism has been an institution not only of whiteness, as scholar Grace Hong has observed, but also of masculinity, "subtended by bourgeois domesticity."[13] 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."[14] 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.[15]

Nonetheless, as Cheryl Harris stresses in "Finding Sojourner's Truth," the patriarchal system that emerged out of slavery was a thoroughly racialized one, with white women's oppression 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.[16] Historian Louise Newman has shown that white women activists in the late nineteenth-century United States measured their rights not only against those of white men but also against the rights 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.”[17] Accordingly, parsing (p.48) white women’s relationship to property rights requires factoring their shifting positionality vis-à-vis both white men and non-white men and women.

Cherniavsky’s treatment of racialized gender focuses on how technological mediations that transformed white women into “commodity-images” threatened to undermine the expectation of white self-possession. She argues that the mechanical reproduction of cinema, allegedly “the first medium in which whiteness … circulates independently of white persons,” jeopardized the privileged status of white bodies, chiefly those of white female stars, who constitute “the primary commodity-image of Hollywood cinema.”[18] In a 2009 article, Eden Osucha also explores the crisis produced by the circulation of white women’s image via visual technology—in this case, photography. Reading Samuel Warren and Louis Brandeis’s influential 1890 legal article “The Right to Privacy,” in which the two jurists fretted over the “invasive” and “corrosive effects” that the rise of photography and the media industry were having on bourgeois codes of propriety and the domestic sphere, alongside a 1902 case, *Roberson v. Rochester Folding Box Company*, in which a young white woman’s photographic image was used without her consent to advertise a flour mix, Osucha shows how “spectacles of white women in peril saturate the early discourses of media privacy.”[19] Crucially, Osucha also places the legal treatise and court case in the context of American commodity racism and the consumer marketplace’s permeation with images of blackface

stereotypes, such as the figure of Aunt Jemima, used to sell pancake mix. When these are viewed in conjunction, it becomes clear that "the cultural anxieties that held unwanted media publicity to be an experience of proprietary dispossession reflect the understanding that to be subject to media publicity is to be, in effect, racialized."[20]

Following Cherniasky's and Osucha's lead, I approach Loïe Fuller's attempt to regulate the circulation of her *Serpentine Dance* as an effort to protect herself from mass commodification, replete with racialized implications, and to claim for herself the right of self-possession, which, because of the public nature of her livelihood, was always under threat. Although photography and film were not the primary media through which Fuller's body circulated, both visual technologies were important to her career. The *Serpentine Dance*, performed by Fuller and her imitators, was captured on film, including by Thomas Edison.[21] (p.49) More generally, as Rhonda Garelick writes, Fuller "exploited the era's fascination with the alchemy inherent in the union of human and machine."[22] Fully imbricated in a culture of visual technology, Fuller developed a skill at commodifying her image that qualifies her as "a direct forerunner of today's modern media celebrities."[23]

Yet the divergences between Fuller and the examples raised by Cherniavsky and Osucha are equally significant. It was not merely visual iconography that was at issue for Fuller; it was the circulation of her live dancing body. Her case thus raises questions about what bearing liveness had on white women's relationship to commodification on the one hand and possessive individualism on the other. Unlike a mechanically reproduced commodity like a photograph or 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). 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 status, by controlling the circulation of her choreography.

“Singular Migrations of Personality”: (Re)Producing Loïe Fuller’s Dancing Body

Born Mary Louise in Fullersburg, Illinois, in 1862, Loïe Fuller’s early years were spent in Chicago where her father ran a tavern. Although the details of her upbringing are not well documented, Fuller’s family appears to have been neither prosperous nor poor. Like other middle-class white women at the turn of the twentieth century, Fuller had access to some of the “racial-cultural” privileges of whiteness without full access to propertied subjecthood. In contrast to (p.50) the wave of European immigration to the United States in the late nineteenth century, Fuller’s roots on both her paternal and maternal side stretched back to the Revolutionary War, which, as biographers Richard and Marcia Current point out, entitled Fuller to join the Daughters of the American Revolution, though she never did.[24] Contrary to the cultural norm of domesticity for middle-class white women, Fuller entered show business at an early age and developed a multifaceted and prolific stage career. Before she began performing the solo dances that would make her famous, she worked as a temperance lecturer, a playwright, and an actress, touring the United States and London with various theater comedies in soubrette and cross-dressing roles. 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.

When Fuller toured United States 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.[25] If Fuller's choice of career made her vulnerable to the sexualized gaze, she took explicit measures to counteract the eroticization of her body, as dance scholars writing about Fuller almost uniformly underscore. Explaining the appeal of her work as a temperance lecturer, for example, Linda Tomko observes that "The temperance identification offered Fuller something that employment in a stock play or burlesque could not—control over presentation of her self."[26] Scholars also point to Fuller's choreographic techniques, from the veiling of her body, to her emphasis on fluid motion rather than static poses, to her use of projection to render her body a "desexualized screen," as evidence of her success at resisting the erotic gaze.[27]

(p.51) As notable as these strategies were, there were limits to Fuller's ability to counter dance's low art status. One chief constraint was the structural position dance held within a theatrical economy, which determined how dancing bodies circulated at the end of the nineteenth century. Accompanying its low repute, dance also lacked autonomy as a medium: rather than stand on its own, it appeared in mixed theatrical revues alongside musical and dramatic routines.[28] Bearing little if any relationship to the content of surrounding acts, individual dance numbers could be and were inserted into a variety of stage productions. This lack of self-sufficiency actually facilitated dance's circulation, for a given dance specialty could appear on multiple programs and, if necessary, be replaced without disrupting the overall coherence of a show. In other words, dance functioned something like an exchangeable commodity within a larger theatrical framework.

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."[29] When the play closed some weeks later, Fuller "was left with her new routine and nowhere to perform it."[30] 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*. Departing that production after a conflict with Aronson (to be discussed below), Fuller found work performing the *Serpentine Dance* as an entr'acte number in the musical *A Trip to Chinatown*.[31]

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 (p.52) 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."[32] 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, 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 Theatre 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.")[33] 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 (p.53) production of commercial theater and controlled the traffic in female performers.[34] Early in her career, Fuller 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.[35] 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.[36] 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.[37]

Her dispute with Aronson over the terms of her engagement in *Uncle Celestin*, in fact, centered around the issue of credit, and a closer look at the lawsuit she filed against the New York

Concert Company, Ltd., the company that operated the Casino Theatre, where she performed in *Uncle Celestin*, and which was run by the producer Rudolph Aronson, sheds light on the nature of her grievances. Filed in New York's Court of Common Pleas in March 1892, but not tried until June, *Loie Fuller v. New York Concert Company, Limited* was a clash over contracts, publicity, and attribution.

In January of 1892, according to Fuller's testimony, Aronson engaged her to "perform and execute a certain dance known as the Serpentine dance" for the New York Concert Company in the play *Uncle Celestin*. (Fuller did not make her appearance in the show until February 15.) Fuller evidently agreed to accept a weekly salary of $50, on the condition that the plaintiff "advertise and feature her by special announcement of such engagement and by the distribution of pictures of the plaintiff representing her in the dress in which such dance was to be performed, such pictures to bear the plaintiff's name together with the announcement of such dance." A week after her debut, having received rave reviews, Fuller complained to Aronson that the Company "had broken its contract with her in having failed specially to feature and advertise her and have her name printed upon the lithographs of herself which had been generally (p.54) distributed throughout the City of New York and on exhibition in the windows of stores and other conspicuous places." In other words, the publicity placards for *Uncle Celestin* depicted Fuller's dancing body along with the words "The Serpentine Dance," but failed to mention her by name. Claiming breach of contract, Fuller refused to remain on in the production without an increase in salary. According to her deposition, when the defendant professed to accept Fuller's demands, which included recalling the circulating lithographs to have her name printed on them, she went on performing in the production, giving two performances on February 22, at which point she was notified that "her terms would not be considered." She promptly left, taking her *Serpentine Dance* to the Madison Square Theatre, where it was inserted between the acts of *A Trip to Chinatown*. But the continued use of the lithographs bearing her image to advertise *Uncle Celestin,* Fuller charged, was "perpetrating a fraud upon the public"

and depriving her of “the benefit of the attendance of such of the public as may desire to see her dance, but are led by such advertisement to believe that she is still performing at the Casino.” Fuller sought damages in the amount of $1,000.[38]

The nuances of Fuller’s complaints in this suit reveal how complicated the relationship between commodity-image and live dancing body was. Her initial objection—that she was not explicitly credited in the publicity lithographs—indicates that it was not the circulation of her likeness that was problematic for her; it was, rather, the detachment of her name from the image. How could she capitalize on her circulating likeness if that likeness remained anonymous? Yet once she terminated her engagement in the production being advertised, the likeness of her posed a problem for precisely the opposite reason: it was *too* identified with her and therefore misled theatergoers about where she was actually performing. The “damage” that Fuller claimed was caused by the publicity from the lithographs was thus a result of both the distance and the proximity between the mechanically reproduced representation of her and her embodied identity. For Fuller, the lack of power to control the circulation of her commodity-image stripped her ability to derive value from it.

