

**Corporate Impersonation:
The Possibilities of Personhood in American Literature, 1886-1917**

by

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“Everything...that the community chooses to regard as such can become a subject—a potential center—of rights, whether a plant or an animal, a human being or an imagined spirit; and nothing, if the community does not choose to regard it so, will become a subject of rights, whether human being or anything else.”

-Alexander Nékám, 1938

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For my family – past, present, and future.

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Abstract

This dissertation analyzes the ways in which certain U.S. novels of the late nineteenth and early twentieth century engaged with the problem of the corporation, a form of business organization that had become ascendant over nearly every aspect of modern life. In a moment when legal scholars were deepening and expanding the ancient doctrine of corporate personhood (which grants corporations the status of people under the law), novelists used literature to explore how the changing status of the corporation might generate new possibilities of personhood for other groups with tenuous legal status—most notably women, immigrants, and animals. Through close reading of novels by Upton Sinclair, Edith Wharton, Theodore Dreiser, Richard Harding Davis, and Frank Norris, this manuscript argues that popular novels in the turn of the twentieth century were as much a part of the debate over the nature of corporate personhood as more traditional legal texts such as law reviews and court opinions. For Sinclair, the Beef Trust’s grotesque exploitation of livestock and immigrant workers alike forces the protagonist to reclaim his humanity by joining a socialist collective—another form of group personhood. Likewise Norris’s *The Octopus* explores the problems and possibilities of direct action against corporate power. For other writers, however, the corporation was less a force of oppression than a vehicle for personal and political transformation. Dreiser’s Cowperwood, by creating his own corporate self, is able to achieve a different kind of financial and social potential, while in Wharton’s *The Fruit of the Tree*, the corporate structure enables the empowerment of its female shareholders—even as the corporation itself becomes naturalized into the familiar collectivities of the family and of “society” writ small. Indeed, Davis’s *Soldiers of Fortune* goes so far as to valorize the multinational corporation as integral to the financial and

social promises of the U.S. imperialist project. Although corporate personhood is often lampooned today as an absurd symbol of oligarchy, the authors in this dissertation grappled with the more complicated problem of how the corporation was changing the nature of personhood itself, for better or worse.

INTRODUCTION

The Individual in a Corporate World

For much of U.S. legal history, the doctrine of corporate personhood—which states that a corporation is treated as a person under the law—lingered in obscurity. Although the principle pre-dates the formation of the United States, finding its antecedents in Roman law and medieval Germanic legal tradition, some modern writers completely miss its thousands of years of history, dating it instead to the 1885 case that extended the Fourteenth Amendment to corporate persons.¹ Regardless of the history of the doctrine, what was once the domain of legal theory has become a target of popular outrage. Bumper stickers with the slogan “Abolish Corporate Personhood” pepper more progressive areas of the country, and the organization Move to Amend (which “call[s] for an amendment to the US Constitution to unequivocally state that inalienable rights belong to human beings only”) has local affiliates in thirty-one states, including conservative bastions such as Texas, Utah, and Arizona (Move to Amend).

In September 2009, the Supreme Court heard re-argument in *Citizens United v. Federal Election Commission*,² a case that soon became shorthand for corporate personhood and power. Originally, *Citizens United* addressed a rather narrow issue—“whether the McCain-Feingold [campaign finance reform] law applied to a documentary, presented on video on demand, by a

¹ See, e.g., the following statement from “ethicist and attorney-at-law” Linda MacDonald Glenn in a recent post on the popular news and entertainment site io9: “The idea of ‘corporations as persons’ though, all started because of a headnote mistake in the 1886 case of *Santa Clara County v. Pacific Railroad Co.*, 113 U.S. 394 — a mistake that has been perpetuated with profound consequences” (Dvorsky).

² 558 U.S. 310 (2010).

nonprofit corporation” (Toobin). As Jeffrey Toobin tells it, the five conservative justices on the Supreme Court, led by Chief Justice John Roberts, saw the case as an opportunity to overturn McCain-Feingold, and scheduled the case for re-argument on a more expansive set of Questions Presented in order to avoid the appearance of overstepping the contours of the case as set by the attorneys representing the parties (Toobin).³

On January 21, 2010, the court released its ruling. In the words of Anthony Kennedy, writing for the majority, “[t]he Government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether.”⁴ Overturning the court’s earlier ruling in *Austin v. Michigan Chamber of Commerce*⁵ that “political speech may be banned based on the speaker’s corporate identity,”⁶ the Court held by a 5-4 vote that “the corporation has a constitutional right to speak” on matters political,⁷ and cannot be restricted to only speaking through the “burdensome alternative[]” of a “separate association,” or Political Action Committee (PAC), formed for that purpose.⁸ In a line that would be paraphrased by many reporters as “money equals speech,” Kennedy wrote, “[the] prohibition on corporate independent expenditures is thus a ban on speech,”⁹ and, among

³ *But see* Tom Goldstein, writing in the nationally-respected SCOTUSblog, who cautions against what he sees as Toobin’s overstatement of the Chief Justice’s advocacy in this case: “It does seem fair to me to criticize the Chief Justice for voting to decide *Citizens United* on constitutional grounds. But that is a criticism that is just as applicable to the entire majority, as opposed to an indication of maneuvering by him. It also ignores that the alternative may have been no clear holding whatsoever – with dueling members of the majority articulating inconsistent rationales that left the law in flux. It is also a criticism that is deeply rooted in a belief that the *Citizens United* ruling is wrong on the merits, as opposed to an objective view that the Court should never issue broad constitutional rulings when it can avoid them. If you instead agree with the ruling, that criticism seems fairly empty. The majority’s view is that the statute imposed a significant restriction on a basic First Amendment right: participating in elections. More broadly, the majority believes that the Court’s prior precedents in this important area are fundamentally flawed. It is not surprising that they want to correct those perceived errors — on what everyone agrees is a critical question — as quickly as possible.” (Goldstein)

⁴ 558 U.S. at 319.

⁵ 494 U.S. 652 (1990).

⁶ 558 U.S. at 319.

⁷ 558 U.S. at 329.

⁸ 558 U.S. at 337.

⁹ 558 U.S. at 339.

encomiums to speech as a “essential mechanism of democracy” and the “right of citizens to inquire, to hear, [and] to speak,”¹⁰ cited a bevy of precedent to support the conclusion that “the First Amendment does now allow speech restrictions based on a speaker’s corporate identity.”¹¹ *Austin*’s restrictions on corporate speech, which were based on the “compelling governmental interest in preventing the ‘corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form,’”¹² were thus merely an aberration, a “troubling assertion of brooding governmental power” unfairly levied on a speaker simply because that speaker consisted of “an association that has taken on the corporate form,”¹³— regardless of the many privileges (among them immortality and limited liability) that the corporate form entails. Painting an apocalyptic picture of a world where “media corporations could have their voices diminished” (even though the law being challenged included an exception for media corporations),¹⁴ the court declared that the “purpose and effect of this law is to prevent corporations, including small and nonprofit corporations, from presenting both facts and opinions to the public[.]”¹⁵ By the Court’s telling here, corporations consist of an “association of citizens,”¹⁶ all of whom can be presumed to be acting in concert, unified by the doctrine of corporate personhood into a likeminded mass. In an aside that indicates the degree to which the Court accepted the fictional unity of the corporate body, Kennedy waved away the problem of “dissenting shareholders,” or disunity within the corporate person such that dissenting shareholders are “compelled to fund corporate speech,” as a phantom that, if it exists,

¹⁰ 558 U.S. at 339.

¹¹ 558 U.S. at 347.

¹² 558 U.S. at 348 (quoting 494 U.S. 652, 660 [1990]).

¹³ 558 U.S. at 349.

¹⁴ 558 U.S. at 352.

¹⁵ 558 U.S. at 355.

¹⁶ 558 U.S. at 356.

can be addressed through normal modes of internal corporate governance.¹⁷

In the longest dissent of John Paul Stevens's thirty-five year career on the Supreme Court, Stevens, joined by Justices Ginsburg, Breyer, and Sotomayor, castigated the majority's "inaccurate [and] inadequate" ruling that "corporations must be treated identically to natural persons in the public sphere" (Toobin).¹⁸ Pointing out "a century of history" that, in his view, the majority simply ignored or misread when it claimed extensive precedent (including several nonbinding dissents) for overturning *Austin*,¹⁹ Stevens warned that the "Court's ruling threatens to undermine the integrity of elected institutions across the Nation,"²⁰ based only upon "an amalgamation of resuscitated dissents."²¹ In contrast to Kennedy's majority opinion, which blithely declared that "there is only scant evidence that independent expenditures even ingratiate" corporations to the candidates they support,²² Stevens countered that the law the majority overturned resulted from Congress acting "in response to a virtual mountain of research on the corruption that previous legislation had failed to avert."²³ Pointing out that "[like] all other natural persons, every shareholder of every corporation remains entirely free under [prior precedent] to do however much electioneering she pleases outside of the corporate form,"²⁴ Stevens reflected on the long-recognized, "distinctive potential of corporations to corrupt the electoral process," a potential that makes restrictions on corporate speech, given the fact that "the 'speakers' are not natural persons, much less members of our political community."²⁵ Indeed, Stevens wryly wondered whether "[u]nder the majority's view... it may be a First Amendment

¹⁷ 558 U.S. at 361, 370-72.

¹⁸ 558 U.S. at 394 (Stevens, J., dissenting).

¹⁹ 558 U.S. at 395 (Stevens, J., dissenting).

²⁰ 558 U.S. at 396 (Stevens J., dissenting).

²¹ 558 U.S. at 414 (Stevens, J., dissenting).

²² 558 U.S. at 360.

²³ 558 U.S. at 400 (Stevens, J., dissenting).

²⁴ 558 U.S. at 416 (Stevens, J., dissenting).

²⁵ 558 U.S. at 423-24 (Stevens, J., dissenting).

problem that corporations are not permitted to vote, given that voting is, among other things, a form of speech.”²⁶

Forming part of the core of Stevens’s dissent is an excursus into the history of the U.S. corporation. Acknowledging that at the time of the country’s founding, corporations “were created, supervised, and conceptualized as quasi-public entities” that came into existence through the grant of corporate status by a state legislature, Stevens asserted that the framers of the Constitution “had little trouble distinguishing corporations from human beings, and when they constitutionalized the right to free speech in the First Amendment, it was the free speech of individual Americans that they had in mind.”²⁷ Highlighting the “fact that corporations are different from human beings” and yet “inescapably structure the life of every citizen,” Stevens then made a declaration that would not have been out of place among Gilded Age critiques of the rise of corporate power:

corporations have no consciences, no beliefs, no feelings, no thoughts, no desires. Corporations help structure and facilitate the activities of human beings, to be sure, and their ‘personhood’ often serves as a useful legal fiction. But they are not themselves members of “We the People” by whom and for whom our Constitution was established.²⁸

If all these elements are true, how, then, did corporations come to be treated as persons, and of what does that personhood consist? In a footnoted aside, Stevens refused to align himself with any one theory of the corporate person, insisting that “[it] is not necessary to agree on a precise theory of the corporation to agree that corporations differ from natural persons in fundamental ways, and that a legislature might therefore need to regulate them differently if it is human

²⁶ 558 U.S. at 424-25 (Stevens, J., dissenting). This is not as absurd as it may seem; in the Australian states of Victoria, South Australia, and Tasmania, corporations that own property are indeed allowed to vote (Sawer and Brent 23).

²⁷ 558 U.S. at 426-28 (Stevens, J., dissenting). Stevens himself acknowledged the irony of using an original intent argument to discredit an opinion joined by Antonin Scalia and other famous “originalists:” “This case sheds a revelatory light on the opinion of some that an impartial judge’s application of an originalist methodology is likely to yield more determinate answers, or to play a more decisive role in the decisional process, than his or her views about sound policy.” 558 U.S. at 430 (Stevens, J., dissenting).

²⁸ 558 U.S. at 466 (Stevens, J., dissenting).

welfare that is the object of its concern.”²⁹ For a Supreme Court justice writing in 2010, this may be true. But in order to understand the complex interplay of legal convenience and socioeconomic forces that allowed the majority to attribute First Amendment rights to a group person in the first place, the theoretical underpinnings of the act of legal imagination that made *Citizens United* a person under the law must be engaged with, both on their own terms and on the terms of non-lawyers who, in the turn of the twentieth century as much as now, sought to make sense of the corporate person in relation to themselves.

In this dissertation, I engage with the fundamental problem of being an individual in a corporate world. Starting from 1885, the year in which a headnote in the Supreme Court case *Santa Clara County v. Southern Pacific Railroad* formalized the corporation’s status as person under the Fourteenth Amendment to the Constitution, and ending with U.S. involvement in the First World War, I trace the ways in which both novelists and legal writers imagined the corporation as an entity in itself, a person existing independently (to various degrees) of the natural persons who comprised its organizational structure. I argue that these two groups of writers, although they operated largely independently from each other, imagined the corporation in two main ways, which I refer to by their legal theoretical names: artificial entity theory and real entity theory.³⁰

In artificial entity treatments of the corporation, what is most important is not the corporation itself, but rather its place within the larger society. Social ties—whether familial, friend-based, or both — animate the corporate structure and the process of corporate decision-making. Aligning with artificial entity theory, which located the act of naming the corporation

²⁹ 558 U.S. at 465 n.72 (Stevens, J., dissenting).

³⁰ Aggregate theory, which was ascendant in the eighteenth and early nineteenth centuries, appears sparingly in the novels studied. Arguably the best examples of an aggregate conception of the corporation taken fictional form can be found in the novels’ treatment of herds of animals, namely the pigs led to the slaughter in Sinclair’s *The Jungle* and the sheep crushed by the train in Norris’s *The Octopus*.

formally as the key moment of corporate creation, the name of the corporation takes on a disproportionate significance, often to make the corporation seem more familiar by hearkening back to an older form of business organization, the partnership. Artificial entity approaches to imagining the corporation work to make the corporation familiar, to counteract the unearthly powers of the corporate body by soothing the reader into seeing it as just another social body like marriage, family, or formal “society.” The corporation, once made intelligible in this way, takes its role as just another group person that interpenetrates the rest.

In contrast, real entity treatments of the corporation see the corporation as arising out of an exercise of human will, often occurring at a moment of sublime revelation. Some of these works feature a protagonist who creates a parallel corporate self, a *corporation sole*, out of himself, while at other times the corporation takes form thanks to a shared emotion or aspiration. Unlike artificial entity approaches, real entity treatments highlight the monstrous capacities of the corporation, and are much more likely to feature corporations engaging in ruthless exploitation of the world around them—although, notably, not all of these exploitative actions are portrayed as unsympathetic.

Taken together, these two approaches to the corporation—artificial entity and real entity—demonstrate the complexity of the ascendant legal jurisprudence during this period, as I chronicle in the dissertation’s first chapter. Although echoes of this arcane debate worked its way into the imaginative literature of the period, I do not argue that the novelists I study—Upton Sinclair, Theodore Dreiser, Edith Wharton, Richard Harding Davis, and Frank Norris—were aware of, let alone shaped by, the nuances of legal theoretical developments.³¹ Rather, I contend

³¹ I acknowledge the possibility that they may have been tangentially aware of legal developments through reading newspaper articles and the like, but the argument does not depend on their having done so. In a later iteration of this project, I will engage with the unpublished novel *A Business Career* by Charles Chesnutt, who, unlike the novelists in the project’s current iteration, did have legal training and may have actually been aware of the nuances of the

that their work engaged with the broad opening of the category of personhood that accompanied the rise of the corporation as the leading form of business organization in the nation, an opening that extended well beyond a single doctrine to include fundamental changes to other forms of group personhood such as family, community, labor unions, and the nation. Artificial entity theory and real entity theory simply were two ways in which American legal thinkers sought to make sense of a changing regulatory landscape. Stepping back to examine other discourses and media sheds light not on any direct causal link between legal theory and imaginative literature, but rather on the common tropological forces that reshaped personhood across multiple domains during this transformative moment of modern American history and literature.

I begin this study by surveying the development of corporate personhood theories in the United States from its founding until the First World War. To simplify the discussion, and in line with other historians of corporate personhood, I group writings on corporate personhood into three main theories: aggregate, artificial entity, and real entity. Understanding these three theories is, I argue, essential to understanding how novelists of this period imagined, manipulated, and reproduced the contemporary corporation.

In the early United States, acquiring corporate status required a grant from the state. If the corporation's personhood was merely a grant of the state and had no meaning outside of that, then jurists were free to see it as an aggregate or assemblage of shareholders bound together by contract.³² By this logic, when we spoke of a corporation, we were actually just using a group

corporation's legal status.

³² The word "aggregate" holds a double meaning in discussions of corporate theory, referring both to this conception of the nature of the corporation and to any corporation as we are accustomed to viewing it. Viewed broadly, corporations are divided into two categories: corporations sole, which consist of one natural person, and corporations aggregate, which unite more than one natural person. In Blackstone's words, "Corporations aggregate consist of many persons united together into one society, and are kept up by a perpetual succession of members, so as to continue forever. . . . Corporations sole consist of one person only and his successors, in some particular station, which are incorporated by law, in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had. In this sense the king is a sole corporation..."

name to refer to the individual human beings who unite under the corporate name to do business. The convenience of naming, to which corporations owed their existence as persons, thereby became the essence of the creature, such that the corporation could not be said to exist apart from its recognition by others and by the government through means of its corporate name. This construction made the corporation a close cousin of the partnership, which was the predominant form of business association in the early republic.

Starting in the 1840's, however, general incorporation statutes proliferated, such that by the end of the nineteenth century, the corporation went from a rare form of charitable organization restricted mostly to cities, churches, and universities to the predominant form of business organization in the nation. After the development of limited liability rendered the assumptions behind aggregate theory obsolete, the artificial entity theory came into prominence. According to artificial entity theory, the corporation should in fact be considered a person under law, although not in the same way as a "natural" (i.e. individual human) person. Instead, the corporation's personhood is a legal fiction: a creation of convenience, deriving from the state. Artificial entity theory retains a key principle of grant theory—the idea that corporate identity is the creation of the state—inasmuch as it depends on the state to allow for the corporation's existence through either a legislatively-issued charter or papers being filed under the state's Acts of Incorporation. At the same time, by conceptualizing the corporate person as an entity separate from the shareholders, artificial entity theory encompasses the reality of postbellum corporations, like railroads, whose operations could be kept opaque from even larger shareholders. In so doing, it addresses the problems that the aggregate view of corporate personhood had struggled with through much of the nineteenth century. Artificial entity theory thus became, as Arthur

(Blackstone 457). After the advent of general incorporation laws, the difference between a sole and an aggregate corporation became blurred, and business corporations consisting of only one shareholder became a phenomenon.

Machen wrote in 1911, the “orthodox” view of the corporate person (Machen 253).

Even as artificial entity theory was working its way into the marrow of American jurisprudence, however, jurists in Europe were working through a more metaphysical interpretation of the corporation: real entity theory. Although initially the European debates over the nature of collective personhood, catalyzed in large part by the development of the modern state, were “untranslated and seemed inassimilable into the common law tradition,” this state of affairs changed at the turn of the twentieth century (Mark 1465). In large part, this shift is due to the work of the German historian Otto Gierke, author of an 1887 treatise on the medieval German law of associations, *Das Deutsche Genossenschaftsrecht* (“German Cooperative Law”). Gierke’s work did not achieve widespread attention in the United States until the British legal historian Frederic Maitland selected the third volume of *Das Deutsche Genossenschaftsrecht*, translated it into English, and published it in England under the title *Political Theories of the Middle Age* (1900), with a powerful introduction that made the case that the corporation was in fact a naturally-occurring legal person, irrespective of any action of the state. Maitland described Gierke’s notion of collective personhood as an entity generated out of the free association of individuals:

our German Fellowship is no fiction, no symbol, no piece of the State’s machinery, no collective name for individuals, but a living organism and a real person, with body and members and a will of its own. Itself can will, itself can act; it wills and acts by the men who are its organs as a man wills and acts by brain, mouth and hand. It is not a fictitious person; ... it is a group-person, and its will is a group-will. (xxvi)

Rejecting the aggregate and artificial entity theories’ insistence that the state must be involved in the creation of a corporate person, Maitland insists that the state itself operates under the same principle as a corporation; or, in biological terms, “there seems to be a genus of which State and Corporation are species” (ix). Although this notion of the corporation as arising out of the

collaboration of individual humans bears some similarities to aggregate notions of corporations, real entity theory sees the corporation not as a group of individuals, but as one solitary individual existing regardless of law's recognition of it, with the members acting as limbs or even cells, each one relevant only in regards to the whole. This organism arises out of the association of individuals and derives its power from the relations between those individuals, irrespective of whether a state decides that this group constitutes a corporation.

After introducing this theoretical foundation, the rest of this manuscript examines how American novelists utilized literature to explore the new possibilities of personhood opened up by the changing legal status of corporations. In Chapter 2, I consider Upton Sinclair's 1906 novel *The Jungle*—today remembered primarily for the meatpacking reforms it inspired—in the light of corporate personhood. The novel traces the exploitation, decline, and redemption of a Lithuanian immigrant, Jurgis Rudkus, working in the packinghouses of Chicago. In *The Jungle*, Sinclair engages with the same concerns as corporate personhood theorists—particularly the processes entailed in fusing individuals into a collective self—and redeploys those theoretical imperatives in support of socialist politics. Sinclair does so in three main ways: by juxtaposing the terrifying capacities of the corporate body with the sublime capacities of the workers' union; by portraying the categories of human and animal as interchangeable and interpenetrating; and by countering the corporations' actions of self-definition by exposing the falsehoods behind corporate speech as embodied in advertising.

The Jungle asks its audience to reevaluate the power of the group, illustrating the overwhelming and monstrous capacities that the corporate form endows, and then, by the end of the novel, painting membership in organized labor as the only way to fight the monster. Although in law the advantages of corporate form led to unequal treatment of corporate interests

and the labor unions that opposed them, in literature the imagery of the corporate body—vast, powerful, inhuman—could be used against it by opposing the collectivity of the workers with the collectivity of shareholders who employ them.³³ In *The Jungle*, the central problem is not that the corporation has successfully employed industrial means to create a mass of men driven by a common will; it is that the common will of the corporation, as embodied in its charter, is to make as much profit for the shareholders as possible, and the experiences of individual human workers are irrelevant to the corporate group-will. As a novel with specifically socialist aims, *The Jungle* utilizes this clash of collectivities to refigure the plant worker as capable of possessing power through a different sort of group personhood than that of the corporation.

Through depictions of the lives of both companionate and incompanionate nonhuman animals, the novel questions the boundaries of personhood, showing how corporate structures of power can degrade both livestock and worker, even as a household pet can be endowed with more agency and privilege than a human. The livestock Jurgis and his coworkers process (particularly the pigs) enact Sinclair's critique of labor's failure to successfully unionize. Meanwhile, the cruelty to nonhuman animals that the slaughterhouse's irresponsible profit-seeking practices perpetuate awakens a bestial nature within its workers, and Jurgis's transformation from innocent immigrant to "wild beast" and back to human shows that this corruption can only be ameliorated by joining a socialist collective consciousness. In a move that signals the mutability that the novel imagines for the category of "person," Admiral Dewey, the pet dog of one of the primary stockholder's sons, acts simultaneously as a symbol of the power of the owner class and as individual endowed by the corporate power structure with his

³³ Labor unions in this period were not typically incorporated as corporations, but I argue that this does not undermine the equation of corporation and union in this novel; both corporation and labor union enacted the combination of individual humans towards a larger goal, and indeed, from a real entity perspective, the sort of union described in *The Jungle* constituted a corporation through its exercise of group will, whether or not the law deigned to call it such.

own agency, an agency that elevates him above Jurgis and the workers even as it is dependent on Admiral Dewey using it to perpetuate the power structure.

Finally, *The Jungle* exposes the problems underlying corporate speech in the form of advertising, although in a very different way than *Citizens United*. By revealing the nauseating truth behind the packing corporations' claims of purity for their products, the novel acts as an antidote to this pernicious corporate speech. In essence, the novel becomes an advertisement for socialism, its meticulous detail counteracting the facile and simplistic claims that, as the novel shows, sought to interpellate everyday consumers into the corporate imagination.

In the third chapter, I examine three business novels that engage with the problems and possibilities of corporate gender and sexuality: Theodore Dreiser's *The Financier* (1912) and *The Titan* (1914), and Edith Wharton's *The Fruit of the Tree* (1907). I argue that these novels, significantly different in their circumstances of production, illustrate the complex machinations by which the corporate person was merged with and naturalized into existing relationships between humans, or even within a single human being. In *The Financier* and *The Titan*, Frank Cowperwood, Dreiser's protagonist and the fictionalization of a real-life tycoon, creates a corporate self through the exercise of his free will, a power that is in line with the real entity theory of corporate personhood. Corporate status in these two novels is an emanation of financial wizardry, and the world of the novel recognizes no difference between Cowperwood's profligate womanizing and his adept manipulation of political and economic players in Philadelphia and Chicago. Cowperwood's artificial and natural selves are at one, and his corporate being acts as a natural extension of his mind.

By contrast, in *The Fruit of the Tree*, Edith Wharton emphasizes the social, communal nature of the corporation, using familiar constructs like "company" and the traditional bonds of

marriage and family to naturalize the corporation into an extension of pre-existing social ties. Up until the mid-nineteenth century, the legal system of coverture, by which a woman's legal being became subsumed into that of her husband along with her property, had constructed marriage as the formation of a group person, albeit one with only two people. In *The Fruit of the Tree*, Wharton portrays the corporation as supplanting the old strictures of coverture by pitting the old understandings of the meanings of marital union against the new financial realities of stock ownership. In addition, by creating a corporation where the stock is transferred from mother to daughter, Wharton complicates the gendering of the corporation, which in other works comes off as a strictly masculine entity; instead, Wharton's novel presents corporate operations as animated in large part by women occupying traditionally feminine spaces.

Looking at these novels together illustrates the promise and danger inherent in the extension of the corporate person to everyday life. Both Dreiser and Wharton portray social pressures as essential to the formation and maintenance of a corporation—but while Cowperwood, the financial wunderkind, uses his corporate self as a superhuman alter-ego, it is almost unimaginably difficult for any of Wharton's characters in *The Fruit of the Tree* to use their corporate powers for much more than physical comfort and social status. Cowperwood creates his own corporation, and uses it to manipulate the social spheres of Philadelphia, Chicago, and New York as much as he does the financial markets of those cities. In Wharton's novel, however, Westmore Mills, as a family manufacturing concern inherited through the generations, has become calcified into the society of Hanaford, the town in which it is located, such that the word *company* in that novel stands both for the corporation and its society, and signifies the profit motive of both. While Dreiser casts corporations as instruments of human sexuality, Wharton focuses on the quotidian consequences of corporate personhood on family,

inheritance, and the other forms of social union that the corporation is slowly supplanting.

The final two chapters of the dissertation engage with two parallel visions of the corporation and its capacities to devour and naturalize terrain: Richard Harding Davis's *Soldiers of Fortune* (1897), a swashbuckling tale of mining and adventure in the fictional Latin American republic of Olancho, and Frank Norris's *The Octopus: A Story of California* (1901), a naturalist critique of the dangers of corporate power as embodied in the travails of a rural California community. Although *The Octopus* and *Soldiers of Fortune* seem to have diametrically opposed views of the corporation, a closer examination reveals surprising commonalities, particularly in the two novels' shared appreciation of the strength of middle management, the conflict between environmental forces and the corporation caused by resource extraction, and the battle of large group entities—whether corporations, nations, or intangible forces—that each novel portrays.

In the dissertation's fourth chapter, I illustrate how the corporate imperial project as it appears in Davis's *Soldiers of Fortune* reframes the process of corporate domination as part of a larger, patriotic, civilizing imperative. Davis's novel occupies an unusual position in this study, in that it is one of the rare instances where the corporation is, if not wholly virtuous, then entirely something to be admired. Davis localizes the force of the corporation not in its stockholder, but in middle management, exemplified by the novel's filibustering hero, Robert Clay.

Although the primary stockowner, Mr. Langham, might be the obvious candidate for the "soul" of a corporation, *Soldiers* is unusual (and ahead of its time) in that it locates the primary embodiment of the corporate mission in the Residential Director, Clay, instead, and defines the efficacy of the other Americans in terms of how well they acknowledge and further Clay's intrinsic superiority in the corporate game. The spirit of the corporation, meanwhile, is given form in the person of Hope, the younger daughter of the sole stockholder and the future wife of

the heroic engineer and manager. Hope embodies the promise both of an enlightened American womanhood and the reforming possibilities of the corporation.

Combining an intelligent comprehension of the financial and structural decisions of the mines with the ability to translate effectively between expert and stock-owning layman, Hope unites both stereotypically male and stereotypically female capacities in furtherance of the corporate mission. Through much of the novel, Hope exists in a hybrid identity category, her femininity queered by her fascination with conventionally male interests like football and engineering in a way that makes her more desirable as an object of male admiration. In her informal work as a sort of secretary for her father, Hope furthers the traditional identification of family with corporation, but in her competence despite the position she holds as youngest daughter, she emphasizes the increased efficacy that comes from utilizing a group with diverse skill sets rather than relying on a single stockowner in whom all decision-making force is imbued. Hope's readiness to take a secondary role to Clay, particularly after she amply demonstrates herself capable of leadership and courage, not only serves as an argument for how the New Woman—independent, athletic, adventuresome—does not fundamentally threaten the dominant masculine paradigm; it also represents the methods by which the person of the corporation served as helpmeet and enabler for the United States' project of imperialist expansion. In this way, the emphasis on family found in artificial entity treatments of the corporation and the emphasis on will found in real entity approaches become fused in a depiction of the mining corporation as the benign agent of U.S. imperialism.

In *Soldiers*, the corporate body of the Valencia Mining Company is overshadowed and supported by the larger body of the United States, such that the corporation's most important work is as an agent and emanation of a larger national self, one which the reader is asked to

identify with. Meanwhile, the inchoate Olanchoan government of “half-breeds” behind it, vaguely supported by Nature as embodied in the mountains, can offer little resistance to the imperialist corporate project (37). Repeatedly, the heroes of the novel actively police membership in both the corporate body and the U.S. body, refusing the Opposition’s attempts to acquire membership in the corporation in a move that precipitates war—and, in turn, the end of that war comes with the active involvement of U.S. military power, illustrating how U.S. economic domination could lead to U.S. political domination as well.

In the dissertation’s final chapter, I turn to Frank Norris’s *The Octopus: A Story of California*, whose pointed criticism of corporate power has made it one of the most famous texts in American literature. A loose fictionalization of the 1880 shootout between San Joaquin Valley ranchers and the Southern Pacific Railroad that became known as the “Mussel Slough Tragedy,” Norris’s novel forms the first part of a projected trilogy, the Epic of the Wheat, engaging with the movement of wheat from the fields of California to the markets of Chicago to, in the envisioned third book, the hungry people of Europe.³⁴ It is in *The Octopus*, however, rather than the commodity trading-focused *The Pit*, where Norris’ pointed views on the expansion of corporate power become most apparent. The novel envisions the turn-of-the-century landscape of California—and of the United States more generally—as a battlefield of Titans, where group persons, mostly corporate, do battle, leaving “the People,” as Norris calls the ordinary, non-stockowning citizenry, to suffer the casualties. Complicating the simplistic portrayal of corporations as evil monsters that occupies some of the novel, however, is a remarkable sympathy or admiration of corporate efficiency, particularly in the person of the railroad’s leader, Shelgrim, and its agent, S. Behrman, whose grudgingly sympathetic portrayal

³⁴ Norris died of complications from a ruptured appendix before he was able to start work on *The Wolf*, as the third book was to be called.

foreshadows Dreiser's later fictionalization of Yerkes into Cowperwood. Meanwhile, the ordinary people subject to the titular Octopus's reach cannot be said to be entirely innocent victims; rather, the touch of the Octopus's tentacle awakes an animality within them, as they attempt to transform into a body that can do battle with corporate power.

Whereas *Soldiers* portrays Clay's work on behalf of the mining company as the civilizing extension of American power to an inferior nation, the titular Octopus in Frank Norris's novel, the railroad, acts upon a land that has already been colonized and converted to part of the United States, and thus the imposition of corporate power upon his fellow Americans comes off as frightening rather than ennobling. Although wheat farming in *The Octopus* is superficially a similar sort of resource extraction to the Olancho Mining Company's endeavors in *Soldiers*—indeed, one of the ranchers, a former gold miner, views mining and farming as fundamentally the same endeavor—the railroad corporation, whose cooperation is required to get the resources to market, acts on the landscape around it to fundamentally different ends (Norris 51). Instead of infusing the people and lands it touches with what Davis saw as the ordering bloom of civilization, the corporation in Norris's view, when acting on an already-colonized, U.S. American landscape, becomes monstrous, imbuing people with an animalistic savagery.

At times, Norris deals with the problem of the corporation's vastness and mutability by incarnating the entire structure into a single individual; but whereas other portrayals of the corporation during this period consider the corporation as located in its primary stockholder, Norris, like Davis, reads the corporation as embodied in its middle management, particularly the terrifyingly competent agent S. Behrman. More generally, however, the novel illustrates the monstrous capacities inherent in group personhood—not just the railroad, but the humans, machines, and animals that comprise the different forces battling in the San Joaquin Valley. By

looking at the novel through two bookending incidents—the massacre of the sheep and Dyke’s flight from the law—I argue that not only is the railroad corporation revealed as a monstrous entity, but that the individuals who struggle with the corporation have a hybrid human-animal identity even as the mechanisms of the railroad itself become animal-machine hybrids. Although the ranchers attempt to combine into their own collective, the League, and battle the Railroad on its own terms, they fail to acknowledge the overwhelming power of Nature as embodied in the Wheat, whose restless inexorability cannot be contained by human collaboration, however well-organized. In the end, even as *The Octopus* shows how powerful humans can be when united in the corporate body, all of this power proves insufficient to battle a collectivity that exists beyond incorporation, a collection of environmental forces that no artificial entity, however powerful, can resist.

CHAPTER 1

Corporate Conceptions: Theories of Corporate Personhood

During the height of the U.S. corporate personality debate at the turn of the twentieth century, various scholars argued about the ancient origins of corporate personhood, debating whether the notion of a corporation as separate from its members flowed most naturally from the Roman *universitas* or the German *genossenschaft*.³⁵ Prior to the mid-nineteenth century in the United States, however, the status of corporations held interest to only a scattering of jurists, since the form itself was restricted to a handful of charitable organizations.

In this chapter, I survey the development of the doctrine of corporate personhood from its origins to the dramatic changes it underwent in the United States from the 1840's until the U.S.'s entrance into the First World War. By offering the historical context behind the economic transformations in the United States, I aim to engage substantively with the theoretical explorations that several jurists and lawyers made in the pages of court opinions and law reviews during this time. In particular, I argue that the three major currents of thought on corporate personhood—which I roughly divide into grant and aggregate, artificial entity, and real entity—were shaped by the changing circumstances under which attorneys practiced their craft.³⁶ Grant theory, the assumption underlying both aggregate conceptions of the corporation and many iterations of artificial entity theory, gave way to a sense of the power of the group as beyond that of law itself, thereby enabling real entity theory to catch hold after 1900. Although real entity

³⁵ See, e.g., Taylor, Maitland, Machen.

³⁶ In so doing, I follow Reuven Avi-Yonah's example in his writing on corporate personhood (Avi-Yonah).

theory offered vast promise for the empowerment of various groups, it did not receive the warm welcome that it had enjoyed in Europe, and the excitement occasioned by its arrival died down after the 1920's, arguably not to return until the present day.