The counterargument of the defense, which moved to dismiss Fuller’s complaint, was entirely devoid of nuance. While Aronson’s lawyers maintained that Fuller had “violated her contract in leaving the Casino,” Fuller’s lawyer evidently erred in suing the New York Concert Company rather than Aronson himself, for the defense claimed that in its capacity as a corporation, (p.55) the Company was not responsible for Fuller’s dealings. More specifically, they denied “each and every allegation” made by Fuller, including that they had hired her for the express purpose of performing the *Serpentine Dance*, that they had ever “made or entered into any contract or agreement of any kind with the plaintiff,” and that they ever agreed to advertise her dance performance in any specific way. Three months after Fuller filed her complaint, Judge L. A. Giegerich granted the motion to dismiss and ordered Fuller to pay $44.32 in costs to the defendant.[39]

Meanwhile, Fuller had endured a further violation. In a chain of events that suggests a connection between the circulation of commodity-images and the circulation of live bodies, Fuller's dispute with Aronson and subsequent departure from *Uncle Celestin* led Aronson to hire the chorus girl Minnie Bemis as Fuller's replacement in the *Serpentine Dance*.[40] If Fuller felt a sense of injury from the unchecked circulation of her commodity-image, being summarily exchanged for another white female body only heightened this sense. Though she was fully prepared to orchestrate her own "migrations," her relative powerlessness to control the conditions and contractual relations under which her dancing body was (re)produced is key to understanding the appeal that the legal discourse of self-possession held for her.

"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.[41] (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 could also be a vehicle for its reproduction.) Fuller's version of the solo dance was comprised of three (p.56) 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 downstage 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.[42] 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.[43] 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*.[44] 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."[45] 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 (p.57) suggestion … [to the creation of] abstract visual imagery."[46] Dance scholars are 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 dissociating her from the exchangeable sexualized bodies of the variety stage.

Click to view larger

Figure 1.1 Image of skirt dancer named Silvia Grey. Photo by Otto Sarony. Jerome Robbins Dance Division, The New York Public Library for the Performing Arts, Astor, Lenox, and Tilden Foundations.

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 (p.58) nineteenth and early twentieth centuries.[47] Reports of how Fuller fortuitously "discovered" the possibilities inherent in skirt manipulation vary widely, but they are marked by a recurrent Indian motif. Testifying for the defense in the 1892 infringement suit against Bemis, the manager of Madison Square Garden, James Morrissey, cited an interview with Fuller that ran in the *World* on February 21, 1892, in which she purportedly explained the evolution of the *Serpentine Dance* as follows:

> When I was in Paris, I saw ever and ever so much dancing. I had a teacher there, and studied a lot of difficult steps and funny skewjiggered things, because I had a notion always that I would like to dance, and I went to see every new thing in Paris in the dancing line. What interested me most was the dancing of the Nautch girls at the Exposition. I went there day after day, but in

> the meantime the teacher was drilling me in a lot of Parisian dances. It seemed to me that with the Nautch dance as a basis, a good thing might be built up. . . . I thought the skirt was the main point in the effectiveness of the whole business.[48]

Fuller's reference to the Exposition makes it likely that she was in Paris in 1889, and her mention of a sustained encounter with Nautch performers is significant in the direct contact it establishes between Fuller and Indian dancing bodies. But it was also an anomaly, for other narratives of the derivation of the *Serpentine Dance* bypassed Indian bodies to focus on the skirt material. For example, 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 subsequent interviews with journalists, Fuller adamantly denied this account and offered up her own origin stories. First she maintained that (p.59) 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 Theatre, and shortly thereafter, that it was "a Nautch girl's dress" from Calcutta sent to her by a friend.[49] In her 1913 autobiography, she described the fabric as a "Hindu skirt … sent me by my two young officers."[50] 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.[51]

Click to view larger

Figure 1.2 Loïe Fuller in the *Serpentine Dance* in *Uncle Celestin* (1892). Jerome Robbins Dance Division, The New York Public Library for the Performing Arts, Astor, Lenox, and Tilden Foundations.

(p.60) 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 "partook heavily of her era's Orientalism," performing in Orientalist fare in the United States and Europe.[52] In New York in 1887, she assumed the title role in *Aladdin's Wonderful Lamp*, a pantomime adaptation of *The Thousand and One Nights*. 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."[53] 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*."[54]

Click to view larger

Figure 1.3 "Nautch" girl dancing with accompanying musicians, Calcutta, India, circa 1900. Library of Congress Prints and Photographs Division.

(p.61) 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.[55] 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 most historical accounts have failed to acknowledge. Srinivasan's 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.[56] 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.[57]
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.[58] 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 (p.62) complements Cheryl Harris's, Saidiya Hartman explains how the right to use and enjoy became an "inheritance of chattel slavery" for whites.[59] 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 also presumed ownership of African American cultural displays. This same logic 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 continued for many years after the abolition of slavery.[60] Likewise, when early white modern dancers took on Eastern themes, they were exercising their right "to take delight in, to use, and to possess" non-white 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.[61] Once barred from US shores, Indian dancers were 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 risk. As Amy Koritz writes, in order for a white woman to "retain the privileges of her ethnicity, she cannot be too closely identified with the Orientalized subject."[62] 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.[63] The task of preserving a safe distance from their non-white subjects, however, could be difficult when (p.63) 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, 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. In her autobiography, she describes eagerly awaiting the debut of advertising placards for her appearance as a specialty act in *Uncle Celestin*. 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.

Furious over the lack of attribution, as recounted above, Fuller resigned (or was fired) from *Uncle Celestin* and secured a new contract with a manager at the Madison Square Theatre. In no time, she learned that Aronson, her former manager at the Casino Theatre, had employed the chorus girl Minnie Bemis to

continue performing the *Serpentine Dance* in her stead. Her reaction to the news is telling: (p.64)

> 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 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.”[64]

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 Eva 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.”[65] 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.[66]

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 US Circuit Court in New York on June 18 of that year, Fuller's copyright infringement case is worth examining in detail, for it touches on issues ranging from authorship, originality, and reputation to the suitability of dance to copyright law.

(p.65) Officially listed as *Marie Louise Fuller versus Minnie Renwood Bemis*, Fuller's case depended on four overarching and interrelated claims. The first was that the *Serpentine Dance* was an original work of authorship. More specifically, as spelled out in the official Bill of Complaint against Bemis, Fuller's lawyer maintained that she, the orator, was

> the author, inventor, designer and proprietor of a dramatic composition know as the Serpentine Dance. That said dramatic composition and each and all of the incidents, scenes and tableaus therein are the original conception and invention of your orator and said composition in character, incidents, situations and dramatic and theatrical effect are wholly original with your orator and designed and suited for public representation.

The fact that novelty was not necessary to prove originality under copyright law did not stop Fuller's lawyer from contending 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. Crucially, 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.[67]

To make her case against Bemis, that is, 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 and much post-modern and contemporary 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.[68] 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 (p.66) their economic survival was increasingly dependent.[69] 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.

The second claim Fuller's lawsuit made was that she possessed a valid copyright on the *Serpentine Dance*. Here, the classification of the dance as a dramatic composition was essential since choreography was not protectable in its own right. Citing the precedent of *Daly v. Palmer* (1868), which defined a drama as "a composition in which the action is not narrated or described, but represented" and held 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, too, was a dramatic composition under the meaning of the law.[70] Bolstering this assertion, Fuller herself testified that

> This composition is called a dance for want of a more appropriate term. It is in reality a series of gyrations of the body and manipulation of the dress for the purpose of producing pleasing effects upon and graceful postures to the eye, and is dramatic and theatrical in effect in that it portrays … and depicts in fanciful and poetic ways certain effects and incidents, such as the appearance of an umbrella, the shape of various flowers, waves or breakers as of the surf, butter fly and other postures.

The emphasis, then, was not on the movements of the Serpentine Dance per se but on the "effects" that its "incidents, scenes and tableaux" had on spectators. The affidavits of several Fuller supporters echoed this assessment. For example, Therese Lee, identified as the wife of the well-known actor Henry Lee, affirmed that the *Serpentine Dance*

> is very dramatic in that it portrays and represents ideas, it appeals to the eye and judging from the applause with which it is received, is a source of great entertainment and satisfaction to the spectators. Each situation and tableau[,] each motion and turn gives rise to new ideas in the mind of the spectator.

(p.67) Suggesting some coaching on the part of Fuller's attorneys, the affidavits of two actors, O'Kane Hillis and Flora Clitherow, contained the following identical statements about the Serpentine Dance: "There are different incidents therein expressed and portrayed and each movement raises and represents a different idea and appeals to the higher emotions." The standardized language suggests how critical proving dramatic content was to Fuller's case, how insistent her lawyers were that the *Serpentine Dance* signified something for and did something to spectators.

In addition to emphasizing the dramatic nature of her composition, Fuller's lawyers were careful to document the legal steps Fuller had taken to secure her copyright registration. In May 1892 she mailed two printed copies of her composition to the Librarian of Congress, together with the fifty-cent registration fee, and on the title page of each published version of her composition she had printed the words, "Copyright, 1892, by MARIE LOUISE FULLER, New York."[71] Fuller's lawyers submitted a copy of this publication as an exhibit in their suit.

Having asserted her authorship and copyright of the *Serpentine Dance*, Fuller then claimed the corresponding entitlements: the exclusive rights of ownership. 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."[72] Just so, Fuller's lawsuit hinged on the contention that her copyright granted her not only "the sole and exclusive right and liberty to print and publish such dramatic composition," but also "the sole and exclusive right to act, perform and represent the said dramatic composition 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." The assertion of the latter, the exclusive right to publicly perform the *Serpentine Dance*, was in keeping with the 1856 Copyright Act, which added performance rights to the list of entitlements for authors of dramatic compositions.[73]

(p.68) Finally, on these grounds, Fuller asserted that Minnie Bemis was infringing upon her property rights and should be enjoined from performing the *Serpentine Dance*. In legal language, Fuller's lawyer stated that Bemis,

> without the knowledge, privity or consent of your orator has produced upon the public stage and is about to continue to produce upon the public stage in theatres throughout the United States, said dramatic composition of your orator in a manner which was and is intended to differ from it only slightly so as colorably to be a different work when it substantially retained and retains the attractive features of your orator's composition, and that she has advertised and caused to be advertised her said dance as "the Serpentine Dance."