The Origin of Corporate Status in Anglo-American Law

In medieval and early modern England, the only corporations were public-minded entities, like a university, the Church, or a city. By the fourteenth century, the corporation had become a separate person under law from its owners (Avi-Yonah 770). Corporate status, granted by royal charter, offered the convenience of not having to redraw titles to Westminster Abbey, for example, each time there was a new Archbishop of Canterbury. Conceiving of the Church of England as constituting a being in itself, rather than as simply a name referring directly to its living human members, enabled the Church to own property in its own right, rather than in the name of the particular human being running it at the time. And since the law is accustomed to regulating persons, the corporation became a *persona ficta*—a person under the law, although that status was only a legal fiction, a convenience of naming.³⁷

The legal status of corporations in this moment can best be described by turning to Sir William Blackstone, an eighteenth-century British legal scholar whose landmark *Commentaries on the Laws of England* (1765-69) are still cited today. Ending his first book, on “The Rights of Persons,” Blackstone addressed corporations pragmatically, in terms of the need to maintain “perpetual succession:”

We have hitherto considered persons in their natural capacities, and have treated of their rights and duties. But as all personal rights die with the person; and, as the necessary

³⁷ Thinking of the corporation in this way is not altogether different from the notion of a state being at once a grouping of individuals and an entity capable of acting with one thought and purpose. Like the Church and universities (consider the phrase *alma mater*), states have been constructed as female; corporations, as will be shown, grew to have more complex relationships to gender.

forms of inventing a series of individuals, one after another, with the same identical rights, would be very inconvenient, if not impracticable; it has been found necessary, when it is for the advantage of the public to have any particular rights kept on foot and continued, to constitute artificial persons, who may maintain a perpetual succession, and enjoy a kind of legal immortality.

These artificial persons are called bodies politic, bodies corporate (*corpora corporata*), or corporations: of which there is a great variety subsisting, for the advancement of religion, of learning, and of commerce; in order to preserve entire and forever those right and immunities, which, if they were granted only to those individuals of which the body corporate is composed, would upon their death be utterly lost and extinct. (Blackstone 455)

Here the corporate form exists specifically as an “artificial” entity, so conceived to allow that artificial entity to exist beyond the lifespan of ordinary humans. This entity, although it may advance “commerce,” is so constructed only “for the advantage of the public,” to the extent that the body politic and the body corporate are treated as different names for the same phenomenon.

By Blackstone’s telling, therefore, the corporate form can be thought of as a sort of subsidiary entity for the state, one which operates as its own state in miniature:

when [individuals] are consolidated and united into a corporation, they and their successors are then considered as one person in law: as one person, they have one will, which is collected from the sense of the majority of the individuals: this one will may establish rules and orders for the regulation of the whole, which are a sort of municipal laws of this little republic; or rules and statutes may be prescribed to it at its creation, which are then in the place of natural laws. (Blackstone 456)

Essentially, the rules expressed at the creation of the corporation become rules which the corporation cannot transgress without losing its very being, such that they approximate the natural, or universal, law—which in Blackstone’s time could be considered the moral construction that underlay all positive, or “municipal,” laws. As Blackstone later puts it, “[t]he general duties of all bodies politic, considered in their corporate capacity, may, like those of natural persons, be reduced to this single one; that of acting up to the end or design, whatever it be, for which they were created by their founder” (467). The corporation thus creates its own

universe, a world in which natural law itself is subject to the dictates of individuals. At the same time, however, the corporation depends for its very existence on the grant of power from the state, embodied in the king: “The founder of all corporations in the strictest and original sense is the king alone, for he only can incorporate a society” (Blackstone 468). The dual work of “society”—referring both to the group of incorporators and to the nation at large—reinforces the parallels between the corporation and the political body that gives it its corporate status. And just as a nation that changes its borders remains the same nation, so too does a corporation consist neither in its members nor its property, but in its name: “Such name is the very being of its constitution; and, though it is the will of the king that erects the corporation, yet the name is the knot of its combination, without which it could not perform its corporate functions” (Blackstone 462). The convenience of naming, to which corporations owe their existence as persons, thereby becomes the essence of the creature, such that the corporation cannot be said to exist apart from its recognition by others and by the government through means of its corporate name.

In colonial America, corporate status was, as in England, restricted to only a handful of enterprises. As Oscar and Mary Handlin note, “before the Revolution, large-scale enterprises in many fields—mining, manufacturing, banking, and trade—used the forms prevalent throughout the Western world, the unchartered joint-stock company and co-partnership” (Handlin and Handlin 5). Partnership, the dominant form of business organization until the rise of the for-profit corporation in the nineteenth century, entails two or more individuals working together on a common enterprise. Each member of the partnership is jointly and severally liable for the debts of the partnership, and if one person leaves the partnership, the entire enterprise is

dissolved.³⁸ A joint-stock company—a form of organization that originated in the exploratory trading companies of the seventeenth century—was a form of enterprise in which members pooled their resources for use in a common undertaking, like natural resource extraction or manufacturing. Unlike royally chartered predecessors like the East India Trading Company, however, unchartered joint-stock companies were treated by the courts as a form of partnership, and thus were subject to the same drawbacks as other partnerships (Blair 50-52).

At the moment of independence, therefore, corporate status in the United States was a privilege that the state primarily granted to charitable and public-minded institutions. This fact derived both from the economic realities of the early republic and from the legal form of the corporation. As has been explained, each corporation required its own law in order to come into being. Replacing the British Crown in this role were state legislatures, and during the 1780's, they began creating corporations in record numbers (Maier 51).³⁹ In Massachusetts, for example, at least half of the acts of incorporation in the 1780's and 1790's were to create "bodies politic" out of units of local government like towns and other districts; "[a]mong the rest, by far the greater part chartered religious associations, educational institutions, and groups formed for charitable and other non-profit purposes" (Maier 53). Although some for-profit manufacturing companies, like the Beverly Cotton Manufactory (incorporated in 1789), received corporate charters, most of what we might consider for-profit corporations in this period were either banks, insurance companies or, particularly in the 1790's, "internal improvement companies" created to

³⁸ Joint and several liability means, on the most basic level, that if A and B enter into an equal partnership, and said partnership causes \$1000 in debt, then A and B are individually liable for \$500 each (several liability). If B is unable to pay, A is liable for all \$1000 (joint liability). As a general rule, stockholders today are not liable for the debts incurred by the corporation due to the development of the limited liability doctrine (*see infra*).

³⁹ Maier contrasts this situation to that of the United Kingdom, which "virtually ceased to develop the corporation for business or profit-seeking purposes" between 1720 and 1825 (51).

build bridges, canals, turnpikes, and other infrastructure elements (Maier 54).⁴⁰

A major restriction on incorporation—other than the practical concern of being well-connected enough to get an act passed on one’s behalf in the legislature—was the expectation that corporations (even for-profit ones) would serve a public purpose (Maier 55). The Beverly Cotton Manufactory mentioned above, for example, was described in the act that created it as designed to further “the happiness and welfare” of the Commonwealth by “the promotion of useful manufactures” (Maier 55). Most large-scale enterprises—not only in the nascent U.S., but also in Britain and France—consisted of unchartered joint-stock companies organized under the laws of partnership, and these business organizations had been able to exploit various legal stratagems (particularly the “extremely flexible concepts of uses and trusts” that U.S. law offered) to negate any advantage that incorporation might have brought (Handlin and Handlin 5-6). Limited liability, so compelling an advantage later on, was not yet a commonly recognized attribute of corporate status (Handlin and Handlin).

Although the corporation in the early republic was moving towards its future status as the preeminent form of business organization in the United States, it had not yet become such an obvious choice. While corporations were considered persons under the law, the implications of that personhood had not been fully explored in U.S. jurisprudence. This began to change in 1819, in the Dartmouth College case.⁴¹

In *Dartmouth College*, the state of New Hampshire attempted to take Dartmouth over and convert it into a public institution by revoking its corporate status, which had been acquired

⁴⁰ Massachusetts created more corporations than other states in this period, but the range and frequency of different types of corporations in other states was comparable to that of Massachusetts (Maier 54).

⁴¹ Trustees of Dartmouth College v. Woodward, 17 U.S. 518 (1819).

through royal charter in 1769.⁴² After a famously dramatic argument to the court by Daniel Webster, himself an alumnus of Dartmouth, Chief Justice John Marshall held that the state charter constituted a contract between the King and the trustees, a contract protected by article 1, section 10 of the U.S. Constitution, which says in part: “No State shall enter into any...Law impairing the Obligation of Contracts.” Accordingly, New Hampshire could not revoke Dartmouth College’s corporate status, and thus the college remained independent.

Along the way to this holding, Marshall gave a profoundly influential description of the corporation as it existed under newly-separated American law:

A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created. Among the most important are immortality, and, if the expression may be allowed, individuality; properties, by which a perpetual succession of many persons are considered as the same, and may act as a single individual. They enable a corporation to manage its own affairs, and to hold property, without the perplexing intricacies, the hazardous and endless necessity, of perpetual conveyances for the purpose of transmitting it from hand to hand. It is chiefly for the purpose of clothing bodies of men, in succession, with these qualities and capacities, that corporations were invented, and are in use. By these means, a perpetual succession of individuals are capable of acting for the promotion of the particular object, like one immortal being. But this being does not share in the civil government of the country, unless that be the purpose for which it was created. Its immortality no more confers on it political power, or a political character, than immortality would confer such power or character on a natural person.⁴³

As a “creature of law”—an individual being, but one which exists only within the social agreements by which the nation functions—a corporation can only operate according to the limitations of its charter. So far, Marshall’s description parallels that of Blackstone. But unlike Blackstone, Marshall here focuses less on the ways in which a corporation is like a state in miniature and more on the ways that it operates as one individual in a larger society. The

⁴² In the words of the charter: “the trustees of said college may and shall be one body corporate and politic, in deed, action and name.” 17 U.S. at 524.

⁴³ 17 U.S. at 636.

corporation possesses “individuality,” a term Marshall tentatively but deliberately uses, and one which connotes “personality” in the individual rather than the status sense. A corporation thus acts as a covering, as “clothing” endowing certain persons with an additional group identity given the force of personhood under law. Notably, Marshall refuses to grant the corporate person citizenship in the sense of the power of political action, although he offers an out (“unless that be the purpose for which it was created”) that implies that the power of corporations may be as great as the imaginations of those who write its charter.

As Morton Horwitz has observed, the “archetypal American corporation of the eighteenth century is the municipality, a public body charged with carrying out public functions; in the nineteenth century it is the modern business corporation, organized to pursue private ends for individual gain” (Horwitz *Transformation I* 112). The *Dartmouth College* case came as the corporation was becoming both more common and more private, coming to “occupy a twilight zone” between “public instrumentality [and] private entity” (Horwitz *Transformation I* 113).

Grant Theory and the Corporation as Aggregate

These developments in the actual use of the corporation brought into question the theoretical apparatus underlying its operation, often referred to as grant theory. Grant theory asserts that the corporate person only exists because the state “grants” it that legal status. As we have seen, this conception of the corporate person was in ascendancy at the time of the American Revolution; it continued to be in power through the nineteenth century, only becoming substantively challenged with the rise of real entity theory. The debate through the nineteenth century, although deeply impassioned, engaged less with the question of whether the personhood of a corporation was granted by the state and more as to the nature of the corporate person.

Once the state allowed an organization to incorporate, of what did that legal person consist—an aggregation of individuals, or a unified being? If the corporation’s personhood is merely a grant of the state and has no meaning outside of that, then jurists are free to see it as an aggregate or assemblage of shareholders bound together by contract.⁴⁴ As Chief Justice Marshall wrote in 1827 in his dissent in *Bank of the United States v. Dandridge*:

a corporation aggregate [is] a being created by law; itself impersonal, though composed of many individuals. . . . The will to be announced is the aggregate will. The voice which utters it must be the aggregate voice. Human organs belong only to individuals. The words they utter are the words of individuals. These individuals must speak collectively to speak corporately, and must use a collective voice.⁴⁵

By this logic, when we speak of a corporation, we are really using a group name to refer to the individual human beings who unite under the corporate name to do business. This perspective explains, for example, Blackstone’s emphasis on the importance of the corporate name in its functions. The convenience of naming, to which corporations owed their existence as persons, thereby becomes the essence of the creature, such that the corporation cannot be said to exist apart from its recognition by others and by the government through means of its corporate name.

This construction makes the corporation a close cousin of the partnership, which, as has been discussed, was the predominant form of business association in the early republic. As corporate law developed in the late eighteenth and early nineteenth century, “many of the rules involving the internal governance of the corporation were borrowed from partnership law, the

⁴⁴ The word “aggregate” holds a double meaning in discussions of corporate theory, referring both to this conception of the nature of the corporation and to any corporation as we are accustomed to viewing it. Viewed broadly, corporations are divided into two categories: sole corporations, which consist of one person, and aggregate corporations, which consist of more than one person. In Blackstone’s words, “Corporations aggregate consist of many persons united together into one society, and are kept up by a perpetual succession of members, so as to continue forever. . . . Corporations sole consist of one person only and his successors, in some particular station, which are incorporated by law, in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had. In this sense the king is a sole corporation. . . .” (Blackstone 457). After the advent of general incorporation laws, the difference between a sole and an aggregate corporation became blurred, and business corporations consisting of only one shareholder became a phenomenon. *See, e.g.*, Chapter 2 *infra*.

⁴⁵ 25 U.S. 64, 91-92 (1827).

most important of which was the requirement of shareholder unanimity for ‘fundamental’ changes in corporate purpose” (Horwitz “Santa Clara Revisited” 184). In Britain, where the Bubble Act impeded the formation of business corporations until 1825, the entire Industrial Revolution took place using partnerships, not corporations, to organize business enterprises (Avi-Yonah 785-86).

Perhaps the most powerful statement of the aggregate view came in *Bank of the United States v. Deveaux et al.*, ten years before the *Dartmouth College* case.⁴⁶ In *Deveaux*, the issue at hand was diversity jurisdiction; the state of Georgia had seized assets from a Bank of the United States branch located in that state, and the bank officers, residents of Pennsylvania, had brought suit in federal court to recover the funds. The Supreme Court had to decide whether this was a suitable matter for federal court, which arbitrates matters between residents of different states, or whether the branch of the Bank being incorporated in Georgia meant that all parties concerned were Georgia residents, and thus the case should be tried in Georgia state court. Writing for the court, Chief Justice Marshall held that the Bank’s act of incorporation did not make it a citizen of Georgia for diversity jurisdiction purposes:

That invisible, intangible, and artificial being, that mere legal entity, a corporation aggregate, is certainly not a citizen; and, consequently, cannot sue or be sued in the courts of the United States, unless the rights of the members, in this respect, can be exercised in their corporate name. If the corporation be considered as a mere faculty, and not as a company of individuals, who, in transacting their joint concerns, may use a legal name, they must be excluded from the courts of the union.⁴⁷

Even though the corporation consists of an “artificial being,” in Marshall’s view, that being is less of a single entity than a collectivity, one whose essence, as Blackstone explained, lies in the joint name that a collection of individuals uses for its shared purposes. Since the “corporate veil” of limited liability had not yet been developed, Marshall tosses aside the corporate name,

⁴⁶ 9 U.S. 61 (1809).

⁴⁷ 9 U.S. at 86-87.

instead viewing the case as between the natural persons comprising the Bank, who were Pennsylvanians, and Deveaux, who was a Georgian: “the controversy is, in fact and in law, between those persons suing in their corporate character, by their corporate name, for a corporate right, and the individual against whom the suit may be instituted.”⁴⁸ Although Marshall acknowledges that, based on English precedent, “for the general purposes and objects of a law, this invisible, incorporeal creature of the law may be considered as having corporeal qualities,” he does not find that corporeality to extend as far as the capacity to reside in a state other than that in which the shareholders reside.⁴⁹

The Antebellum Corporation

As Joseph Stanhope Davis would note in 1917, corporate law developed for and was applied to all three categories of corporation—religious, governmental, and business—in the late eighteenth and early nineteenth century (J. S. Davis 4). These corporations, brought into being by an action of the legislature, typically bore two common attributes: a statute of incorporation that acted like a charter, enunciating the scope and limits of the corporate purpose and power “like a constitution;” and an implication, at least for those corporations enacted for purposes of commerce, that with the franchise came monopoly privileges (Hurst 16; Horwitz *Transformation I* 127). The latter assumption of monopoly privileges, seen initially as a quid-pro-quo for engaging in a publicly-minded work like building a bridge or maintaining a canal, became troublesome as the notion of the corporation as an exclusively public construction became

⁴⁸ 9 U.S. at 87.

⁴⁹ 9 U.S. at 89.

outdated, and was eventually overturned in the *Charles River Bridge* case.⁵⁰ As Morton Horwitz has observed, “settled expectations that had grown up in a settled and underdeveloped society were giving way to a conviction that ownership of property in a dynamic and changing environment necessarily entailed many risks and uncertainties for which the law could offer no protection” (Horwitz *Transformation 1* 131).

As the corporation began to be seen as less of a publicly-minded construct and more of a profit-minded enterprise, the cumbersome process of incorporation through statute began to be reconsidered. In the late eighteenth century, several states had created general incorporation acts—laws by which corporations could come into being without needing a specific act of the legislature—for use by nonprofit organizations (Hurst 16). As the centralized, majority-rule structure of the corporation became more useful, particularly in the increasingly spread-out business environment of the growing nation, the corporate form became more desirable to entrepreneurs beyond the public-works category. Correspondingly, special charters were denounced, particularly by Jacksonian Democrats, for their “encouragement of legislative bribery, political favoritism, and, above all, monopoly” (Horwitz “Santa Clara Revisited” 181; Wallis 214). Given that corporations paid taxes into the state treasury—and many states were struggling financially, particularly after the Panic of 1837—it was in the states’ interest as well to make themselves a tempting location for new corporate enterprises (Wallis 215). Accordingly, many states expanded general incorporation acts in the early 1840’s, thereby allowing free entry to the corporate form. These general acts, as John Wallis has noted, “created an administrative

⁵⁰ In *Charles River Bridge v. Warren Bridge*, 36 U.S. 420 (1837), the Taney Court held by a vote of five to two that the grant of a franchise to the Charles River Bridge Corporation in Boston did not preclude the later legislative grant of a franchise to the competing Warren Bridge, only a few yards away. The Massachusetts Supreme Court had dismissed the petitioners’ plea to enjoin the construction of the Warren Bridge in 1830, and by the time the case was finally heard by the Supreme Court seven years later, the Charles River Bridge—which charged a toll, unlike the Warren Bridge—had become completely unprofitable (Horwitz *Transformation 1* 130).

mechanism to charter corporations, and all corporations shared common features with respect to stockholders, internal structures, and liability—creating more transparent corporate forms with stronger guarantees of shareholder rights” (215). Of the eleven states that wrote new constitutions between 1842 and 1852, eight included in those new constitutions a provision requiring their state legislatures to promulgate general incorporation laws (Wallis 212). In a telling symbolic move showing the degree to which the Jacksonian outcry against special charters had succeeded, New York limited the granting of corporate charters in 1846 to cases where general incorporation acts were inadequate (Hurst 120).⁵¹

Part of what made the corporate form so tempting for a whole range of new enterprises was the development in the 1830’s of limited liability. Unlike with partnerships, where each member is jointly and severally liable for the debts of the partnership, shareholders in a corporation with limited liability are generally not liable for the corporate debts (Avi-Yonah 789). This development began during the turn of the nineteenth century with several state courts ruling that, in the absence of charter provisions specifying shareholder liability for corporate debts, “the personal responsibility of the stockholder is inconsistent with the nature of a body corporate.”⁵² In parallel to this judge-made law, states began extending the protections of limited liability to corporations in their jurisdiction, with New York leading the way in 1811 and most states following suit by the 1840’s (Blumberg 11-12).⁵³ Still, the extension of limited liability is best seen as less of an outgrowth of popular demand—as Handlin and Handlin note, most corporations in the turn of the nineteenth century were fairly safe investments—and more as an

⁵¹ It should be noted, however, that the special charter did not entirely disappear until the twentieth century, as some states created general incorporation acts in the mid-nineteenth century that also allowed for the granting of special charters with different, typically preferential terms (Hurst 21).

⁵² *Myers v. Irwin*, 2 Serg. & Rawle 268, 371 (Pa., 1816) (Tilghman, J.).

⁵³ The major exception to this trend was the state of California, which imposed pro rata liability on all corporations doing business in the state from its admission to the Union in 1849 until the 1930’s (Blumberg 12-13).

additional incentive to encourage the formation of corporations within one's own state, aided by the increasing influence of the business class and popularity of laissez-faire thinking (Handlin and Handlin 16-17; Livermore 684-86). It should be noted, however, that limited liability does not equal the complete absence of shareholder liability; until the twentieth century, shareholders could be held liable for as much as twice the value of their investment in the corporation if such payment was required to pay the debts of a corporation (Blumberg 12).

The Unraveling of Aggregate Theory

Aggregate theory is well suited for a business milieu in which most business enterprises consist of partnerships—collaborations between relatively few people all united towards the same enterprise. If the corporation is only a glorified form of partnership, then jurists can use the same principles with the developing corporate law as they have for partnerships. In this way, as Herbert Hovenkamp observes, “[the] early limited partnership statutes were thus ancestors of the mid-nineteenth century general corporation acts” (“The Classical Corporation in American Legal Thought” 1596).

Under aggregate theory, the personhood of the corporation is in fact the personhood of the shareholders. Indeed, corporations and their advocates often exploited the fear of damaging the shareholders as a bulwark against increased corporate regulation. As late as 1876, Francis Wharton, a Massachusetts legal scholar and sometime Episcopal priest, defended his approach to railroad liability for damages by drawing attention to the humans behind the corporate person (Rabban 20-21):⁵⁴

We are accustomed to look with apathy at the ruin of great corporations, and to say, ‘well enough, they have no souls, they can bear it without pain, for they have nothing in them by which pain can be felt.’ But no corporation can be ruined without bringing ruin to

⁵⁴ For more on Wharton's theories of liability, see Goodman 79; Horwitz *Transformation* 2 57-59.

some of the noblest and most meritorious classes of the land. Those who first give the start to such corporations are men of bold and enterprising qualities, kindled, no doubt, in part by self-interest, but in part also by the delight which men of such type feel in generous schemes for the development of public resources. . . . Those who come in, in the second place, to lend their means to such enterprises after these enterprises appear to be reliable objects of investment, are the ‘bloated bond-holders,’ consisting of professional men of small incomes, and widows and orphans whose support is dependent on the income they draw from the modest means left to them by their friends. Nor is it these alone who are impoverished by the destruction of the corporations of which I here speak. The corporation may itself be soulless, and those investing in it may deserve little sympathy, but those whom it employs are the bone and sinew of the land. (F. Wharton 730-31)

In order to win adherents for a construction of tort law that would draw liability away from railroad corporations, Wharton here refigures the corporation as consisting of three layers: the founders of the corporation, who he imagines as (at least partially) motivated by the old concerns of public welfare; the shareholders, who, in a repurposing of the then-common derogatory term “bloated bond-holders,” he paints as figures of ultimate sympathy; and the employees of the corporation, who he describes as at once part of the corporate body and part of the body of the nation. Although the corporate person may have no soul, Wharton argues, the persons involved in the corporation’s life do, and therefore tort law should not have easy access to deep corporate pockets. Despite its rhetorical usefulness, Wharton’s description of the corporation, founded upon an aggregate notion of corporate identity, was becoming increasingly less relevant—due in large part to the rise of limited liability.

In the beginning of the nineteenth century, limited liability was not a feature of the corporate form, at least for manufacturing corporations, although some public and financial service corporations enjoyed these protections as a feature of their charter (Blumberg 20). Over the first half of the nineteenth century, as has been discussed, various court decisions established the presumption of limited liability unless it was specifically denied in the charter; and as the corporate form grew in popularity, this presumption of limited liability was established in

statutory law as well (Hurst 27-28).⁵⁵ If, however, the shareholders are not generally liable for the debts of the corporation, then it becomes increasingly difficult to see the shareholders and the corporation as one and the same—a presumption that underlies the aggregate conception of corporate personhood.⁵⁶

Once limited liability developed, the fundamental assumptions behind aggregate theory no longer applied. If the individual shareholders were no longer liable for corporate debts, then being a corporation had to mean more than simply having a group-name under which to do business, and thus “the disjunction between seeing the corporation on the one hand as nothing more than the aggregate property of the shareholders and on the other as a functioning business entity proved impossible to maintain” (Mark 1464). As Gregory Mark explains, “[t]he partnership analogy ignored two key truths of corporate enterprise: first, that part of the value of corporate property was that corporations were ongoing operations premised on the ability to maintain property as a unit; and second, that corporators were rapidly losing any responsibility for the workings of the firm” (1465). To use Francis Wharton’s example, the “professional men...and widows and orphans” investing in a railroad could hardly be expected to have much, if any, impact on how the railroad was run on a day to day basis. Instead, stock in a corporation constituted a good investment exactly because the prospective stockholder could rely on the corporation to run itself, and his or her involvement would largely be restricted to receiving dividends. Given this new reality, the aggregate theory’s basic premise proved incapable of fully representing the new economic and legal character of the corporation.

⁵⁵ As Willard Hurst notes, however, enough opportunities for shareholder liability still existed — for example, through the still-common practice of having members of a small corporation endorse notes in their personal as well as corporate capacities — that “as a matter of both law and business practice, there seems to be good reason to think that the other limited-commitment opportunities facilitated by corporate organization (defined purposes, defined shares, assurance of limited drafts upon investor time and energy) played as substantial a role in the growing popularity of incorporation as did formal legal limits on shareholder responsibility for debts” (28).

⁵⁶ See Avi-Yonah 790-91.

Along with the establishment of limited liability, the 1840's saw the second major phase in the development of corporate personhood: the Taney Court's ruling that a corporation constituted a person, not just an "artificial being." In *Louisville, Cincinnati & Charleston Railroad v. Letson*, a citizen of New York, T.W. Letson, brought a case against the Louisville, Cincinnati & Charleston Railroad Company in a South Carolina court for breach of contract.⁵⁷ Although the lower court found that the railroad had indeed violated the contract, the railroad appealed on the ground that, since several of the railroad's shareholders were citizens of North Carolina, the corporation was not truly South Carolinian, and therefore federal court, not South Carolina state court, was the proper venue for the case.

This legal reasoning stemmed from the Marshall Court's holding in *Bank of the United States v. Deveaux et al.*, ten years before *Dartmouth College*: "That invisible, intangible, and artificial being, that mere legal entity, a corporation aggregate, is certainly not a citizen; and, consequently, cannot sue or be sued in the courts of the United States, unless the rights of the members, in this respect, can be exercised in their corporate name."⁵⁸ If the corporation is not a citizen, then it cannot be sued in its own name, and, under *Deveaux*, Letson would need to redraw the suit to address all of the shareholders of the railroad individually.⁵⁹ In *Letson*, however, the court held that the *Deveaux* reasoning "was carried too far,"⁶⁰ and the courts should engage with the corporation as itself, not just as an aggregation of shareholders: "A corporation

⁵⁷ 43 U.S. 497 (1844). Although the court in *Letson* spoke of the parties in the case as "citizens" of the state in which they resided, this usage is now archaic. Contemporary courts would use the term "resident" instead.

⁵⁸ 9 U.S. 61, 86 (1809).

⁵⁹ Under the Constitution, the federal judicial power encompasses controversies between citizens and States. U.S. Const. art. III, sec. 2. Under *Deveaux*'s reasoning, when a corporation sues a citizen or a State, the plaintiffs are actually the shareholder citizens, suing as individuals under a "corporate name." 9 U.S. at 91.

⁶⁰ 43 U.S. at 127. Interestingly, Justice James Moore Wayne, writing for the court, asserted that not only was *Deveaux* inconvenient for "the bar," but Chief Justice Marshall himself regretted ruling as he did: "It is within the knowledge of several of us, that [Marshall] repeatedly expressed regret that those decisions had been made, adding, whenever the subject was mentioned, that if the point of jurisdiction was an original one, the conclusion would be different." 9 U.S. at 129. Whether true or false, Wayne's historical claim acts to naturalize the *Letson* court's view of corporate personhood, interpellating the revered Chief Justice Marshall as adherent to this adapted vision of the corporate body.

created by a state to perform its functions under the authority of that state and only suable there, though it may have members out of the state, seems to us to be a person, though an artificial one, inhabiting and belonging to that state, and therefore entitled, for the purpose of suing and being sued, to be deemed a citizen of that state.”⁶¹ This definition encompasses the idea of a corporation as something that can inhabit a state irrespective of the domicile of its shareholders—such habitation taking the form of incorporation papers filed under that state’s Acts of Incorporation.⁶² Citizenship, here, is narrowly defined to qualify the corporate person under the judicial power in the Constitution (Article III, section 2), but not imagined to extend to all of the rights of the “natural” person. Nonetheless, the language later in the opinion, viewed in hindsight, reveals a court oblivious to the power of its declaration:

a corporation created by and doing business in a particular state, is to be deemed to all intents and purposes as a person, although an artificial person, an inhabitant of the same state, for the purposes of its incorporation, capable of being treated as a citizen of that state, as much as a natural person. Like a citizen it makes contracts, and though in regard to what it may do in some particulars it differs from a natural person, and in this especially, the manner in which it can sue and be sued, it is substantially, within the meaning of the law, a citizen of the state which created it, and where its business is done, for all the purposes of suing and being sued.⁶³

On one hand, the opinion suggests that a corporation is only a citizen for purposes of suing and being sued, but, on the other, the Court also describes it as “to all intents and purposes a person, although an artificial person.” As the corporate form became more prevalent, spreading these “artificial persons” through the nation, the country would be forced to confront its own definitions of personhood through the brutal Civil War. One outcome of that war would be an expansion of the rights of persons, through the Fourteenth Amendment, that would have unexpectedly powerful consequences for corporations.

⁶¹ 43 U.S. at 128.

⁶² “When the corporation exercises its powers in the state which chartered it, that is its residence, and such an averment is sufficient to give the Circuit Courts jurisdiction.” 43 U.S. at 137.

⁶³ 43 U.S. at 133-34.

The Birth of the Fourteenth Amendment

The most important doctrinal shift in the concept of corporate personhood was occasioned by the Fourteenth Amendment to the Constitution. Section One of the Fourteenth Amendment, ratified in 1868, specifies: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”⁶⁴

The Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution, known as the Civil War or Reconstruction Amendments, attempted, as William Novak argues, to enact “a radical reconstruction of individual rights... In contrast to the law of *salus populi*, this new ‘higher’ constitutionalism emphasized individual freedoms and personal autonomy rather than the duties incumbent upon members of organized and regulated communities” (Novak 244-45). While it is true that these three amendments emphasized individual rights—the Thirteenth banned slavery, while the Fifteenth prohibited discrimination in voting rights against citizens based on “race, color, or previous condition of servitude” — it is also true that, as Gregg Crane writes, these amendments sought to “reimbue the defining documents of American government with the moral authority of the higher law tradition” (Crane 129).⁶⁵ This moral authority had been eroded, in part, by the infamous *Dred Scott* case of 1857, in which the Supreme Court had held, among other things, that African Americans could not be citizens of the United States.⁶⁶ According to Chief Justice Taney:

The words ‘people of the United States’ and ‘citizens’ are synonymous terms, and mean

⁶⁴ U.S. Const., amend. XVI, sec. 1.

⁶⁵ See also U.S. Const., amends. XIII, XV.

⁶⁶ *Scott v. Sanford*, 60 U.S. 393 (1857).

the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the Government through their representatives. They are what we familiarly call the ‘sovereign people,’ and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word ‘citizens’ in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States.⁶⁷

Taney’s confluence of “citizen” and “person” explains how the Fourteenth Amendment could move from discussing citizenship to granting rights to persons, as not only *Dred Scott* but also many contemporary commentators understood the two to be synonymous. Indeed, John Bingham, the principal framer of the Fourteenth Amendment, quoted the *Dred Scott* language on the synonymy of “people” and “citizens” on the floor of the House during debates over the amendment in 1866 (Amar *Bill of Rights* 171, 74).⁶⁸ The functional equivalency of “citizen” and “person” enshrined in the Fourteenth Amendment would make the debate in *Letson* over the citizenship of the corporation unnecessary to grant the corporation standing and rights, as it offers a broadly conceived protection to all persons regardless of citizenship.

These broad protections would not last long, however, as two important sets of cases in 1873 and 1883 would circumscribe the Fourteenth Amendment’s protection of the “privileges and immunities” of citizenship. The first test of the Fourteenth Amendment in the Supreme Court came in the *Slaughter-House Cases*, a set of actions by New Orleans butchers challenging an act of the Louisiana legislature that had created a private corporation to centralize slaughterhouse operations south of the city. (The legislature had hoped to thereby keep offal

⁶⁷ 60 U.S. at 404.

⁶⁸ Amar writes: “Though many aspects of *Dred Scott* were highly offensive to members of the Thirty-ninth Congress, there was widespread support for the idea that the Bill of Rights was paradigmatically, even if not exclusively, a catalogue of privileges and immunities of ‘citizens’” (171). The first sentence of the Fourteenth Amendment specifically overturns *Dred Scott*’s ruling: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.” U.S. Const., amend. XVI, sec. 1.

from floating through the city and causing disease outbreaks.) Writing for a narrow (5-4) majority, Justice Miller read the inclusion of “and” in the first sentence of the Fourteenth Amendment (“citizens of the United States *and* of the State in which they reside”)⁶⁹ to mean that there were two different types of citizenship: “there is a citizenship of the United States, and a citizenship of a state, which are distinct from each other, and which depend upon different characteristics or circumstances in the individual.”⁷⁰ From this, Justice Miller drew the conclusion that the Fourteenth Amendment only protects the rights guaranteed by the federal government and does not extend to individual state action, arguing that if it did, the result would be to “fetter and degrade the State governments by subjecting them to the control of Congress in the exercise of powers heretofore universally conceded to them of the most ordinary and fundamental character.”⁷¹ The plaintiffs thus had no recourse to the federal courts to appeal the slaughterhouse monopoly, and it remained in place. As Akhil Amar notes, “[by] strangling the privileges-or-immunities clause in its crib, *Slaughter-House* forced contrarian-minded litigants to argue that the original Bill [of Rights] applied against states directly of its own force or via the Fourteenth Amendment’s due process clause” (*Bill of Rights* 213).⁷² The restrictions found in *Slaughter-House* were reinforced ten years later in the *Civil Rights Cases*, where the Supreme Court (with only Justice Harlan dissenting) held that the Civil Rights Act of 1875, which had prevented private discriminations against individuals based on race, was unconstitutional, as the Fourteenth Amendment’s protections extended only to state action and thus did not give

⁶⁹ U.S. Const., amend., XIV (emphasis added).

⁷⁰ *Slaughter-House Cases*, 83 U.S. 36, 74 (1873).

⁷¹ 83 U.S. at 78.

⁷² Amar writes elsewhere, “Virtually no serious modern scholar—left, right, or center—thinks [Justice Miller’s majority opinion in *Slaughter-House*] a plausible reading of the Amendment. (The holding, on the facts of the case, is far more defensible than some of the overly broad language.) It is also worth noting that the Justices who decided the case in 1873 had not exactly been cheerleaders for the Amendment in 1867, and that the case was decided on a set of facts and at a time not especially conducive to a generous reading of the Amendment.” (“Substance and Method” 631 n. 178).

Congress the right to regulate private actors.⁷³

Although *Slaughter-House* and its ilk had eroded many of the protections the Fourteenth Amendment had originally promised, it soon gave rise to a new line of reasoning based upon liberty of contract. Starting in the 1880's, courts began to interpret the Fourteenth Amendment's "due process of law" clause in light of antebellum cases like *Dartmouth College*, seeing in it a constitutional protection of the right of individuals and businesses to enter into contracts without those contracts being infringed upon by the government. Although judges had rejected many of the higher law ideals behind the creation of the Fourteenth Amendment, as Gregg Crane observes, "[when] striking down legislative infringements on the liberty of contract, such as wages and hours regulations passed by progressive state legislatures, the judiciary was as capable as any reformer of waxing eloquent about the higher law requirement that law comport with such universal norms as freedom and equality" (Crane 184).

Santa Clara and its Aftermath

With the twin blows of the *Slaughter-House Cases* and the *Civil Rights Cases*, much of the promise that the Fourteenth Amendment showed early in its life faded away. Although it is tempting to view this solely as a debate within the Court over actualizing social justice, Morton Horwitz argues that, at this moment in the Supreme Court, "the real source of division..., except perhaps over questions of race, turned on different views of the dangers of federal power and of government centralization" (Horwitz *Transformation* 2 24). Since 1850, the "twin fears of state power" — neo-Jacksonians worrying that corporations would enlist state power for their own ends, and conservatives fearing that the state would force equality of wealth through seizing

⁷³ U.S. v. Stanley; U.S. v. Ryan; U.S. v. Nichols; U.S. v. Singleton; Robinson & Wife v. Memphis and Charleston R.R., 109 U.S. 3 (1883).

property or protecting debtors — had collaborated to make laissez-faire ideology dominant (Horwitz *Transformation 2* 23). Still, business interests were well aware of the potential the Fourteenth Amendment held for furthering their own agenda, and the contested 5-4 decision in the *Slaughter-House Cases* testified to the lack of unity on the court. Justice Stephen Field, in particular, had offered up an expansive reading of the Fourteenth Amendment’s powers in his dissent in *Slaughter-House*, and when Field, while riding circuit in California, was called to rule on whether California could tax corporate and individual property differently, he saw an opportunity to expand the realm of the Fourteenth Amendment beyond race relations (Horwitz *Transformation 2* 69; Pollman 1644).⁷⁴

These California tax cases made their way to the Supreme Court, and were resolved in *Santa Clara County v. Southern Pacific Railroad*, which became a landmark in the history of corporate personhood in the United States.⁷⁵ In *Santa Clara*, the Southern Pacific Railroad contested the taxes that Santa Clara County had assessed upon its land in that county, claiming, among other things, that the way in which the county had valued the taxes violated the Equal Protection Clause of the Fourteenth Amendment, since it taxed corporations at a different rate than natural persons. Although the court did not rule upon the constitutional issues in its opinion, Chief Justice Morrison Waite asked the court reporter to include an influential note at the beginning of the report: “The court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a State to deny to

⁷⁴ The Judiciary Act of 1789 established circuit courts but failed to provide for circuit court judges, which left Supreme Court justices with the unenviable job of traveling across the nation and presiding at local cases, some of which they would be called to hear on appeal at the Supreme Court. Despite repeated complaints from the justices, the practice remained in full force until the Judiciary Act of 1869 established a circuit court judiciary, although Supreme Court justices retained some circuit-riding duties until the 1891 Circuit Court of Appeals Act was passed. The practice of riding circuit was completely abolished by Congress in 1911 (Glick 1755). Justice Field, who prior to ascending to the Supreme Court had been chief justice of the California Supreme Court, was given responsibility for the Tenth Circuit, which then covered the Pacific coast from southern California up to Portland, Oregon (Glick 1813).

⁷⁵ 118 U.S. 394 (1886).

any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of opinion that it does.”⁷⁶ Although a note like this one is technically dicta — language that, since it is not at the core of the ruling, does not have to be followed by later courts — in practice it has been given precedential force.⁷⁷

Under *Santa Clara*, therefore, the protections of the Fourteenth Amendment extend to the corporate person. The form the corporate person took at this moment, however, was not the unitary structure that later theorists would give to the corporation. Instead, Justice Field, writing in the companion case, used a mix of artificial entity and aggregate language to refer to the corporation: “[private] corporations are, it is true, artificial persons...but they consist of aggregations of individuals ...the courts will always look beyond the name of the artificial being to the individuals it represents.”⁷⁸ Although the strategy of equating the corporation with its stockholders was used during the 1880’s and 1890’s as a “delegitimizing [one] deriving from anti-corporate and anti-consolidation sentiment,” it proved useful for the railroad interests in *Santa Clara*, and their success there would bear fruit over the next few decades (Horwitz *Transformation* 276).

The Development of Artificial Entity Theory

According to artificial entity theory, the corporation should in fact be considered a person under law, although not in the same way as a “natural” (i.e. individual human) person. Instead, the corporation’s personhood is a legal fiction: a creation of convenience, deriving from the state.

⁷⁶ 118 U.S. at 394.

⁷⁷ See, e.g., *Minneapolis and St. Louis Railway Co. v. Beckwith*, 129 U.S. 26 (1889); *Hale v. Henkel*, 201 U.S. 43 (1905); *Wheeling Steel Corp. v. Glander*, 337 U.S. 562 (1949); *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765 (1978). This is despite the complaints of some, such as Justices William Douglas and Hugo Black in their dissent in *Wheeling*, that “the Santa Clara case was wrong and should be overruled.” 337 U.S. at 580 (Douglas, J., dissenting).

⁷⁸ *San Mateo v. Southern Pac. R.R.*, 13 F. 722, 743-44 (C.C.D. Cal. 1882). See also Horwitz *Transformation* 270.

Artificial entity theory retains a key principle of grant theory—the idea that corporate identity is the creation of the state—inasmuch as it depends on the state to allow for the corporation’s existence through either a legislatively-issued charter or papers being filed under the state’s Acts of Incorporation. At the same time, by conceptualizing the corporate person as an entity separate from the shareholders, artificial entity theory encompasses the reality of postbellum corporations, like railroads, whose operation could be something entirely opaque from even larger shareholders. In so doing, it addresses the problems that the aggregate view of corporate personhood had struggled with through much of the nineteenth century.

Still, proponents of artificial entity theory still utilized some fading remnants of language associated with the old aggregate approach. John Norton Pomeroy, a founding professor of law at Hastings Law College in California and “an early and persuasive proponent of the partnership theory of the corporation” (Mark 1461), could write by the end of his career: “A corporation, in most of its relations, acts as a unit, and it is, for the most part, convenient to view it as a unit, and to regard it as a person in law; but in many relations, the proper idea of a corporation is not that of a person, but that of an aggregation of persons, or a kind of limited partnership” (“The Legal Idea of a Corporation” 116).⁷⁹ Of course, by this time, Pomeroy was one of the chief attorneys representing Southern Pacific Railroad in *Santa Clara*, the case which established corporate personhood for purposes of the Fourteenth Amendment.⁸⁰ Pomeroy’s transformation from aggregate theorist to adherent of artificial entity theory demonstrates how the new corporations, which could span thousands of miles and relied on an increasingly intricate internal bureaucracy

⁷⁹ Although the Note is unsigned in its original publication, Morton Horwitz attributes its authorship to Pomeroy. (“Santa Clara Revisited” 204).

⁸⁰ Although numerous authorities note Pomeroy’s extensive involvement in *Santa Clara* as it worked its way up to the Supreme Court, he appears to not have attended the oral arguments in person, as he is not listed in the case report (Mark 1461; Horwitz “Santa Clara Revisited” 177). This may be due to illness, since he died on February 15 of pneumonia at his home in San Francisco, and argument was heard only two weeks beforehand in Washington, DC (“Death of John Norton Pomeroy.”).

to function, could no longer be either reflected or served by the older corporate doctrines that had been perfectly fine when dealing with municipal corporations or small manufacturing concerns.

Artificial entity theory was not without its opponents, however. The notion of a nonhuman person, however artificial, can be unsettling, and some argued that creating a corporate entity separate from shareholders could only result in the erosion of the rights of natural persons. In 1884, Henry Taylor, an American theorist and historian, argued that the idea of corporate personhood is in fact a needless fiction that serves to elide the actual personhood of the shareholders: “[W]hat has become of the venerable ‘legal person’? is he still somewhere, as he has always been imagined? or is he nowhere, as he has always actually been?... [B]etter forget him. For he is a conception, which if it amount to anything, is but a stumbling-block in the advance of corporation law towards the discrimination of the real rights of actual men and women” (Taylor 27). Taylor saw the notion of a legal person as interfering with the “question of real importance,” that of defining the “rights and liabilities” that the corporation consists of and in turn must abide by. Although Taylor acknowledges the utility of the fiction of corporate personhood in the past, he asserts that in the present, “it is to-day inadequate for the purpose of doing justice among persons interested in corporate enterprises” (Taylor 27). Taylor retained this language in his treatise through multiple post-*Santa Clara* revisions, even though he was fighting a losing battle against the onslaught of both jurisprudence and theoretical writing.

Instead, the utility of the artificial entity theory to practicing attorneys is suggested by Henry Winslow Williams’s “Inquiry into the Nature and Law of Corporations,” published in the *American Law Register* in 1899. Williams, who practiced in a prominent corporate law firm in Baltimore, Maryland, representing several banks, espoused a view of the corporation that saw its personhood immediately deriving from the rights and obligations that the law placed upon it

(Hall):

In contemplation of law... a person is but the subject of certain rights, duties, and penalties; and conversely, it follows that if such rights, duties or penalties are predicated of an imaginary being, vested with a name, such imaginary being, by such name, as a subject of such rights, duties, or penalties, will immediately exist in contemplation of law as an artificial person. (6)

Like Taylor, who emphasized the legal relations that made up a corporation in his treatise, Williams brings the focus to the obligations and privileges imbued by law; but unlike Taylor, who saw agency as a problem standing in the way of an artificial entity view, Williams sees the agency of the corporation—the ability to act on its own behalf—as the essence of personhood. By this logic, personhood is the fruit of rights and obligations under law, not the root of them—meaning that any entity endowed with agency becomes a person under the law. That being said, the distinction between “artificial” and “natural” persons means that not all rights borne by natural persons are shared by their artificial brethren: “An artificial person is a separate and distinct legal conception, as such the person exists but as a subject of property rights, while of the living person the personal rights of life and liberty are also predicated” (Williams 10). Once endowed with the corporate “assumed name,” the “artificial person” of the corporation could exist “independent of the existence of the persons who exercise its powers,” thereby allowing the corporation to have “perpetual succession”—that is, the corporation could outlive any and every person who acted on its behalf and successive generations of owners, making the corporation theoretically as long-lived as the state framework that supported it (Williams 12-13).

As one would expect given this law-first conception of personhood, Williams insisted on the necessity of state authority “in every case” to imbue the corporation with its existence (Williams 16). Even though *Santa Clara* extended the umbrella of the Fourteenth Amendment to the corporate person, artificial entity theory would hold that this person can indeed bear

certain rights (property rights, specifically, according to Williams' formulation) without morally or even legally equating natural and artificial persons. Such an assessment is reinforced by the Court's characterization of the corporate person two years after *Santa Clara*, in *Pembina Consolidated Silver Mining and Milling Co. v. Pennsylvania*, as essentially an assemblage of shareholders, thereby understanding the Fourteenth Amendment's protection of corporate persons as merely a recognition of the rights of shareholders comprising the corporation: "Under the designation of person there is no doubt that a private corporation is included. Such corporations are merely associations of individuals united for a special purpose, and permitted to do business under a particular name, and have a succession of members without dissolution."⁸¹ In this way, artificial entity theory, although in some respects opposed to the aggregate view, managed to coexist relatively peacefully with the vestiges of the old corporate conceptions until the turn of the twentieth century.

In artificial entity treatments of the corporation within literature, what is most important is not the corporation itself, but rather its place within the larger society. Social ties—whether familial, friend-based, or both — animate the corporate structure and the process of corporate decision-making. Aligning with artificial entity theory, which located the act of naming the corporation formally as the key moment of corporate creation, the name of the corporation takes on a disproportionate significance, often to make the corporation seem more familiar by hearkening back to an older form of business organization, the partnership. Artificial entity approaches to imagining the corporation work to make the corporation familiar, to counteract the unearthly powers of the corporate body by soothing the reader into seeing it as just another social body like marriage, family, or formal "society." The corporation, once made intelligible in this way, takes its role as just another group person that interpenetrates the rest.

⁸¹ 125 U.S. 181, 189 (1888).

The Rise of Real Entity Theory

Even as artificial entity theory was working its way into the marrow of American jurisprudence, jurists in Europe were working through a different, more metaphysical interpretation of the corporation: real entity theory. Although initially the European debates over the nature of collective personhood, catalyzed in large part by the development of the modern state, were “untranslated and seemed inassimilable into the common law tradition,” this state of affairs changed at the turn of the twentieth century (Mark 1465). In large part, this shift is due to the introduction of the German historian Otto Gierke,⁸² author of an 1887 treatise on the medieval German law of associations, *Das Deutsche Genossenschaftsrecht* (“German Cooperative Law”), into Anglo-American legal discourse after 1900.

The German-born scholar Ernst Freund, professor of law at the University of Chicago, incorporated findings from Gierke’s original treatise into his important 1897 work *The Legal Nature of the Corporation*, but Freund refused to fully adopt Gierke’s “organic” theory, arriving instead at a “representative” conception of the corporate person in which acts taken by that corporation are “not corporate in the psychologically collective sense, but merely representative, and imputed to the corporation for reasons of policy and convenience” (Freund 52).⁸³ Gierke’s work did not achieve widespread attention in the United States until the British legal historian Frederic Maitland selected the third volume of *Das Deutsche Genossenschaftsrecht*, translated it into English, and published it in England under the title *Political Theories of the Middle Age* (1900), with a powerful introduction that made the case that the corporation was in fact a

⁸² Gierke’s name is often written “Otto von Gierke,” but his publications in the United States simply refer to him as “Otto Gierke” or “Dr. Gierke.”

⁸³ See also Horwitz *Transformation* 2 101-02.

naturally-occurring legal person, irrespective of any action of the state.⁸⁴

Although it may seem strange that a treatise on medieval Germany was massively influential in late-nineteenth and early-twentieth-century business law, in Gierke's work, as Maitland would put it in his translator's introduction, "medieval appears as an introduction to modern thought" (vii). Essentially, Maitland (speaking for Gierke) argues by process of analogy. We are used to thinking of a State in such a way as to attribute to it a will, and "it must occur to us to ask whether what is thus affirmed in the case of the State can be denied in the case of other organized groups" (xi). Re-interpreting what was then received wisdom that Roman law considered the corporation to be a fictive person, Maitland asserts "there is no text which directly calls the *universitas a persona*, and still less any that calls it *persona ficta*" (xviii). Having thus rejected two thousand years' worth of precedent as invalid, Maitland is thus rhetorically free to refigure the "modern joint-stock company" into something that can bear rights and duties (xxii). Although Maitland acknowledges that the United States has already seen some avid debate on the subject of corporate personhood, he dismisses the aggregate and artificial-entity theories as futile: "in America where law schools flourish, where supreme courts are many and the need for theory is more urgent than it is in England, highly interesting attempts have been made to dispel the Fiction, or rather to open the Bracket and find therein nothing but contract-bound men" (xxiv).

Instead, Maitland introduces Gierke's notion of collective personhood generated out of the free association of individuals:

⁸⁴ The original title of the translated section is "Die publicistischen Lehren des Mittelalters." Interestingly, in his introduction to the volume Maitland speaks of this selection as an "amputating process," using the process of translation as a way to teach real entity theory: "The organism which is a whole with a life of its own, but is also a member of a larger and higher organism whose life it shares, this, so Dr Gierke will teach us, is an idea which we must keep before our minds when we are studying the political thought of the Middle Ages, and it is an idea which we may apply to his and to every good book. The section has a life of its own, but it also shares the life of the whole treatise" (viii).

our German Fellowship is no fiction, no symbol, no piece of the State's machinery, no collective name for individuals, but a living organism and a real person, with body and members and a will of its own. Itself can will, itself can act; it wills and acts by the men who are its organs as a man wills and acts by brain, mouth and hand. It is not a fictitious person; ... it is a group-person, and its will is a group-will. (xxvi)

Rejecting the aggregate and artificial entity theories' insistence that the state must be involved in the creation of a corporate person, Maitland insists that the state itself operates under the same principle as a corporation; or, in biological terms, "there seems to be a genus of which State and Corporation are species" (ix). Although this notion of the corporation as arising out of the collaboration of individual humans bears some similarities to aggregate notions of corporations, real entity theory sees the corporation not as a group of individuals, but as one solitary individual existing regardless of law's recognition of it, with the members acting as limbs or even cells, each one relevant only in regards to the whole.

This organism arises out of the association of individuals and derives its power from the relations between those individuals, irrespective of whether a state decides that this group constitutes a corporation. Looking at medieval Germany, Gierke had noticed the historical tendency of humans to form themselves into groups, an action which involves the sublimation of any one individual's will to the "common will" of the group (Schane 567). Thus, Gierke concluded, the group "acquires a common will and pursues its own goals, and its life continues regardless of changes in membership. The law may or may not recognize the group, but that endorsement in no way affects its reality, for it exists in its own right" (Schane 567). As Mark Hager has noted, Gierke's theory seemed more "progressive and scientific" to contemporary legal intellectuals than the artificial entity theory (582), reinforced by the new discipline of sociology and more appropriate to "the age of Darwin," as Maitland put it (ix). This may be in part because the phenomenon described does not depend on arcane inheritances from older legal

systems or the demands of convenience, but rather on a sociological phenomenon that seems to extend across cultures and to evolve in regards to changing circumstances. Given the profound changes that the economic system of the United States had undergone over the past several decades, and the monolithic autonomy of the large corporations that had become fixtures of everyday life, it is no wonder that real entity theory soon became the latest darling of the legal intelligentsia.

The writings of George Wharton Pepper, a prominent Philadelphia lawyer, help to illustrate the U.S. reaction to real entity theory.⁸⁵ In 1895, writing in the first of a two-part reflection on current Supreme Court corporate jurisprudence, Pepper had observed: “there are almost as many views of *corporate power* in England and in this country as there are tribunals with jurisdiction to pass upon the question” (“Recent Development” 298). According to Pepper, however, none of those corporate views adequately deals with various contemporary quandaries, such as the Trust Fund doctrine.

In an 1901 review of Maitland’s translation of Gierke, amply splashed with lengthy verbatim quotations from Maitland’s introduction, Pepper asserted with approval that the Realist theory⁸⁶ solves many of the conflicts between the artificial entity theory and the current state of corporate jurisprudence, as it “makes a ‘trust fund doctrine’ unnecessary and a law of *ultra vires*

⁸⁵ Pepper taught law at the University of Pennsylvania Law School (1894-1910), which he himself attended; co-founded the still-extant law firm of Pepper Hamilton; and, from 1922 to 1928, served in the United States Senate as a Republican (“Pepper, George Wharton”). In the early 1890’s, however, Pepper served as co-editor and co-publisher of the University of Pennsylvania Law Review (then called the American Law Register and Review), to which he contributed an extensive array of articles. Among them was a brief 1892 study in Shakespeare, “Shylock v. Antonio — Judgment Affirmed,” in which Pepper refuted the contentions of other scholars that Antonio was saved despite Portia’s “‘sublime pettifogging’,” instead asserting that Portia’s legal argument in the trial scene was “a lucid explanation of sound legal principles in their application to the case at hand” (Pepper “Shylock v. Antonio” 226).

⁸⁶ Many real entity theorists referred to themselves as “Realists.” This should not be confused with the Legal Realist movement popular during the 1920’s and 1930’s.

impossible” (“Law of Association” 267).⁸⁷ Contrasting Freund’s representative theory, which also resolves many of those incongruities, with Maitland and Gierke’s real entity theory, Pepper appeared sympathetic to the historical basis of the group-person while remaining skeptical about its mysticism:

To the extent, however, that the organic theory leads to the same result, it does so only by assuming the existence between the associates of an organic relation analogous to the relation between the brain and heart and hand of man. From the assumption of the existence of a group-person follows the reconstruction of his body in a fashion which is perilously near the domain of fancy. Professing to discard fiction, it may be questioned whether the theory does not involve the most audacious of all fictions — the assertion that fiction is reality. (“Law of Association” 267)

The metaphysical nature of real entity theory, although compelling in its vision, would take some time to seem less like a “fancy” and more like legal – and sociological – fact.

In contrast to artificial entity approaches, real entity treatments of the corporation in literature see the corporation as arising out of an exercise of human will, often occurring at a moment of sublime revelation. Some of these works feature a protagonist who creates a parallel corporate self, a corporation sole, out of himself, while at other times the corporation takes form thanks to a shared emotion or aspiration. Unlike artificial entity approaches, real entity treatments highlight the monstrous capacities of the corporation, and are much more likely to feature corporations engaging in ruthless exploitation of the world around them—although, notably, not all of these exploitative actions are portrayed as unsympathetic.

The “Fundamental Question” of Corporate Personhood

Ten years after Pepper’s article appeared, Harvard Law Review published a two-part

⁸⁷ *Ultra vires* actions are actions “beyond the powers” granted by the corporate charter; in effect, they are actions putatively taken on behalf of the corporation that, since they are beyond the scope of the corporate charter, cannot truly be taken by that corporation at all. The trust fund doctrine holds, on the most basic level, that the assets of the corporation need to be held like a trust fund for the benefit of any corporate creditors when the corporation is dissolved.

excursus into the development of corporate personhood doctrine by Arthur W. Machen, Jr. A practicing attorney based in Baltimore, Maryland, Machen drew widespread attention with his two-part treatise on corporate law, published in 1908.⁸⁸ Although he referred to the corporation as a “living organism” in the preface to that treatise, seemingly aligning him firmly with the Real Entity camp, he complicated that theoretical perspective in his 1911 articles, articulating a hybrid theory that borrowed from a multiplicity of theorists and, in the process, illustrating the current state of the corporate personhood debate (Machen *Treatise* v).

Machen opens by contrasting what he terms the “orthodox” doctrine of corporate personhood — “an intangible legal entity, without body and without soul... separate and distinct from the personality of the members who compose it”— with the “heretics” who have made corporate personhood a subject of debate “in order to pose as great reformers engaged in a gigantic task of emancipating the legal world from the thralldom of a medieval superstition” (“Corporate Personality” 253). As a result, Machen claims, nearly all American lawyers who addresses corporations in their work end up having to declare themselves one way or the other: “If [the lawyer] endeavors to preserve silence, his failure to speak is attributed to cowardice, or to a lack of clearly defined convictions upon a fundamental question. He is not permitted to treat the whole controversy with indifference” (“Corporate Personality” 253). This characterization of the situation may be colored by personal experience; as a nationally-known expert on corporate law, Machen may have written these articles in response to repeated questions from others in the legal profession about his theoretical allegiances. Nonetheless, Machen’s colorful and forceful

⁸⁸ Machen was himself the son of a prominent Baltimore attorney, and his son — also known as Arthur Machen Jr. — would take over the family firm after his father’s death, one that eventually merged with what is now Venable LLP. At the time these articles were published, Machen was transitioning from specializing in corporate law to being known as a tax law expert, eventually assisting in the reform of Maryland tax laws as the chairman of the State Tax Revision Commission in 1927. The biographical sketch that the Maryland State Bar Association published at his death in 1950 asserts that his work on corporations was admired by multiple scholars, including Justice Frankfurter, and was still “in demand and quoted by the courts” although out of date by that time (Biography).

language adds to the body of evidence suggesting that the debate over the nature of the corporation was something of vital interest to the legal profession as a whole—not just legal academics or judges—and, moreover, that familiarity with the major theories was expected of those lawyers whose practice dealt with corporate law.

Machen goes on to contrast artificial entity theory (the “orthodox” position, in Machen’s terms) with real entity theory, the “heretical” newcomer on the scene. Delving into the theoretical developments in Europe, Machen lists the deductions of several European theorists as if to suggest that they are self-evidently erroneous:

In the hands of some writers, this doctrine is carried to grotesque lengths. The corporate organism is an animal: it possesses organs like a human being. It is endowed with a will and with senses. It even possesses sex: some corporate organisms, like the church, are feminine, while others, such as the state, are masculine. . . . Of course, in the hands of most writers, this reality theory of corporate personality is much more refined. (“Corporate Personality” 256)

Machen’s choice of the word “refined” to describe the form of real entity theory with which he would be comfortable at least partially aligning reveals how transgressive the implications of real entity theory really were for someone embroiled in the established social order. To think of the corporation as its own being is somehow “grotesque” in Machen’s view, a hybrid of human and animal that goes beyond the bounds of decorum.

This is not to say, however, that Machen counted himself within the artificial entity camp either, as his critique of orthodoxy makes clear:

The orthodox American lawyer would be apt to say, ‘A corporation is a fictitious, artificial person, composed of natural persons, created by the state, existing only in contemplation of law, invisible, soulless, immortal.’ Now, such a definition is a *congeries* of self-contradictory terms. For example, a corporation cannot possibly be both an artificial person and an imaginary or fictitious person. That which is artificial is real, and not imaginary: an artificial lake is not an imaginary lake, nor is an artificial waterfall a fictitious waterfall. So a corporation cannot be at the same time ‘created by the state’ and fictitious. If a corporation is ‘created,’ it is real, and therefore cannot be a purely fictitious body having no existence except in the legal imagination. Moreover a

corporation cannot possibly be imaginary or fictitious and also composed of natural persons. Neither in mathematics nor in philosophy nor in law can the sum of several actual, rational quantities produce an imaginary quantity. (“Corporate Personality” 257)

Here, Machen rejects the idea that the personhood of the corporation exists solely in the “legal imagination” (a phrase which he uses repeatedly in these two articles).⁸⁹ If the word “artificial” is commonly used to modify a real noun, Machen argues, then it cannot possibly be used to refer to something that is not “real.” Although his argument has some logical flaws (if an author writes about a character, is that character “real”?) the implication is that “legal fictions” like corporate personhood cannot properly be considered to be fictional at all, so long as natural persons act as if they are real.⁹⁰ As Machen acknowledges, this inquiry, traversing both legal arcana and everyday language, quickly becomes difficult to navigate: “we cannot well determine whether the corporate entity is real, unless we first decide what reality is. . . . So, the question whether, or in what sense, a corporation is a person, naturally involves an inquiry into the nature of personality, than which no more profound or baffling question can be conceived. In such metaphysical mazes it is easy to lose one’s self” (258). Machen therefore reduces his inquiry to two major questions: whether the corporation is an entity separate from its members, and whether that entity constitutes a person.

In answering the first question, Machen aligns himself with the Realists, as he declares that a “corporation is an entity—not imaginary or fictitious, but real, not artificial but natural” (262). Using as an analogy the building of a house—“the law can no more create such an entity [i.e. the corporate body] than it can create a house out of a collection of loose bricks”—Machen

⁸⁹ Machen’s use of this term immediately invites comparison to James Boyd White’s foundational book, *The Legal Imagination*, which laid the groundwork for current developments in the field of law and literature. Machen would no doubt agree with White when he argues: “The imagination of the lawyer is more than a capacity for pretending or for perceiving; it is also a power that organizes what is seen and claims a meaning for it” (J. B. White 209).

⁹⁰ This article appeared around the same time that Gestalt theory was being developed in Germany. Although Machen claims that “[neither] in mathematics nor in philosophy nor in law can the sum of several actual, rational quantities produce an imaginary quantity,” the Gestalt psychologists would argue that in fact the human mind does produce a whole out of disparate parts that transcends the individual components (257).

argues that the problem with Anglo-American law is not that it recognizes the corporation as an entity, but that it refuses to recognize the partnership as an entity as well (260). Indeed, the ability to recognize the corporation as an entity acts as itself a marker of personhood: “A corporation exists as an objectively real entity, which any well-developed child or normal man must perceive: the law merely recognizes and gives legal effect to the existence of this entity” (Machen “Corporate Personality” 261). Refusal to see the corporate entity as more than a historical artifact—“a mere technicality and a relic of the Middle Ages”—is, in Machen’s view, merely a “fashionable” error (261).

Where Machen parts ways with the real entity theorists, however, is in their belief that the corporate entity constitutes a person, and that personhood means simply being a “subject of rights.” Calling again upon colloquial language, Machen uses the word’s “ordinary” meaning to prove his point: “If we use the word [person] in the signification which it conveys to the ordinary English-speaking layman, undoubtedly the corporate entity is not, in truth and reality, a person. For the corporate entity is not a human being; it is not even a rational creature capable of feeling and willing” (262).⁹¹ To illustrate his argument, Machen asserts that “[there] are or may be subjects of rights which are not beings capable of feeling and volition, but they are not persons in an proper sense of the word,” using animals and “purely imaginary beings” like unborn children and deities as examples (263).

Instead, Machen defines the “essence of juristic personality” as “subjection to liabilities,” not “possession of rights” (263). Legal personhood, by this account, lies in the ability to

⁹¹ To prove his point, Machen calls upon a children’s novel — Lewis Carroll’s *Through the Looking-Glass* — and uses it as a sort of educational parable, or illustrating case: “But the word may be used in some very different sense. ‘When I use a word,’ said Lewis Carroll’s Humpty Dumpty, ‘it means just what I choose it to mean - neither more nor less’; and when Alice objected, ‘The question is whether you can make words mean so many different things,’ Humpty Dumpty replied, ‘The question is which is to be master - that’s all.’ Many a German scholar has resolved, like Humpty Dumpty, that words shall not master him...” (“Corporate Personality” 262).

understand and react to the commands of the law, an ability that cannot simply be created out of thin air by the words of the law: “No fiction can supply these essential elements of juristic personality: no law can create them. The only way the law can protect or enforce legal rights is by imposing punishment upon those who violate them — an idle proceeding unless the violator is a moral being capable of being deterred by the threat of punishment” (Machen “Corporate Personality” 264).⁹² Instead, Machen aligns himself with the “orthodox” view in refusing to see the corporation as itself a real person:

As a corporate entity is not a rational being, is not capable of understanding the law’s commands, and has no will which can be affected by threats of legal punishment, it follows — if demonstration be needed of a self-evident fact — that a corporation is not a real person, if the word ‘person’ be used in its ordinary sense. In addressing commands to a corporation, the law can speak only to the human beings who compose it or who manage and control its destinies” (265).

Although this description would seem to align itself with the aggregate theory of corporate personhood, Machen goes on to explain that he considers this to be the “element of truth” in the “orthodox” (or artificial entity) view. Unlike the aggregate view, which disregarded the collective unit, Machen’s theory sees the collective union of a corporation as constituting an entity in the same “natural” way that we personify a ship instead of seeing it as an assemblage of lumber and nails: “although corporate personality is a fiction, the entity which is personified is no fiction. The union of the members is no fiction. The acting as if they were one person is no metaphor. In a word, although corporate personality is a fiction, yet it is a fiction founded upon fact” (266).

In the sequel to this article, which appeared in the next issue of the same journal, Machen

⁹² Machen acknowledges that this definition of personhood excludes “idiots and infants,” arguing that “[if] society consisted exclusively of idiots or babes, there could be no law. They are persons only in form and *in posse*.” Although he deliberates in a more detailed fashion over the personhood of slaves, he ultimately concludes that because slaves were held subject to legal duties, they qualified as persons under his definition: “When the law declared that a slave was not a person, it meant merely that he was to be treated for some purposes as if he were not a person” (264).

seeks to “test this theory that a corporation is a real but impersonal entity, which is personified by a legal fiction or metaphor” by applying it to real-life problems in corporate law (Machen “Corporate Personality (continued)” 347). Machen argues that the imaginary nature of the corporate person allows the law to consider the corporation as capable of possessing a mental state, thereby allowing courts to find corporations guilty of fraud, malice, and other crimes that involve the perpetrator’s mental state (348). This freedom of the “legal imagination” is limited only by “the futility of extending to an absurdity the conception of corporate personality,” as when, for example, the law contemplates the imprisonment of a corporation (Machen “Corporate Personality (continued)” 349). Indeed, the whims of the “legal imagination” as to which collectivities it chooses to personify are the only divisions between an entity that is personified, such as a corporation, and one that is not, such as a partnership. Although the personification of an entity is in essence an arbitrary decision, this does not mean that such a decision is useless, since “the conception of corporate personality is a simplification of the processes of thought” that go into attributing those elements that are essential to contemporary definitions of the corporation, like limited liability and continuous succession (Machen “Corporate Personality (continued)” 352).

Corporate personhood, although a useful shorthand, must always be used, Machen warns, with an eye to the natural persons who such a doctrine may affect: “So a judge, in order to work out a problem in the law of corporations, often finds it convenient to make use of the imaginary corporate person in his calculations; but he must recognize that ultimately the effect of his decree, although it may be expressed in terms of the corporate personality, must be the

determination of the rights and liabilities of actual human beings” (353).⁹³ Consequently, the “temptation to apply [the doctrine of corporate personality] too freely,” Machen argues, is a significant danger, one which the fashionableness of the corporate personality debate makes ever-present:

For notwithstanding the indispensable assistance which is afforded by the conception of a corporation as a person in solving legal problems, yet that idea should not be exalted into a divinity, or a great mysterious dogma, before which as loyal disciples of the common law we must stand in reverent awe, believing where we cannot prove. There is no command to fall down and worship the imaginary corporate personality, like the golden image which Nebuchadnezzar set up. Still less should the doctrine of the corporate fiction be treated as an oracle to be consulted on every question in corporation law. (356)⁹⁴

After this extensive, detailed excursus into the nature of this corporate person, Machen concludes that the best way to engage with the doctrine of corporate personhood is to ignore it: “The best method of dealing with the doctrine that a corporation is a legal personality is, therefore, to think less about it. ... Being a natural conception, it will tend to find its proper place in the law, if only we cease to regard it as something mysterious or technical” (363). Although the doctrine may be fascinating to lawyers as scholars of jurisprudence and history, “as practical lawyers we may and should disregard all that wealth of learning, contemplating it only as something to be avoided... To understand and apply correctly the doctrine of corporate personality, no other guide is desirable than sturdy common sense” (365).

Machen’s excursus into corporate personhood theory seems to have been well received.

For example, George Folger Canfield, a professor at Columbia Law School, cited it approvingly

⁹³ At the same time, however, Machen warns against the temptation to drop corporate personhood whenever the use of the fiction might harm natural persons: “The fact that in a particular case the application of the rule that a corporation is to be treated as a person will work hardship is no reason whatever for departing from the theory” (354).

⁹⁴ Machen speculates that one cause of this tendency may be the desire of many lawyers to revel in the most technical, arcane “mysteries of the profession,” like the rule against perpetuities or the rule in *Shelley’s Case*: “We lawyers are naturally prone to take an inexplicable interest in those rules of law which are most inexplicable to the lay mind. We like to perch ourselves upon some pinnacle of learning from which we may look down with complacency upon the whole world that lieth in darkness at our feet” (358).

in his 1917 article on corporate personhood, “Scope and Limits on the Corporate Entity Theory.” In this article, Canfield articulates a theory that is substantively identical to Machen’s in its insistence that “[the] ‘personality’ of the group exists only as a legal conception... [but it is] founded in the normal mode of thought not only of trained lawyers but of mankind in general” (Canfield 128). Although Canfield started out as a practitioner, by the time this article appeared he had been settled on the Columbia Law School faculty for twenty-three years, making him perhaps more of the new breed of establishment legal academics than the kind of hybrid scholar-practitioner that Machen represents.⁹⁵ Nonetheless, Canfield’s article illustrates that what he vaguely calls the “corporate entity theory”—seemingly an umbrella term for all theories that postulate the group as a separate entity from that of its members—had become almost completely dominant in U.S. jurisprudence at this point, leaving the aggregate view completely outmoded, outdated, and unreflective of the current state of the law (Canfield). Although the precise nature of corporate personhood was still a matter for debate, the corporate person itself as an entity separate from its shareholders had been firmly established in both legal imagination and jurisprudential reality.

In the chapters that follow, I will bring theoretical conceptions of the corporate person to bear on some of the literary portrayals of corporate life that appeared at the same time that lawyers were fiercely debating the nature of those corporations. In so doing, I argue that a thorough explication of the nature of corporate personhood as it was then understood is essential to appreciating the often-revolutionary implications of the literature produced during this period. Corporate personhood doctrine has been evaluated in tandem with literature in the past; for

⁹⁵ During his time in practice, Canfield would work with future Supreme Court justice Harlan Stone as part of the firm Wilmer, Canfield, and Stone (“Canfield, George Folger”). Stone also served on the Columbia Law faculty with Canfield in the 1910’s (Supreme Court Historical Society). In the early 1920’s, Canfield, then at the end of his career, taught corporate law to the future Supreme Court justice William O. Douglas (Douglas).

example, Walter Benn Michaels has explicated Arthur Machen's theory of the corporation in the context of naturalism (Michaels 198-205). I seek to build on this work by considering how jurists and novelists engaged in distinct and conflicting ways in the nevertheless shared project of imagining the possibilities that can arise from the corporate person.