That Bemis's version of the dance departed from Fuller's only "colorably" was critical to Fuller's case, and she recruited several witnesses to provide evidence to this effect. While an actor named John Bauer testified that "the imitation by the defendant of the complainant's dance was as close a one as it could be," another, O'Kane Hillis, concluded that "to the ordinary observer … there would be no difference whatever between the dances of the complainant and defendant." Another witness, George R. Hall, was apparently recruited for the sole purpose of combing newspaper articles that commented on the relationship between Bemis's and Fuller's acts. In his deposition, he cited references to Bemis as an "exact counterfeit of Miss Fuller," "a perfect duplication," and

"an observant understudy" who had "succeeded in reproducing every pose and gesture of the original."[74] To prove infringement, Fuller thus characterized Bemis as the unauthorized copy to her original.

Unabated performances of this counterfeit *Serpentine Dance*, Fuller further alleged, were doing her acute harm. "The continuance of [Bemis] at a rival theatre," Fuller testified, "will cause and tend to cause me irreparable injury in that it has deprived me and will continue to deprive me of the applause and credit of such performance and in that it tends to give to another the reputation and (p.69) profit of the performer of said composition which rightfully belongs to me." Bemis was thus not only robbing Fuller of economic capital but also of her "rightful" reputation. Here Cheryl Harris's discussion of "status property" is helpful, for, as she argues, one of the ideas that ensued from the Lockean notion of "self-ownership" was "that reputation, as an aspect of identity earned through effort," was like property, and that "the loss of reputation was capable of being valued in the market."[75] Made at a time when American women were not yet enfranchised citizens, Fuller's injury claims implicitly align her with the capital of the white, male propertied subject.

Each and every one of Fuller's claims was vehemently contested by the opposing counsel in *Fuller v. Bemis*. The chief point of contention was the originality of the *Serpentine Dance*. In answer to Fuller's list of complaints, Bemis's lawyers, led by Allan McCulloh, asserted that it was "not true that the complainant is the author, inventor, designer and proprietor" of the *Serpentine Dance*, nor that "all or any of the incidents, scenes and tableaux therein, were the original conception and invention of the complainant, or that the said alleged composition in character, incidents, situations and dramatic and theatrical effect, or any of them, is or are wholly or partly original with the complainant." As the star witness for the defense, Minnie Bemis testified at length about the ordinariness of the dance that, in her account, she had been performing for about three years. Maintaining that the "movements, steps and gyrations" that comprised her act were "common in fancy, character and ballet dances," Bemis argued

that “the only features [*sic*] of said dance, as now produced by me, which is not in very common use, is the use at times of a long skirt, instead of the usual short ballet skirt.” The skirt, Bemis claimed, was “wholly designed by myself.” She further alleged

> That there is nothing novel in said dance, and that the same may be performed by any graceful professional dancer. That I have many times seen the same movements of the body, arms and limbs which are used by complainant also used by other professional dancers upon the public stage for upwards of eight or ten years.
>
> That I have seen the complainant herein perform what she terms her serpentine dance, and that the movements and gyrations by the complainant in said dance are not novel or original, but have been performed for many years, in connection with other movements, by ballet and other professional dancers upon the public stage.
>
> (p.70) That the complainant in performing her said dance, does not, as understood in the profession, use any dance steps other than perhaps a waltz step, which is in no way novel.

Even while disputing the novelty of Fuller’s movements, Bemis cast doubt on the possibility of duplicating them precisely. Acknowledging that she and Fuller were performing at the Casino Theatre at the same time, she nonetheless maintained that she “did not at that time have opportunity to see the whole of any performance by the complainant herein, and have never previously seen her dance.” She went on:

> From my knowledge and experience in the matter of public dancing, I believe it to be entirely impossible for any dancers to imitate strictly or in a colorable manner any dance possessing the novelty and originality alleged by the complainant to be possessed by her alleged dramatic composition or dance, except after repeated, close and careful attending and study of the same, and of the whole thereof.

Using Fuller's own logic against her, Bemis asserts that truly innovative dancing is not replicable without sustained scrutiny. Finally, Bemis challenged the originality of Fuller's use of calcium lights, which Bemis claimed to have "many times seen upon the public stage in the City of New York, and elsewhere."

Deponent after deponent, including the manager of Madison Square Garden and a host of dance teachers, testified to the same effect, insisting that there was "nothing novel" about Fuller's dancing. Rather, they alleged, Fuller's *Serpentine Dance* was "in every respect a skirt dance in the well known sense of the term," save for its length, and that "hundreds of dancers" were currently performing similar "poses, steps and glides" on the public stage. Citing a number of antecedents, they compared Fuller's dancing to that of the British skirt dancer Letty Lind (whom Bemis likewise named as an influence), a Viennese ballet dancer named Bertha Linde, who also used a long skirt, and the actress Maggie Mitchell, who had apparently performed a "Shadow Dance" using lights in a manner similar to Fuller's use some two decades earlier. (Fuller responded by testifying that while she had worked in the same company with Letty Lind for a year, Lind "never wore a skirt such as I wear in the Serpentine Dance or performed a dance similar thereto.") Interestingly, the only reference to Nautch dancing among the many affidavits came when one witness quoted a newspaper interview with Fuller, in which, as cited above, Fuller described seeing "Nautch girls" at the Paris Exposition. Like dance scholars generations later, Fuller's contemporaries identified her principally with the tradition of (p.71) skirt dancing, exhibiting a blindness to the non-Western sources of her movement. Unlike present-day scholars, dance teachers in Fuller's time (if only those recruited to testify on Bemis's behalf) found her performance entirely lacking in creativity.

Furthermore, where Bemis commented on the difficulty of replicating another's dance movements if they were truly original, most of the dance teachers asserted that originality itself was a virtual impossibility in dance. For example, Edward Collyer submitted that "it is not possible … for any one now alive to lay claim to the authorship or invention of one

single step, pose, posture, movement or glide in any manner, shape or form," for "every movement or pose or step taken by any dancer on the public stage at this present date is merely one of a series of movements taught in the regular course of instruction." Augusta Sohlke added that "the movements of arms and limbs and body of complainant and defendant in their respective dances are old and are such as have been used from time immemorial in conjunction with other movements of limbs and gyrations of the body on the ballet and variety stages." From the perspective of these dance teachers, whose profession, after all, depended on passing down "movements, gestures, and steps" that they themselves had learned, dances were not inventions so much as re-arrangements of existing moves that were transmitted from one body to another. By this logic, dance hardly seemed an appropriate candidate for copyright protection.

The defense countered the legitimacy of Fuller's copyright in other ways as well. Undermining Fuller's classification of the *Serpentine Dance* as a dramatic composition, Bemis described it as "a mere spectacle," lacking "any literary or dramatic character[,] … any verbal accompaniment or dialogue," and any "attempt to portray any narrative." More prosaically, the defense challenged Fuller's contention that she had obtained a copyright certificate for the *Serpentine Dance*. Among the affidavits submitted on Bemis's behalf was one from an attorney named Aldis Browne, evidently recruited for the express purpose of investigating the status of Fuller's copyright application. He maintained that the Librarian of Congress had unequivocally refused Fuller's copyright because there was "no authority in the Copyright Law by which a dance could be copyrighted nor the directions for such a dance be construed as a literary composition of any nature entitled to such copyright." In support of these assertions, Browne attached a letter received from A. R. Spofford, the Librarian of Congress, dated May 27. It stated that

> the entry of Copyright on "a Serpentine Dance," by Marie L. Fuller, was not made—for the reason that it does not come within the designation of any of the

> articles which are lawful subjects of Copyright. The two copies purporting to be this “Dramatic Composition” are (p.72) nothing but written directions for dances, tableaux, poses, etc. without a word of dialogue or literary composition of any kind.

Unwilling to let these assertions stand, lawyers for Fuller responded by entering into evidence their own correspondence with Spofford. Apparently, Spofford had initially returned Fuller’s registration fee and refused to enter her description of the *Serpentine Dance* as a dramatic composition. In reply, Lewinson and Falk wrote an angry letter to Spofford, dated May 28, re-submitting the registration fee and making three arguments: first, that as the Librarian of Congress, Spofford was “not a judicial officer” who possessed the authority to decide “whether writings are compositions or not”; second, that they had submitted the typewritten copies of the *Serpentine Dance* not as a dramatic composition but as “a description of the dramatic composition” and only asked that Spofford enter into his records the title of the *Serpentine Dance*; and third, that “Although you are not a judicial officer and cannot construe the law, it may interest you to know that a dramatic composition does not necessarily consist of ‘dialogue or literary compositions of any kind.’ ”[76] On June 13, Isaac Falk testified that Spofford had yet to take any subsequent action, leaving no “intimation … whether he would issue the certificate applied for or not although he has received the fees for such certificates and has had the same in his possession now for two weeks since last sent to him.”

So, it would seem, the status of Fuller’s copyright claim remained uncertain up to and through her infringement trial. The fact that Fuller’s lawyers contended, on one hand, that the *Serpentine Dance* did qualify as a dramatic composition based on precedent and, on the other, that her copyright was only intended to cover the description of the dance is a fitting indicator of the ambiguity that has surrounded the question of dance’s copyrightability. Indeed, the issues debated by lawyers for Fuller and Bemis—about whether a dance could qualify as a dramatic composition, and about how to construe the relationship between a “fixed” transcription of a dance and

the actual movement—would remain unsettled for virtually the next eight decades.

Exploiting equally the doubt around the copyrightability of the *Serpentine Dance* and Fuller's status as a Romantic artist, Bemis's defense effectively argued that Fuller's proprietary claims on the *Serpentine Dance* had no legal standing. To the extent that Fuller's case rested on shoring up her difference from other female dancing bodies who circulated as interchangeable commodities in the theatrical marketplace, the defense's case rested on eviscerating that difference. If there was nothing original about the *Serpentine Dance*, if (p.73) it was not a dramatic composition, if the Copyright Office had denied Fuller's registration request, and if dance in general consisted only of recycled steps, then Fuller could enjoy no more entitlement to perform the *Serpentine Dance* than Bemis, and Fuller's claims of injury were devoid of merit.