CHAPTER 2

The “Wild Beast” in the Slaughterhouse: Arbitrating Personhood in Upton Sinclair’s *The Jungle* (1906)

In Chicago, progress ran on rails. In 1848, Chicagoans pooled their finances to create the Chicago Union Railroad, “a corporation managed by Chicago businessmen but financed in good measure by the rural and small-town communities along its line”; by the 1870’s, there was a vast network of railroads feeding the markets of Chicago, all with Chicago at their eastern terminus (Cronon 66-67). Lumber, wheat, and livestock traveled from the countryside to the streets of Chicago, while the workers processing them rode on cable cars whose rapid pace gave Chicago the nickname “the City of Speed” (Miller 185).

As Rick Halpern has observed in his study of packinghouse workers in this period, it was the railroad that made the meatpacking business possible in Chicago: both the cattle cars to bring the livestock to slaughter, and refrigerated cars to carry dressed meat to cities on the Eastern Seaboard (10-13).¹ This system, in a large scale, would enable the same hook that held a hog in its final moments of life to be the one that delivered the hog’s body to the butcher on the Eastern Seaboard (Miller 208). By the turn of the twentieth century, the livestock industry was the largest in the nation, and its epicenter was the Chicago stockyards (Arthur 45).

Correspondingly, when Upton Sinclair sought in 1904 to write his own *Uncle Tom’s Cabin*—a novel that would illustrate “the working conditions that he thought approximated slavery”—he went to the Packingtown district of Chicago (Arthur 44). Sinclair exploited the

¹ The design for these refrigerated cars was funded by Gustavus Swift, one of the four main players in what Upton Sinclair’s novel *The Jungle* would refer to as the “Beef Trust” (Halpern).

“progressive infrastructure” of Chicago by relying on local activists, including Jane Addams of Hull House, to introduce him to workers and show him local sites like Bubbly Creek and the dump where children foraged for food (Mattson 61-62). In total, Sinclair spent seven weeks living in the Stockyards Hotel and eating meals at the University Settlement, meeting with social workers and packinghouse employees, and assembling tales of woe to be put into his novel (Mattson 61; Subačius 1-3).²

Sinclair started composing the novel in January of 1905, and by the end of February, the first chapter appeared in the Socialist newspaper *Appeal to Reason*, which at the time had approximately 290,000 subscribers nationwide (Arthur 59). Considerably longer than the final version of the novel and showing signs of its hasty composition, the *Appeal to Reason* version nonetheless brought enough positive attention that Sinclair was eventually able to find a publisher in Doubleday, Page (Arthur 69). The revised and edited novel appeared in stand-alone form in February of 1906, accompanied by a barrage of media appearances organized by Sinclair’s publicist, Isaac Marcossou (Arthur 69-71).³ Sinclair would become a celebrity and his novel a nationwide sensation, resulting in the passage of the Meat Inspection Act of 1906 (Mattson 67). As Sinclair would later lament, “I wished to frighten the country by a picture of what its industrial masters were doing to their victims; entirely by chance I had stumbled on another discovery—what they were doing to the meat-supply of the civilized world. In other words, I aimed at the public’s heart, and by accident I hit it in the stomach” (Sinclair “What Life Means to Me” 594).

² Unfortunately, it is difficult to ascertain specifics beyond the various versions of the tale Sinclair told over the years, as the Helicon Hall fire of 1907 destroyed Sinclair’s notes for the novel (Subačius 1-3).

³ All citations to the novel in this chapter refer to the 1906 edition. Sinclair, Upton. *The Jungle*. New York: Doubleday, Page & Co., 1906. Print.

Despite Sinclair's oft-quoted distinction between the heart and the stomach, I argue that the problem of animal treatment in *The Jungle* is in fact inextricably bound with the problem of worker exploitation. I will begin by examining how Jurgis Rudkus, the novel's Lithuanian immigrant protagonist, and his peers become entwined—both literally and figuratively—with the animals they must slaughter and dismember. Next, I will turn to the division between domesticated farm animals and the trope of the “beast,” which is portrayed as being awoken within the workers by the brutal conditions under which they work and die. In the context of the novel's revolutionary aims, I argue, this beast imagery likens the Beef Trust's treatment of workers to a failed process of animal domestication.

Superficially, the conflation between worker and animal may seem to have little in common with the overarching doctrine of corporate personhood with which this study is concerned. Consider, however, Arthur Machen's emotional response to the Real Entity theorists' proposition that the “corporate organism is an animal,” an idea he termed “grotesque” (Machen “Corporate Personality” 256). If the corporation, an entity that can theoretically consist of millions of people, can be recognized in law as a single person, then what else could take the title of person? After all, it was not so long before this novel's composition that an African-American man (like the titular character in *Uncle Tom's Cabin*, Sinclair's inspiration) could be legally considered as chattel, the same as the livestock he might have tended. In *The Jungle*, which sought to expose “wage-slavery,” the blending (sometimes literally) of worker and animal reinforces the analogy of packinghouse employee to the animals they slaughter and dismember.

I argue, however, that on a deeper level, the novel participates in a larger conversation on the ways in which the status of “person” could be broadened. At its core, the doctrine of corporate personhood argues that a group can become a single entity, that uniting for a common

cause makes one person out of multiple individuals. This entity, in turn, can become imbued with powers—immortality, for one—that its members cannot possess on their own. Although the common cause for most corporations in the turn of the twentieth century was the profit-imperative, as we have seen, for hundreds of years the common motivator had to be, in part, the wellbeing of the community. Although in law the advantages of corporate form led to unequal treatment of corporate interests and the labor unions that opposed them, in literature the imagery of the corporate body—vast, powerful, inhuman—could be used against it by opposing the collectivity of the workers with the collectivity of shareholders who employ them.⁴ As a novel with specifically socialist aims, *The Jungle* utilizes this clash of collectivities to refigure the plant worker as capable of possessing his or her own power commensurate with that of any stockholder in the corporation.

The Jungle incites its audience to reevaluate the power of the group—whether a herd of pigs or a union of the workers who slaughter them. Significantly, however, it fails to engage with the corporate bureaucracy. The packing companies utilized a middle management system extensively; this infrastructure was necessary in part because of the limited time refrigeration could keep meat fresh from slaughter to consumption. Swift alone employed over a thousand clerical workers in 1905 (Chandler 391-92). However dehumanizing such office work may have been (and therefore worthy of Sinclair’s sympathetic portrayal), the foremen are the only elements of the organizational chart to even appear in person in *The Jungle* (Chandler 394-95). The management structure of the corporation entailed multiple layers between the stockholders

⁴Most labor unions were unincorporated associations, not corporations, which left them vulnerable to unequal treatment by the courts. A corporation is incapable of conspiracy within itself, since all of its members constitute a single entity; but since labor unions were not incorporated, “courts generally perceived the workers themselves, rather than the union, as the real parties in interest in union-management disputes.” At the time this novel was being composed, the question of whether labor unions should incorporate was a matter of active debate. Ultimately most labor unions refused incorporation, not wanting to place themselves further under state control—a decision that left them open to conspiracy claims (Hovenkamp “Labor Conspiracies in American Law, 1880-1930” 959-62).

and the plant foremen, layers that occluded the horrific treatment of the plant workers from those in charge.⁵ Disregarding the nuances of corporate management, *The Jungle* portrays only corrupt foremen and fabulously wealthy owners, concerning itself only with the plight of the very lowest—the flocks of livestock and workers who pass through the slaughterhouse floor, incapable of controlling anyone else, their agency yielded up to the corporate structure.

What makes this cruelty distinctly corporate is the contrast between the privileges granted to the corporate person—a person closely held by families whose consequential privilege extends even to their own domestic animals, as this chapter will show—and the conditions suffered by those who are so far removed from the stock-owning management as to be the invisible subjects of platitudes and moralizing.⁶ Even workers and animals—entities separated by the boundaries of species and speech—have more in common than the humans at the top of the corporate hierarchy and those at the very bottom. The single-minded pursuit of profit to the exclusion of all other concerns—a single-mindedness that can uniquely mark the group-will of the corporate person—directly results in the grouping of entities across species and ethnic lines into two groups: those with money, therefore agency, and thus personhood, and those who lack money and thus the agency that marks personhood. In tandem with its socialist goals, the novel argues that to reclaim agency and become a person again, the worker must unite with his or her fellow workers and become part of a collectivity motivated by socialist goals, a collectivity that can stand against the monstrous corporate person. In this way, *The Jungle* redeploys the theoretical imperatives behind the doctrine of corporate personhood in support of socialist politics.

⁵Indeed, this opacity has proven to be a major problem with corporate operations even today. See, e.g., Bader (“if an executive doesn’t see problems firsthand, he or she is much less likely to commit resources to addressing them.”)

⁶ In keeping with other major corporations of the period, the packing companies were not only closely held by the families that had founded them, but “[well] into the twentieth century the Armour, Swifts, Morrises, and Cudahys continued to manage as well as to own their massive enterprises,” and even the Swifts, who had yielded some shares to others, held a controlling interest in Swift & Co. (Chandler 399).

Corporate Chicago

Jurgis's Chicago is a place of transplantation and modification, where old traditions struggle to coexist with the brutality of the working conditions. Jurgis himself comes from a more primeval type of jungle: "*Brelovicz*, the Imperial Forest... a hunting preserve of the nobility."⁷ His father, Antanas, and many generations before him had grown up upon the same "half a dozen acres of cleared land in the midst of the wilderness" (24). Indeed, Jurgis might never have left had it not been for a chance meeting at a horse-fair with Ona, a woman he fell madly in love with but whose father refused to trade her for the two horses Jurgis had brought with him. Seeking better opportunities for a married life, they go to the United States, and after the ocean crossing and being bilked by several unscrupulous people in New York, they are "taken and put on a car, and taught a new word – 'stockyards'" (27).

Their train journey to Chicago, packed onto a car and sent to a place they fail to fully understand, is not all that different from the cattle and sheep and pigs that also took the trip to Packingtown. Even before their lives become intertwined with livestock, the novel conflates Jurgis, Ona, and their family—and, by extension, the other immigrants, Lithuanian, Polish, Irish, and so on, who crowd the slums of Packingtown—with domesticated animals, divided from those in control by language and culture instead of species, but nonetheless fundamentally kin.

The parallel between immigrant and livestock becomes more robust when Jurgis and his family first tour the packing facility. After seeing the vast pens of cattle outside the slaughterhouses, and the chutes that drive the cattle into the factory—"pressing on to their fate, all unsuspecting—a very river of death"—Sinclair hints at the parallels between the animal's

⁷ Giedrius Subačius identifies this as a misprint of the 1905 *Appeal to Reason* original *Bialowicza*, referring to Białowieża, now a UNESCO world heritage site on the border between Poland and Belarus (Subačius 31). The park is a short distance from the southern border of modern Lithuania, and holds the "last remaining primary deciduous and mixed forest of the European lowlands" (UNESCO).

journey and the immigrant's journey: "Our friends were not poetical, and the sight suggested to them no metaphors of human destiny; they thought only of the wonderful efficiency of it all" (38). Although the process requires industrial transit to move the animals to the city, once inside this artificial space, the factory is constructed as to make the animals unwittingly the instrument of their own destruction: "the hogs went up by the power of their own legs, and then their weight carried them back through all the processes necessary to make them into pork." The natural force of gravity is thus co-opted into what has been called the "disassembly line" (Cronon 229; Duvall 39).

The ease by which the structure of the slaughterhouse causes the animals to collaborate in their own exploitation parallels the exploitation of the workers—for example, Jurgis's family's happiness about buying a home in one of the slums of Packingtown, a cheap tenement with no sewage system that they are led to believe is brand-new. When one of their neighbors finally tells them the truth and reveals that the contract they signed (in English, a language they do not yet speak) includes an usurious rate of interest, their reaction parallels the experience of an animal at the slaughterhouse: "It was sickening, like a nightmare, in which suddenly something gives way beneath you, and you feel yourself sinking, sinking, down into bottomless abysses. As if in a flash of lightning they saw themselves — victims of a relentless fate, cornered, trapped, in the grip of destruction. All the fair structure of their hopes came crashing about their ears." (82).⁸ The housing company's scheme – building something cheaply and unsafely, waiting until an immigrant family misses a single payment, then seizing the home, repainting it, and selling it to a new immigrant family as brand-new—is as efficient and profitable as it is deceptive (76-83).

⁸ As Grandmother Majauszkiene calls out their ignorance, she uses terminology that parallels the eating of slaughterhouse products, except without all of the processing: "'You are like all the rest,' she said; 'they trick you and eat you alive'" (81).

As J. Michael Duvall has noted, we are accustomed to speaking of efficiency in terms of industrial production, and at least in theory, Sinclair saw efficiency as a way to move forward to a future of plenty for all—that is, provided that efficiency did not come at the cost of mutilating or murdering the workers (Duvall 35-36). When describing the actual moment of killing during the slaughterhouse tour, however, Sinclair’s narrator indulges in a meditation on the contrasts between this “very businesslike...pork-making by machinery, pork-making by applied mathematics” and the individual animals (not objects, but gendered beings) that this “slaughtering-machine” takes in:

Each one of these hogs was a separate creature...and each of them had an individuality of his own, a will of his own, a hope and a heart’s desire...now suddenly [a horrid Fate] had swooped upon him, and had seized him by the leg...it did its cruel will with him, as if his wishes, his feelings, had simply no existence at all... (40-41)

Unbeknownst to Jurgis, this meditation foreshadows the brutality of the profit-driven factory machine, which will assimilate him and other factory workers into it just as it assimilates hogs into a mess of processed meat. The “radical and intimate *coupling* of bodies and machines,” evidenced in this instance by the slaughterhouse machinery, here enacts in lived experience the process of taking individual lives and making them part of a larger profit-making enterprise: in short, the terrifying capacities of the corporate body (Seltzer 13).

What makes these capacities terrifying is not simply the profit motive—this has driven concerns of all sorts for thousands of years—but rather the impersonality enabled by the corporate structure. When the employer is an entity rather than an individual person, and responsibility for that entity’s actions is divided among thousands of middle management workers, each responsible for only their own little piece of the larger whole, the physical remove between the “mind” of the corporation and the “hands” allows horrific things to happen to the ground-level employees in the name of the corporation’s guiding motivator: profit. At the same

time, however, Sinclair's description of the hogs' suffering resembles the arguments of Gilded Age animal protection movements, which saw "violence towards animals [as] on a continuum with cruelty toward human beings" (Pearson 58).

As Susan Pearson has shown, animal rights reformers in this period sought to frame animals (and children) as rights-bearing entities, thereby entitling them to protection by humane societies that had obtained police powers from state and local authorities (Pearson 15-19, 151-52). This profoundly legal conception of personhood nonetheless relied on intermediaries, such as reformers and humane societies, to speak on behalf of the "defenseless" and shame those with power into recognizing the rights of the other. In lobbying to have states recognize these rights, however, reformers implied that these rights were intrinsic to the animals as individual beings and needed only state recognition to be enforceable. Indeed, Sinclair seems to support this notion of rights-bearing livestock in his meditation on their death: "they were so very human in their protests — and so perfectly within their rights!" (41). In a sense, the throngs of pigs and cattle waiting to be slaughtered represent an incomplete group formation; if the animals were to act collectively, they might avoid their fate, but without a group-will (to use Gierke's term) they cannot be part of a collective entity.⁹ In this way, the slaughtered animals enact Sinclair's critique of labor's failure to successfully unionize. At this point in the novel, however, Jurgis is

⁹ If the herds of livestock managed a concerted riot, arguably only a few would make it out of Chicago. The technological advantage possessed by the humans who control them cannot be surmounted solely by collective action, as the near-extinction of the American bison attests. Nonetheless, the novel's relentless emphasis on the hogs' cooperation with their fate makes a parallel between the livestock and the workers inescapable, albeit somewhat illogical outside the world of the novel.

unable to see any parallels between the human and the animal situations, as he remarks “*Dieve*— but I’m glad I’m not a hog!” (41).¹⁰

Just as the individuality of the workers is irrelevant to their treatment in these factories, so too is the actual nature of the food (generously speaking) seemingly unconnected to the label pasted on it. For example, Durham’s, the firm most often critiqued in the book, advertises products like “mushroom catsup” and “potted chicken,” even though neither mushrooms nor chickens were processed at the factory.¹¹ Instead, any item advertised by the “alchemists” at the plant was made of some mess of collected parts of cows, pigs, sheep, and even goats, all chemically treated and foisted onto the public with deceptive advertising (117-18). Reinforcing the equation of human worker with animal product, the workers themselves sometimes became physically interchangeable with the animals they processed, such as in the cases of the workers in certain steamy rooms who fell into vats, unnoticed: “when they were fished out, there was never enough of them left to be worth exhibiting – sometimes they would be overlooked for days, till all but the bones of them had gone out to the world as Durham’s Pure Leaf Lard!”

¹⁰ Interestingly, given the passage’s earlier meditation on a “god of hogs” who would care about the individual hog’s life and death, the mention of God (“*Dieve*”) is in Lithuanian, again equating the immigrant experience as something alien to that of the English-speaking Americans who were often the instruments of immigrant exploitation. *See also* the narrator’s commentary on the fertilizer works: “For the odors in these ghastly charnel houses there may be words in Lithuanian, but there are none in English” (154-55).

¹¹ The real-life analogues to the companies named in the novel are as follows: Durham’s, or Anderson’s in the 1905 *Appeal to Reason* version, is Philip D. Armour’s company; Brown’s, or Smith’s in the *Appeal* version, is Gustavus F. Swift’s company; and Jones, or Morton in the *Appeal*, is Nelson Morris of Morris & Co. (Wade 86; Subačius 37). In March of 1903, these three firms merged into the National Packing Company, a holding corporation that coordinated the actions of each of the packing firms. Armour, Swift, and Morris were joint owners of the National and met regularly to coordinate its actions, just as Sinclair describes in *The Jungle*. The National was dissolved under Justice Department supervision in 1912 (Whitten and Whitten 175).

(117). Purchasing and consuming the products of the Beef Trust thereby becomes an act of literal as well as metaphorical cannibalism.¹²

Given the brutality of this profit-driven stockyard machine, it is perhaps surprising that in the midst of it there would be industrial tourism.¹³ In fact, corporations utilized factory tours as public relations, increasing the public's estimation of their corporation and making their work seem more closely allied to the old notion of corporation as public service than the current reality of corporation as profit-driven machine. The Swift corporation, for example, asserted around 1913 that their operation "was conducted along the lines of a public service corporation" (Marchand 259-60). By offering a sanitized vision of their factory operations, corporations could maintain the illusion of transparency in a vastly complex organization that was anything but transparent.

The tour that Jurgis and his family received upon their arrival in Packingtown appears to be a more informal version of these established promotional ventures, although a more typical one appears later on. In the middle of the novel, Teta Elzbieta, Ona's stepmother, leaves her thirteen-year-old daughter Kotrina to take care of the house and goes to work in the damp, dark sausage rooms, where through "the ancient custom of nature," the "men and women...were precisely the color of the 'fresh country sausage' they made" (157). Struck pale as the animal parts they are processing, these workers nonetheless draw the attention of industrial tourists,

¹² This incident – the one of workers falling into vats and being transformed into lard – is the only one in the novel that the investigators President Roosevelt dispatched to the meatpacking plants could not confirm, an exception that Sinclair explained by asserting that "the families who had experienced this had been paid off" (Mattson 68). In the novel, Sinclair suggests that these deaths happened more often than even the families believed, with the packing companies claiming that the worker simply stopped showing up one day: "When, for instance, a man had fallen into one of the rendering tanks and had been made into pure leaf lard and peerless fertilizer, there was no use letting the fact out and making his family unhappy" (143).

¹³ These factory tours first became a formal offering in 1893 to supplement the packers' displays at the Columbian Exposition. The visitors to all of the Packingtown slaughterhouses combined would have numbered at least a hundred thousand by 1905 (Marchand 259-60). The packers' promotional material encouraged visitors to view the activity as "a genteel educational occasion for well-dressed people in small groups" (Marchand 263).

“visitors” who, as their Chicagoan countryman “ponas Jokubas”¹⁴ noted, “did not see any more than the packers wanted them to” (39).

By contrast, the novel begins by giving the reader the “factory tour” cleared by the packers, and then moves into a truer, more complete factory tour as it provides an internal glimpse of the lives of the workers as individuals, not just parts of a machine. For example, the narrator remarks on how factory tours often stopped to watch the “wriggling snake of sausage” be twisted into links by a skilled female factory worker:

year after year, twisting sausage links and racing with death. It was piece-work, and she was apt to have a family to keep alive; and stern and ruthless economic laws had arranged it that she could only do this by working just as she did, with all her soul upon her work, and with never an instant for a glance at the well-dressed ladies and gentlemen who came to stare at her, as at some wild beast in a menagerie. (159)

The structure of the latter sentence, with commas and semicolons serving as incomplete pauses in a sentence that runs on breathlessly, enacts the struggle of the factory worker whose “soul” becomes tied up in this soulless work. More than that, however, the closing comparison of the chapter—between the worker and the wild beast—indicates a much larger theme in the novel, that of the equation between worker and animal.

Transcending the Beast

In her study *The Law is a White Dog*, Colin Dayan observes that when the status of person is brought into question, the comparison to animals, “chattels” that are living yet owned, inevitably comes into play: “[Animal] treatment helps us to understand the limits of cruelty. They are used as examples when humans need most to categorize, to dominate...” (116). The moment that these hierarchies are instantiated, however, the commonalities between the different rungs on the ladder of privilege confound the very distinctions that those in power seek to

¹⁴ This translates as “Mister Jokubas,” a reminder that Jurgis is still viewing the world through old-world lenses at this moment in the novel (Subačius 33-34).

perpetuate: “when the pressure is on to construct, legally and socially, degradation and inferiority, categories and terminology get muddled. The hierarchies no longer hold” (Dayan 116).

As Dayan’s observation would predict, the legal discourse of corporate personhood did exploit nonhuman animal imagery to further various arguments, although the abstractness of the discussion may explain why they did not feature very prominently. One theoretician who did engage with animals was Alexander Nékám, a U.S.-trained, Hungarian scholar, who wrote in 1938, “Everything . . . that the community chooses to regard as such can become a subject—a potential center—of rights, whether a plant or an animal, a human being or an imagined spirit; and nothing, if the community does not choose to regard it so, will become a subject of rights, whether human being or anything else” (Nékám 26). Although Nékám explicitly engaged with the possibilities of extending personhood to animals, most scholars (with a few exceptions, such as Machen) left these questions to their reader’s imaginations. Instead, most corporate personhood scholars contented themselves with only a brief mention of the Aristotelian notion of humans as social animals, and resisted any temptation to press the doctrine further.¹⁵

In reform discourses of the period, however, the language of animality was fraught with a different set of concerns. Humane societies sought, in the words of the Mohawk and Hudson River Humane Society letterhead, to protect “child and beast by authority of the law” (Pearson 167). The word *beast* did double work in the language of reformers. On one hand, *beast* helped reformers to emphasize the muteness and inferiority of animals in a way that encouraged readers to feel the need for their protection, such as when one anticruelty activist wrote in 1896 of the

¹⁵See, e.g., Laski (“For man is so essentially an associative animal that his nature is largely determined by the relationships thus formed” (404)); Radin (“Let us hurriedly concede, lest Aristotle be quoted in our teeth, that man is a social animal and that he is practically never found quite alone” (666)). Animal metaphors were, however, applied liberally to large corporations in literature and other popular discourses, perhaps most famously in Frank Norris’s *The Octopus: A Story of California* (see Chapter 5 *infra*).

“indescribable irritations to which slaves, whether man or beast, are subject” (Pearson 132). On the other hand, *beast* could also be deployed against humans who had diminished themselves through addiction or cruelty to animals. As Susan Pearson writes: “Humane publications redrew the map of community around character rather than kind, referring to cruelists and drunkards as ‘beasts’ or ‘brutes’ as much, if not more, than they used such terms to describe the animals they sought to protect. Invoking the specter of wild and undomesticated animals, the term ‘beast’ suggested that the drunken man, like even the sober cruelist, transported himself outside the bounds of the human community” (85).

In turn, critics shaped the boundaries of the human community with reference to race and ethnicity. Contemporary eugenic discourse claimed that Anglo-Saxons were the height of human evolution, and that “the persistence of savage, barbarian, or animalistic traits” could be found in the lower rungs of the “hierarchical chain of being”—rungs populated by various immigrant categories as well as ex-slaves and Native Americans (Pearson 65). The *beast* thus operated within the general category of human to mark a lesser example of the species, even as, within the general category of animal, it operated to mark an object of sympathy. In both cases, the use of the word *beast* instantiates a hierarchy between the supposedly elevated observer (or reader) and the object of that gaze.

Just as cruelty to animals, including the treatment of the livestock in slaughterhouses, grew to mark the “savage” in the trajectory towards social reform (Pearson 66, 68-69), so too does *The Jungle* illustrate how cruelty to nonhuman animals awakens a bestial nature within the human spirit, a nature that can only be ameliorated by rejoining a collective consciousness. In direct contrast to the eugenicist assertion that immigrant populations comprised a lesser grade of humans who, because they were not fully evolved humans themselves, were more prone to treat

animals cruelly, in *The Jungle* cruelty to animals is a direct result of the single-minded focus on profit to the exclusion of all other interests by corporations whose primary stockholders are native-born White people.

In animal terms, Jurgis's existence in Chicago is one in which he goes from "beast of burden" to "wild beast" to human through incorporation into a Socialist class consciousness. Jurgis comes into Packingtown strong and healthy, able to trudge through blizzards and subdue livestock. Unfortunately for Jurgis, due to the profit-maximizing process known as "speeding up," in which certain workers are given higher wages in exchange for working at an extraordinarily fast pace, occasionally the livestock would get a chance to fight back: "Sometimes, in the haste of speeding-up, they would dump one of the animals out on the floor before it was fully stunned, and it would get upon its feet and run amuck" (136).¹⁶ In one of these instances, Jurgis twists his ankle, and the subsequent injury leads him down a long and winding path to degradation.

After working for some time in the stockyards, Jurgis's initially robust health has been dulled, and the "savage beast ... lurking somewhere in the pathway of his life" has come upon him in the person of the fertilizer mill, the lowest work available in Packingtown and one that irrevocably marks its employees with a stench that alienates them from all other humans (151). Numbed in mind and senses by the work, Jurgis lives "like a dumb beast of burden, knowing only the moment in which he was," and unable to understand his wife Ona's "hunted animal" gaze (167-68). After time and growing cynicism leads him to be suspicious of the wife he adores, he forces Ona, "her voice like the voice of some wild beast," to tell him the truth: that her foreman has repeatedly raped her (178). Enraged and "breathing like a wounded bull" as he

¹⁶ In this context, the use of the phrase "run amuck" – a term originally referring to a "frenzied Malay" in an animalistic, murderous rage – reinforces the animalization of the Lithuanian (and other immigrant) labor in the packinghouse, even as it hints at the fear packed into the othered body of the worker/animal (see Ahuja 557).

travels to Ona's workplace (180), Jurgis transforms from "beast of burden" to "wild beast," as the physical touch of the foreman releases his violent impulses:

To Jurgis this man's whole presence reeked of the crime he had committed; the touch of his body was madness to him —it set every nerve of him a-tremble, it aroused all the demon in his soul. It had worked its will upon Ona, this great beast — and now he had it, he had it! ... In a flash he had bent down and sunk his teeth into the man's cheek; and when they tore him away he was dripping with blood, and little ribbons of skin were hanging in his mouth. (181-82)¹⁷

Confronted by the beast-nature of Ona's foreman, Connor (also an immigrant), Jurgis becomes a "tiger," brutally ravaging his "prey" in an animalistic way (182-83).¹⁸

This incident marks the beginning of Jurgis's wanderings, as his subsequent incarceration cuts him off physically and financially from his family, and he loses the sense of family- and community-fellowship that had led him to Packingtown in the first place. Stuck in the county jail, alone and desperate on Christmas Eve, Jurgis realizes that he has been exploited ever since he came to the United States, even as he acknowledges the degrading implications of the system treating him like (or even worse than) a "wild beast":

They had put him behind bars, as if he had been a wild beast, a thing without sense or reason, without rights, without affections, without feelings. Nay, they would not even have treated a beast as they had treated him! Would any man in his senses have trapped a wild thing in its lair, and left its young behind to die? (161)

Recalling his youth in the Imperial Forest, Jurgis contrasts his childhood understanding of animal behavior and the relationship between humans and wild creatures with his present. In his past, a "wild beast," although it may have lacked rights, was subject to a "sensible" code of treatment that allowed the ecosystem to remain stable. In Chicago, by contrast, the seemingly endless supply of immigrant labor has reduced the status of those laborers to little more than objects, commodities like the livestock they process. To reject this state of affairs without replacing it

¹⁷ The movement from "his body" to "it" in this passage lends the incident a tinge of Gothic horror, as the two combatants transform into something unhuman and ungendered.

¹⁸ "[Connor] was a big, red-faced Irishman, coarse-featured, and smelling of liquor" (181).

with something new is to become a “wild beast,” disorganized and passionate but lacking agency. Unable to handle the pain of losing his family and the awareness that they will likely starve without his help, Jurgis becomes part of the “wild-beast tangle” of men in the prison system (197). When he finally is released from prison, he returns home to Packingtown only to find that his house has been sold out from under him by “the company that had marked them for its prey,” and locates his family only to see his wife Ona die horribly in premature childbirth (212).

And yet Jurgis clings on to some shred of humanity, wandering from job to job in order to support his son Antanas. In this he is encouraged by Teta Elzbieta, whose “common-sense” persistence in the face of suffering marks her as a stubbornly surviving prey animal: “Elzbieta was one of the primitive creatures: like the angleworm, which goes on living though cut in half; like a hen, which deprived of her chickens one by one, will mother the last that is left her” (231). He works at the harvester works and the steel mill (where he helps make steel rails for the railroad) until the second tragedy hits him: his beloved son falls off of the elevated sidewalk and into the muck of the street, where he drowns.¹⁹ His last tie to family and home broken, Jurgis walks into the countryside, where he becomes a traveling farm laborer, alternating physical labor with “sprees” in which he drinks and entertains women: “then he went upstairs into a room with her, and the wild beast rose up within him and screamed, as it has screamed in the jungle from the dawn of time” (261). This moment – the only instance where Sinclair uses the word “jungle” in the main text of the novel – signifies, for Jurgis, the complete relinquishment of the ties of

¹⁹ As they are being created, the rail ties that will enable corporate expansion seem almost animal, a treatment that echoes Frank Norris’s novel of a few years earlier, *The Octopus*: “The ingot seemed almost a living thing; it did not want to run this mad course, but it was in the grip of fate, it was tumbled on, screeching and clanking and shivering in protest. By-and-by it was long and thin, a great red snake escaped from purgatory; and then, as it slid through the rollers, you would have sworn that it was alive – it writhed and squirmed, and wriggles and shudders passed out through its tail, all but flinging it off by their violence. There was no rest for it until it was cold and black – and then it needed only to be cut and straightened to be ready for a railroad” (247). For more on Norris’s novel, see Chapter 5 *infra*.

family and love that had brought him to the United States in the first place.²⁰ Instead, he gives himself up to the fulfillment of basic needs—food, shelter, sex—in the pastoral context of the countryside, and tries to abandon the painful memories of his past in favor of a pleasure-oriented present. These respites are temporary, however, as people he meets remind him of “what he had been, and now could never be,” and his memories of “Ona and his child and his old dead self” seem far away, as he is “writhing and suffocating in the mire of his own vileness” (264).

As the harvest season ends, the demands of the natural world cause him to return to the artificial environment of the city, burdened still by his memories such that he becomes “like a wounded animal in the forest” (270). There he wanders the streets in the company of a menagerie of professional beggars, their very appearance made animal by circumstance and poverty: “herded together in a miniature inferno, with hideous, beastly faces, bloated and leprous with disease, laughing, shouting, screaming in all stages of drunkenness, barking like dogs, gibbering like apes, raving and tearing themselves in delirium” (276).

His momentary salvation comes by incorporating himself into the Chicago graft machine, getting the help of the man who, unbeknownst to Jurgis, has been complicit in all the great tragedies of Jurgis’s life, including by being “principal stockholder in the company which had sold him the ramshackle tenement, and then robbed him of it. But Jurgis knew none of these things, any more than he knew that Scully was but a tool and puppet of the packers” (311). Scully, as agent of the packing consortium (presumably the National Packing Company), drags Jurgis into the political machine, which offers a temporary reprieve but ultimately proves an unreliable protection.

²⁰ In the original, *Appeal to Reason* version of the novel, Sinclair had made the parallels between the world of Chicago and a jungle much more pronounced, explicitly referencing the laws of the jungle and describing people preying on others for their money. Upon the encouragement of his publisher, he removed most of these references, but refused to change the title of the novel despite concerns that it was “too provocative” (Arthur 69)

Jurgis finally throws off his bestial self when, sitting in a socialist meeting for the warmth, he is assailed by the call of a passionate orator who speaks in the language of an animality transcended: “To you, whose lot it is to sow what other may reap, to labour and obey, and ask no more than the wages of a beast of burden ... I have known what it is ... to see all the fair flowers of my spirit trampled into the mire by the wild-beast powers of life” (361).²¹ Inspired by his impassioned call for the working class to rise up, Jurgis experiences a sublime moment of self-awareness, in which he confronts the fact that he has “submitted” to these degradations, “and forgotten” what it felt like to be treated like a human being – “ah, truly that was a thing not to be put into words, a thing not to be borne by a human creature” (367). In this moment, his animal nature cries out and is destroyed:

There was a falling in of all the pillars of his soul, the sky seemed to split above him — he stood there, with his clenched hands upraised, his eyes bloodshot, and the veins standing out purple in his face, roaring in the voice of a wild beast, frantic, incoherent, maniacal. And when he could shout no more he still stood there, gasping, and whispering hoarsely to himself: “By God! By God! By God!” (367)

In this moment of revelation, the beast is purged from Jurgis’s soul, leaving him a human crying out to a higher power. In this “miracle,” “a new man had been born” to replace the human that came out of Lithuania and was slowly killed on the killing floor (368). Crucially, this transformation is made possible by Jurgis becoming part of the socialist group-will, so that the “will and...purpose” now motivating his life is twinned with the awareness that “[h]ere were men who would show him and help him; and he would have friends and allies” (368). Thus the humanity that Jurgis last fully possessed when in his home community of the Imperial Forest, and which the ties of family, romantic love, and shared cultural heritage kept somewhat alive

²¹ The orator’s phrasing echoes Jurgis’s first inkling, much earlier in the novel, that Chicago was not all he had been promised: “It was true, it was true, — that here in this huge city, with its stores of heaped-up wealth, human creatures might be hunted down and destroyed by the wild-beast powers of nature, just as truly as ever they were in the days of the cave-men!” (136). Anthony Arthur claims that this unnamed orator is meant to represent Eugene V. Debs, the famous union leader and Socialist Party presidential candidate (Arthur 51).

within him during his slow slide into a “wild-beast” self, is reawakened by his joining a collective will—that of the socialist reformers.

With the help of his Socialist mentor Ostrinski, Jurgis comes full circle from his innocent days touring the slaughterhouse, realizing the equation of work product and meat product that comes from a group-will whose governing ideology is that of profit:

To Jurgis the packers had been equivalent to fate; Ostrinski showed him that they were the Beef Trust. They were a gigantic combination of capital, which had crushed all opposition, and overthrown the laws of the land, and was preying upon the people. Jurgis recollected how, when he had first come to Packingtown, he had stood and watched the hog-killing, and thought how cruel and savage it was, and come away congratulating himself that he was not a hog; now his new acquaintance showed him that a hog was just what he had been — one of the packers’ hogs. What they wanted from a hog was all the profits that could be got out of him; and that was what they wanted from the working-man, and also that was what they wanted from the public. What the hog thought of it, and what he suffered, were not considered; and no more was it with labor, and no more with the purchaser of meat. That was true everywhere in the world, but it was especially true in Packingtown; there seemed to be something about the work of slaughtering that tended to ruthlessness and ferocity²² — it was literally the fact that in the methods of the packers a hundred human lives did not balance a penny of profit. (376-77)

Here, the Beef Trust becomes a monstrous beast in its own right, a rampaging *kaiju* “devouring with a thousand mouths, trampling with a thousand hoofs,” disregarding all else in its single-minded pursuit of self-satisfaction (377).²³ The Beef Trust’s ruling imperative becomes not simply to make a profit, but to squeeze “all the profits” out of the three allied interests the Beef Trust preyed upon: livestock, worker, and consumer. Animated by “blind and insensate greed,” the “monster” seeks only the maximization of profit, incapable of perceiving anything other than financial calculations—a consequence of the depersonalization of the corporate structure. As a result, lives—whether human or animal, worker or consumer—are completely left out of the

²² This assertion – that the work of slaughtering leads to increased crime rates in the surrounding community – has been borne out by contemporary research, leading some to call it the “Sinclair effect” (Fitzgerald, Kalof and Dietz).

²³ Although I use the term *kaiju* a bit tongue in cheek, political cartoons since at least the 1880’s had depicted corporations as monstrous creatures who would not look out of place battling Godzilla or Mothra. See, e.g., G.F. Keller, *The Curse of California*, 1882 (portraying the railroad as a sea monster); George B. Luks, *The Menace of the Hour*, 1899 (depicting the street railway monopoly as a dragon-headed squid); Udo J. Keppler, *Next!*, 1904 (drawing Standard Oil as an octopus with an oil tank for a body).

calculation, since without quantification they cannot penetrate the corporate decision-making process.

Interestingly, although on one hand Ostrinski castigates the Beef Trust for its myriad offenses, on the other he sees the industry itself as capable of being turned to good ends if Socialists “were to seize the huge machine called the Beef Trust, and use it to produce food for human beings” (377-78). The problem, therefore, is not that the corporation has successfully employed industrial means to create a mass of men driven by a common will; it is that the common will of the corporation, as embodied in its charter, is to make as much profit for the shareholders as possible, and the experiences of individual human workers are irrelevant to the corporate group-will. This, in turn, directly emanates from the historical transformation of the corporation itself from a public-minded institution into a profit-making one, such that the corporate structure (and the organizational efficiencies it entails) enables human exploitation on a vast scale.²⁴ In this way, the corporate person acts to the individual worker as people are accustomed to do with livestock: controlling their lives, moving them from place to place, and ultimately exploiting their bodies for their own gain. It is this equation of human with animal, enabled by the activation of the corporate person as a profit-driven institution to the exclusion of all other considerations, that Jurgis and his fellow Socialists revolt against – enabled, in turn, by their own collective person, that of the Socialist Party, to combat the “monster.”

Domestication and Privilege

At the heart of this “monster,” however, are human beings, and in the “one adventure of his life,” during his begging days, a chance encounter allows Jurgis a vision into the life of the

²⁴ This novel largely predates (but may well have helped shape) the notion of “corporate social responsibility,” in which the obligation of community service is written into the corporate charter (see Avi-Yonah; Johnson). Theoretically, CSR can make this sort of single-minded profit seeking an *ultra vires*, and therefore a prohibited, corporate action.

corporate stockowners — one in which the relationship between family, animals, and labor is viewed through a funhouse mirror. The packer whose life Jurgis enters, albeit vicariously through his son, is “old man Jones” (104). One of the triad of Durham, Brown, and Jones that comprise the Beef Trust, Jones’s first mention in the novel is for employing child labor: “the oldest son of Szedvilas was only twelve, and had worked for over a year at Jones’s” (51). In a later discussion of the ways in which the packers exploit working regulations — only paying workers per sixty-minute increment and failing to compensate them for “broken time” — the narrator explains that Jones extensively patronizes religious mission work, and uses the profits from exploiting his immigrant laborers to fund these enterprises: “Old man Jones was great on missions and such things, and so whenever they were doing some particularly disreputable job, the men would wink at each other and say, ‘Now we’re working for the church!’” (104). Again, the many insulating layers between stockowner/manager and laborer enable the exploitation of the workers, here in the service of a form of charity that focuses on the exotic Other rather than the suffering happening under the corporation’s very roof.

The moment Jurgis meets young Freddie Jones is one of shocking empathy from one of a privileged class, transgressing normal social boundaries in an almost inexplicable manner. Back in Chicago after roaming through the Midwestern countryside, with work-related injuries making him incapable of resuming work in the packing-houses, Jurgis takes to begging on the streets, a “pent-up tiger, trying one bar after another, and finding them all beyond his power” (277). In the wealthy neighborhoods, even the buildings themselves transmit the inequity of privilege that keeps Jurgis in his place: “There was no place for him anywhere — every direction he turned his gaze, this fact was forced upon him. Everything was built to express it to him: the residences, with their heavy walls and bolted doors, and basement-windows barred with iron; the great ware

houses filled with the products of the whole world, and guarded by iron shutters and heavy gates; the banks with their unthinkable billions of wealth, all buried in safes and vaults of steel” (278).²⁵ With each building suffused with iron and/or steel, the edifices of the wealthy seem like cages keeping Jurgis and the other beasts safely away from the privileged. Not only that, but Jurgis is apparently meant to internalize his inferiority, as the construction of the buildings is intended to “express it to him.” In this way, stockholder (“residences”), commodity (“ware houses”), and cash (“banks”) stand apart, protected by a physical plant that reflects and perpetuates their superiority.

Desperate to get enough money to keep out of the snow, Jurgis approaches a stranger near the theatre district and asks him for money, only to be surprised by the man listening and nodding sympathetically. Young Freddie Jones’s appearance marks his privilege—he is clothed in silks and furs, both animal products—even while his manner belies it: “He was a young fellow—not much over eighteen, with a handsome boyish face. He wore a silk hat and a rich soft overcoat with a fur collar; and he smiled at Jurgis with benignant sympathy” (279). Hearing that Jurgis has been in the hospital and has no money, young Jones empathizes in his drunken way: “less be chums, ole boy – jess like me! No money, either – a’most busted!” (280) Disregarding the physical signs of Jurgis being below him in class, Freddie invites Jurgis beyond the iron gates and barred doors, seeking the alleviation of solitude brought on by his excess of wealth:

Awful lonesome—nobody home! ... Nuff—hic—nuff to drive a feller to drink, I say! Only ole Ham standin’ by, passin’ plates—damfican eat like that, no sir! ... Thass my guv’ner — hic — hard as nails, by Harry! Tole ole Ham to watch me, too — servants spyin’ on me — whuzyer think that, my fren’? ... Hadda come away an’ leave Kitty—hic—left her cryin’, too—whujja think of that, ole sport? ‘Lemme go, Kittens,’ says I—‘come early an’ often—I go where duty—hic—calls me.’ ... Say, my fren’, whatcha say — willye come home an’ see me, an’ hassome supper? Come ‘long like a good feller — don’t be haughty! You’re up against it, same as me, an’ you can unnerstan’ a feller; your

²⁵ For more on how buildings can embody the corporations they house, *see* the discussion of Cowperwood and Co.’s headquarters and the Hanaford pleasure house turned recreational center in Chapter 3 *infra*.

heart's in the right place, by Harry — come 'long, ole chappie, an' we'll light up the house, an' have some fizz, an' we'll raise hell, we will — whoop-la!" (279-80)

With his family out of town or hospitalized for childbirth, the only remaining people in his life are both named for domestic animals: his butler, "Ham" (short for Hamilton), who his father, old man Jones, has charged with maintaining Freddie in his proper social place, and his girlfriend, "Kittens," who he has just returned from visiting. The passage is filled with rhetorical questions, as Freddie creates a dialogue with Jurgis that ends in one of the wealthiest men in the city telling one of the poorer not to be "haughty," and calling on the fellow-feeling of two suffering individuals, not imagining how his own suffering could be very different than Jurgis's.²⁶ Ham, acting as the agent of "the gov'ner," his father (source of Freddie's money and thus the ultimate arbiter of power in his life), also echoes through his name the source of Freddie's comfort—the animals converted into food in the slaughterhouse.

Taking Jurgis back to his palatial home, Freddie introduces Jurgis to Ham, his butler — whom he has to order not to forcibly remove Jurgis from the house — and takes him around the place, in the process revealing his family identity: "Ole man Jones's place—Jones the packer—beef-trust man. Made it all out of hogs, too, damn ole scoundrel. Now we see where our pennies go—rebates, an' private car lines—hic—by Harry! Bully place, though—worth seein'!" (285). Freddie's innocent admiration of the grandeur of his own home complicates his apparent awareness of the corrupt ways in which his father has made money. Once Jurgis reveals his previous employment by Jones's company, Freddie makes clear that despite being aware of his father's penchant for bribery, he has internalized and accepted his father's claims of collaboration with the workers:

²⁶ Although Freddie may seem to be monologuing, his demeanor maintains at least the veneer of conversation: "[Freddie] always insisted on having an answer to his remarks, leaning over Jurgis and smiling into his face. Jurgis liked it" (284).

“Guv’ner ought to be here—glad to see you. Great fren’s with the men, guv’ner—labor an’ capital, commun’ty ‘f int’rests, an’ all that—hic! Funny things happen in this world, don’t they, ole man? Hamilton, lemme interduce you—fren’ the family—ole fren’ the guv’ner’s—works in the yards. Come to spend the night wiz me, Hamilton—have a hot time. Me fren’, Mr.—whuzya name, ole chappie? Tell us your name.”

“Rudkus—Jurgis Rudkus.”

“My fren’, Mr. Rednose, Hamilton—shake han’s.” (285)

In this passage, Freddie evidences an utopian view of where his family’s money comes from, parroting catch-phrases like “labor and capital” and “community of interests” that he has clearly overheard over time. The stockyards of Freddie’s imagination are thus some ideal business in which the will of both worker (labor) and corporate stockholder (capital) are united towards progress. This vision presupposes a “community of interests”—that the corporation and the workers have the same objective, and thus are part of a harmonious group-will. In fact, the term “community of interests” was often used in the period to refer to multiple companies working together to fix railroad rates or engage in other mutually beneficial transactions (Whitten and Whitten 128; Nimmo). This collective ideal, in practice uniting separate corporate persons (like the packers were prior to their merger in 1903) towards a larger goal, becomes in Freddie’s deluded, insistently rose-colored view a paternalistic symbiosis of capital and labor, in which a lowly worker becomes first a “friend of the family” and then an “old friend of the guv’ner.” To manage this, however, Jurgis’s last name is anglicized into an unconscious pun on the speaker’s drunken state, suggesting the impossibility from the perspective of management of incorporating ethnic difference into the group will.

Indeed, Freddie’s affable difficulty understanding the distinctions in class and objective between his father and Jurgis’s fellow workers speaks to a larger problem: the inability of the family to successfully underpin or shadow the corporate structure. Freddie himself admits as much when he gives Jurgis a hundred-dollar bill to pay for the cab to his house:

Pay the cabbie an' keep the change—I've got—hic—no head for business! Guv'ner says so hisself, an' the guv'ner knows—the guv'ner's got a head for business, you bet! 'All right, guv'ner,' I told him, 'you run the show, and I'll take the tickets!' An' so he set Aunt Polly to watch me—hic—an' now Polly's off in the hospital havin' twins, an' me out raisin' Cain! (281-82)

The family, arguably the oldest collective identity, would seem to be a natural underpinning to the corporation, since both are animated in this period by a common name and legal ties (like inheritance) that give the relationships between them juridical force.²⁷ Unfortunately for primary stockholders, however, the transmission of biological characteristics cannot be as easily controlled as the inheritance of shares. However much Freddie's father may wish him to be "corporation-minded," to use Dreiser's term, he clearly lacks either the intelligence or the hardness (or both) to enfold himself within the profit-driven group-will of the packing corporation. Accordingly, Freddie gladly accepts a subordinate role in his father's enterprise, and his father sets another family member to monitor him (alongside the servant Ham)—although in the process of expanding the family, she must necessarily lose track of her charge. Family thus becomes at once a comfort—Freddie constantly complains about being alone in the large house—and a burden, as the Jones family-will, lacking a corporate charter and fixed mutual objective, cannot be fully merged with the group-will of the National Packing Company.

Nonetheless, Freddie does manage to "play the guv'ner" in a limited sense, when he shows Jurgis around his home:

Wanta see the place, ole chappie? Wamme play the guv'ner—show you roun'? ... Tea room Maryanntnet—picture of shepherds dancing—Ruysdael—twenty-three thousan'! ... Then this place—silver bowl—Benvenuto Cellini—rummy ole Dago! An' the organ—thirty thousan' dollars, sir—starter up, Hamilton, let Mr. Rednose hear it. (402)

For Freddie the value of art is merely monetary, in contrast to the Socialist worldview—which,

²⁷ For a more thorough discussion of the relationship between the family and the corporation, see Chapter 3 *infra*.

as the novel later claims, removes art's status as commodity.²⁸ The scale of the wealth reflected by these ornamental objects seeks to further highlight the inequities perpetuated by "old man Jones's" packing operation, which robs workers of a few cents through not paying for "broken time" even as it enables the collection of precious pieces of art that do little but transmit their owner's wealth to the world.

When they settle down to dinner, Jurgis confronts an animal that is valued, legally and emotionally, above himself. In Freddie's study, surrounded by trophies of the hunt – an enormous moose head, with horns six feet across, faced a buffalo head on the opposite wall, while bear and tiger skins covered the polished floor" – Jurgis meets Admiral Dewey (287):

out of the next room a dog emerged, a monstrous bulldog, the most hideous object that Jurgis had ever laid eyes upon. He yawned, opening a mouth like a dragon's; and he came toward the young man, wagging his tail. "Hello, Dewey!" cried his master. "Been havin' a snooze, ole boy? Well, well—hello there, whuzzamatter?" (The dog was snarling at Jurgis.) "Why, Dewey—this' my fren', Mr. Rednose—ole fren' the guv'ner's! Mr. Rednose, Admiral Dewey; shake han's—hic. Ain't he a daisy, though—blue ribbon at the New York show—eighty-five hundred at a clip! How's that, hey?"

The speaker sank into one of the big armchairs, and Admiral Dewey crouched beneath it; he did not snarl again, but he never took his eyes off Jurgis. He was perfectly sober, was the Admiral. (287-88)

On one level, Admiral Dewey is a living work of art among the Jones's collection, an animal valued at \$8500 for its conformation to breed standards and its success "in New York," a reference possibly to the Westminster Kennel Club dog show. On a deeper level, though, Dewey's monetary value – many times greater than Jurgis's fellow workers in Packingtown – imbues him with a type of personhood, in which he actively participates in reinforcing the privilege of the Jones family and keeping workers like Jurgis down. The personhood of the

²⁸ As the socialist Schliemann explains near the end of the book, in the new socialist utopia artists would be supported by "free associations" of people who wanted to enjoy their art, instead of all artists being supported by "a small minority of people, all debased and vulgarized by the effort it had cost them to win in the commercial battle" (402). Although the reader is no doubt meant to see this situation as preferable, it is arguably simply the replacement of one group for another.

bulldog is reinforced both by his name—in honor, no doubt, of naval Admiral George Dewey, who defeated Spain in the Battle of Manila Bay, thereby eventually enabling U.S. colonization of the Philippines—and Freddie’s polite introduction of him to Jurgis, complete with a request to “shake hands” (Kaplan 153-54). By keeping an eye on Jurgis even when his “master” is unwilling or unable to do so, Dewey helps to maintain an imperialist order between Anglo packinghouse owner and immigrant packinghouse worker.

Dewey’s privileged status is further reinforced when he and Ham collaborate to evict Jurgis from the Jones mansion once Freddie has fallen asleep:

Once [Jurgis] stirred, and the dog growled; after that he sat almost holding his breath—until after a while the door of the room opened softly, and the butler came in. ... ‘Get out of here!’ he whispered. ... And Jurgis wavered but an instant more. He saw ‘Admiral Dewey’ coming up behind the man and growling softly, to back up his threats. Then he surrendered and started toward the door. (290)

In this moment, the human servant Ham and the canine companion Admiral Dewey collaborate towards the common goal of protecting the house from Jurgis’s incursion. While Dewey largely stays stationed by his “master,” presumably to defend him, Ham shares his subordinate role, “terrified that his young master should waken” (291). In the world of Chicago, dominated by corporate power, simply having a “master” does not in itself rob one of personhood; instead, from a corporate perspective, personhood comes from the combination of capital, efficacy, and will. At once a symbol of the might of the owner class and an individual creature that collaborates in the furtherance of the corporate will, Admiral Dewey confounds the easy conflation of animal and worker that the novel otherwise perpetuates. Indeed, when considered in context, Admiral Dewey is arguably more of a person than most of the Lithuanian immigrants in the novel, and certainly more so than Jurgis during his “wild-beast” days. Once personhood expands beyond the simple equation of “one human equals one person,” the category itself is

revealed as multivalent and mutable, able to encompass human, group, and nonhuman alike.

The Corporation Speaks

Just as the act of naming marks Admiral Dewey as a privileged entity, so too does naming enable the corporation to sustain itself. Names – whether “the Beef Trust” or “National Packing Company,” “the union” or “Socialism” – act to coalesce group identity, facilitating the formation of the group will that Gierke and the real entity theorists found essential to collective personhood. From an aggregate theory perspective, the name under which a corporation does business can be said to *be* the corporation itself, the “knot of its combination,” to borrow Blackstone’s language; and artificial entity theory, although not as reductive, similarly identified the formal naming of an organization as the moment when the artificial person came into being in the view of the law (Blackstone 462).²⁹ On a less theoretical level, however, a corporation specializing in consumer goods has its identity tied up with the products it sells. It is via these products that it enters the homes – and, in the case of foodstuffs, literally becomes part of the bodies – of the public. The naming of their products was thus many corporations’ ultimate act of self-definition, more so than naming themselves.

The packing companies of Chicago were no exception, and *The Jungle* takes particular pains to illustrate the irony intrinsic within “Brown’s Excelsior Sausages,” “Durham’s Pure Leaf Lard,” “Durham’s Devilled Chicken,” and other products whose titles give an illusion of purity to the mishmash of tainted ingredients within (39). When Jurgis first tours the Packingtown factories, though, the narrator switches from speaking of Jurgis’s experience to that of “the visitor,” in the process meditating on the shared American experience of being interpellated by

²⁹ See, e.g. Williams (“if such rights, duties or penalties are predicated of an imaginary being, vested with a name, such imaginary being, by such name, as a subject of such rights, duties, or penalties, will immediately exist in contemplation of law as an artificial person”). For more on Williams’ variety of artificial entity theory, see Chapter 1 *supra*.

advertising:

These buildings, made of brick and stained with innumerable layers of Packingtown smoke, were painted all over with advertising signs, from which the visitor realized suddenly that he had come to the home of many of the torments of his life. It was here that they made those products with the wonders of which they pestered him so — by placards that defaced the landscape when he travelled, and by staring advertisements in the newspapers and magazines — by silly little jingles that he could not get out of his mind, and gaudy pictures that lurked for him around every street corner. (38-39).

Through the medium of advertising, corporations insinuate themselves into the minds of the individual humans with whom they share the American landscape, and who they depend on to enable their profit-seeking objectives. Instead of the voice of one human, intrinsically limited by physical capacity, the voice of the corporation is only limited by the financial capital that the corporate person can call upon to transmit its call to the wider world. Corporate speech thus becomes a “torment” rather than a conversation—an endless stream of propaganda from which the individual finds it difficult to escape.

Perhaps the most troublesome aspect of corporate speech is that it combines vast resources with an unusually vested interest in persuading its audience, an interest that allows for truthfulness only insofar as the law proscribes the alternative. The average person in Chicago, as Jurgis soon realizes, lives in a world framed by self-serving corporate speech: “the very fences by the wayside, the lamp-posts and telegraph-poles, were pasted over with lies. The great corporation which employed you lied to you, and lied to the whole country—from top to bottom it was nothing but one gigantic lie” (88). The inescapable call of the corporation thus attempts to incorporate the humans it reaches into its own brand of delusion: that Durham’s lard is pure, that “special” sausage is worth more money than regular sausage, that any of it is really made solely out of the animals whose bucolic lives may appear on the advertisements and packages (162). In its way, *The Jungle* acts as an antidote to this pernicious corporate speech, using (at least in its

initial version) the collective will of Socialism as instantiated in *The Appeal to Reason* as his counterweight to the inestimably more powerful Beef Trust.

In closing, let us look again at how the first major type of transnational corporation, the railroad, plays into this novel. Railways and streetcars framed the experiences of the Lithuanian immigrants in *The Jungle*. The railway brings them to Chicago, where Jurgis Rudkus finds work in the stockyards. Jurgis and his family use the streetcars, when cost permits, to go back and forth to their factory jobs. Unlike the mass transit system operated by the Chicago Transit Authority today, streetcar networks were operated by privately owned streetcar companies, an industry pioneered by Charles Yerkes (Miller 269).³⁰

As Jurgis, his wife Ona, and their family become more accustomed to Chicago, their perceptions of the streetcar companies change too, as what seems initially to be benign convenience reveals its sinister, single-minded obsession with profit at all costs. The absurd difficulty of getting a transfer from one streetcar line to another early in their Chicago life leads Ona to get sick from walking in the rain, an illness the narrator blames on “this car line [being] owned by gentlemen who were trying to make money”—a cabal of rich men who fell “into a rage” when the city required them to give transfers (89). By the time that Jurgis’s family has been in Chicago for three years or so, the narrator switches from treating the streetcar company as a group of individuals to a single group entity, and the incident is remembered as “that fatal morning when the greedy street-car corporation had turned her out into the rain” (167). When Jurgis returns from his travels through the Midwestern countryside, the novel reveals a further development in understanding corporate structure, paralleling the development of corporate theory.

³⁰ For much more on Charles Yerkes – and Theodore Dreiser’s treatment of him through the character of Frank Cowperwood in *The Financier* and *The Titan* – see Chapter 3 *infra*.

Just as the novel moved from an aggregate to an entity understanding of the railway corporation, here the novel reveals how shell companies—corporations whose stock was fully owned by either the incorporators of the main corporation or the corporation itself, but which nonetheless enjoyed the pretense of separate legal individuality—could be used to further the profit-making imperative: “the law required that transfers be given at all intersecting points, but the railway corporation had gotten round this by arranging a pretence at separate ownership” (239).³¹ Initially, the railway actions seem nothing more than the logical result of the desire for profit driving the men who make up the company; eventually, the railway is revealed as a monstrous entity, capable of much more than an ordinary human being, and more even than the sum of the individuals who compose it.³² Jurgis’s experiences of the street-car system thereby illustrate, in miniature, the development of contemporary understandings of corporate personhood, even as it shows many of the legal intricacies designed to maintain that power that the theory of corporate personhood enabled.

In the next chapter, we will examine several novels in which the criticism of the corporation gives way somewhat to wonderment about its very existence and an attempt, through fiction, to understand how it interacts with more “natural” structures.

³¹ This parallels the fictional divisions within the Beef Trust, which seem to be separate companies and yet operate as one: “he had learned by this time that Packingtown was really not a number of firms at all, but one great firm, the Beef Trust” (131). .

³² For more on the power of the railroad and its significance in how corporations were imagined and feared at this moment, see the discussion of Frank Norris’s *The Octopus: A Story of California* in Chapter 5, *infra*.

CHAPTER 3

“The Real Business of Life”: Gender, Sexuality, and Corporate Power in the Business Fiction of Theodore Dreiser and Edith Wharton

“[W]hy do you call your republic a republic? It is a close corporation, and you create arbitrary objections in order to keep people out.”

-Edith Wharton, *The House of Mirth* (1905)

Although differing as to the exact nature of the corporate person, all theories of corporate personhood—grant, aggregate, artificial entity, and real entity—agreed that the corporation depended upon the natural person, the human, to bring it into being. Regardless of whether the corporation had an independent being—and by the early twentieth century, the real entity theorists who claimed it did were ascendant—humans were necessary to create the corporation and make its actions possible. Even the corporation’s purported immortality depended on the society around it; if there were no longer natural persons to read and write the documents, could the corporation really exist at all?

The very term “natural person,” indicating (in the most general sense) an individual human being, hints at the complexity built up around what comes “naturally” to people. Individual humans, for the most part, can enter into contractual relations and the marriage contract. They connect with other humans socially and sexually. Their lives are woven together by a complex web of dependency, obligation, and affection, such that being part of a social body is an integral aspect of being a person. How, then, can the artificial person of the corporation—whose ubiquity made it a new form of body or bond for many with whom it was involved—fit into the social worlds of the natural persons who comprise it?

One of the most critical aspects of natural personhood under the law during this period was gender. As Nancy Cott has observed, this was an era obsessed with the “New Woman,” women who attempted to transcend the bounds of traditional gender roles. These women, however, found themselves struggling against the imposition of male standards as “objective” standards, a struggle which led some, by the twenties and thirties, to abandon the categories of gender altogether and claim to be fighting for “humans,” not women (Cott 235, 277). The problem with this formulation, as Susan Bordo puts it, is that “[in] a culture that is *in fact* constructed by gender duality...one *cannot* simply be ‘human.’...Our language, intellectual history, and social forms are ‘gendered;’ there is no escape from this fact and from its consequences on our lives” (Bordo 143). Indeed, as the corporation became part of this social web, its personhood was not only structured around gender and sexuality, but became a critical vehicle for actively changing the meanings of masculinity, femininity, and sexual identity in the turn of the twentieth century.

In this chapter, I examine three business novels that engage with the problems and possibilities of corporate gender and sexuality: Theodore Dreiser’s *The Financier* (1912) and *The Titan* (1914), and Edith Wharton’s *The Fruit of the Tree* (1907). I argue that these novels, significantly different in their circumstances of production, illustrate the complex machinations by which the corporate person was merged with and naturalized into existing relationships between humans, or even within a single human being. In *The Financier* (1912) and *The Titan* (1914), Frank Cowperwood, Dreiser’s protagonist and the fictionalization of a real-life tycoon, creates a corporate self through the exercise of his free will, a power that is in line with the real entity theory of corporate personhood. Corporate status in these two novels is an emanation of financial wizardry, and the world of the novel recognizes no difference between Cowperwood’s

profligate womanizing and his adept manipulation of political and economic players in Philadelphia and Chicago. Cowperwood's artificial and natural selves are at one, and his corporate being acts as a natural extension of his mind.

By contrast, in *The Fruit of the Tree* (1907), Edith Wharton emphasizes the social, communal nature of the corporation, using familiar constructs like “company” and the traditional bonds of marriage and family to naturalize the corporation into an extension of pre-existing social ties. Up until the mid-nineteenth century, the legal system of coverture, by which a woman's legal being became subsumed into that of her husband along with her property, had constructed marriage as the formation of a group person, albeit one with only two people. In *The Fruit of the Tree*, Wharton portrays the corporation as supplanting the old strictures of coverture by pitting the old understandings of the meanings of marital union against the new financial realities of stock ownership. By creating a corporation where the stock is transferred from mother to daughter, Wharton complicates the gendering of the corporation, which in other works comes off as a strictly masculine entity. Instead, Wharton shows the corporation to be a more familiar—even familial—construction, as relevant to the drawing room as the trading floor.

Looking at these novels together illustrates the promise and danger inherent in the extension of the corporate person to everyday life. Both Dreiser and Wharton portray social pressures as essential to the formation and maintenance of a corporation—but while Cowperwood, the financial wunderkind, uses his corporate self as a superhuman alter ego, it is almost unimaginably difficult for any of Wharton's characters in *The Fruit of the Tree* to use their corporate powers for much more than physical comfort and social status. Cowperwood creates his own corporation, and uses it to manipulate the social spheres of Philadelphia, Chicago, and New York much as he does the financial markets of those cities. In Wharton's

novel, however, Westmore Mills, as a family manufacturing concern inherited through the generations, has become calcified into the society of Hanaford, the town in which it is located, such that the word *company* in that novel stands both for the corporation and its society, and signifies the profit motive of both. While Dreiser casts corporations as instruments of human sexuality, Wharton focuses on the quotidian consequences of corporate personhood on family, inheritance, and the other forms of social union that the corporation is slowly supplanting.

The Pleasures of Business: Frank Cowperwood on the Make

In 1911, Theodore Dreiser began work on *The Financier*. The inspiration for the novel's protagonist was Charles Yerkes, a Philadelphia-born financier. Born in Philadelphia in 1837, Yerkes opened a brokerage office at twenty-one, and at twenty-two he began investing in street railways. An unwise speculative venture proved fatal to Yerkes' career in his hometown, however, due to the unfortunate fact that he was investing with public funds—funds that the City Treasurer of Philadelphia had allowed Yerkes to invest for his own personal benefit (Franch 47-49). The fact that this was a common practice among Philadelphia bankers did not ameliorate the fact that it was also illegal, and the stock market crash following the Chicago Fire of 1871 meant that Yerkes, an otherwise exemplary investor, lacked the liquidity to pay off the debt (Franch 47). Besides, the Republican political bosses in charge of the investigation felt that the public needed a sufficient show of punishment in order to ensure no lasting damage to the Republican Party (Franch 48). Accordingly, the Court of Quarter Sessions found Yerkes guilty of embezzlement and larceny as bailee, and Yerkes was sentenced to imprisonment in the Eastern State Penitentiary, although he ended up serving only a few months before his friends obtained him a pardon from the governor (Franch 68-75; Gerber 117-18).

Years later, a young Chicagoan, Theodore Dreiser, dazzled by Yerkes' mansions and fame while "despis[ing] him as the symbol of capitalistic evil," would take all of these biographical details and use them to craft one of his most famous and successful novels, *The Financier* (Gerber 113). *The Financier* would later be followed by the two other parts of what Dreiser called the Trilogy of Desire, *The Titan* (1912) and *The Stoic* (1947), , all dealing with the life of Frank Cowperwood, Dreiser's fictional version of Yerkes.

In *The Financier*, which Dreiser began work on in 1911, Cowperwood grows from an inquisitive boy to a financial mastermind, moved by twin passions for women and art. At the height of his power, Cowperwood engineers a takeover of Philadelphia commuter rail lines—only to be brought down by a combination of illegal use of city funds and the stock market crash caused by the Great Chicago Fire of 1871. After being tried and convicted of embezzlement, Cowperwood serves time in the penitentiary, becomes rich again through investing in stocks after the Panic of 1873, and leaves for the West.

The idea of corporate life in this novel arises directly from Cowperwood's hedonistic enjoyment of the world, as key a characteristic to him as his business acumen. As the narrator observes, "he cared nothing for books, but life, pictures, trees, physical contact—these, in spite of his shrewd and already gripping financial calculations, held him. To live richly, joyously, fully—his whole nature craved that" (61).¹ Although the narrator seems to construct his enjoyment of physicality in opposition to his love of business, the use of "gripping" belies this opposition, indicating that for Cowperwood, conducting business fills him with a sense of being alive as profound as courting women or collecting art. Early in Cowperwood's financial career,

¹ This and subsequent citations are to the following edition of *The Financier*: Dreiser, Theodore. *The Financier*. 1912. New York, NY: Penguin, 2008. Print. This edition uses the shorter version of the novel's text – cut approximately one-third from the original eight-hundred-plus pages – which Dreiser and his editor, Louise Campbell, released in 1927.

the narrator observes that “bookkeeping did not interest him except as a record, a demonstration of a firm’s life;” by acknowledging the “life” of a firm, this construction echoes the real entity theorists’ vision of a group-life, perfectly aligning with Frederic Maitland’s pronouncement ten years earlier that “a corporate body...is a living organism and a real person” (Maitland xxvi).

Indeed, Cowperwood’s entire business approach seems to embrace the assertions of real entity theorists that the corporation as a business entity exists irrespective of any action from the state, instead deriving its existence from the interactions of human beings. The first mention of Cowperwood’s incorporation comes in the middle of the narrator’s commentary on another character’s opinion of Cowperwood, reinforcing the social characteristics of the status: “A number of people had spoken of Cowperwood to him. (It was now Cowperwood & Co. The company was fiction purely)” (73). Simply from this aside, it would be difficult to ascertain what form of enterprise organization had been constructed; but repeated allusions to the solo nature of Cowperwood’s venture support the conclusion that Cowperwood has incorporated himself: created a corporation under his own name in which he is the sole shareholder. The use of the word “fiction” to describe the “company” Cowperwood uses in his corporate name—referring, superficially, to Cowperwood’s lack of formal collaborators—recalls the corporate person’s status as a “legal fiction,” but it is a fiction with power, hearkening back to an earlier era of partnership (Tighe & Co., his first employers, for example). By creating a corporation sole with an aggregate corporate name, Cowperwood acknowledges the utility of perceived continuity with the past and the necessity of seeming to be larger and more conventional than he actually is.

Dreiser offers the reader no window into how Cowperwood managed the transaction legally—requesting corporate status, receiving a corporate charter, and such formalities—but we

do see the creation of the corporation's physical manifestation: namely, the elaborate construction of the offices of Cowperwood and Co., complete with an office safe "raised on a marble platform at the back of the office and lacquered a silver-grey with Cowperwood & Co. lettered on it in gold" (104). Cowperwood's insistence on creating the trappings of old-school wealth and power reflect not only his love of beauty and fine things, but more importantly an awareness that the power of his corporate self depends upon its being recognized and given weight by others in his business circle. As real entity theory would have it, Cowperwood's corporate self comes about in the novel through an exercise of will, not through the intervention of the state. Still, Dreiser expands upon Maitland's assertion that "we take [the Group Person] into the law courts and markets and say that he stands the wear and tear of forensic and commercial life;" for Cowperwood, this process depends as much or more upon social posturing as metaphysics (Maitland xli).

As the book progresses, Dreiser increasingly leads the reader to view "Cowperwood & Co." as Cowperwood's shadow-self, something beyond the Frank Algernon Cowperwood introduced at the beginning of the novel and yet entirely organic with that being. By putting him into the orbit of the new treasurer-elect of Philadelphia, George Stener, and thus enabling a whole new set of financial machinations, the incorporation of Cowperwood & Co. marks the beginning of Cowperwood's ability to fully realize his financial potential. Internally, as well, the existence of the firm revitalizes him, throwing him back into the stock business he had once abandoned "with more vim than he had ever displayed, for now he was working for himself, the firm of Cowperwood & Co." (94). While the corporation of Philadelphia (cities being one of the most ancient forms of the corporation) is replete with officers, Dreiser never shows us any

employee of Cowperwood & Co. but Cowperwood himself—no clerks, no secretaries, no one to get in the way of the unity of Cowperwood and his grand building.²

Cowperwood's ghostly corporate self, though it seems not to bother any of his political associates, makes a surprising reappearance in the closing argument of his trial for embezzlement and larceny as bailee. Shannon, the district attorney, cites it in his closing argument to give the impression of Cowperwood's untrustworthiness and unfitness for his city-appointed task, asking: "Was the said Frank A. Cowperwood & Company—there is no company, as you well know, as you have heard testified here to-day, only Frank A. Cowperwood—was the said Frank A. Cowperwood a fit person to receive the check at this time in the manner he received it—that is, was he authorized agent of the city at the time, or was he not?" (356). What Shannon means when he says "there is no company" is unclear, but it might refer to the absence of associates in Cowperwood's business organization, not the absence of incorporation papers (a matter on which the novel remains silent). According to this interpretation, Shannon here exploits Cowperwood for his corporate self. Unlike the partnerships of a generation past, Cowperwood & Co. can exist without other human beings, an unnatural duality of human and legal ghost that, Shannon suggests, creates a false illusion of security and reliability.

Even while Shannon uses Cowperwood's corporate self as part of a ploy to bring him down, Cowperwood still clings to it as representative of his natural identity. When the verdict is handed down, Cowperwood rallies himself with thoughts of his professional capacity: "Still he was Frank A. Cowperwood. ... He was not down yet. He would win his liberty" (368). In his own view, his best, strongest, truest self is not "Frank Algernon Cowperwood," the personage introduced in the novel's first sentence, but rather "Frank A. Cowperwood" of "Frank A.