"Merely Mechanical Movements": Legal Judgments

The arguments of the defense ultimately won the day. On June 10, 1892, Judge E. Henry Lacombe announced his ruling in the case. Declaring that the matter had been "fully argued" and that the court was "fully advised in the premises," the judge decided "after due deliberation … that the complainant is not entitled to a preliminary injunction."[77] In his judgment, which was reported in several newspapers, he rejected the use of *Daly v. Palmer* as a relevant precedent, declaring that it was "not authority for the proposition that complainant's performance is a dramatic composition within the meaning of the Copyright Act." He went on to explain his criteria for meeting the dramatic requirement:

> It is essential to such a composition that it should tell some story. The plot may be simple. It may be but the narrative or representation of a single transaction: but it must repeat or mimic some action, speech, emotion, passion or character, real or imaginary. And when it does, it is the ideas thus expressed which become subject of copyright.

> An examination of the description of complainant's dance, as filed for copyright, shows that the end sought for and accomplished 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.[78]

(p.74) Ignoring witnesses for Fuller who testified that the *Serpentine Dance* did, in fact, depict images that appealed to spectators' emotions, Judge Lacombe chose to construe the kinesthetic components of Fuller's performance as "merely mechanical movements," thus evacuating the *Serpentine Dance* of any meaning. As such, the decision crops up frequently in literature about choreographic copyright, where it is held up as evidence of the considerable hurdles dancers faced in their bids for copyright protection prior to the 1976 Copyright Act, and in scholarship on Fuller, where it is seen as proof of her pioneering artistic status. Fuller's failure to meet the judge's expectation that dancing must relay a story to contain ideas, that is, signals the radical modernism of her choreographic practice. As Rhonda Garelick has written, "The judge's remarks offer a neat explanation of the difference between nineteenth-century narrative or character-based dance and its twentieth-century abstract, modern descendant."[79] In a slightly different vein, Ann Cooper Albright reads the ruling in terms of Fuller's non-conformity with the "expressive paradigm" that other dance scholars like Mark Franko have limned as the "foundational narrative of modern dance, where the (feminine) body translates interior and transcendent 'ideas' into physical forms."[80] In other words, Albright finds that Fuller "refused the 'natural' interiority of a feminine body" that Judge Lacombe expected,

inaugurating instead a different kind of kinesthetic expressivity that "required a new way of seeing."[81]

The gendered implications of the judge's decision certainly deserve attention. The opposition he sets up between narrative, representation, and ideas, on one side, and gracefulness, comeliness, and visual pleasure, on the other, pointedly absents the female dancing body from the realm of legal consequence. Like Albright, I read Judge Lacombe's language as a gender-coded finding that Fuller's moving body lacked interiority. But rather than seeing this lack in aesthetic terms, as Fuller's rejection of a certain kind of expressivity, I see this missing interiority as a blunt rejection of her possessive individualism. Deemed no more than a "comely woman," Fuller is reduced to a feminized object and deprived of the "incorporated embodiment" that would enable her to claim anything as proper to her subject.[82] In denying that Fuller's choreography constituted the expression of meaningful ideas, Judge Lacombe concomitantly denied her status as an authorial subject entitled to ownership rights in her bodily labor. In short order, his decision demoted Fuller from Romantic artist to a body that is "all surfaces" and "fully open to capital."[83]

(p.75) Just how open is made clear by the other lawsuits that Fuller lost in the immediate aftermath of Judge Lacombe's ruling. Just four days later, on June 14, 1892, came the dismissal of Fuller's complaint against Aronson and the New York Concert Company, which, as described above, Fuller originally filed in March. Two days after that, Fuller lost a third suit, this one filed against her by Hoyt & Thomas, the management company of Madison Square Theatre. Heard in New York City's Superior Court, *Hoyt et al. v. Fuller* was, like *Fuller v. New York Concert Company, Limited*, a case about contract violations, but this time, Fuller was on the receiving end of breach accusations. Evidently, Fuller, described by the court as "an actress and *danseuse*," had agreed to perform the *Serpentine Dance* in *A Trip to Chinatown* for the length of its run at the Madison Square Theatre, and then during a road tour, until August 1, 1892. The point of contention was whether, though the contract apparently did not explicitly

state as much, Fuller had granted Hoyt “the exclusive right to her services” and whether she had thus violated the contract by performing the *Serpentine Dance* at Amberg’s Theatre during the run of *A Trip to Chinatown*.[84] While Fuller had “expressly refused to sign a contract with a clause to the effect that she was to appear with Hoyt & Thomas exclusively,” claiming “the privilege of appearing … at other places, as her time is not wholly occupied at the plaintiffs,’ ” the plaintiffs alleged that exclusivity was part of the spirit and intent of the employment contract.[85] Seeking an injunction against Fuller, Hoyt asserted that he had engaged Fuller “as a special feature to induce people to come to witness her performance, who would not otherwise attend his theater, and her appearance at other theaters would result in pecuniary injury to him.” On June 16, Judge J. McAdam issued a ruling in favor of the plaintiffs, granting the injunction against Fuller until August 1, “unless the plaintiffs sooner elect to terminate the contract, according to the option therein contained.”[86]

The decision in this case is striking insofar as it renders Fuller open to capital—with her male managers given full and exclusive access to her—even while it grants her a kind of power that verdicts in earlier lawsuits denied her. For, in order to recognize Hoyt & Thomas’s injury claims, Judge McAdam had to find that Fuller’s performance of the *Serpentine Dance* was utterly original. In an ironic twist, the judge, pointing to Fuller’s infringement suit against Bemis, used her legal claims of uniqueness against her. Quoting Fuller’s own characterization of the “originality and extraordinary novel nature” of the *Serpentine Dance* in *Fuller v. Bemis*, Judge McAdam concluded, “If this graphic (p.76) description be correct, it is evident that no one can be procured as a substitute for the defendant. She is the original and only artistic serpentine dancer, while her would-be rivals are but poor imitators.” Rather than affirming Fuller’s rights, however, this designation of originality enhanced those of her managers, who deserved to profit fully from her uniqueness. Here, recognition of Fuller’s value only reinforced her status as a commodity, as “an attractive feature” and “a drawing card” for consumers.

Taken together, the logic of the verdicts in the three lawsuits in which Fuller was involved in close proximity is both contradictory and consistent. Although two of the cases were concerned with contract violation and one with copyright infringement, all three were essentially about the extent to which Fuller's image—either as static visual representation or as live dancing body—should be allowed to circulate in the theatrical marketplace, and who possessed the rights to profit from that circulation. On the former question, the legal decisions seem to be at odds. While the judge in *Fuller v. New York Concert Company* allowed lithographic images of the *Serpentine Dance* to circulate with impunity, the judge in *Hoyt v. Fuller* restricted the dance's circulation by confining Fuller to a single theater. While the judge in *Fuller v. Bemis* gave no heed to Fuller's claims of uniqueness and thus sanctioned other performers' imitations of the dance, the judge in *Hoyt v. Fuller* used these same claims to justify strict limits on the dance's reproduction. Yet, on the latter question—who had the right to regulate and profit from the circulation of the *Serpentine Dance*—the legal findings were in agreement: not Fuller. All three of the cases thus 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 under which her dancing body circulated were ineffectual, rendering her "susceptible to abstraction and exchange" in the male-dominated marketplace.

In this context, it is worth returning to Judge Lacombe's use of the term "mechanical" to describe Fuller's choreography. 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 collectively, the three legal cases draw conflicting 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.

(p.77) To a great extent, though, 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 & 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* 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 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).[87] 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": Corporeal Judgments

On the heels 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.[88] As suggested above, one imitator, named Mabelle Stuart, was already performing the dance at the Folies-Bergère in Paris when Fuller arrived there.[89] 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."[90]

(p.78) 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

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Figure 1.4 Loïe Fuller imitator, between 1890 and 1909. Photo by Theodore C. Marceau. Jerome Robbins Dance Division, The New York Public Library for the Performing Arts, Astor, Lenox, and Tilden Foundations.

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?
>
> (p.79) 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.[91]

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 expropriated, her particular corporeality could not. Confident of the "superiority" of her dancing skill—of the singular 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."[92] 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*.[93] Accordingly, Fuller began billing herself as "La Loïe Fuller," the "La" signifying her status as "the genuine article."[94]

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 US 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 (p.80) 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.[95]

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. Thwarted in her legal attempts to own choreography 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. In 1894 she threatened an injunction against two producers in New York for “the use of mirrors for scenic effect in dancing,” and 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.[96]

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 white, as she was, should not detract from the not only gendered but also racialized nature of her predicament or her claims. Her concern about who controlled the commodification 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 emphasizing the tacit correlation between whiteness and property rights surely does not exhaust the range of possible interpretations of (p.81) 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.

In Fuller's Legal Footsteps

Ida Fuller

Fuller's influence following her infringement suit against Minnie Bemis was evident in both the theatrical and legal arenas, as subsequent white female dancers took up the pursuit of intellectual property rights in their creations. One of these was a Fuller imitator, Ida Fuller, who adopted Loïe's surname and claimed to be either her sister or sister-in-law. In the late 1890s, Ida Fuller began performing a *Fire Dance* in Europe. This was a version of *Le Danse Feu* that Loïe had first presented in 1896, and which became, along with the *Serpentine Dance*, one of her best-known works. Where Loïe's *Fire Dance* employed underlighting and played with the relationship between light and shadow, Ida developed a theatrical device that used silken ribbons, a fan, and red lights to give the appearance of an onstage fire, and in 1899, she applied for a patent for it. Three years later, Ida sought to enjoin the producers of a melodrama called *The Ninety and Nine*, which played at the Academy of Music, from using an appliance in a fire scene that, she alleged, infringed on her patent. As she explained to the court, she had traveled to the United States from France for the purpose of performing her *Fire Dance* on the vaudeville circuit but found herself unable to obtain engagements "due to the usurpation of her device by the defendants."[97]

Fuller v. Gilmore et al. was tried in the United States Circuit Court before the same Judge Lacombe who had rejected Loïe's

infringement claim ten years earlier. This time, Lacombe looked more favorably on the dancer's petition, suggesting again that patent law was a more hospitable province for dancers' assertions of possessive individualism than was copyright law. While lawyers for the defendants argued that Ida Fuller's patent had yet to be adjudicated and validated, the judge held that the patent "appeared to be novel, useful, (p.82) and ingenious" and thus found the injunction warranted. Interestingly, Judge Lacombe referred back to Loïe Fuller in his ruling:

> In the device employed by an earlier "fire dancer," which was before this court in *Fuller v. Bemis, 50 Fed. 926*, the waving draperies of the performer, agitated solely by her own movements, were illumined, as in the device in suit, by colored lights cast up from beneath the stage; but there was no air-blast, the aperture for light being covered with a plate of glass.

The distinction the judge draws between the two "fire dancers" is worth noting: whereas Loïe used "solely … her own movements" to create the movement of fabric, Ida uses the "air-blast" of a fan. Perhaps not surprising in a case centering on a patent, the implication is that an actual machine is more deserving of protection than a body's so-called mechanical movements. However subtly, Judge Lacombe's language and his divergent rulings in the two cases reinforce a hierarchy between a scientific invention and an embodied work of authorship.[98]

Yet like her predecessor, Ida Fuller's success with patent law did not stop her from claiming more expansive intellectual property rights in her dancing, as explained in a 1907 report in *Variety*, titled "Has Act Protected":

> Through her attorneys this week Ida Fuller, the "fire dancer" at the New York Theatre, notified the United Booking Offices that Rialto, a dancer playing at the Union Square this week, was infringing upon her dance and the management would be held accountable if continued. The case of Miss Fuller against Gilmore &

> Tompkins and Frank McKee, the managers who allowed an infringement in the Academy of Music in 1902, was cited to the United as a further warning, Miss Fuller having received a verdict against the managers in that action.[99]

Although it is not clear whether Fuller did actually attempt to register her act with the Copyright Office, she quite plainly sought to leverage her earlier legal victory to protect herself from—or at least scare off—other fire dancers.

(p.83) The irony in this chain of imitations and copyright claims should not be lost. Where Loïe Fuller sued Minnie Bemis for copyright infringement of an act modeled on skirt and Nautch dancing, Ida Fuller, who took not only her more famous counterpart's *Fire Dance* but also her name, threatened to sue another dancer for infringement of her act. If Loïe Fuller's copyright defeat made it more possible for her impersonators to carry on, it does not appear to have had a dampening effect on white female dancers' interest in positioning themselves as propertied subjects.

Ruth St. Denis

A more prominent successor to Loïe Fuller in the pursuit of copyright protection was Ruth St. Denis (1879–1968), considered another "pioneer" of American modern dance. In 1905, St. Denis registered two of her choreographic works, *Egypta* and *Radha*, as dramatic compositions with the Copyright Office. Unlike Fuller's *Serpentine Dance*, copies of Ruth Dennis's (as she was known before she adopted the name "St. Denis") compositions survive in the Library of Congress, possibly suggesting less resistance to her registration. This may have been because both choreographic works are cataloged as playscripts: *Egypta* is labeled "An Egyptian play in one act," and *Radha* is "A Hindoo Play in One Act Without Words."[100] The texts lay out the cast of characters, the scene settings, and the general actions that comprise each "play," but they are short on specific movement descriptions. For example, the "mystic dance" at the center of *Radha* is transcribed as follows:

> The dance is comprised of three figures, the first being performed in five circles one within the other, each circle representing one of the five senses. The second figure is danced on a square, representing, according to Buddhist theology, the four-fold miseries of life, and is done with writhings and twistings of the body to portray the dispair [*sic*] of unfulfillment. At the end of this figure Radha sinks to the ground in darkness. After a short interval a faint light discloses her in an attitude of prayer and meditation. This light coming from a hanging lamp designed from the lotus, is first concentrated upon her figure, then diffused with increasing power over the whole stage. Radha now rises from a kneeling posture with her face illumined by the light of joy within, and holding a lotus flower, now begins the third figure of the dance, which follows the lines of an open lotus, the steps of which lead from the center of the flower to the point of each (p.84) petal. This figure is danced on the balls of the feet, and typifies the ecstasy and joy which follow the renunciation of the senses, and the freedom from their illusion. The close of this figure which finishes the message, Radha dances slowly backward toward the shrine holding aloft the lotus flower and followed by the priests, the curtain slowly descending. When the curtain rises the image of Radha is seen once more seated in the shrine, (her spirit having merged into Logos). The worship is over, the lights are out, the priests are gone, leaving the idol alone once more to the shadows and silence of the temple.

St. Denis deposited this copy of *Radha*, as well as her copy of *Egypta*, before she had premiered either work.[101] In other words, in contrast to Fuller, who submitted the *Serpentine Dance* for copyright registration only after she felt the sting of Minnie Bemis's imitations, St. Denis preemptively established her proprietary rights over the dance works that would make her famous before they had actually done so. As St. Denis biographer Suzanne Shelton writes, the copyright deposits were a reflection of her confidence in the ideas behind the works, which she believed she could market "to the novelty-hungry producers in vaudeville."[102]

As with Fuller, St. Denis's interest in property rights must be understood as an attempt to navigate a confluence of overlapping economic, artistic, racial, and gender factors. St. Denis, as other dance scholars have noted, began her career in the commercial realm of show business but aspired to "art" dance status.[103] Having played a range of bit parts and chorus girl roles in standard theatrical fare, St. Denis was eager to establish herself as a solo dance artist, for which she needed both financial resources and cultural legitimacy. Linda Tomko has pointed to the indispensable role that elite club and society women played in providing both kinds of capital for St. Denis.[104] Her pursuit of copyright protection, I would argue, was similarly a bid to secure and protect both economic and artistic capital. Convinced of the market value of *Radha* and *Egypta*, St. Denis saw these works as both commercially viable and the basis for (p.85) building a solo career. But there were also inherent risks for St. Denis in trying to exploit the commercial appeal of her dancing in order to elevate herself as an artist, and copyright served as a safeguard against at least some of these risks. For one, it would theoretically prevent others from capitalizing on her ideas. And too, it signaled her status as a possessive individual rather than a racialized, sexualized commodity.

The latter was particularly important for St. Denis given the unconcealed racial dynamics of her performances. If Fuller's *Serpentine Dance* contained "a bit" of Indian Nautch dancing that was overshadowed by most spectators' focus on skirt dancing antecedents, St. Denis's compositions, as the titles and descriptions indicate, were firmly entrenched in Orientalia, even advertised as "Hindoo dances."[105] While St. Denis also worked as a skirt dancer early in her career and "employed the tools of the skirt dancer, a smattering of sentimentalized ballet tippy-toe turns and waltz steps, simple *attitudes* and *degagés*" to create her choreography, her performances were blatantly indebted to "Oriental" sources.[106] As scholarship by Priya Srinivasan has shown, contrary to standard narratives, the stimulus for St. Denis's *Radha* came not merely from a cigarette poster of an Egyptian diety, nor solely from library research on India. Rather, St. Denis was inspired by her kinesthetic encounters with a

troupe of Nautch dancers whom she observed at Coney Island in 1904. St. Denis herself wrote about this encounter in her autobiography:

> My whole attention was not captured until I came to an East Indian village which had been brought over in its entirety by the owners of the Hippodrome. Here, for the first time, I saw snake charmers and holy men and Nautch dancers, and something of the remarkable fascination of India caught hold of me.

She then became "determined to create one or two Nautch dances, in imitation of these whirling skirted damsels."[107] Yet, while St. Denis absorbed some of the basic elements of the Nautch dancing she witnessed, in replacing brown bodies with her own white body in works like *Radha*, she effectively effaced the labor of the female Indian dancers whose practices she imitated.[108]

St. Denis's copyright registrations, submitted a year after her encounter with Nautch dancers at Coney Island, were the legal supplement to the kinesthetic action of "seiz[ing] representational and discursive control" of racially (p.86) marked bodily practices.[109] Declaring herself the sole author of compositions based on imitation, St. Denis claimed exclusive ownership rights and marked her distinction from the Nautch dancers who remained unnamed and unentitled.