² Yerkes, Cowperwood's model, did have employees; in fact, his defense argued at trial that Yerkes should not be held responsible for taking funds from the city treasurer when it was Yerkes' clerk who physically fetched the check (Franch 75).

Cowperwood and Company” (1, 356). By identifying the part of himself that can “win” physical and financial freedom with the part that is known for business transactions, Cowperwood illustrates the immortality of the corporation: the natural person who is sole stockholder may be imprisoned (or even die), but the corporation lives on, amorphous and eternal, retaining all of its pre-existing powers.

Many corporations featured in the literature of this period were owned by relatively few stockholders, a choice which, as I theorize, functions to make the rise of the corporation more cognizable, since the result seems closer to the old convention of partnership. Still, many of the corporations of Dreiser’s time were powerful conglomerates with the wealth and livelihood of many in their control. It is entirely in keeping with the novel’s indeterminacy that the same protagonist whose corporate self embodies a sort of financial wizardry superpower is brought down by what the novel calls (metaphorically) a “close corporation” of politicians and political contractors (80). Here, Dreiser refers to the phenomenon of the closely-held corporation, in which the shares are concentrated in a few hands and not available in the open market. The closely-held corporation is an apt moniker for the Republican political machine of the novel, where only cunning and the resulting financial success brings one into the tiny group of the truly powerful.

This sense of the corporation—powerful, rich, exploitative, and teetering on the border between unfairness and illegality—is the one in which Judge Payderson’s “corporation-minded” nature comes to bear. Payderson is, by the narrator’s telling, a distasteful, dull, uncreative individual, bound to his political masters by obligation as well as a blind equation of might with right, so that “whatever the weight of great interests dictates, that [he] conscientiously believe[s].

Someone has since invented the phrase ‘a corporation-minded judge.’ There are many such. Payderson was one. He fairly revered property and power” (324).

Here, Dreiser more explicitly engages in his project of contemporary critique by directly connecting the world of the novel—where political influences control the judges—to the world he lives in, where such political influences are likely to be deeply intertwined with corporate advantage. In calling Payderson “corporation-minded,” Dreiser critiques not the institution of the corporation itself, or even the concept of corporate personality, but rather the concentration of power that the corporation may have colloquially represented to his readers. To be corporation-minded without owning that corporation’s stock is to be a willing pawn of manipulation—in fact, exactly the sort of manipulation that Cowperwood engages in during the course of *The Titan*.³ Attributing the phrase to an unknown writer, meanwhile, allows Dreiser to maintain a certain degree of sympathy with Cowperwood. This sympathy can be seen, for example, in the extensive notes Dreiser took on Yerkes in preparation for writing *The Financier* and *The Titan*. At one point in recounting Yerkes’s stock exploits in Chicago, for example, Dreiser offers an aside praising Yerkes’s fearlessness: “N.B. I should make a note of this. The courage of Yerkes in this failure! His daring! Of course if he lost he was really no worse off than he was before.”⁴

Based on Yerkes’ adventures in Chicago (and secondarily New York), *The Titan* engages much more concretely with the machinations of corporate power in the late Gilded Age and early Progressive Era. Much of the plot hinges on a legislative action—Cowperwood’s attempt to get fifty-year franchises for his streetcar lines—that is, as the narrator notes, “expressly forbidden” by Illinois constitutional law; but, as the narrator also notes, “there are

³ The phrase “corporation-minded” first appears in the Google Ngram corpus around 1909, used in much the same way Dreiser used it here. The phrase continues to be used with some frequency through the twentieth century.

⁴ Box 134, Folder 7256, p. 758. Theodore Dreiser Papers.

fads of legislation as well as dusty pigeonholes in which phases of older law are tucked away and forgotten,” and law can always be tinkered with to “render inoperative the original intention” (Dreiser *The Titan* 477-78). This insistence on revealing the malleability of law corresponds with the mutability of corporate personality doctrine in this period, and illustrates the hybrid nature of structure and subject, politician and government, and, most importantly, shareholder and corporation evident in both *The Financier* and *The Titan*.

The same meticulous research that went into Dreiser’s writing process extended to *The Titan*; according to the archival records at the University of Pennsylvania, Dreiser spent six months in 1911 gathering research in New York, Chicago, and Philadelphia, and then took a year and a half turning the voluminous set of notes into a 552-page volume.⁵ As Philip Gerber has noted, the majority of the Trilogy of Desire closely mirrors the well-reported events of Charles Yerkes’s life—the parade of mistresses Cowperwood entertains being the notable exception (Gerber 116). Cowperwood’s hedonism, instead of being purely a physical action, is instead presented as part and parcel of his disregard of legal conventions, as illustrated by one of his early Chicago flings:

The difficulty with this situation, as with all such where an individual ventures thus bucaneringly [sic] on the sea of sex, is the possibility of those storms which result from misplaced confidence, and from our built-up system of ethics relating to property in women. To Cowperwood, however, who was a law unto himself, who knew no law except such as might be imposed upon him by his lack of ability to think, this possibility of entanglement, wrath, rage, pain, offered no particular obstacle. It was not at all certain that any such thing would follow. (Dreiser *The Titan* 128).

For Cowperwood, affairs are yet another quasi-legal stock transaction, the benefits from the merger measured in the pleasures he receives from “his artistic if not emotional subjugation to their beauty” (Dreiser *The Titan* 128). While his corporate self goes about town buying and selling portions of other corporate bodies, becoming one with them only to toss them aside when

⁵ Box 13, Folder 7224. Theodore Dreiser Papers.

they become unprofitable or fulfill their purpose, his natural human self does the same with various women throughout the novel. Cowperwood's living equation of human sexuality with stock trading makes the life of the corporation cognizable and even empathizable, as the pleasures of business and the pleasures of human sexuality intertwine.

For all his affairs, Cowperwood never actively bears the responsibility of raising a child in these two novels, so the problems of inheritance are elided. In Edith Wharton's novel *The Fruit of the Tree*, however, the conjunction of business and sexuality is taken a step further, as the intertwining of marriage, family, and the corporate body takes the form of a complex ethical drama.

The "Human Machine" at Work

According to Edith Wharton's diary, she began work on the novel that would become *The Fruit of the Tree* on November 4, 1905.⁶ The writing process on the novel, then titled "Justine," proceeded at a rapid rate through the end of 1905, but production flagged until she took it up again on June 19, 1906, and it acquired what would be its permanent title when she was 84,000 words through the novel (that is, approximately at the end of Book III, when Bessy dies).⁷ In these two years, Wharton had experienced the death of a friend through a riding accident (unlike Bessy, a peaceful death while unconscious) and had her dog Miza euthanized due to cancer.

Lest we be too quick to dismiss the euthanasia of her dog as not worth considering alongside the death of a human, Wharton's words in a later book of notes force the reader to examine animals more closely:

⁶ Diary, 1905. Box 51, Folder 1521. Edith Wharton Collection.

⁷ Diary, 1906. Box 51, Folder 1521.

I am secretly afraid of animals -- of all animals except dogs, & even of some dogs. I think it is because of the usness in their eyes, with the underlying not-usness which belies it, + is so tragic a reminder of the lost age when we human beings branched off + left them: left them to eternal inarticulate-ness + slavery. Why? their eyes seem to ask us.⁸

This admission regarding her fear of animals may seem surprising considering her heavy involvement in the local branch of the Society for the Protection of Cruelty to Animals, but in fact it corresponds with an overall acknowledgement of the multiplicity of personhood, represented here by the concept of “usness” (Lee 152). Her assertion that animals live in “eternal inarticulate-ness,” when immediately belied by the claim of their capacity to question without speech, emphasizes that conventional words are but one avenue with which to conduct an interpersonal (or interspecies) relationship.⁹

This acknowledgement of a form of humanity that is not reducible to human and not-human corresponds to the evolution of the corporate person as a being that is at once composed of and (theoretically, at least) subject to the will of its shareholders. Although the dog, like the corporation, is seemingly easily corralled and controlled, it possesses a subjectivity and existence beyond the desires of its owners. For much of its history, the corporation was simply considered to be a creation of the state, and as such acted as a group-name referring to the shareholders. With the advent of real entity theory around the time of this novel’s composition, however, the corporation began to acquire in the minds of certain legal thinkers—and gradually, through jurisprudence and legislation, in the law itself—an existence created out of, but existing independently from, the humans who initially formed it.

⁸ Diary, 1924-34. Box 51, Folder 1523. Edith Wharton Collection. She resorted to conventional epithets, however, when characterizing cats: “The cat: a snake in fur.”

⁹ In a recent biography, Hermione Lee asserts: “In old age [Wharton] often spoke about her almost mystical sense of communication with her dogs, and she judged her new friends partly by whether they shared this enthusiasm” (Lee 152).

In *The Fruit of the Tree*, Wharton takes the commonplace – an elegant drawing room, a stockholder’s meeting, a marriage – and finds the “not-usness” within it. Her reading complicates the real entity theorists’ notion of a group-person arising out of the collection of humans for a common purpose, instead showing the ways in which the group-self, once formed, can be in active opposition to the persons within it.

The novel weaves together the issue of conscious termination of life through euthanasia and the problem of existence alongside and within the corporate person. Mercy killing through morphine first appears not in the context of Bessy’s riding accident, but much earlier, when Amherst, the reform-minded factory manager who would later be horrified at Justine’s euthanasia (by the same method) of his wife Bessy, casually observes of an injured factory hand: “I know what I should do if I could get anywhere near Dillon—give him an overdose of morphine, and let the widow collect his life-insurance, and make a fresh start” (15).¹⁰ Here, the worker’s body is reduced to a machine; when it “breaks down at twenty-five,” the company avoids blame (calling the natural result of horrific working conditions a “phthysical [sic] tendency”) and puts the survivors to less-skilled, lower-paid work, if anything at all (14).¹¹

Although Amherst repeatedly falls into the linguistic trap of treating workers as machinery, he simultaneously recognizes the humanity of the workers, with a familiarity bred of prolonged close contact with their lives. As he laments the current industrial situation, workers and business owners alike become tied up in the same mechanistic construction: “his heart ached for the bitter throes with which the human machine moves on” (48). This “human machine”—

¹⁰ This and future citations refer to the following edition: Wharton, Edith. *The Fruit of the Tree*. 1907. Amherst, NY: Prometheus Books, 2004. Print.

¹¹ In *Bodies and Machines*, Mark Seltzer argues that this conflation of the worker and the machine he or she operates is part of the network of the “body-machine complex” and the “‘realist’ insistence on a compulsory and compulsive visibility”: “the late nineteenth century realist and naturalist text operates through a double discourse by which the apparently opposed registers of the body and the machine are coordinated and ‘managed’ within a flexible control-technology of regulation and production... The relays elaborated between bodies and machines in this discourse hold steadily visible the problem of accounting for human beings.” (95).

nongendered, incapable of feeling pain, incapable of talking back—owes its existence in part to the lack of empathic fellow-feeling between employer and employed, a distance enabled by the rise of the for-profit corporation:

The disappearance of the old familiar contact between master and man seemed to him one of the great wrongs of the new industrial situation. That the breach must be farther widened by the ultimate substitution of the stock-company for the individual employer—a fact obvious to any student of economic tendencies—presented to Amherst’s mind one of the most painful problems in the scheme of social readjustment. . . . while the individual employer was still to be reckoned with, the main thing was to bring him closer to his workers. Till he entered personally into their hardships and aspirations—till he learned what they wanted and why they wanted it— Amherst believed that no mere law-making, however enlightened, could create a wholesome relation between the two. (48)¹²

Although the patriarchal tones of the distinction between “master and man” reveal that Amherst’s is no proletarian consciousness, his prediction of future discontinuity reveals the problems that the person of the corporation presented to contemporary critics. Once ownership of a corporation is spread over thousands of stockholders, does the corporation lose the capacity of empathy? In other words, the being of the corporation, instantiated in the corporate charter, consists in fulfilling the objectives set out therein—but if such a document contains no mention of what is now termed “corporate social responsibility,” can an action to further the wellbeing of the workers be conducted without becoming *ultra vires*? In raising this question, *The Fruit of the Tree* presciently engages with the concerns animating contemporary scholarship on corporate social responsibility.¹³

At this point in the novel, Westmore Mills is a closely-held corporation, with the stock primarily concentrated in the hands of Bessy Westmore, widow of the late mill owner. This sort of corporation, in which stocks are not traded on the open market but rather concentrated in the

¹² Since only corporations issue stock and are structured in the manner she describes, “stock-company” and “corporation” can be used interchangeably.

¹³ See, e.g., Avi-Yonah (2006), French.

hands of a few (in this instance, the Westmore family), appears frequently in much of the business literature of the period—perhaps because it is intelligible in the language of partnerships, the form of business organization that was ascendant prior to the for-profit corporation.¹⁴ When thought of solely in terms of a limited few stockholders, the corporation does not seem all too different from a partnership.¹⁵ As Amherst observes, however—and as the novel pointedly illustrates—the removal between the everyday workings of the corporation and those who benefit from it, one facilitated by the creation of the corporate person, leads to a situation in which the humanity of the workers is disregarded and degraded.¹⁶

Just as the corporation is not a standard, living, breathing human being, so too do the employees become part of this “human machine.” Amherst’s love of the machinery of the mills turned him into an engineer despite his upbringing, and leads him to see the mills and the workers as united in a hybrid organism:

[he] loved the work itself as much as he hated the conditions under which it was done; and he longed to see on the operatives’ faces something of the ardour that lit up his own when he entered the work-rooms. . . . It was not only the sense of power that thrilled him—he felt a beauty in the ordered activity of the whole intricate organism, in the rhythm of dancing bobbins and revolving cards, the swift continuous outpour of doublers and ribbon-laps, the steady ripple of the long ply-frames, the terrible gnashing play of the looms—all these varying subordinate motions, gathered up into the throb of the great engines which fed the giant’s arteries, and were in turn ruled by the invisible action of quick thought and obedient hands, always produced in Amherst a responsive rush of life. (56-57)

Looking at the construction as a whole, his function one of management rather than manufacturing, Amherst can see how each element contributes to the functioning of the “giant” known as Westmore Mills. The doubling of “obedient hands,” however—referring both to the

¹⁴ See the discussion of Richard Harding Davis’s *Soldiers of Fortune* in Chapter 4 for another example of this phenomenon.

¹⁵ The difference, however, becomes apparent the moment a stockholder dies, as happened before the novel’s events (Richard Westmore) and during them (Bessy Westmore). Partnerships are automatically dissolved upon the death of any partner, but corporations, once created, can be immortal.

¹⁶ For more on this problem, see Chapter 2 *supra*.

workers' limbs and the workers themselves—suggests why Amherst may not see the same “ardour” on the “operatives' faces” that he himself feels for the being he helps manage.

Although the workers may nominally be in control of the machines they operate, they in turn are operated by the will of the corporation, made manifest in the form of overseers like Amherst. To see the mills as a body—either as an “intricate organism” or as a corporate person—throws the independence of those who make up that body, whether they be operatives or stockholders, into question.

In regards to its stockholder composition, Westmore Mills is a corporation in transition. Bessy Westmore's husband, Richard, was president before his death, leaving his relative by marriage, Halford Gaines, as the nominal head of the company. By the terms of the will, however, Bessy has inherited her husband's shares—and as Amherst observes to Justine, “her husband was really the whole company. The official cousins hold only a few shares apiece” (19). Amherst's phrasing reveals the degree to which the rhetoric of corporate personhood has pervaded even casual discourse; the primary stockholder *becomes* the company in an abstract sense, even if (as with Bessy) the stockholder has little interest in the functioning of the corporation.

Amherst's dreams for reform of the Westmore Mills thus lie in Bessy's merged self: the combination of feminine emotions and the power that majority ownership of the corporation's stock entails. Although Amherst acknowledges that Bessy never showed any interest in the mills in the past, nor did her husband—“It was a case of inherited money. He drew the dividends, and Truscomb did the rest”—he nonetheless relies on established notions about well-bred women's interests (the ill, the poor, children) to inspire her towards reform (15).

When Bessy actually tours the mills, coming face to face with the suffering of the workers, Amherst must engage with the conflict between dividends and the profit-making project that creates them. Truscomb is a “‘paying’ manager,” one who prioritizes the profits of the stockholders (who in turn keep him in his high-salary job) over the well-being of the workers: “To keep the floors scrubbed, the cotton-dust swept up, the rooms freshly whitewashed and well-ventilated, far from adding the smallest fraction to the quarterly dividends, would have deducted from them the slight cost of this additional labour; and Truscomb therefore economized ... on all expenses connected with improved ventilation and other hygienic precautions” (57-58). The physical plant of Westmore Mills is on the path to “squalor,” and the novel conflates the dinginess of the surroundings with the workers’ “dull eyes and anæmic skins, and in the dreary lassitude with which they bent to their tasks” (58).

The chaos of the mills (something to which Bessy is unaccustomed) makes it impossible for her to perceive what is actually going on until a symbol of mourning left at a carding machine forces her to conduct one of Amherst’s idealized “dialogue[s] between master and man”—this one between a female stockowner and a female employee. As “wave of sympathy” runs through a circle of female workers, Bessy becomes engulfed in it, and her maternal self is physically expressed in a moment of connection with Dillon’s wife: “the scrubber’s sobs were buried on her employer’s breast” (66). When Bessy leaves the company of her female employees and becomes re-absorbed into the male-dominated world of refined drawing rooms, however, this moment of connection evaporates.

The routine “company” Bessy keeps is instead a toxic mix of friendship, family, and business. Since Westmore Mills is a family enterprise, one in which few people associated with the company are not related to the Westmore family by blood or marriage, the corporation has

become weighted down with habit and entitlement, an enterprise managed by its chief stockholders to maintain their financial and social dividends:

Oh, the company, on paper, shows the usual official hierarchy. Richard Westmore, of course, was president, and since his death the former treasurer—Halford Gaines—has replaced him, and his son, Westmore Gaines, has been appointed treasurer. You can see by the names that it's all in the family. Halford Gaines married a Miss Westmore, and represents the clan at Hanaford—leads society, and keeps up the social credit of the name. . . . Westy Gaines has a better head than his father; but he hates Hanaford and the mills, and his chief object in life is to be taken for a New Yorker. So far he hasn't been here much, except for the quarterly meetings, and his routine work is done by another cousin—you perceive that Westmore is a nest of nepotism. (18-19)

Being a Westmore means association with the mills, but it also means having a social status that discourages stockholders from getting to know the source of those funds on a physical level. Accordingly, the formal structure of the corporation, although replete with Westmore kin in a way that would suggest a deep intertwining of family and industry, is in fact animated by subordinates like Truscomb, the manager of the mills who reigns without interference from Halford Gaines.

Halford Gaines, whose very name suggests the pursuit of profit, embodies prosperity to the extent that he transgresses the bounds of refined taste: “The President of the Westmore mills was a trim middle-sized man, whose high pink varnish of good living would have turned to purple could he have known Mr. Langhope’s opinion of his jewelled shirt-front and the padded shoulders of his evening-coat” (110-11). Langhope, Bessy’s father, who describes himself as “hopelessly vague” about business, appears to represent what in Wharton’s novel *The Custom of the Country* is termed “Old New York”—the “old money” mentality where openly demonstrating one’s wealth is seen as gauche.¹⁷ Through her person, Bessy Langhope Westmore

¹⁷ See, for example, the traditional view of social upstarts espoused early in *Custom* by Ralph Marvell: “what Pople called society was really just like the houses it lived in: a muddle of misapplied ornament over a thin steel shell of utility. The steel shell was built up in Wall Street, the social trimmings were hastily added in Fifth Avenue; and the

embodies both the source of Gaines's fortune (the mills) and, if not Langhope's own money, then the comfort he enjoys in her home on a daily basis. Langhope's critique of Gaines's fashion sense belies the comfort of this union, suggesting that the multiple constructs that unite the two men possess conflicting yet interdependent value systems.

In the novel, these value systems become incarnate through the fluid use of the word *company*, signifying both a social gathering and the corporation of Westmore Mills. In this novel, Wharton uses the term "stock company" to represent the enterprise organization characterized in part by the issuance of stock, what is typically termed the corporation.¹⁸ The word *company* is also used, however, to refer to the social gatherings hosted by Bessy and her peers.¹⁹ Interestingly, the first time this usage is implemented, it is unclear whether the "company" spoken of is Westmore Mills, her social circle, or both, as Amherst meditates on Bessy's likelihood of instigating reform: "[the] whole official strength of the company darkened the background with a gathering storm of disapproval—this sense of being the glove flung by her hand in the face of convention" (109). Surrounded by her social circle, many of whom also hold offices in Westmore Mills, Inc., Bessy feels the weight of her corporate responsibilities in the form of obeying the interpersonal pressures weighed by those around her as well as the formal business advice of her corporate officers. If she were to listen to Amherst over the profit-minded counsel of Truscott and Langhope, Bessy would be rejecting the traditional corporate hierarchy which she is supposed to embody. Conceptualizing the corporation in terms of a social circle,

union between them was as monstrous and factitious, as unlike the gradual homogeneous growth which flowers into what other countries know as society, as that between the Blois gargoyles on Peter Van Degen's roof and the skeleton walls supporting them" (Wharton *The Custom of the Country* 73).

¹⁸ Edith Wharton only used the term *corporation* twice in her published work; once in *The House of Mirth* (1905, 113) when Lily Bart compares the socially powerful cohort shunning her to a "close corporation," and once in the story "Roman Fever" (1934), where one of the main characters is "the wife of the famous corporation lawyer, always with a case or two on hand" (*Roman Fever and Other Stories* 7).

¹⁹ *Company* appears sixteen times in reference to Westmore Mills, and six times (either as *company* or "in company with") in reference to a group of people not necessarily joined in a business venture.

however, allows Bessy to cast her actions in terms of setting a trend, something cognizable to the traditionally feminine role to which Bessy restricts herself. In this formulation, Amherst ends up being a “glove”—an object, not a person – which befits both his lower social status and his status within the corporation as a non-stockowning employee (little more than one of the “hands” who work the machines). Bessy’s gendered perspective thus opens up a domesticated view of corporate functioning, showing how the machinations of the boardroom are fundamentally akin to those of the drawing room.²⁰

From Coverture to Corporation

This gendered perspective had been shaped by a longstanding tradition of constructing “compulsory dependency, particularly economic dependency, as an essential characteristic of womanhood” (Warren 45). In Anglo-American legal tradition, a single woman held property and a few other rights in a similar way to a single man; but once she married, a woman’s entire legal identity would be subsumed into that of her husband under the doctrine of coverture. Starting in the 1830’s, however, many states began passing Married Women’s Property Acts, despite concerns that allowing women to control their own property would create divisions between spouses (Warren 49-50; Cott, 1453). Accordingly, even though women (particularly in the Northeast) acquired a bevy of rights—the New York Married Women’s Property Act of 1860 allowed a married woman “to sue or be sued in her own name, to conduct a business or trade, and to sign contracts” —in practice courts were reluctant to interpret the laws in such a way as to allow women their independent rights, and women, in turn, were discouraged from seeking the protection of these laws (Warren 51). As Peggy Rabkin points out, the Married Women’s

²⁰ This language is reminiscent of the German real entity theorists’ love of parsing out who and what constitutes the “hand,” “foot,” “mouth,” etc. of the corporate body. See, e.g., Maitland’s explanation of the “German Fellowship”: “Itself can will, itself can act; it wills and acts by the men who are its organs as a man wills and acts by brain, mouth and hand.” (Maitland xxvi)

Property Acts were passed with relatively little controversy, as opposed to the massive opposition faced by proponents of women's suffrage, illustrating how the female ownership of property would be easily subsumed into patriarchal culture (Rabkin 10). Coverture, although extinguished on paper, lived on in medical, religious, and secular discourses of womanhood (Warren 58-63).

When John Amherst and Bessy Westmore marry, their union provides insight into the ways in which coverture still limps on in social discourse while being slowly eroded by the superseding doctrine of corporate personhood. Although John and Bessy still constitute one person in law in some respects, Bessy retains the control over the mills that she was given by the terms of her first husband's will. It is perhaps no accident that the formation of an artificial person by the combination of husband and wife gives way in this novel to the formation of an artificial corporate self, but one whose falseness in describing the real interaction between human beings is as evident as the falseness and oppression of the unity of husband and wife under coverture. Some of the vestiges of this doctrine remain, however, mostly in naming; for example, Mrs. Dressel refers to Bessy and John as "the John Amhersts," providing the reader's first indication that Bessy and John have married in the intervening three years (142).

Although one would think that marriage to the owner of the corporation would result in the ability to effect whatever changes one wished in the conditions suffered by the operatives, it becomes quickly apparent that Amherst has not changed Bessy's attitude of disgust towards the town of Hanaford, nor fulfilled the obligations that lie therein. With her knowledge developed through her childhood friendship with Bessy, Justine's perspective may offer the answer as to how John Amherst may have become so deluded as to Bessy's character: "She was always the dearest little chameleon in the world, taking everybody's colour in the most flattering way, and

giving back, I must say, a most charming reflection—if you'll excuse the mixed metaphor; but when one got her by herself, with no reflections to catch, one found she hadn't any particular colour of her own." (150). In this "mixed metaphor"—a phrase that speaks not only to Bessy, but to the dual work of *company* in this novel—Justine portrays Bessy as one who throws back the best characteristics of others, but at the sacrifice of not having an authentic self of her own. To have the Westmore stock concentrated in such a blank vessel – “One of the girls used to say she ought to wear a tag, because she was so easily mislaid” – is a marked contrast to the powerful Frank Cowperwood of Dreiser's *Trilogy of Desire*, who creates his own corporate self that is at once a part of him and legally separate (150). For Bessy, the Westmore Mills are a “tag” of ownership placed upon her, and the corporation, with its strength and financial power, owns the natural person of the being that is supposed to own it.

As Justine observes in her second visit to Hanaford, at the Gaines' garden party, society there functions as a group person much like the corporate body, except that membership is directly dependent on birth and marriage, and only indirectly marked by stock ownership. As Mrs. Dressel's friend, attired in a fashionable (and borrowed) Irish lace dress, Justine qualifies to participate in the Gaines entertainments, which she observes are the “concentrated essence” of Hanaford society: “rather a dull thick body, with a surface stimulated only by ill-advised references to the life of larger capitals” (153).²¹ This image of society as a slow-moving corpus parallels the constitution of a corporate body. Instead of manifesting the excitement created by what Wharton refers to in *The Custom of the Country* as the “real life” of businessmen—trading shares, spending dividends – as the city of New York does, Hanaford society, enabled by the

²¹ The colonial implications of this choice of clothing are reinforced by the reference to the garden party's entertainment: a “trio of Cuban singers” (178).

money of the mills and the crucible in which it is re-formed, suffers in sluggishness by distance to the center of its corporate life (Wharton *Custom* 203).

Hanaford society acts as a unified body in opposition to Amherst's idealized vision of what the Westmore Mills could be. Although he had hoped to interest Bessy in his reforms, reasoning that as the mill owner, she could not possibly be uninterested in the welfare of the workers, he soon realizes that Bessy's natural and corporate selves speak as one when it comes to profit:

Certainly, if the case could have been put to Hanaford—the Hanaford of the Gaines garden-party—it would have sided with Bessy to a voice. And how much justice was there in what he felt would have been the unanimous verdict of her class? Was his mother right in hinting that he was sacrificing Bessy to the mills? But the mills *were* Bessy—at least he had thought so when he married her! They were her particular form of contact with life, the expression of her relation to her fellow-men, her pretext, her opportunity—unless they were merely a vast purse in which to plunge for her pin-money! (180-81)

By merging his fortunes with the primary stockholder of Westmore Mills, Amherst had thought that he would possess the mills themselves under the traditional construction of coverture (“the mills *were* Bessy”). Seeing only Bessy's corporate self—or perhaps having it reflected back at him to match with his desires—Amherst had believed that he could exert the leverage over her acquired by ties of emotion to make her implement the reforms he desired, without having to make her really understand the issues at stake in a comprehensive way. Positioned at the intersection of the mills and Hanaford society, however, Bessy is too firmly ensconced in the habits and perspectives of her social body, reinforced by the desire for profits, to be pulled away by one individual—husband or not. In the new world that her social circle represents, a woman of high social standing may both own and protect her property, so long as she does so in accordance with the elevation of profit above other motivations and allows men to do the

quotidian busywork required to run a business.²² Despite Amherst's desperate desire to instigate reforms in how Westmore Mills (Inc.) treats its workers, he must confront the reality that part of him stubbornly insists on ignoring—that Bessy's desires, both in her own person and her corporate person, are for profit, not worker comfort.²³ Although Bessy possesses an ample appetite for risk, embodied in her love of riding the mare "Impulse," she is not willing to risk her own enjoyment in a gamble for the wellbeing of others.

Although Bessy engaged with the mills as a subordinate creature in the early days of her relationship with Amherst — "[in] her eager adoption of his ideas she had made a pet of the mills, organizing the Mothers' Club, laying out a recreation-ground on the Hopewood property, and playing with pretty plans in water-colour"—she soon realizes, thanks to counsel from her father and Tredegar, that the more money is spent on the workers' well-being, the less she has for her own personal expenses (181). The mills thus move from "pet"—a creature brought into the family, whose wellbeing is valued alongside the humans who surround it—to a source of profit, much like the difference between a family dog and a farm steer.

In this way, the classic corporate objective—to make money for the stockholders—is actualized as a choice between personal pleasures and distant, suffering operatives who Bessy cannot empathize with in the abstract, as her lack of imagination made it "easy for her to forget painful sights when they were not under her eye" (181-82). Interestingly, this phrasing reinforces a real entity theory reading of the novel. If Amherst were still employed by the mills, he would be an "eye" of the corporation, and thus the suffering he observed would be made

²² In other Wharton works, women run their own businesses—see, e.g., Mme. Regina the milliner in *The House of Mirth* – but that independence comes with a lower social standing.

²³ During the time of the novel's composition, Wharton collaborated with her brother Harry to sell a piece of property in New York to a trust company. Wharton's own facility with business matters (and Justine Brent's similar acumen in the novel) stands in notable contrast to the fashionable haplessness of Bessy (Langhope) Whitmore Amherst in *The Fruit of the Tree*.

manifest and real to Bessy. Since he is no longer an employee, however, and the actual employees who report to Bessy dismiss the suffering of the workers as idle nonsense, it can be said that the painful sights are truly not “under her eye” unless they are exposed to her natural body (187). By figuring Amherst as no longer part of her body, however, the phrasing further reinforces the disappearance of coverture; the corporate union is more real, more tangible, than the union of husband and wife.

Meanwhile, the “official ‘platform’ on which she had married,” the justification for the “unconventionality” of marrying Amherst, was subordinated to the “modern code of chivalry that lovely woman should not be bothered about ways and means” (183). Again, Bessy at once expects to benefit from the exploitative and profitable practices at Westmore Mills and to maintain the fashionable woman’s ignorance of the ways that money comes into her coffers. Bessy is thus torn between the desire to maintain her comfortable lifestyle, free of concern about where her funds come from, and the desire to palliate her husband, who dreams of helping Bessy “to use her power nobly, for her own uplifting as well as for that of Westmore” (184). Her husband, meanwhile, constructs his social identity in a way opposed to that of the Hanaford elite, making it doubly difficult for him to communicate a message alien to their values:

He was never common or ridiculous, but [Bessy] saw that he would never acquire the small social facilities. . . . The men’s smokingroom anecdotes did not amuse him, he was unmoved by the fluctuations of the stock-market, he could not tell one card from another, and his perfunctory attempts at billiards had once caused Mr. Langhope to murmur, in his daughter's hearing: “Ah, that's the test—I always said so!” (262-63)

As passionate as John Amherst is about the lived experience of the mills, and as much as he is willing to participate in the corporation through marriage to the primary stockholder, he refuses to see the corporation’s functions as entertainment, as the placement of the stock market between jokes and billiards implies the others in his social circle do. His failure to engage successfully in

the small battles of billiards and card games by which the company of the drawing-room evaluates its members translates directly into a failure to incorporate himself fully into the operations of Westmore Mills.

Following the aforementioned garden party, John Amherst forces Bessy's father Mr. Langhope, the family lawyer Mr. Tredegar, and Bessy into an evaluation of his "interests"—the ways in which he, as Bessy's spouse, is and is not part of the body of Westmore Mills such that his opinions regarding its proper management need to be taken into account. Clustered around "Richard Westmore's table," in "his house," the physical embodiments of the deceased Westmore's will, which gave control of the mills to his widow Bessy, permeate the meeting (186). Although no longer alive in his natural form, Richard Westmore lives on in paper form through a will that actualizes the desires of a man long dead, lending him a presence as tangible—and easily manipulated—as the corporation he was once part of.

As Bessy's spouse, Amherst, lacks an enumerated role in both the social and financial company, and consequently calls this Westmore Mills meeting to "define my position in the matter"—the matter at hand being the welfare of the mills' operatives (189). Aware of the problems involved in his tenuous position, Amherst, "[as] far as the welfare of Westmore was concerned [,] would rather have stood before his companions as the assistant manager of the mills than as the husband of their owner" (187) – but, having abandoned that position for the phantom of control that a marital union with the stockowner seemed to promise, Amherst must now confront the gulf between the ghost of coverture and the reality of modern stock ownership.²⁴

²⁴ Wharton does not portray most of the courtship or marriage of these two characters, but after the fact, Amherst repeatedly returns to Bessy's status in relationship to the mills when he thinks about why they got married (*see, e.g.*, 116-18, 180-81, 324).

Nonetheless, Tredegar initially refuses to admit of any opening between John's position and that of Bessy, calling on antique notions of marital shared interests: "Is not your position naturally involved in and defined by hers? You will excuse my saying that—technically speaking, of course—I cannot distinctly conceive of it as having any separate existence" (188). Although this formulation nominally cedes Amherst some sort of role in relation to the mills, in fact it extinguishes it by making any initiative Amherst may have dependent on the controlling whims of his wife. Langhope, in turn, points out the old structure of coverture under which Amherst's position would have been created, not circumscribed, by Bessy's mill ownership: "But surely—according to old-fashioned ideas—[your position] implies identity of interests?" (189). Under coverture, the spouses became one being, but in practice that being was the husband's; he alone held sole power to enter into contracts, such that he "covered" the person of the wife with his own. Now, however, when pushed, Langhope must admit that it is Bessy's person that covers John's, not the other way around: "'Yes, but whose interests?' 'Why—your wife's, man! She owns the mills'" (189). As with coverture, which extinguished the legal personhood of the wife, Bessy's will, which controls the corporation thanks to her stock ownership, submerges John's desires, along with John's capacity to act on them.

John, as the powerless party, thus identifies a key distinction between "interest," implying an emotional process of connection, and "interests," signifying a profit-driven approach to the mills: "Bessy's interests in Westmore should be regulated by her interest in it—in its welfare as a social body, aside from its success as a commercial enterprise. If we agree on this definition, we are at one as to the other: namely that my relation to the matter is defined by hers" (189). Acknowledging Westmore Mills as a "social body" powerfully evokes the dual meaning of *company* as both profit-minded corporation and the Hanaford high society, motivated by the

desire to profit as much as possible, that controls it. John Amherst seeks to codify what he earlier hoped Bessy's personal exposure to the mills would achieve: the reconfiguring of the corporate objectives to encompass the "hands" as part of the corporation rather than mere machinery, which he had sought to enact by exploiting Bessy's emotions.