Yet, as Fuller well knew, the act of submitting a composition to the Copyright Office was no guarantee of exclusive control over the work. In an episode that bears a striking resemblance to Fuller's experience at the Folies-Bergère some fourteen years earlier, St. Denis arrived in Paris in 1906 with an engagement to perform *Radha*, only to discover posters plastered everywhere advertising a "Radha, danseuse hindique" at another theater.[110] As biographer Shelton recounts, St. Denis reacted to this "horrendous betrayal" by hiring a lawyer to serve an injunction against the rival dancer.[111] She also pleaded her case in a letter to the editor of the Paris edition of the New York *Herald*. "As an American girl, and feeling I have been imposed on in a foreign country," St. Denis began the letter, titled "The Only 'Radha,' " "I

naturally turn to the HERALD and would be very glad if you would afford me the strong protection of publicity in the columns of your popular paper." She continued:

> I am the originator of a series of Hindoo dances, which I produced in New York and London, dancing under the name of "Radha," and on July 20 had the honor to dance before His Majesty the King of England at the house of the Duke of Manchester, under the patronage of the duchess. While at London I was approached by several theatrical managers for engagement here. One of the managers, representing the "Olympia," offered me a price below what it cost me to produce the dances, and I, of course, declined, but afterwards entered into a contract with the Marigny Theatre, where my performances will begin September 1.
>
> Meantime, I find greatly to my surprise, that the "Olympia" has brought out another dancer under the name of "Radha." They have imitated me at least in name, in the goddess wife of Krishna, also the Cobra, or Snake-Charmer, and in the matter of scenery and properties, but have been unable to do so in the execution of the dance itself. I will be very grateful if the HERALD will kindly take the matter up for me through its columns, so that both the French and American people may know that mine is the real and only "Radha," and that I deserve to reap the fruits of my creation.[112]

(p.87) While the rival apparently soon disappeared from view, there was, as Shelton observes, a certain irony to St. Denis's accusations, given the tradition of imitation in vaudeville. "St. Denis herself," Shelton writes, "might have been considered an imitator by some Parisians, for the previous summer [the Dutch exotic dancer] Mata Hari had appeared in Paris in bare feet and gold chains and 'worked herself into a frenzy of worship' in a Brahman dance."[113] Certainly, St. Denis was hardly alone in capitalizing on the Orientalist vogue on both sides of the Atlantic. But it was precisely the ease with which dances that were part of this vogue circulated across different bodies—both brown and white—that made assertions of possessing the "real and only" *Radha* (backed up, of course, by

the US copyright registration) so meaningful. Even while St. Denis prides herself, like Loïe Fuller, on the uniqueness of her performance, assuring readers that imitation was not possible "in the execution of the dance itself," she appeals to the print media to enforce the distinction between her choreography and that of her competitors.

Three years later, St. Denis's exclusive claims on her dances received another challenge. This time, the threat came not from a rival female dancer but from a member of her own company. Although St. Denis never shared the stage with Indian female dancers, she did perform alongside a company of Indian male dancers. As scholars Yutian Wong and Priya Srinivasan have pointed out, St. Denis's early "solo" performance of *Radha* was not truly a solo, for an entourage of Indian men surrounded her as she danced, playing supporting roles as priests. St. Denis recruited this group of men, which included both Muslims and Hindus of various caste backgrounds, from Coney Island, local stores, and Columbia University, and they toured with her for a number of years.[114] In November 1909, one of them, Mohammed Ismail, sued St. Denis in New York City Court, alleging that he had originated and taught her the material for *Radha* and that she owed him $1,250 ($2,000 in another account) for services rendered. According to the report in the New York *Sun*, Ismail "says that Miss St. Denis engaged him in 1905 to train her for an Oriental act which she is now playing under the name 'Radha.' He says he taught her to do the act and played the high priest for a time."[115] St. Denis entered a denial in the suit, countering that "she first met Ismail after he came [to New York] from the St. Louis exposition" and that "she had made a study of Hindu worship long before she saw him." In early May 1910, the case went to trial. As the *New York Times* reported, (p.88)

> Ismail, accompanied by some of his be-turbaned fellow country-men, made a picturesque spectacle in Part IV of the City Court. But after he had undergone a searching cross-examination about his past as a cook, waiter, and house servant, and had heard Miss St. Denis and various other witnesses testify that she had danced her Oriental

> dances long before she ever saw him, Ismail asked to be allowed to withdraw his action, and Judge Lynch dismissed the jury.[116]

Legal records of the court case have been lost to history, leaving three short newspaper articles all that remain of the incident. But the information in these accounts speaks volumes. That fact that Ismail filed a complaint against St. Denis in the US legal system at all is as significant as its swift dismissal. It is not known how or how much St. Denis remunerated her male performers, but Ismail clearly believed it was insufficient compensation for his contributions to *Radha*, which, by 1909, had made St. Denis quite famous. The question of what he contributed, of course, was the crux of the legal contest. While St. Denis admitted only that Ismail had "played the part of the high priest for a time,"[117] Ismail asserted that his services were much more extensive, including, as the initial *Times* report put it, having "originated an Oriental Dance … and taught [St. Denis] the steps." In other words, Ismail's allegations directly challenged St. Denis's authorial status and undermined her copyright claim. Reversing the hierarchy of the two dancers' roles, Ismail positioned himself as the choreographer/teacher and St. Denis as the student/performer.

Click to view larger

Figure 1.5 Ruth St. Denis with “native Hindus” in *Radha*, 1906. It is possible that one of the seated male dancers is Mohammed Ismail. Jerome Robbins Dance Division, The New York Public Library for the Performing Arts, Astor, Lenox, and Tilden Foundations.

Yet this reversal could not hold up under the weight of an early twentieth-century racial schema. As the second account in the *Times* suggests, the spectacle of race and the power of racial stereotyping overwhelmed Ismail’s claims. Already visually othered by the “picturesque” backdrop of his “be-turbaned fellow country-men,” Ismail’s work history as a “cook, waiter, and house servant” located him on a lower rung on the racial/class order. Writing about the lawsuit in her book *Sweating Saris: Indian Dance as Transnational Labor*, Srinivasan observes that the emphasis on Ismail’s past employment, surely a strategic move on the part of St. Denis’s lawyers, “pigeonholed [him] into the stereotype of Asians and Indians as manual or day laborers” and thereby undercut “his authority as a dancer, dance teacher, and choreographer.”[118] Despite Ismail’s contention that he first worked with St. (p.89) Denis in 1905, the year before she premiered *Radha*, her claim that she “had danced her Oriental dances long before she ever saw him” trumped whatever facts were on his side.

Still, it would be misguided to view this legal skirmish in simple, binaristic terms, as a straightforward victory for St. Denis and an unqualified loss for Ismail. Rather, Ismail’s legal

action is better understood, as Srinivasan proposes, as a "performative gesture" that serves to "highlight the labor that otherwise remains unacknowledged by St. Denis."[119] Seen as an act of resistance against St. Denis's ability to capitalize on East Indian sources while those sources remained largely invisible (even when in plain sight), Ismail's charge of an unpaid debt was also a protest against the entitlements that whiteness conferred to "use and enjoy" non-white cultural material with minimal credit or compensation. The fact that his performative gesture took place in the courts, where it garnered enough attention to leave a record in the press, indicates that, at least initially, he saw legal adjudication as a promising means for contesting white domination. Just as St. Denis turned to copyright law to position herself (p.90) as a possessive individual, Ismail turned to the law to rectify a dispossession of his individual rights.

Although made on the basis of uncompensated services rather than copyright infringement, Ismail's complaint is another example of the instability and contestability of copyright for dance around the turn of the twentieth century, even when it was registered under the category of dramatic composition. Like Loïe Fuller's before her, Ruth St. Denis's claim of ownership over a dance, or, more precisely, the claim that she alone originated *Radha*, did not go unchecked. The fact that St. Denis's claim was challenged by a non-white dancer under her employment rather than by legal authorities (from below rather than from above) is a reminder of white female dancers' contingent positionality in their quest to establish themselves as property-holding subjects. Measured against the rights of white male producers and managers, and even against other white female performers, as the outcome of Loïe Fuller's myriad legal struggles suggests, white women dancers held sharply delimited power, their market value as "comely" commodities taking precedence over their rights as possessive individuals. Measured against the rights of immigrant Indian dancers, as Fuller's and St. Denis's use of Nautch dancing and the outcome of St. Denis's legal imbroglio suggest, white female dancers held remarkably broad power, their status as authorial subjects and their racial entitlement to "use and enjoy" taking precedence over the (lack of) rights of non-white

bodies, who were, indeed, fully open to capital. White female dancers' pursuit of copyright protection in the late nineteenth and early twentieth centuries, a time before women had won the franchise, then, must be seen at one and the same time as an act of gendered resistance against a patriarchal system and an assertion of racial privilege within a system of white dominance.

Notes:

([1]) *Fuller v. Bemis*, 50 F. 926 (C.C.S.D.N.Y. 1892).

([2]) While an earlier case, *Daly v. Palmer* (6 F.Cas. 1132 [C.C.S.D.N.Y.1868] [No. 3,552]), determined that pantomime did meet the bar for protection, the judge in *Fuller v. Bemis*, as I detail below, refused to find any narrative content in Fuller's choreographic composition.

([3]) In a Society of Dance History Scholars paper, for example, Jody Sperling dubbed the *Serpentine Dance* "America's first modern dance." Sperling, "Loïe Fuller's Serpentine Dance: A Discussion of Its Origins in Skirt Dancing and a Creative Reconstruction," in *Proceedings of the Twenty-Second Annual Society of Dance History Scholars Conference* (Stoughton, WI: Society of Dance History Scholars, 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 with light and shadow onstage in proto-cinematic fashion, and incorporating electricity and technology into her onstage work." Rhonda K. Garelick, *Electric Salome: Loie Fuller's Performance of Modernism* (Princeton, NJ: Princeton University Press, 2007), 9.

([4]) See Nicholas Arcomano, "Choreography and Copyright, Part One," *Dance Magazine* 54.4 (April 1980): 58–59.

([5]) See especially Ann Cooper Albright, *Traces of Light: Absence and Presence in the Work of* Loïe *Fuller* (Middletown, CT: Wesleyan University Press, 2007); Garelick, *Electric*

Salome; Sally R. Sommer, “Loïe Fuller,” *Drama Review* 19.1 (1975): 53–675; Elizabeth Coffman, “Women in Motion: Loïe Fuller and the ‘Interpenetration’ of Art and Science,” *Camera Obscura* 17.1 (2002): 73–105; Julie Townsend, “Alchemic Visions and Technological Advances: Sexual Morphology in Loïe Fuller’s Dance,” in *Dancing Desires: Choreographing Sexualities on and off the Stage*, ed. Jane C. Desmond (Madison: University of Wisconsin Press, 2001), 73–96; Tirza True Latimer, “Loïe Fuller: Butch Femme Fatale,” in *Proceedings of the Twenty-Second Annual Society of Dance History Scholars Conference* (Stoughton, WI: Society of Dance History Scholars, 1999), 83–88; Felicia McCarren, “Stéphane Mallarmé, Loïe Fuller, and the Theater of Femininity,” in *Bodies of the Text: Dance as Theory, Literature as Dance*, ed. Ellen W. Goellner and Jacqueline Shea Murphy (New Brunswick, NJ: Rutgers University Press, 1995), 217–30. This chapter 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.