As Amherst learns, however, the contemporary corporation has transformed dramatically from its origins as a charitable institution; the mind of the corporation, as such, is motivated by profit, and thus his objective cannot become one with the corporate objective:

Whenever the Westmore mills had been enlarged, it had been for the sole purpose of increasing the revenues of the company; and now Amherst asked that these revenues should be materially and permanently reduced. [...] But his demands, moderate as they were, assumed in his hearers the consciousness of a moral claim superior to the obligation of making one's business 'pay'; and it was the futility of this assumption that chilled the arguments on his lips, since in the orthodox creed of the business world it was a weakness and not a strength to be content with five per cent where ten was obtainable. Business was one thing, philanthropy another; and the enthusiasts who tried combining them were usually reduced, after a brief flight, to paying fifty cents on the dollar, and handing over their stock to a promoter presumably unhampered by humanitarian ideals. (194-96)

In the corporate charter (also referred to as the Articles of Incorporation), each corporation (depending on the laws of the state) must list a "purpose," which typically comprehends the conducting of any lawful business in the state of incorporation. The purpose of the vast majority of corporations is business—the making of money, which will then be distributed to the shareholders.²⁵ To violate the interest of the shareholders is thus to violate the purpose of the corporation, an *ultra vires* prohibited action.

By arguing for reforms to the physical plant of the mills—expansions intended not to increase profit, but to decrease the likelihood of accidents such as the one that opens the novel—

²⁵ Many charitable corporations still operated at the turn of the twentieth century, but the vast majority of corporations in this period existed to make a profit through commerce. As long as they acted in correspondence with all state and federal laws, their obligations as regards the well-being of the State were fulfilled in a legal sense. For more, see Chapter 1 *supra*.

Amherst is thus attempting to refigure the purpose of the corporation as something that must fulfill the emotional as well as the financial needs of the stockholders. The “company”—here, not only Westmore Mills, but also the social gathering comprised of the major (Bessy) and minor (Westmore cousin) stockholders—has historically been driven by the desire to increase the contents of their own coffers, to the disregard of the workers’ health and safety. Refiguring the corporate charter in such a way that the well-being of all who are associated with Westmore Mills is prioritized would require reconceptualizing “the company” to include the workers as well as the stockholders, which, in turn, would entail different way of thinking about what making the business “pay” actually means. Such a corporation would be closer in spirit to the historical antecedents of the corporate form than the profit-driven business common in this period.

Conceiving of the corporation in this way, as Amherst acknowledges here, is not likely to succeed given past attempts to meld social reform with profitable ventures. Describing these would-be pioneers as “enthusiasts” implies a fundamental lack of reasonableness in their plans, one that stands in contrast to Amherst’s proposed measured pace of reform: “His aim was to remedy the abuse nearest at hand, in the hope of thus getting gradually closer to the central evil; and, had his action been unhampered, he would still have preferred the longer and more circuitous path of practical experiment to the sweeping adoption of a new industrial system” (195). Consequently, this critique of “enthusiasts” may reflect more about the expectations of Amherst’s listeners than the actual consequences of Amherst’s proposals. Nonetheless, Amherst recognizes that the substance of what he proposes, regardless of its chances for improving the social relation between employer and employee, is less important than the passion with which he pleads to the chief stockholder, his wife: “Reason would be wasted on all; but eloquence might at

least prevail with Bessy....” (196) Once again, Amherst’s hopes of corporate reform depend upon the emotionality of a human (particularly, in John Amherst’s stereotypically gendered view, of a woman), one whose emotional attachments he hopes to exploit in order to institute larger changes.

Subsequently, Bessy explains to John (in private) her own understanding of corporate personhood and the responsibilities it entails for her as primary stockholder:

‘I do feel sure you know—about the treatment of the hands and all that; but you said yourself once—the first time we ever talked about Westmore—that the business part was different——’
Here it was again, the ancient ineradicable belief in the separable body and soul! Even an industrial organization was supposed to be subject to the old theological distinction, and Bessy was ready to co-operate with her husband in the emancipation of Westmore’s spiritual part if only its body remained under the law. (202)

In Bessy’s vision, Westmore Mills’ personhood can be divided into the physical—the “giant” that Amherst envisions the mills to be—and the spiritual, exemplified by Bessy’s implementation of the Mothers’ Club and the playground for the children of (and/or the youngest of) the millworkers (57, 190). Accordingly, the profit-making portion—comprising the physical plant of the mills and the “hands” who operate it—remains untouched, while the spiritual element ministers to the emotional needs of the millworkers after they stop being “hands” and resume their individual natural being. In essence, Bessy argues that she can act with a conscience—taking an interest in the spiritual and emotional wellbeing of the employees—while still acting as a corporation as far as the profit motivation is concerned.

This assertion is in line with contemporary legal scholarship regarding the corporation, which concerned itself only with the actions of “agents” and did not delve into the distinctions between corporate officers and employees with little opportunity to act creatively in the name of the corporation. The law of corporations comprehends “agents” as those employees invested by

the board of directors to act on behalf of the corporation in those matters which are outside the exclusive purview of the Board (Pepper 257).²⁶ If one of the millworkers were to commit a tort or a crime in the course of their work for Westmore Mills, the corporation of Westmore Mills would be “subject to indictment precisely to the same extent as any individual principal or master is subject to indictment for the crimes of his agents or servants” (Canfield 131 n.3). With this doctrine, inherited from feudal relationships between master and servant, the individual millworker does not acquire any new rights from being employed by an artificial person instead of a natural one—indeed, George Canfield, in 1917, goes on to make precisely that point: “a corporation which in general must be treated as if it were a person cannot be held liable under this doctrine to any greater extent than any human being” (Canfield 131 n.3).

To counteract Bessy’s view of the corporation – one which, as we have seen, is more orthodox than John might like to admit – he attempts to refigure the meaning of “prosperity” to encompass the wellbeing of those affected by the corporation as well as the stockowners who formally comprise the corporate body: “You would certainly have less money for a number of years [if reforms were enacted]; after that, I believe you would have more rather than less; but I should not want you to think that, beyond a reasonable point, the prosperity of the mills was ever to be measured by your dividends” (204). Even though Amherst has earlier acknowledged that “wages and dividends and so on...are out of my province,” he engages here with the language of profit only to refigure it in a much broader way than either Bessy or her late husband would have done (53). Despite his attempt to redefine prosperity, however, the fact remains that the

²⁶ With the rise of real entity theory, some argued that the word “agent” was inadequate to represent the role, like W. Jethro Brown, writing in 1905: “[N]atural persons act without the mediation of another person. The corporate person can only act through the mediation of natural persons. The real significance of this difference is seen when we try to find a name for the natural persons who act for the group. Shall we call them agents? representatives? or organs? To call them agents is clearly open to objection, since an agent is appointed by a principal who himself wills and acts” (Brown 373).

prosperity of the mills *is* objectively measured by her dividends, and thus he couches this hope of extending “prosperity” throughout the mills in an optimistic belief in the eventual financial benefits of a salutary work environment.

Ultimately, however, the only way John can achieve a temporary victory is by exploiting Bessy’s desire for “immediate pleasure” (204). Bessy’s hedonism is one of her defining characteristics—she cannot bear to suffer in a given moment, even if it means she will be able to enjoy more pleasure later on—and so she is ill suited for the discomfort of arguing with her husband to protect her income. To win the argument, Amherst pretends to leave in tired resignation, prompting Bessy to give in: “I’ll do anything...only say you don’t hate me!” (206). A victory dependent on temporary pleasure is one that will ultimately fail, however; the indulgences enabled by Bessy’s dividends grow smaller and fewer as those dividends are repurposed towards projects of reform, until those projects of reform are starved into nonexistence.

In their last fight before Bessy’s accident, Amherst tries, and fails, to create a unitary marital person that will translate into a shared commitment to the reform of Westmore Mills. Rejecting the company’s claims that he has no right to spend her money, he reframes the issue as one of marital trust and unity rather than the forfeiture of “self-respect” that Bessy’s social circle considers it to be: “You’ll say that what I’m asking you is to give me back the free use of your money. Well! Why not? Is it so much for a wife to give?” (323) Throughout their marriage, Amherst has consistently clung to archaic notions of “the good woman’s code of ethics” that he expresses in a quotation from Milton’s *Paradise Lost*: “*He for God only, she for God in him*”

(179, emphasis in original).²⁷ Accordingly, Amherst has approached their entire romance with the expectation that by uniting in marriage with Bessy, he would then become part of the mills, and be empowered to implement reforms. Even in the moments where his persuasive powers failed him, he called on traditional stereotypes of women's emotionality to coerce Bessy into agreeing with his plans against the counsel of her other advisors. In this moment, however, Amherst is forced to make explicit his expectation that Bessy should comply with long-dead notions of coverture and yield up all of her property to her baron. Indeed, to him, it is the only moral solution that will allow the most good to be done: "I've *no right* to let you keep me from Westmore" (324).

These, however, are not the values under which Bessy was raised, and she takes a stand against her husband's insistence that she revert to these ancient norms: "I don't see why you should expect me to give up all the ideas I was brought up in. Our standards are different—but why should yours always be right?" (324) In this moment, Bessy transcends the traditional feminine roles to which she often relegates herself, asserting her values—which correspond to the corporate value hierarchy in which profit is a source of virtue, not guilt—in an attempt to maintain her privileged way of life. Although John declares a wife's "dreams and her hopes, her belief in justice and goodness and decency" are the most important things she entrusts to her husband, so much so that if he destroys them, "he'd better have had a mill-stone around his neck," he seems not to recognize that Bessy's values do encompass her dreams and hopes—

²⁷ The full passage, describing Adam and Eve before the Fall, completes the picture of male domination and female submission: "For contemplation he and valor formed, / For softness she and sweet attractive grace; / He for God only, she for God in him. / His fair large front and eye sublime declar'd / Absolute rule..." (IV, 297-301) In a Miltonic reading, the novel's title—*The Fruit of the Tree*—thus stands for the introduction of disharmony into a perfect union (Carlin).

dreams and hopes that depend on having a large amount of disposable income.²⁸ The Bessy he wants to see and the Bessy that stands before him have rarely been so clearly different than in this moment in the novel.

In John's view, however, Bessy's socially inculcated values wrongly identify interference with a wife's corporate self, or at least the privileges that derive from it, as the greatest of sins: "Nobody has a word to say till he touches her dividends—then he's a calculating brute who has married her for her fortune!" (324) The choice of the word "dividends" as opposed to "income" is key here, as it reminds the reader of the essentially corporate nature of these funds. Membership in the corporation is thus prioritized above the union of husband and wife; the marital body gives way to the corporate body. Although Bessy has compromised socially in the hopes of maintaining her relationship with Amherst – she gives up the friendship of the divorcée Blanche Carbury in the hope that it will lead to concessions from Amherst as regards the mills – her actions nonetheless place corporate responsibilities over marital ones (325). In the case of Blanche Carbury, Amherst views her negotiations as symptomatic of an addiction to money, not as Bessy's self-actualization: "he said to himself that she would sooner desert a friend to please him than sacrifice a fraction of her income; and the discovery cast a stain of sordidness on their whole relation" (327). Unable to reconcile himself to Bessy's financial control, Amherst leaves the house. He would not return until after Bessy's fall from her mare "Impulse," which she rode alone in specific contravention of his last communicated wishes—a

²⁸ John Amherst's formulation echoes a passage from the New Testament in which Jesus threatens those who would cause children to lose faith: "If anyone causes one of these little ones—those who believe in me—to stumble, it would be better for them to have a large millstone hung around their neck and to be drowned in the depths of the sea." Matthew 18:6 (*see also* Luke 17:2; Mark 9:42). The choice of this metaphor reinforces John's infantilization of Bessy, as he insists on seeing her as inferior and incomplete, not an adult with desires and values equal to his own.

ride that would result in a disastrous fall and eventually euthanasia at the hands of her friend Justine Brent (377).

Before her death, Bessy crafts plans for a pleasure house that will be a refutation of her earlier dependence on her husband, encouraged by the voicelessly communicated critique of her reclaimed friend Blanche Carbury: “What! She was a young woman, with an independent fortune, and she was always wavering, considering, secretly referring back to the mute criticism of an invisible judge—of the husband who had been first to shake himself free of any mutual subjection?” (364). The pleasure house thus becomes the physical manifestation of Bessy’s rejection of John’s reforms; instead of modernizing and increasing the safety of the physical plant of the mills, Bessy aims to modernize and increase her own comfort (literally her physical “pleasure”). In the process, Bessy has transferred the management of her finances to Mr. Tredegar, who she trusts to share the prioritization of her own dividends over reforms (365).

Bessy is frustrated in her aims, however, by the reduction in her income that is still resulting from the reforms she had allowed John to enact earlier, and she mourns her own delusions tearfully:

The humiliation—before my friends! Oh, I was warned...my father, every one...for Cicely’s sake I was warned...but I wouldn’t listen—and *now!* From the first it was all he cared for—in Europe, even, he was always dragging me to factories. *Me?*—I was only the owner of Westmore! He wanted power—power, that’s all—when he lost it he left me. (368)

In grief for her dashed plans and failing marriage, Bessy laments her loss of social value in the “company” of Hanaford, manifested both by the thwarted pleasure house and by her choice to marry John in opposition to the wishes of her family, who wish to retain value for the next generation (her daughter, Cicely) as well as for their own wellbeing. Looking back on the beginning of her marriage, Bessy cynically (but arguably realistically) identifies John’s

motivations, opaque to her at first, as rooted in the desire to possess power over the course of Westmore Mills. Although she downplays her own role in the mills, referring to herself as “only the owner,” she simultaneously acknowledges her ability to grant that power, and correctly identifies John Amherst’s withdrawal from active participation in her marriage with the rejection of his corporate reforms.

Towards Matriarchy

After Bessy’s death, the narrative skips ahead a year and a half. Amherst has settled into the house that is now his, along with his mother. Under the terms of Bessy’s will, he has finally become part of Westmore Mills:

Bessy had divided her estate between her husband and daughter, placing Cicely's share in trust, and appointing Mr. Langhope and Amherst as her guardians. As the latter was also her trustee, the whole management of the estate devolved on him, while his control of the Westmore mills was ensured by his receiving a slightly larger proportion of the stock than his step-daughter. (436)

Although Amherst is now part of the corporate body, his earlier views on marital union seem to color the way he approaches his new ownership, causing him to view it as the logical continuation of the reconciling gesture that Bessy had made by crafting the will to give him a controlling share. Like Bessy, he sees his role in the mills as motivated by the protection of Cicely’s interests, but without her to protest, he can reimagine those interests as encompassing a vision of “prosperity” that includes worker well-being as well as high dividends: “The mills were virtually his; and the fact that he ruled them not only in his own right but as Cicely’s representative, made him doubly eager to justify his wife’s trust in him” (438). Amherst’s emphasis on Cicely’s ownership corresponds with the late nineteenth century tendency of legal reformers to find it easier to comprehend female property ownership when embodied in the next generation—their daughters—than when the current state of marriages was at hand (Rabkin 13,

81). The Westmore mills are now an Amherst family enterprise, as John Amherst is able to enact his own vision of responsible corporate ownership and inculcate those values into his stepdaughter, Cicely Westmore. Again, the communication of values from father to daughter transcends the power of the marital bond, just as it did (to Amherst's chagrin) with Bessy and her father Mr. Langhope.

As her husband had done before her, Bessy lives now only in the form of her will and its consequences. And like the deceased Richard Westmore, whose desires were made into Bessy's own, the only Bessy that remains is the one that John Amherst wished to see. Their marriage, which the novel has painted as one of conflict and misunderstanding, is re-formed in Amherst's mind as one of emotional and ideological unity, in which all of Amherst's desires for reform were echoed and redoubled in Bessy's own mind: "Amherst persisted in regarding the gift of her fortune as a gift not to himself but to the mills: he looked on himself merely as the agent of her beneficent intentions" (439). This willful self-delusion enables Amherst to enact the very reforms that his wife fought against while still formulating them as part of a familial project, an inheritance of values as well as stock.

As the novel concludes, Amherst's reforms have made Westmore and the mills it is built upon "humanized" and successful (621). Justine, now Amherst's wife, and John inculcate Cecily, the next generation of the corporate body, with the importance of her dual identity:

Cicely was old enough now to regard her connection with Westmore as something more than a nursery game. She was beginning to learn a great deal about the mills, and to understand, in simple, friendly ways, something of her own relation to them. The work and play of the children, the interests and relaxations provided for their elders, had been gradually explained to her by Justine, and she knew that this shining tenth birthday of hers was to throw its light as far as the clouds of factory-smoke extended. (622)

The emphasis on mill children allows Cicely to cultivate the faculty of empathy, encouraging her to craft a shared identity with the millworkers employed by her corporation.

By choosing her tenth birthday as the occasion on which to unveil the new recreational facility, Amherst consciously casts the humane treatment of millworkers as a project bound up inextricably with female stockowners, one dependent on the duality of natural person and stock ownership. At the celebration, Justine learns that the pleasure house he presents as Bessy's dearest desire for the workers was in fact the gymnasium Bessy had wanted to build to spite Amherst: "a project devised in deliberate defiance of his wishes, and intended to declare his wife's open contempt for them, [had] been transformed into a Utopian vision for the betterment of the Westmore operatives" (628). The "phantom" Bessy, living in the stock she had devised to Amherst and Cicely, becomes for Amherst a symbol of everything he wished the real Bessy to be, and in the process, supplants the real, human, flawed woman (Justine) who actually does share his goals and values (629).

Justine's confusion and horror thus combines with the realization that not only has Amherst veiled his reform project in stereotypically feminine values to create a false notion of matriarchal continuity, but the entire company—socialites and operatives alike—believe his version of events to be true:

ah, he had done poor Bessy justice! And to think that till now Hanaford had never fully known how she had the welfare of the mills at heart—how it was really only *her* work that he was carrying on there! Well, he had made that perfectly clear—and no doubt Cicely was being taught to follow in her mother's footsteps: everyone had noticed how her step-father was associating her with the work at the mills. And his little speech would, as it were, consecrate the child's relation to that work, make it appear to her as the continuance of a beautiful, a sacred tradition.... (630-31)

By creating a vision of a responsible, charitable, yet efficient female stockowner and tying it so explicitly to Cicely—she is even given the key line in the ceremony, "In my mother's name, I give this house to Westmore"—Amherst refigures the Westmore Mills corporate body as female, even while instituting values that were in direct opposition to the previous female stockowner's

(629). By imposing a vision of female stockownership that encourages Cicely to think of herself as the beneficent mother/guardian of the workers, Amherst is actually restricting Cicely, and by extension female stockowners in general, to a stereotypically gendered role in relation to what is essentially a profit-making enterprise.

Amherst's failure to comprehend women as possessing equal rights and desires is illustrated heartbreakingly by his treatment of Justine Brent, the independent nurse who becomes his wife by the end of the novel. Once she reveals that she had euthanized Bessy out of charity, Justine loses the "secret inner union" that she and Amherst once shared in their marriage (623). As the novel ends, she observes that "they no longer had any real life of their own"—they share their work, but little else (623). With Bessy refigured into a loving martyr, John Amherst has no room to comprehend a living woman who, although flawed, is more than his equal in intelligence and competence. Although Justine, as the only one who knows that the gymnasium was actually the product of Bessy's selfish desires rather than a munificent attempt to better the lives of Hanaford's workers, could destroy Amherst's vision, she refuses to do so, seeing Bessy's living ghost as the "price" she must pay for ending Bessy's suffering (632). As she contemplates her new reality, the "smoke of Westmore" rises in front of their shared gaze—as the novel's closing image, a reminder of the immortal corporation of Westmore Mills and its power to overwhelm lesser unions (633).

In both the exploits of Dreiser's Frank Cowperwood and the travails of Edith Wharton's Bessy Westmore and John Amherst, the corporate entity's forms and powers are determined by the social and economic pressures that surround them. For *The Financier*, *The Titan*, and *The Fruit of the Tree*, these surroundings consist of urban or sub-urban society, centered in the Northeast or Chicago. In the chapters that follow, I will read Frank Norris's *The Octopus: A*

Story of California (1902) against Richard Harding Davis's *filibustero* bestseller *Soldiers of Fortune* (1897). Both of these novels deal with resource extraction through corporate means, but do so in contexts ranging from the wide-open wheat farms of California to the fictional Latin American republic of Olancho. The social body of the corporation, replete with the vagaries of the individual stockowners, comes into direct conflict with the local customs of the lands it enters in to exploit, raising the question of what kind of citizen the corporation is capable of being.

CHAPTER 4

“The Chief Civilizer of Our Century”: Corporate Imperialism in Richard Harding Davis’s *Soldiers of Fortune* (1897)

In February of 1902, an article by Frank Norris appeared in the magazine *The World’s Work*. Entitled “The Frontier Gone at Last”—and echoing Frederick Jackson Turner’s famous argument a decade earlier in “The Significance of the Frontier in American History” (1893)—the piece lamented the loss of the “romance” of the frontier that “we Anglo-Saxons” had pursued since the early days of striking across Europe (Norris “Frontier” 69). Whereas Turner linked the so-called closing of the frontier to the findings of the 1890 U.S. Census, Norris pointed instead to the Spanish-American War and the consequent spread of U.S. military power across the Pacific. In Norris’s view, an era of military conquest was coming to an end, only to be replaced by a new “desire for conquest” in the form of trade. The “great word of our century,” he wrote, “is no longer War, but Trade” (Norris “Frontier” 74). Even “the most peacefully disposed of American manufacturers,” in his view, were at bottom in the business of conquest (Norris “Frontier” 74).

Norris’s romanticization of trade as the new American conquering spirit helps highlight the commonalities between his own *The Octopus: A Story of California* (1901), a naturalist critique of the dangers of corporate power, and Richard Harding Davis’s earlier romance *Soldiers of Fortune*, a swashbuckling tale of mining and adventure in the fictional Latin

American republic of Olancho.¹ Although *The Octopus* and *Soldiers of Fortune* seem to have diametrically opposed views of the corporation, a closer examination reveals surprising commonalities, particularly in the two novels' common treatment of the relationship of middle management to the corporate body, the conflict between nature and the corporation caused by resource extraction, and the battle of large group entities—whether corporations, nations, or intangible forces—that each novel portrays.

In this chapter, I will analyze the corporate imperial project as it appears in Davis's novel, highlighting in particular how the process of corporate domination becomes reframed as part of a civilizing imperative. Davis's novel occupies an unusual position in this study, in that it is one of the rare instances of a novelist treating the corporation as, if not wholly virtuous, then entirely something to be admired. Davis localizes the force of the corporation not in its stockholder, but in middle management, exemplified by the novel's filibustering hero, Robert Clay. The spirit of the corporation, meanwhile, is given form in the person of Hope, the younger daughter of the sole stockholder and the future wife of the heroic engineer and manager. In this way, the emphasis on family found in artificial entity treatments of the corporation and the emphasis on will found in real entity approaches become fused in a depiction of the mining corporation as the benign agent of U.S. imperialism. In the next chapter, I will turn to Norris's own *The Octopus*, which, despite his paean to the virtues of the corporate industrialist, shows how the notion of corporate personhood, benign and comforting when displaced on a foreign landscape, could turn terrifying when the corporate "monster" devours U.S. land.

¹ Although I acknowledge that these two works arose in different genres, I contest that these novels share much more than the divide of genre would suggest. After all, although *Soldiers of Fortune* is not a naturalist text, it is "characterized by both an aggressive masculinity and professionalism" just as the "authorial ideology of naturalism" is; and as June Howard notes, "Frank Norris both wrote some wholly or predominantly sentimental tales and incorporated domestic formulas in virtually all his work" (Howard 179)

**“A Name and a Power:”
Middle Management, Gender, and the Family**

Soldiers of Fortune, the reporter Richard Harding Davis’s most popular novel, came about through corporate tourism. In 1886, Davis accompanied his old tennis partner William W. Thurston, the president of the Bethlehem Iron Company, on a tour of southeastern Cuba. The purpose of the tour was to inspect the iron mines in Siboney and the railroad that had been custom-built to bring the ore to the harbor of Santiago (Lubow 29). Years later, Davis would take his recollections of Santiago de Cuba, combine them with the impressions garnered from an 1895 tour of Central America, and produce what would become his most popular book (Lubow 123; Murphy 122). With a setting that spans the drawing rooms of polite New York and the remote mountains of Latin America, *Soldiers of Fortune* “became the second-best selling book of the year” when it came out in 1897 (Lubow 124).

Opening the novel from the perspective of Alice Langham, the eldest daughter of the novel’s primary stockholder, creates a domestic, wealthy, U.S. baseline from which the action of the novel can contrast itself. Alice, at home in New York society, sits at a formal dinner party between Reggie King, her presumed future fiancé, and Robert Clay, the mysterious engineer who will become the hero of the novel. In a narrative aside from Alice’s point of view, she meditates on her rejections of other suitors and wonders whether Reggie King had “another side, one that had not disclosed itself, and which she could not perceive in the strict social environment in which they lived” (3).² Her anxiety seems to be on the question of whether she could craft a companionate marriage with King, one in which “he would but treat her more like a comrade and equal, and less like a prime minister conferring with his queen!” (4). From the outset, therefore, even the simplest form of group person becomes an object of contestation.

²This and subsequent citations are to the following edition, illustrated by Charles Dana Gibson: Davis, Richard Harding. *Soldiers of Fortune*. New York: Charles Scribner’s Sons, 1897. Print.

Faced with the romantic attentions of Robert Clay, who will prove himself willing to treat her as his partner in work, she demurs. Clay had idolized her based on a picture of her reprinted in a newspaper, “a lovely, frank face, looking out into the world kindly and questioningly, and without fear,” (19) that Clay had fixated on through his travels. Even though “Clay interested her beyond her usual self,” bringing out the ghosts of interests long dead, Alice rejects Clay’s insistence that he can evaluate her as easily as he would a diamond in the Kimberly mines. Unlike objects, she reminds him, people change, and cannot be evaluated solely based on appearances: “[the picture you carry] is the picture of a girl who ceased to exist four years ago, and who you have never met” (18, 23-24). In the context of Clay’s later romance with Hope, the novel implies that the pressures of conventional society take hold during adolescence and early adulthood, eliminating the possibilities of youth and fitting the individual for a fixed role—for men, as will be discussed *infra*, one within the company of the corporation, and for women, one within the company of society. In the intervening four years since Clay’s picture was taken, Alice has become something different than the “woman [Clay] hoped she was” (91), a realization Clay finally comes to in the catalyzing presence of the mines. Alice’s disinterest in his great work, contrasted with Hope’s enjoyment and curiosity, signals the transference of his affections from the older “Miss Langham” to the younger “Miss Hope” (139).

Consequently, Alice settles for the man who her “company” seems to find her best fitted for: “The society [she and King] knew put them constantly together and approved. Her people approved. Her own mind approved, and as her heart was not apparently ever to be considered, who could say that it did not approve as well?” (6). Although Alice seems to have once possessed the potential to transcend the conventionality of her current role, and indeed can still pretend to be whatever pleases her viewer — “It was her principle to be all things to all men” —

she chooses to be the embodiment of social correctness, the rock of home to Hope's adventures abroad (8). With this acceptance of conventionality comes a certain peace: "after all King understood her and she him, and...if they never rose to certain heights, they never sank below a high level of mutual esteem, and that perhaps was the best in the end" (356). In a sense, her marriage to King is a safe investment, one without the excitement of stocks' rise and fall but one sure to bear social and emotional dividends.

Although Alice Langham sees Clay as a "cowboy" initially, a stray observation from Reggie King about the "pioneers and martyrs" of civil engineers he met during his travels provides a fuller and more poetic introduction to the unique situation of Clay's profession:

They were marching through an almost unknown part of Mexico, fighting Nature at every step and carrying civilization with them. They were doing better work than soldiers, because soldiers destroy things, and these chaps were creating, and making the way straight. They had no banners either, nor brass bands. They fought mountains and rivers, and they were attacked on every side by fever and the lack of food and severe exposure. And they knew all the time that whatever they decided to do out there in the wilderness meant thousands of dollars to the stockholders somewhere up in God's country, who would some day hold them to account for them. ... When their work is done we ride over the road in an observation-car and look down thousands and thousands of feet into the depths they have bridged, and we never give them a thought. They are the bravest soldiers of the present day, and they are the least recognized. I have forgotten their names, and you never heard them. But it seems to me the civil engineer, for all that, is the chief civilizer of our century. (13-14)

King's unsolicited paean to civil engineering casts this type of skilled labor as the propagation of civilization, and makes that project a specifically corporate endeavor.³ Creating the railroad enables not only pleasurable tourism by Americans, who can easily traverse the areas of Mexico they have no interest in, but also enables the stockholders back home "in God's country" to

³ As William Gleason points out, this project would have been immediately recognizable to many contemporary readers as part of Mexican president Porfirio Diaz's grand plan to modernize Mexican transportation, "a project criticized by many Mexicans for disproportionately benefiting the imperial designs of road- and rail-dependent industries dominated by foreign capital" (Gleason 113). John Seelye, meanwhile, reads Clay more generally as "a fictional embodiment of those 'soldiers of the transit' who laid out the Panama Canal, and as such [Clay] is given romantic expansion and elevation" (Seelye 193).

profit from the engineers' skill in choosing the most efficient route. The profit-making imperative becomes almost religious, with the imagined scene in which the engineers are held "to account" evoking the Christian notion of justifying one's actions to the divine after death. All of this labor makes the civil engineers' lives, in King's view, both "picturesque" and sacred in their dual service to corporation and nation (13).

Not only does King juxtapose the "stockholders up in God's country" — i.e. the United States — with the "wilderness" of Mexico, but he personifies this wilderness as a pernicious entity opposed to the project of "civilization." By portraying the engineers as soldiers, this moment specifically frames the "Soldiers of Fortune" of the novel's title not as members of the military, but rather individuals who fight for "fortune" in the financial sense as well as the sense of beneficent luck (here configured as the ameliorating effects of "civilization" upon the Latin American scene).⁴ Instead of fighting individuals, the corporate soldiers battle against Nature itself, here portrayed as embodied in "mountains and rivers" and armed with the natural weapons of disease and starvation.

After hearing King's praise, Clay is initially hesitant to admit his own role; asked to choose between engineering and "the chocolate-cream soldiers, in red coats and gold lace," he insists "It's a trade for each of them," before stuttering a response: "I - I have been an engineer all my life. I built that road Mr. King is talking about" (15). Clay's modesty only serves to reinforce the accuracy of King's paean to engineers, even as the repeated juxtaposition between

⁴ Although I argue that this novel glorifies "soldiers of fortune" in the sense of corporate employees, I acknowledge that Davis offers a different definition in the biographical volume *Real Soldiers of Fortune* (1906), which profiles famous military officers: "In the strict sense of the phrase, a soldier of fortune is a man who for pay, or for the love of adventure, fights under the flag of any country. In a bigger sense he is the kind of man who in any walk of life makes his own fortune, who when he sees it coming, leaps to meet it, and turns it to his advantage" (R. H. Davis *Real Soldiers of Fortune* 75).

engineers and a sort of caricatured Latin American military figure prefigures the dual work that Clay will engage in down in Olancho.

Olancho, a fictional country located “on the northeastern coast of South America,” becomes, like Mexico, another example of Latin American Nature in need of U.S. taming (29). Clay first notices the iron ore in Olancho’s mountains on a voyage to Brazil, where his first vision of the future mine appears as an appendage of a monstrous body: “There were five of these mountains which jutted out into the ocean, and they suggested roughly the five knuckles of a giant hand clenched and lying flat upon the surface of the water.” (30) Whereas the corporate “hands” act to further the larger group objective, in Olancho’s case the hand is merely there to be exploited, and indeed Clay’s future report implies that the mountains somehow expect to be mined: “I saw great masses of red hematite lying exposed on the side of the mountain, only waiting a pick and shovel” (31). Nonetheless, when the actual mining work begins, Clay compares it to an “attack,” taking pride in the military force with which he tames the brutal landscape: “And beyond the house he saw his five great mountains, the knuckles of the giant hand, with its gauntlet of iron that lay shut and clenched in the face of the sea that swept up whimpering before it. Clay felt a boyish, foolish pride rise in his breast as he looked toward the great mines he had discovered and opened, at the iron mountains that were crumbling away before his touch.” (53, 102-03) With exploitation comes possession, and the battle of corporate entity versus Olanchoan Nature ends ultimately in Olancho’s taming, with the very earth (the iron ore) taken away and used to further U.S. industry.

As an engineer — the quintessential engineer, within the novel — Clay embodies a new kind of expertise, one whose rise was bound up with the corporation’s ascension. David Noble points out in his study of the history of the engineering profession that engineers at the turn of

the twentieth century struggled to balance the independence they had held in the days of the machine shop—an independence furthered by their often solitary labor—with the increasing preeminence of the large manufacturing corporation as the locus of employment and opportunity for the engineering profession (Noble 35-47). Clay describes himself as a “self-made man” who has “never been to college,” and the novel is unclear about what kind of engineering he practices (early in the novel he is a “civil engineer,” but just a few pages later he is a “mining engineer”); this vagueness allows not only his flexibility in a corporate management role, but also a sense of promise in the ways his figure can stand for American intrepidity and adventuresome profit-seeking (16, 30).

Clay learned to become an engineer through apprenticeship, working “for English and German and French companies, as well as for those in the States,” even though he simultaneously asserts “I’ve always had to educate myself” (16). This blurring of national boundaries in his training makes Clay’s life up until the events of the novel a mirroring of the origins of (European-descended) U.S. Americans, even as his ambition is to be the best representative of his homeland that he can: “though I hope I am a good American, it happens that I’ve more friends on the Continent than in the United States” (17). The “eight months of the year” during which he endures “rough work” as an engineer on the frontier ameliorates the time spent in the decadent Old World, where scientific knowledge degrades into idleness: “I go where the art galleries are biggest and where they have got the science of enjoying themselves down to the very finest point. I have enough rough work eight months of the year to make me appreciate that” (16-17). Clay’s insistence on turning potential into practice inspires him to exhort Alice Langham to turn her talents to the sort of tangible impacts he imagines women to be capable of: “In Europe you could have a salon, or you could influence statesmen. There surely must be

something here for you to turn to as well. Something better than golf-sticks and salted almonds” (21). Although Clay’s hope for Alice to transcend the confines of her New York drawing room (a theme repeated later on in Wharton’s *Fruit of the Tree*) seems liberating, it is also confined by the Europeanness of the example; it will take Hope, the New American Woman, to create a vision of men and women partnering through corporate imperialism.

Although Clay provides the impetus for the formation of the Valencia Mining Company by discovering the iron ore in Olancho and notifying Mr. Langham of its existence, his fitness as a member of the corporation is ultimately proved through contrast to his predecessor. After “the Valencia Mining Company was formally incorporated” in New York, the corporation sends a man named Van Antwerp, whose name simultaneously recalls the decadence of the Old World and the established high society of the American social capital (32). Van Antwerp goes on to become a living lesson in how not to manage a corporation in a colonial context, refusing to discuss decisions with his “lieutenants,” offending the natives and their “habits of procrastination,” and ignoring Olanchoan class distinctions by treating the “rich planters” the same way as the “regiment of soldiers which the Government had farmed out to the company to serve as laborers in the mines” (32).

When Clay, having finished the Mexican railroad that inspired King’s outpouring of praise, receives the corporation’s call to finish the work, he acquires the formal trappings of corporate power that will allow him to take control:

He accepted the offer and was given the title of General Manager and Resident Director, and an enormous salary...He had a letter of recall for Van Antwerp, and a letter of introduction to the Minister of Mines and Agriculture. Further than that he knew nothing of the work before him, but he concluded, from the fact that he had been paid the almost prohibitive sum he had asked for his services, that it must be important, or that he had reached that place in his career when he could stop actual work and live easily, as an expert, on the work of others.” (33)

Success in the corporate imperial project depends upon authorization from the United States-based corporate bureaucracy, and placement in a position of power within that bureaucracy. Similarly, the exorbitant salary he receives indicates both his skill in bargaining and the equation of wealth with merit. Although the mess he finds in Olancho confounds his hope that he might “stop [his own] actual work,” Clay uses his own natural body to motivate the employees into engaging in their shared corporate project: “[the] men ... could not long resist the fact that Clay was doing the work of five men and five different kinds of work, not only without grumbling, but apparently with the keenest pleasure” (39). As befits his management role, Clay couples his “general utility” skills with political savvy: “He conciliated the rich coffee planters who owned the land which he wanted for the freight road by calls of the most formal state and dinners of much less formality, for he saw that the iron mine had its social as well as its political side” (39). Clay’s ability to exploit Olanchoan social norms allows the corporation to become part of Olanchoan society, even while the ostentatiousness of some of his gestures, like presenting “the first piece of ore taken out of the mine...in a cluster of diamonds” to the wife of the Minister of the Interior, hints that the mine’s existence depends upon bribing the elites (39).