([6]) See, among others, Jane Desmond, “Dancing Out the Difference: Cultural Imperialism and Ruth St. Denis’s ‘Radha’ of 1906,” *Signs: Journal of Women in Culture and Society* 17.1 (1991): 28–49; Ann Daly, *Done into Dance: Isadora Duncan in America* (Bloomington: Indiana University Press, 1995); Yutian Wong, “Towards a New Asian American Dance Theory: Locating the Dancing Asian American Body,” *Discourses in Dance* 1.1 (2002): 69–90; Susan Manning, *Modern Dance, Negro Dance: Race in Motion*. Minneapolis: University of Minnesota Press, 2004; and Priya Srinivasan, *Sweating Saris: Indian Dance as Transnational Labor* (Philadelphia, PA: Temple University Press, 2011).

([7]) Susan Manning, “The Female Dancer and the Male Gaze: Feminist Critiques of Early Modern Dance,” in *Meaning in Motion: New Cultural Studies of Dance*, ed. Jane Desmond (Durham, NC: Duke University Press, 1997), 163.

([8]) Cheryl I. Harris, “Whiteness as Property,” *Harvard Law Review* 106.8 (1993): 1707-1793

([9]) Eva Cherniavsky, *Incorporations: Race, Nation, and the Body Politics of Capital* (Minneapolis: University of Minnesota Press, 2006), 84.

([10]) Ibid., 89.

([11]) Ibid., 85.

([12]) C. B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (London: Oxford University Press, 1962), 3. See also Eric O Clarke, “The Citizen’s Sexual Shadow,” *boundary* 26.2 (1999): 163–91.

([13]) Grace Kyungwon Hong, *The Ruptures of American Capital: Women of Color Feminism and the Culture of Immigrant Labor* (Minneapolis: University of Minnesota Press, 2006), 5, emphasis added.

([14]) Cherniavsky, *Incorporations*, xxv.

([15]) Laura Brace, *The Politics of Property: Labour, Freedom and Belonging* (New York: Palgrave Macmillan, 2004), 189–99; Gayle Rubin, “The Traffic in Women: Notes on the ‘Political Economy’ of Sex,” in *Feminist Anthropology: A Reader*, ed. Ellen Lewin (Malden, MA: Blackwell, 2006), 87–106.

([16]) Cheryl Harris, “Finding Sojourner’s Truth: Race, Gender, and the Institution of Property,” *Cardoza Law Review* 18.2 (1996): 321, 322.

([17]) Louise Michele Newman, *White Women’s Rights: The Racial Origins of Feminism in the United States* (New York: Oxford University Press, 1999), 10.

([18]) Cherniavsky, *Incorporations*, 127–28, 101.

([19]) Eden Osucha, “The Whiteness of Privacy: Race, Media, Law,” *Camera Obscura* 24.1 (2009): 67, 73.

([20]) Ibid., 73.

([21]) Ann Cooper Albright, *Traces of Light: Absence and Presence in the Work of* Loïe *Fuller* (Middletown, CT: Wesleyan University Press, 2007), 188. Several of these imitation *Serpentine Dances* are available on YouTube. See, for example, https://www.youtube.com/watch?v=O8soP3ry9y0. Accessed June 12, 2014. Felicia McCarren reports that this version of the *Serpentine Dance* by filmmaker Louis Lumière does not actually feature Fuller. *Dancing Machines: Choreographies of the Age of Mechanical Production* (Stanford, CA: Stanford University Press, 2003), 234n24. McCarren describes Fuller's choreography of moving images as among the forms of entertainment "that anticipated cinema, staging elements that the cinematograph would bring together," such as "stereoscopic photography producing a theatrical three-dimensional effect" and "magic lantern projections" (63, 50).

([22]) Garelick, *Electric Salome*, 6.

([23]) Ibid.

([24]) Richard Nelson Current and Marcia Ewing Current, *Loie Fuller: Goddess of Light* (Boston: Northeastern University Press, 1997), 6.

([25]) Robert Clyde Allen, *Horrible Prettiness: Burlesque and American Culture* (Chapel Hill: University of North Carolina Press, 1991), 96; Amy Koritz, *Gendering Bodies/Performing Art: Dance and Literature in Early-Twentieth-Century British Culture* (Ann Arbor: University of Michigan Press, 1995), 2.

([26]) Linda J. Tomko, *Dancing Class: Gender, Ethnicity, and Social Divides in American Dance, 1890–1920* (Bloomington: Indiana University Press, 1999), 45.

([27]) Albright, *Traces of Light*, 32; Sally Banes, *Dancing Women: Female Bodies on Stage* (New York: Routledge, 1998), 71.

([28]) Koritz, *Gendering Bodies*, 16.

([29]) Garelick, *Electric Salome*, 28.

([30]) Current and Current, *Loie Fuller*, 32.

([31]) Sally R. Sommer, “Loïe Fuller,” in *International Encyclopedia of Dance*, ed. Selma Jeanne Cohen (New York: Oxford University Press, 1998), 91–92. 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 signified an exotic ethnic locale in the musical but was apparently never actually depicted. See Sabine Haenni, “Filming ‘Chinatown’: Fake Visions, Bodily Transformations,” in *Screening Asian Americans*, ed. Peter X. Feng (Rutgers, NJ: Rutgers University Press, 2002), 49n40. Fuller’s *Serpentine Dance* bore no relation to the musical’s plot.

([32]) “La Loie Interprets Law,” *New York Times*, September 3, 1893, p. 9.

([33]) “Loie Has Changed Her Mind,” *New York Times*, September 4, 1893, p. 5.

([34]) 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.” “Historicizing the Relations of Theatrical Production,” in *Critical Theory and Performance*, ed. Janelle G. Reinelt and Joseph R. Roach (Ann Arbor: University of Michigan Press, 1992), 171.

([35]) Current and Current, *Loie Fuller*, 26, 30–32.

([36]) Loie Fuller, *Fifteen Years of a Dancer’s Life* (Boston: Small, Maynard, 1913).

([37]) Albright, *Traces of Light*, 27.

([38]) Current and Current, *Loie Fuller*, 41; Fuller, *Fifteen Years*, 38–40; *Fuller v. New York Concert Company, Limited*, Court of Common Pleas, New York City, 1892, Municipal Archives, N.Y.C. Department of Records and Information Services, 31 Chambers Street, New York City.

([39]) Current and Current, *Loie Fuller*, 42; *Fuller v. New York Concert Company*.

([40]) Fuller's unannounced absence from the production evidently caused quite a commotion: when Fuller and her *Serpentine Dance* failed to appear in the third act of *Uncle Celestin*, a spectator drew a pistol and demanded his money back. A "stampede for the box office" followed. Bemis was promptly hired to take Fuller's place. "A Pistol Drawn at the Casino," *New York Sun*, February 25, 1892, p. 8. The failure to announce Fuller's withdrawal was "due to the fact that Manager Aronson did not believe Miss Fuller would enforce her demands."

([41]) The description of the dance that Fuller submitted as part of her copyright registration was included as an exhibit in *Fuller v. Bemis*. It was also re-printed in "Copyright —'Dramatic Composition'—Stage Dance," *Albany Law Journal*, August 27, 1892, 165–66.

([42]) Martie Fellom, "Skirt Dance," in *International Encyclopedia of Dance*, 605.

([43]) See Catherine Hindson, *Female Performance Practice on the Fin-de-Siecle Popular Stages of London and Paris: Experiment and Advertisement* (Manchester: Manchester University Press, 2007) for more on the gender ideology of the skirt dancer.

([44]) Sommer, "Loïe Fuller" 1975, 55–56; Current and Current, *Loie Fuller*, 30–31.

([45]) Sperling, "Loïe Fuller's Serpentine Dance," 54.

([46]) Ibid., 53.

([47]) See Srinivasan, *Sweating Saris*, and Uttara Asha Coorlawala, "Ruth St. Denis and India's Dance Renaissance," *Dance Chronicle* 15 (1992): 123–52. Jody Sperling is one scholar who does take notice of the influence of Nautch dancing on the development of Fuller's *Serpentine Dance*. Sperling, "Skirting the Image: The Origins of Loïe Fuller's

Serpentine Dance," 2001, www.timelapsedance.com/files/skirting_the_image.pdf. Accessed May 1, 2012. Sally Sommer also notes that the "filmy transparent costume" used in a Nautch number in *The Arabian Nights* (1887), in which Fuller also appeared, was "not unsimilar to the one used later by Fuller." Sommer, "Loïe Fuller," 1975, 55.

([48]) *Fuller v. Bemis*. This account bears striking similarities to Ruth St. Denis's encounter with "Nautch" girls at Coney Island in 1904, to be discussed below. The timing of Fuller's study in Paris is a bit unclear, but she may have traveled there while stationed in London in 1889, which would have coincided with the Paris Exposition of 1889.

([49]) Current and Current, *Loie Fuller*, 59–60.

([50]) Fuller, *Fifteen Years*, 28.

([51]) Current and Current, *Loie Fuller*, 60–61.

([52]) Garelick, *Electric Salome*, 17.

([53]) Ibid., 25–26.

([54]) Quoted in Sommer, "Loïe Fuller" 1975, 57, emphasis added.

([55]) Srinivasan, *Sweating Saris*, 23, 68, 72.

([56]) Priya Srinivasan, "The Bodies beneath the Smoke or What's Behind the Cigarette Poster: Unearthing Kinesthetic Connections in American Dance History," *Discourses in Dance* 4.1 (2007): 8.

([57]) See Albright, *Traces of Light*, for a discussion of the *Serpentine Dance* as Fuller's signature.

([58]) Srinivasan, *Sweating Saris*; Yutian Wong, *Choreographing Asian America* (Middletown, CT: Wesleyan University Press, 2010); Desmond, "Dancing Out the Difference"; Amy Koritz, "Dancing the Orient for England: Maud Allan's *The Vision of Salome*," in *Meaning in Motion: New Cultural Studies of*

Dance, ed. Jane C. Desmond (Durham, NC: Duke University Press, 1997), 133–52.

([59]) Saidiya V. Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (New York: Oxford University Press, 1997), 23–24.

([60]) On blackface minstrelsy and its persistence into the twentieth century, see Eric Lott, *Love and Theft: Blackface Minstrelsy and the American Working Class* (New York: Oxford University Press, 1993) and Michael Rogin, *Blackface, White Noise: Jewish Immigrants in the Hollywood Melting Pot* (Berkeley: University of California Press, 1996). I address the relationship between black slavery and blackface minstrelsy further in Chapter 2.

([61]) Srinivasan, *Sweating Saris*.

([62]) Koritz, “Dancing the Orient,” 144.

([63]) For example, early modern dancers like St. Denis drew on the “expressive” principles of the American Delsarte system of movement. See Desmond, “Dancing Out the Difference,” 33–35.

([64]) Fuller, *Fifteen Years*, 41–42.

([65]) Cherniavsky, *Incorporations*, xx. Eden Osucha similarly notes that “if one’s self-possession implies the possession of one’s image, then the unbidden circulation of that image can constitute a kind of theft” (“The Whiteness of Privacy,” 77).

([66]) Cherniavsky, *Incorporations*, 89.

([67]) *Fuller v. Bemis.*

([68]) Martha Woodmansee and Peter Jaszi, “Introduction,” in *The Construction of Authorship: Textual Appropriation in Law and Literature*, ed Martha Woodmansee and Peter Jaszi (Durham, NC: Duke University Press, 1994), 3.

([69]) Martha Woodmansee, *The Author, Art, and the Market: Rereading the History of Aesthetics* (New York: Columbia University Press, 1994), 33.

([70]) *Daly v. Palmer*; “Copyright—‘Dramatic Composition’—Stage Dance.”

([71]) *Fuller v. Bemis*. Prior to the 1909 Copyright Act, registration was a prerequisite for copyright protection. The 1909 act made publication with notice (i.e., the affixation of a copyright symbol) the means of establishing copyright. See David Rabinowitz, “Everything You Ever Wanted to Know about the Copyright Act before 1909,” *Journal of the Copyright Society of the U.S.A.* 49 (Winter 2001): 650–61.

([72]) Mark Rose, *Authors and Owners: The Invention of Copyright* (Cambridge, MA: Harvard University Press, 1993), 1.

([73]) Copyright Act of Aug. 18, 1856, 34th Congress, 1st Session, *U.S. Statutes at Large,* 11:138.

([74]) Interestingly, the discussion around copying took on a pointed gendered cast. Among the reports cited was one from the *New York Recorder* of February 28, 1892, which read: “The Casino people are jubilant over the huge success of Miss Fuller’s successor in the Serpentine dance. The imitativeness possessed by the majority of women is certainly marvelous. Like man’s original ancestor—according to Darwin—they can imitate almost anything in a surprisingly short space of time and with comparatively little effort. Before Miss Fuller had introduced this dance no one had over seen it, yet she had been dancing for less than a week when an observant understudy succeeded in reproducing every pose and gesture of the original.” Fuller’s claims of originality thus disrupted the perception that female cultural production was only ever reproductive, even as her accusations against Bemis sustained it. *Fuller v. Bemis.*

([75]) Harris, “Whiteness as Property,” 1734–35.

([76]) Lewinson and Falk cited *Palmer v. Daly*, 6 Blatch, 256.

([77]) *Fuller v. Bemis*.

([78]) “Copyright—‘Dramatic Composition’—Stage Dance.”

([79]) Garelick, *Electric Salome*, 30.

([80]) Albright, *Traces of Light*, 28.

([81]) Ibid.

([82]) Cherniavsky, *Incorporations*, xv.

([83]) Ibid., xvii.

([84]) *Hoyt v. Fuller,* 19 N.Y. 962.

([85]) *New York Clipper*, June 25, 1892, 247; *Hoyt v. Fuller.*

([86]) *Hoyt v. Fuller*.

([87]) I am indebted to an anonymous reviewer of an earlier incarnation of this work for suggesting this possibility.

([88]) Stephen Burge Johnson, *The Roof Gardens of Broadway Theatres, 1883–1942,* Theater and Dramatic Studies no. 31 (Ann Arbor, MI: UMI Research Press, 1985), 28.

([89]) On June 28, 1892, Fuller secured an immediate release from her contract with Hoyt & Thomas and sailed to Germany and then Paris. Current and Current, *Loie Fuller*, 44.

([90]) Ibid., 51. The most famous of these imitators was Ada Fuller, who claimed to be Loïe's sister-in-law. Current and Current, *Loie Fuller*, 58. In his biography of Fuller, Giovanni Lista describes her as simultaneously "inimitable" and "imitated everywhere" and proceeds to list over thirty Fuller imitators. Lista, *Loïe Fuller: Danseuse de la Belle Epoque* (Paris: Stock-Éditions D'Art Somogy, 1994), 28–30.

([91]) Fuller, *Fifteen Years*, 53–54.

([92]) Ibid., 57, emphasis added.

([93]) Ibid., 56.

([94]) Current and Current, *Loie Fuller*, 51.

([95]) Margaret Haile Harris, *Loïe Fuller, Magician of Light: A Loan Exhibition at the Virginia Museum, March 12–April 22, 1979* (Richmond: The Museum, 1979), 18–19; Current and

Current, *Loie Fuller*, 61–62. In addition, Fuller imposed a policy of strict secrecy on her assistants, refusing to discuss the details of her costumes or lighting effects. Harris, *Loïe Fuller*, 20; Current and Current, *Loie Fuller*, 60.

([96]) "Theatrical Gossip," *New York Times*, February 15, 1894, p. 8; "Reserve Decision on 'Barefoot Dance,' " *New York Times*, March 10, 1910, p. 9.

([97]) " 'Ninety and Nine' Fire Enjoined," *New York Daily Tribune*, December 24, 1902, p. 7; *Fuller v. Gilmore et al.*, Circuit Court 121 F. 129; 1902 U.S. App. LEXIS 5326; "Cuts Dancer's Award," *New York Times*, April 26, 1907.

([98]) Although damages are not discussed in *Fuller v. Gilmore*, Ida Fuller was subsequently awarded the remarkable sum of $22,000 as compensation for the sixteen weeks in which the producers of *The Ninety and the Nine* used the fire-simulating device that was deemed an infringement on her patent. In 1907, a judge reduced that figure to $3,200. "Cuts Dancers's Award."

([99]) "Has Act Protected," *Variety*, September 21, 1907, p. 6.

([100]) Ruth Dennis, *Egypta;* Ruth Dennis, *Radha*, Copyright Office, Library of Congress.

([101]) Biographer Suzanne Shelton records 1905 as the date for the initial copyright for *Egypta*. Suzanne Shelton, *Divine Dancer: A Biography of Ruth St. Denis* (New York: Doubleday, 1981), 299. My own research at the Copyright Office of the Library of Congress yielded a copy of *Radha* from 1905 and a copy of *Egypta* from 1910. Nevertheless, although *Egypta* did not premiere until 1910, it was conceived in 1904, making it entirely plausible that St. Denis registered it at the same time as *Radha*. Ted Shawn, *Ruth St. Denis: Pioneer and Prophet; Being a History of Her Cycle of Oriental Dances* (San Francisco: Printed for J. Howell by J. H. Nash, 1920), 4, 48.

([102]) Shelton, *Divine Dancer*, 49, 50.

([103]) Tomko, *Dancing Class*, 48.

([104]) Ibid., 47–58.

([105]) “What the Week Promises in the Theatres,” *New York Times*, November 14, 1909.

([106]) Tomko, *Dancing Class*, 47; Shelton, *Divine Dancer*, 62.

([107]) Ruth St. Denis, *An Unfinished Life* (New York: Harper & Brothers, 1939), 55.

([108]) Srinivasan, *Sweating Saris*, 82.

([109]) Ibid., 69.

([110]) Shelton, *Divine Dancer*, 73.

([111]) Ibid.

([112]) Ruth St. Denis, “The Only ‘Radha,’ ” Letter to the Editor, New York *Herald*, August 20, 1906, p. 8.

([113]) Shelton, *Divine Dancer*, 73.

([114]) Ibid., 51–52; Srinivasan, *Sweating Saris*, 87; Wong, *Choreographing Asian America*, 48.

([115]) “Must Push St. Denis Suit,” New York *Sun*, November 27, 1909, p. 5.

([116]) “Hindu Didn’t Teach Her,” *New York Times*, May 3, 1910, p. 3. His first name alternately spelled “Mahomed” and “Mahomet” in newspaper reports, Ismail, Srinivasan clarifies, was not Hindu, as he was identified, but Muslim. *Sweating Saris*, 90.

([117]) “Must Push St. Denis Suit,” 5.

([118]) Srinivasan, *Sweating Saris*, 90.

([119]) Ibid., 84.

White Womanhood and Early Campaigns for Choreographic Copyright