Still, Clay’s internal relationship to his corporate affiliations casts his membership in the corporate body as more of a shared ideal than a financial exchange. Within Olancho, as Teddy Langham asserts, Clay “represents the company” (58). Internally, however, Clay hesitates to accept the subordination that being a corporate employee entails:

Perhaps, after all, [MacWilliams] was right. It seemed absurd, but it was true. They were only employees of Langham — two of the thousands of young men who were working all over the United States to please him, to make him richer, to whom he was only a name and a power, which meant an increase of salary or the loss of place. Clay laughed and shrugged his shoulders. He knew that he was not in that class; if he did good work it was because his self-respect demanded it of him; he did not work for Langham or the Olancho Mining Company (Limited). (100-01)

Why does Clay insist on rejecting the role he has embraced elsewhere in the novel, that of middle management in a large corporation? I contend that the answer is partially bound up in Clay's identity as engineer—a profession that, although it was being swallowed up by the corporation in this moment, still retained a history of independence—and partially by the corporation's imperial project. The men Clay describes are domestic workers, not filibusterers; their quotidian work does not directly make them agents of the “civilizing” imperative King had praised earlier. Later, as Clay meditates on his past, he considers the life of poverty he led as a child, and “[how] the mind of the mathematician, which he had inherited from the Boston schoolmistress, had been swayed by the spirit of the soldier, which he had inherited from his father” (who, we later learn, died fighting for Cuban independence from Spain) (102). These thoughts, which further establish Clay in the reader's mind as the über-American, soothe the moment of panic that the thought of assimilation into the corporate bureaucracy provokes, and re-frames his endeavor in Olancho as one of bringing order and civilization to the Other. Indeed, as he looks at the mountains, Clay reverses the financial relations between him and the corporation, casting the entire mining project as the endeavor of Clay's body: “Clay felt a boyish, foolish pride rise in his breast as he looked toward the great mines he had discovered and opened, at the iron mountains that were crumbling away before his touch” (103). Having thus refigured his personal relationship to the corporate endeavor, he can acknowledge his corporate self to Mr. Langham while giving him a tour of the mining complex, describing his house as “the home of the resident director of the Olancho Mining Company (Limited)” (106).⁵

When it comes to Clay's relationship to the two main women in the novel, Alice and Hope, what divides them most is their ability to see Clay's relationship to the corporation in the

⁵ Interestingly, Clay repeatedly mentions the “Limited” aspect of the mining company's name, a reminder of limited liability—one of the primary advantages of the corporate form and a result of the corporation's separate personhood.

way he does (see Wesley 116; Murphy 133-36). In a reversal of Clay's earlier chastisement of Alice's "salted almonds and golf sticks," Alice (or Miss Langham as the novel terms her, a formal title that reminds us of her relationship to the stockowner) criticizes Clay's work at the mines: "it hurts me to see you wasting your time here over my father's interests. You should exert that same energy on a broader map. You could make yourself anything you chose" (147). Alice's use of the term "broader map" to inspire Clay has the opposite effect as her intent, since it reminds the reader that the corporation is exactly what enables Clay to make known and civilized the unknown spaces of non-US and European lands. Clay's retort makes clear that he views the corporate project as not only a way to lift himself out of his childhood poverty, but as a way to exert his excess virile energy to further imperial goals:

If I wished it, I could drop this active work to-morrow and continue as an adviser, as an expert, but I like the active part better. I like doing things myself. I don't say, 'I am a salaried servant of Mr. Langham's.' I put it differently. I say, 'There are five mountains of iron. You are to take them up and transport them from South America to North America, where they will be turned into railroads and ironclads.' (151-52)

Rather than embracing the ability to be a free agent, one who chooses his own projects, Clay accepts the responsibilities and obligations that come with being part of the corporate structure because it allows him to be the "hands" of the corporation—to utilize the force of corporate means and labor in furtherance of his own purpose. In turn, he refigures that purpose in terms of imperial profit; imperial, because the iron will be turned into the two main means to enact corporate domination on a transnational scale, and profit, because this exchange will implicitly benefit the corporations that engage in this business. Through his actions, Clay envisions a world where the very land of South America is turned against it through the corporate economy, with Clay himself as a catalyst. In so doing, he rejects the older, pre-corporate configuration in which he is simply a "salaried servant" of a single individual, while at the same time

acknowledging that since Langham owns the entirety of the stock, in a sense he is that which he rejects himself being.

As he explains it to Hope, being part of a corporate structure allows him to leave a tangible impact on the world, even as these actions further the profits of others:

‘[W]hen I come to die, and they ask me what I have done with my ten fingers, I suppose I will have to say, “Well, I built such and such railroads, and I dug up so many tons of ore, and opened new countries, and helped make other men rich.” ... I want to feel that I have accomplished something outside of myself — something that will remain after I go. Even if it is only a breakwater or a patent coupling. When I am dead it will not matter to any one what I personally was, whether I was a bore or a most charming companion, or whether I had red hair or blue. It is the work that will tell.’ (220)

Clay rejects the ephemera of finance in favor of the tangible impacts that his “work” enables him to make on the world. Through engineering, he sublimates his individuality into grand works, works that simultaneously profit others financially and further the imperial project that he, as a “good American,” feels obligated to continue (17). The corporation is thereby a means towards the larger objective of lasting “civilization.” When Hope rejects his self-deprecation and recognizes him as an individual who holds his own worth—“We do not like men because they build rail-roads, or because they are prime-ministers. We like them for what they are themselves” — even as she praises his “grand work and noble work, full of hardships and self-sacrifices,” she embraces both his role in the corporation and his natural person outside of it (221-22). Indeed the moment in which she fully inspires his love is one in which she declares she “could trust both” the man himself and the bridges he builds, a wording that recalls financial transactions even as it equates the individual with the work he produces as part of a corporation (222).

Clay unites his dual identities as filibusterer and corporate employee when Olancho undergoes a revolution. Much of his success has to do with his judicious utilization of the

miners, many of whom are former Olanchoan soldiers: “after consulting with Mr. Langham, [Clay] dictated an order to Kirkland, instructing him to call the men together and...to promise them an increase of wages if they remained faithful to Mr. Langham’s interests...” (251) On one hand, this moment epitomizes effective corporate organization, one in which two different levels of upper management consult and subsequently delegate action to lower management, who then inform the employees. On the other hand, the missive speaks of the corporate interests as “Mr. Langham’s interests,” framing the employees’ position as one of servants to Mr. Langham’s master rather than shared participants in the corporate mission. This may be due in part to the novel’s patronizing attitude towards Olanchoans and the “Irish and negroes” who make up the remainder of the mine’s workforce (244, *see also infra*). Clay’s postscript to the note further reinforces his dismissive attitude towards the workers: ‘Tell them, if they are loyal, they can live in their shacks rent free hereafter,’ wrote Clay. ‘They are always asking for that. It’s a cheap generosity,’ he added aloud to Mr. Langham, ‘because we’ve never been able to collect rent from any of them yet.’” (251) Clay’s casual attitude towards exploitative work practices — after all, the mining operation is far from any town, so where would the workers live but in company shacks? — further illustrates the management’s dismissive attitude towards its employees, both U.S. and Olanchoan, who merely serve as instruments rather than partners.

Still, Clay effectively marshals the corporation’s resources, both human and material, throughout the adventures of the novel’s second half. From using the company’s railroad and its American employees to seize the opposition’s shipment of arms (238-44), to marching an employee army, each company with a foreman at its head and “his engineers and the Irish-Americans in the van,” to the capital city in support of the corporation’s choice for Olanchoan president, Clay proves equally adept at both profit-making and the military action that protects

those profits (330).⁶ As Marilyn Wesley points out, in this and other Richard Harding Davis novels, “it is violent aggression that underwrites the growth of the hero and the validity of the capitalist enterprise” (Wesley 121). Clay’s engineering skills may have brought him to this point, but his embrace of violence (or at least the threat of violence) is what equips him to manage in the transnational context. Wesley further asserts that “Clay’s violent defense of Langdon’s investment is a series of gestures of competence through which he allies himself with paternal economic authority idealized as class value” (Wesley 118); I would add to her argument that it is specifically Clay’s competence in corporate management that enables him to fulfill the paternal expectations of the stockowner, thereby enabling not only a change in class by marriage to the stockowner’s daughter, but also cementing his belonging in the fused corporate-family structure created therein.

Apart from Robert Clay, the rest of the named male characters in *Soldiers of Fortune* merely serve to populate the surroundings, acting in ways that highlight Clay’s superiority in the field of economic combat. In the following paragraphs, I analyze the roles of three of these conventional men—the stockowner Mr. Langham, the “son and heir” Teddy Langham, and the colorful engineer MacWilliams — in relation to their roles in the Valencia Mining Company’s structure and purpose. Although the primary stockowner, Mr. Langham, might be the obvious candidate for the “soul” of a corporation, *Soldiers* is unusual (and ahead of its time) in that it locates the primary embodiment of the corporate mission in the Residential Director, Clay,

⁶In this instance, “van” is short for vanguard, meaning that the engineers and Irish-American workers lead the army in its march.

instead, and defines the efficacy of the other Americans in terms of how well they acknowledge and further Clay's intrinsic superiority in the corporate game.⁷

As with other novels discussed elsewhere in this study, the Valencia Mining Company's ownership is couched in a family tableau. Even the source of the wealth that enables the corporation's formation is familial, the product of inheritance that, in turn, becomes like a child itself: "Mr. Langham was the slave of his own good fortune. By instinct and education he was a man of leisure and culture, but the wealth he had inherited was like an unruly child that needed his constant watching, and in keeping it well in hand he had become a man of business, with time for nothing else" (24). This wealth transforms into corporate stock — not only the Valencia Mining Company, but also "a great Western railroad" — such that the "child" can be seen to be the corporate person itself, something that is of Langham but, as the novel shows, not directly animated by him.⁸

This interpretation is, however, complicated by Langham's own presentation of his involvement in the Valencia Mining Company. After Alice inquires as to whether Langham is "interested" in the company employing Clay, Langham, busy with a game of solitaire, responds by portraying himself as identical to the company:

"Yes — I am interested in it," Mr. Langham replied, studying the cards before him, "but... nobody knows it yet, except the president and the other officers." He lifted a card and put it down again in some indecision. "It's generally supposed to be operated by a company, but all the stock is owned by one man. As a matter of fact, my dear children," exclaimed Mr. Langham, as he placed a deuce of clubs upon a deuce of spades with a smile of content, "the Valencia Mining Company is your beloved father." (27)

⁷ In this I agree somewhat with Marilyn Wesley, though I posit that the core of authority lies in being an effective promoter of the corporate project: "For Davis... it is the degree of authority rather than psychological development that is at issue in heroic maturation, and, in fact, his buddy figures function to define degrees of distance from authorization" (118).

⁸ As Wesley observes, "it is the authority of [Langham's] money, rather than his culture, that is the true basis of his power." Reggie King, Alice's passive suitor, also has some nebulous source of wealth that allows him to roam the world in a yacht (contradicting Wesley's claim that King has "culture without financial force"), but King merely functions as a foil for Clay, and is relatively useless except insofar as he can get his crew to fight alongside the corporate army (Wesley 118).

In this moment, Langham embraces the notion that stock ownership means that the corporate person maps onto the natural person who owns the stock, such that the Valencia Mining Company operates as a second self, much like Cowperwood's "Frank A. Cowperwood & Co." in Dreiser's *The Financier*. One salient difference between Langham and Cowperwood, however, is that Cowperwood has a natural gift for finance and creates fortunes out of nothing using only his will and intelligence, while Langham's ability to effectively manage his inherited wealth is constantly thrown into question. Langham's best gift is not his guidance, but his ability to take the counsel of others; for one thing, the company itself would not exist had Langham not taken Clay's report of high-quality iron ore in Olancho seriously. By interspersing Langham's proud declaration that "the Valencia Mining Company is your beloved father" with his indecision over moves in a game of solitaire, the novel subtly questions the effectiveness of a simple one-to-one equation of sole stockholder with corporation. Indeed, the chapter's closing line — a critique from the novel's heroine — reminds the reader of Langham's lack of practical competence, especially with "building" and engineering, and hints at where the soul of the corporation actually lies: "'You shouldn't have put the deuce there,' [Hope] said, 'you should have used it to build with on the ace'" (28).

When Langham sails with his daughters down to Olancho, his uselessness takes on quasi-comic proportions. The justification for his trip is twofold: to obey his physician's orders to "rest in a mild climate" and to "see how the son and heir had developed as a man of business" (40). From the very beginning of his trip, therefore, Langham acknowledges his own redundancy in the actual work of the corporation; his purpose is rather to enjoy the leisure that the work of taking care of his "child" has necessitated, even while supervising the development of his human children into useful managers of corporate stock. Thus, even though he is

theoretically, as his son affectionately calls him, the “Governor” of the family and the corporation, in practice he has little to do, even going so far as to encourage Clay to slack off during their visit: “if you want me to make a good report of our resident director on my return, you had better devote yourself less to the mines while you are here and more to us.” (78, 104) The emphasis on “report” here again emphasizes the corporate structure; Langham may be sole shareholder, but the Board clearly plays an essential role in the practical governance of the corporation.

As the visit progresses and Olancho barrels towards revolution, even Clay rejects Langham as a source of authority. The key moment comes when Langham refuses to allow Clay to enlist the assistance of the U.S. military, in the person of a man-of-war currently to the south of Olancho, to protect the corporate interests:

Mr. Langham said, firmly, that he would not ask for help until he needed it.
“Well, I’m sorry,” said Clay. “I should very much like to have that man-of-war here. However, if you say no, we will try to get along without her. But, for the present, I think you had better imagine yourself back in New York, and let us have an entirely free hand....

Mr. Langham looked appealingly at his son and at King. They both smiled back at him in unanimous disapproval of his policy of non-interference.

“Oh, very well,” he said, at last. “You gentlemen can go ahead, kill, burn, and destroy if you wish. But, considering the fact that it is my property you are all fighting about, I really think I might have something to say in the matter.” Mr. Langham gazed about him helplessly, and shook his head.

“My doctor sends me down here from a quiet, happy home,” he protested, with humorous pathos, “that I may rest and get away from excitement, and here I am with armed men patrolling my garden-paths, with a lot of filibusters plotting at my own dinner-table, and a civil war likely to break out, entirely on my account. And Dr. Winter told me this was the only place that would cure my nervous prostration!” (213-14)

Again, Langham insists on viewing the corporation as interchangeable with his natural self, even as the novel belies a facile conflation by emphasizing the corporate structure over stock ownership. Langham’s reluctance to exploit the imperial aspect of the corporate mission marks his incapacity to be an effective manager of American interests overseas, thereby leading Clay to

advise him to pretend that he is “back in New York” and thereby entirely dependent on local advisers, who are more adept at the sort of militaristic management that corporate imperialism requires. Swayed by his family — his son and his two almost-sons-in-law — Langham gives in to the will of that group body and authorizes violence in unusually graphic terms (“kill, burn, and destroy”).⁹ The reiteration of “my” in his regretful, “helpless” observation, however, reinforces his own personal insistence on his own importance; he even erroneously magnifies the corporation’s role in the Olanchoan civil war, just to cling to his own centrality in a battle whose success depends far more on effective middle management than the stockholder himself.

From this point on, Langham’s role is one of gentle paternal approval to the exploits of Clay and company, rather than an active arbiter. Indeed, Langham himself acknowledges as much as he sits in on the corporation’s war counsels: “Mr. Langham, with his fine, delicate fingers beating nervously on the table, observed the scene as an on-looker, rather than as the person chiefly interested. He smiled as he appreciated the incongruity of the tableau, and the contrast which the actors presented to the situation. He imagined how much it would amuse his contemporaries of the Union Club, at home, if they could see him then” (227). Unlike Clay’s roughened, masculine hands, Langham’s fingers, “fine [and] delicate,” encapsulate his ineffectiveness when it comes to direct management. He accepts his role as an “on-looker,” reconfiguring his group membership as one of the “Union Club” rather than the corporate body, so that the corporation can be more fully embodied in Clay and, to a secondary degree, in his son Teddy.

Young Theodore Langham, Mr. Langham’s “son and heir” (as the novel repeatedly reminds us), moves from the football fields of Yale University to the mining camps of

⁹This explicit treatment contrasts with the remainder of the novel, in which violence is typically glossed over or treated as a game (see *infra*; Wesley 120).

Olancho.¹⁰ Although at the start of the novel Teddy is only a faint presence, manifested most notably in the complex football plays he relates to his sister Hope “under an oath of secrecy” (25), once Clay takes over the mines Teddy arrives in Olancho to serve the dual roles of apprentice and familial protector: “young Teddy Langham, who came ostensibly to learn the profession of which Clay was so conspicuous an example, and in reality to watch over his father’s interests.” (40)¹¹ Teddy’s goal of learning civil engineering makes sense to a limited degree, as civil engineers by then had become a major part of the corporate bureaucracy; but although civil engineering had begun as a profession that one learned on the job, at this point most civil engineers were trained in technical schools, and the novel makes no mention of Teddy taking engineering courses at Yale (Noble 36-38). Still, the pretense is sufficiently plausible to grant occasion for certification of Clay’s competence in corporate management, a competence Clay quickly manifests by treating Teddy with all the sternness his natural father lacks: “[Teddy] was put at Clay’s elbow, and Clay made him learn in spite of himself, for he ruled him and MacWilliams, of both of whom he was very fond, as though, so they complained, they were the laziest and the most rebellious members of his entire staff” (40).

Acting as a corrective to the laziness instilled by Teddy’s luxurious upbringing, Clay insists on educating Teddy, manifesting his affection through strict adherence to the job requirements. This affection pays off both in Clay’s report to Teddy’s father/employer — “Young Langham was radiant with pleasure at the good account which Clay had given of him to his father, and Mr. Langham was gratified, and proud of the manner in which his son and heir had conducted himself” — and in Teddy’s abandonment of his preoccupation with his “father’s

¹⁰ See pp. 25, 40, 96, 236.

¹¹ Although it is tempting to identify this character’s first name as an homage to Theodore Roosevelt — and in fact Roosevelt had written extensively on the importance of football as masculine training through the 1890’s — the connection is tenuous at best, since Davis had yet to observe the Rough Riders in Cuba and young Langham’s character otherwise bears minimal resemblance to Roosevelt (*see* Seelye 56-58).

interests” and replacement of that ideal with the official corporate management hierarchy (95-96).

This transformation becomes apparent when the villain of the novel, General Mendoza, requests Teddy’s presence as he attempts to negotiate a bribe with Clay over the Opposition’s critique of the mines:

“I understand that it is his father who controls the stock of the company. If we discuss any arrangement it might be well if he were here.”

Clay was sitting with his chin on his breast, and he did not look up, nor did the young man turn to him for any prompting. “I’m not down here as my father’s son,” he said, “I am an employee of Mr. Clay’s. He represents the company. Good-night, sir.” (58)

In the scant pages between the observation that Teddy would “watch over his father’s interests” and this moment, the novel transforms Teddy’s primary stance from familial to corporate, replacing the older obsession with inheritance with a newer concern about one’s position on the organizational chart. Although Mr. Langham may comfortably assert that “the Valencia Mining Company is your beloved father” (27), in truth the corporation is more fully embodied in its resident director, Clay. The novel does hint at a future in which management competence and stock ownership may be joined, as Teddy Langham ends the novel as the new resident director of the mines (357). Through the novel’s events, however, Teddy exists on an equal plane with the country-bred, informally-educated MacWilliams as a “lieutenant” serving under Clay’s military and economic command, living together with the two men in a new corporate family: “[that tin house is] the home of the resident director of the Olancho Mining Company (Limited), and of his able lieutenants, Mr. Theodore Langham and Mr. MacWilliams” (106).

MacWilliams — who despite his centrality to the novel’s action never gets a first name — serves as the novel’s exemplar of American local color, a life-long railroad man who is allowed to socialize with management because of his hard work and entertainment value. The

one member of the corporate staff to actually fulfill the duties of his job prior to Clay's arrival in Olancho, MacWilliams acts as comic relief with an edge (38):

MacWilliams was a type with which Clay was intimately familiar, but to the college-bred Langham he was a revelation and a joy. He came from some little town in the West, and had learned what he knew of engineering at the transit's mouth, after he had first served his apprenticeship by cutting sage-brush and driving stakes. His life had been spent in Mexico and Central America, and he spoke of the home he had not seen in ten years, with the aggressive loyalty of the confirmed wanderer, and he was known to prefer and to import canned corn and canned tomatoes in preference to eating the wonderful fruits of the country, because the former came from the States and tasted to him of home. (48-49)

Like Clay, who grew up "under the shadow of Pike's Peak" (101-02), MacWilliams comes from the old U.S. frontier and brings with him that spirit of expansion. Educated through long practice with various railroads (the "P.Q. & M.," a fictional corporation, being one [49]), MacWilliams cements his ties with home in part through adherence to corporations—not only the railroads that pay his salary, but also the industrialized food system that enables the exportation of U.S. food products, inferior as they may be to the local produce.¹²

Indeed, MacWilliams seems to have constructed a parallel identity for himself, one that reconstructs being American as adhering to a set of ideals fulfilled through the corporate structure rather than actually inhabiting U.S. territory. Much of MacWilliams' attachment to the notion of being American is performed through sentimentality, as with his favorite song, "He never cares to wander from his own Fireside," which was especially appropriate in coming from a man who had visited almost every spot in the three Americas, except his home, in ten years" (93). Despite the critique of other miners (a critique which the narration seems to tacitly endorse), the "peculiar sentiment" with which MacWilliams treats the song (and his performance

¹² This canning process was not without its pitfalls; Davis would later follow the Rough Riders as they made do with spoiled canned meat during their time in Cuba, an experience that led Roosevelt to be sympathetic to Upton Sinclair's expose of the meatpacking industry's irresponsible practices. (See Chapter 2.) Davis, however, seems to have ignored these failings in his reporting, writing instead of the "good beans, corned beef, and coffee" served to enlisted men. (R. H. Davis *The Cuban and Porto Rican Campaigns* 88).

of it) makes it something like a “national anthem,” a mark of Americanness that can be publicly performed and reinforced nightly despite the singer’s practical repudiation of the domesticity of the lyrics (93-94). As MacWilliams finds himself welcomed into the Langhams’ society during his visit, the contrast between his origin and the position enabled by his corporate service becomes a source of wonderment: “he could not help thinking how surprised his people would be if they could see him, whom they regarded as a wanderer and renegade on the face of the earth and the prodigal of the family, and for that reason the best loved, leaning over a grand piano, while one daughter of his much-revered president played comic songs for his delectation...” (96). The collective “his people” refers superficially to his family and more generally to the expectations of domestic U.S. society, which lacks sufficient appreciation for MacWilliams’ self-made ruggedness; the use of “his much-revered president” in this context serves to relocate MacWilliams’ national allegiance to the Valencia Mining Company, such that the corporation becomes even more American than the U.S. itself—a space unlike that at home where merit is rewarded by social fluidity.

Still, MacWilliams cannot move between social worlds as easily as Clay, who is equally adept in the drawing room and the fields of Olancho, and can debonairly “retain the look when in formal clothes of one who [is] in the habit of doing informal things in them” (10). Although MacWilliams knows enough to call out Clay for the failings of Clay’s own formal wear, MacWilliams decides not to socialize dressed like a “fool undertaker,” declaring “if they don’t want me in white duck they don’t get me” (84). MacWilliams’s refusal to fully assimilate extends to a wry commentary on the incongruity of the situation: “we’re mixing right in with the four hundred, we are! I’m substitute and understudy when anybody gets ill. We’re right in our

own class at last!” (99-100).¹³ In MacWilliams’ outsider narration, society becomes a game, complete with uniform and mock combat (as well as mixed metaphors), that MacWilliams plays at but never fully buys into. Instead, by the end of the novel, MacWilliams transcends being the “boy” Clay calls him, becoming an adventurer in his own right who predicts that Clay will “grow fat” and long for his filibustering past once he becomes “Andrew Langham’s son-in-law” (353). MacWilliams’ imaginative capacities have already been well-demonstrated in the novel; Clay even remarks at one point, “if I had your imagination I’d give up railroading and take to writing war clouds for the newspapers,” an ironic commentary considering that Davis himself became famous for writing his own “war clouds” for Hearst.¹⁴

By turning filibuster at the end of the novel, MacWilliams uses his corporate training towards military ends, deciding to help free Macedonia from Turkish rule because “it sounds more interesting than engineering” (359).¹⁵ MacWilliams sees this military project as something that his treasured national identity will not allow him to turn down: “You, as an American citizen, ought to be the last person in the world to throw cold water on an undertaking like that. In the name of Liberty now?” (360) His seamless move from corporate employee to freelancer for freedom reinforces the corporation’s imperial project, even as it suggests that the corporation’s ancillary motive is not only to bring civilization to the globe through resource extraction, but also to prepare its employees to further that mission as individuals. Indeed, by rejecting the tethering influence of an individual woman in favor of idealized collective values, MacWilliams becomes a more complete American, moving from “boy” to man as he fulfills the

¹³ Invented by Ward McAllister, the term “the Four Hundred” referred to the New York social elite during the late nineteenth century. It would have come off as slightly outdated at this point, like many of MacWilliams’ references.

¹⁴ “War clouds” referred to articles designed to invoke the specter of war on the horizon, or to convince the reader of the need for war. (See “War Clouds”). The fact that Clay makes this statement mocking exaggerating reporters supports Seelye’s assertion that Davis “may in effect have been serving the cause of jingoism, but he was not himself a jingo” (Seelye 248).

¹⁵ Perhaps MacWilliams’ experience actually getting to know the officers of the corporation demystified the nature of the corporate structure in a way that made the kind of idealism he had heretofore shown impossible.

call of “Liberty.” As Amy Kaplan observes, the “self-contained white male body is delineated by its rejection of feminization and racial otherness, but it is mobile and flexible enough to make itself at home anywhere in the world. Only in the release from geographic bounds can the United States secure the borders of its own identity” (Kaplan 106).

Even while MacWilliams becomes a more complete American by acting independent of female influence, the novel’s heroine, Hope, embodies the promise both of an enlightened American womanhood and the reforming possibilities of the corporation, becoming the corporate soul to Clay’s corporate body. As Clay contemplates the potential of a future marriage, he opines, “[t]he woman he was to marry...must fill out and complete him where he was wanting,” and indeed Hope acts to highlight the small deficits in Clay’s makeup—not only his lack of financial force and class status, but his failure to develop an emotional, empathic link with his surroundings. (156) What makes Hope stand out from other “New Women” of the fin-de-siècle is the strength and independence she maintains despite the conventional romance plot, a strength which, I argue, directly comes from her identification with the corporation.¹⁶

Through much of the novel, Hope exists in a hybrid identity category, her femininity queered by her fascination with conventionally male interests like football and engineering in a way that makes her more desirable as an object of male admiration. Her close bond with her brother Teddy and her father first becomes apparent earlier in the novel, when the visiting railroad board of directors discovers Hope and her father mapping out Teddy’s football plays on a billiard table: “The sight filled the directors with the horrible fear that business troubles had turned the President’s mind, but after they had sat for half an hour perched on the high chairs around the table, while Hope excitedly explained the game to them, they decided that he was

¹⁶ See Patterson, *Beyond the Gibson Girl* 37; Kaplan 106-08. For a discussion of the New Woman of this era more generally, see Patterson, “Introduction.”

wiser than they knew, and each left the house regretting he had no son worthy enough to bring ‘that young girl’ into the Far West” (25). Her fascination with football becomes a way to demonstrate her worth in both social and business contexts.

Subsequently, Hope repeatedly acts as an interlocutor between men, transmitting knowledge in a way that amplifies understanding. As her sister notes, Hope takes in the information sent back to New York about the mines and interprets it in a way that enables her father to understand:

Hope knows all about them, I believe; she knows their names, and how much you have taken out, and how much you have put in, too, and what Mac Williams’s railroad cost, and who got the contract for the ore pier. Ted told us in his letters, and she used to work it out on the map in father’s study. She is a most energetic child; I think sometimes she should have been a boy. I wish I could be the help to any one that she is to my father and to me. (89)

Alice, who exemplifies conventional femininity, has trouble classifying her sister, resorting to describing her as a pre-pubescent gender-neutral “child” rather than a “girl” and explicitly questioning the appropriateness of her biological sex. This very unconventionality, however, is what makes Hope a “help” to her father and sister; her activity, as opposed to Alice’s passivity, both others her and makes her indispensable. Although Hope engages in several conventionally masculine activities and questions some of the restrictions placed upon her by gender conventions, she does not seem to want to be a “boy,” preferring instead to act without much reflection (again, a stereotypically masculine trait): “she was not given to analyzing her impressions or offering reasons for them” (116).

Hope’s gift of translation appears again when, unlike her sister, she engages in vibrant debate over the engineering strategies employed in the mine:

But a few minutes later she saw [Clay] look up at Hope, folding his arms across his chest tightly and shaking his head. “You see it was the only thing to do,” she heard him say, as though he were defending some course of action, and as though Hope were one of

those who must be convinced. “If we had cut the opening on the first level, there was the danger of the whole thing sinking in, so we had to begin to clear away at the top and work down. That’s why I ordered the bucket-trolley. As it turned out, we saved money by it.”

Hope nodded her head slightly. “That’s what I told father when Ted wrote us about it,” she said; “but you haven’t done it at Mount Washington.”

“Oh, but it’s like this, Miss —” Kirkland replied, eagerly. “It’s because Washington is a solider foundation. We can cut openings all over it and they won’t cave, but this hill is most all rubbish; it’s the poorest stuff in the mines.” Hope nodded her head again and crowded her pony on after the moving group, but her sister and King did not follow. (134)

This moment reveals Hope’s hybridity as explicitly corporate, while her competency with complex engineering decisions marks her as a more accurate embodiment of the corporate “soul” than her father. Combining interest in the financial and structural decisions of the mines with the ability to elicit simpler, clearer explanations from the experts, Hope unites both stereotypically male and stereotypically female capacities in furtherance of the corporate mission. In her informal work as a sort of secretary for her father (as described by Alice *supra*), Hope furthers the traditional identification of family with corporation, but in her competence despite the position she holds as youngest daughter, she emphasizes the increased efficacy that comes from utilizing a group with diverse skill sets rather than relying on a single stockowner in whom all decision-making force is imbued. Indeed, at the end of the scene, Hope joins the “moving group” of mining employees, while her sister and King, who refuse to become emotionally and practically involved in the Valencia Mining Company, separate themselves from the corporation both physically and symbolically.

Hope’s role as the incarnation of the corporate spirit drives MacWilliams, at least, to renewed heights of interest in the corporate project, as he observes to Clay:

I never took so much interest in your mines until she took to riding over them, and I didn’t think great shakes of my old oreroad, either, but now that she’s got to acting as engineer, it’s sort of nickel-plated the whole outfit. I’m going to name the new engine after her — when it gets here — if her old man will let me. ... [Miss Hope] comes out with Ted nearly every day now, and she’s learning how to run a locomotive. Just for fun, you know,” he added, reassuringly.

“I didn’t suppose she had any intention of joining the Brotherhood,” said Clay. “So she’s been out every day, has she? I like that,” he commented, enthusiastically. “She’s a fine, sweet girl.”

“Fine, sweet girl!” growled MacWilliams. “I should hope so. She’s the best. They don’t make them any better than that, and just think, if she’s like that now, what will she be when she’s grown up, when she’s learned a few things? ... It’s a privilege to show her about. She wants to see everything, and learn everything, and she goes poking her head into openings and down shafts like a little fox terrier. And she’ll sit still and listen with her eyes wide open and tears in them too, and she doesn’t know it — until you can’t talk yourself for just looking at her.” (154-55)

Hope’s personal involvement transforms MacWilliams’s view of his role in the corporation, making his work “nickel-plated”—a process that both adds shine to an object and makes it resist corrosion, exemplifying Hope’s inclusion of both added glamour to the corporate work and a competence that makes the corporation run in a more stable and effective manner. Hope’s position is still arbitrated by male influence—not only MacWilliams and Ted, who show her around and teach her to “act[] as engineer,” but also her father, who determines whether the physical instruments of the corporation may bear her name. Even Clay’s joke about her joining the Brotherhood of Locomotive Engineers emphasizes the masculine fraternity of the engineering profession that Hope has informally adopted (see R. White 237). Consequently, MacWilliams shares Alice’s difficulty in categorizing Hope; she is at once a “fine, sweet girl,” “the best,” and a “little fox terrier,” a hybrid creature marked (in an unusual move for a woman) not by her physical appearance but by her curiosity and adeptness. Even though she transcends many conventional limitations, however, her most lasting trait is a distinctly feminine one—the evocation of emotion, both unconsciously in herself and consequently in her interlocutor, such that communication transcends words and exists in a moment of the sublime.

In her courtship of Clay, Hope moves from “girl” to “woman,” proving her worth as a companion for Clay through both physical bravery and stereotypical submission. When Hope first reveals her affection for Clay, responding to his throwaway comment “I know that while my

bridges may stand examination — *I can't*” with a calm “I could trust both, I think,” her twinning of Clay the engineer with Clay the person rewards both his interpersonal skills and his adeptness in serving the corporation (222). Tellingly, the narrator comments, “[it] was not a girl, but a woman who had spoken then;” her recognition of Clay’s dual competencies marks her as a full adult, a “woman” fit to “complete him where he was wanting” (222, 153).

From this point on in the novel, Hope proves her maturity through stereotypically masculine acts of bravery. Although her excuse for going to witness the parade without permission is rough at best — she claims she can accompany the servants “disguised in a turban,” but ends up riding a horse, unlike any of the Olanchoan women (252, 255) — she defends her decision as one of protecting a woman who could not protect herself: “I could not help it...I had to go with Madame Alvarez” (321). Hope’s protectiveness towards Madame Alvarez marks Hope as more than “the narrative version of the athletic Gibson girl” (Wesley 117); by taking charge where Madame Alvarez cannot, she enacts a justification of corporate imperialism, creating in her own strength a reason for the United States (via the corporation) to take over from the vestiges of the Spanish empire. Indeed, it is not until Madame Alvarez faints, overcome by stress and grief, that Ted recognizes Hope’s maturation: “‘She is fainting,’ said Hope. Her voice was strained and hard. To her brother she seemed to have grown suddenly much older, and he looked to her to tell him what to do. ‘Take hold of her,’ she said. ‘She will fall.’ The woman sank back into the arms of the men, trembling and moaning feebly” (272).¹⁷ In a culmination of Hope’s physicality, Hope heroically rescues the men (including Clay) from almost certain death at the hands of Olanchoan soldiers, “her woman’s figure outlined clearly in

¹⁷ By contrasting herself to Madame Alvarez’s nervousness and weakness, Hope proves the strength that, according to contemporary medical theories, made the New Woman suitable for childbearing. (See Patterson *Beyond the Gibson Girl* 37-38) This reconfiguring of athleticism as compatible with childbearing helped the otherwise masculine accomplishments of Hope and other Gibson Girls avoid fears of androgyny and sterility.

the riding habit she still wore” (306). Her bravery twinned with her femininity, Hope proves herself fit to be half of the Hope-Clay power couple.

After this rescue, however, Hope yields up her newfound power to Clay as their partnership is cemented. Despite (or perhaps because of) all of the strength Hope had shown during the revolution, as he is about to declare his affection, “something in her attitude at his feet held Clay in a spell” (310). Even though it is Hope’s power that makes her a suitable match for Clay, their collaboration is still dependent upon her taking a subservient role. At the end of the novel, as Clay contemplates their future, he paints Hope as a simple housewife, the only difference being the exoticness of the homestead:

“After [the honeymoon] we will go to work again, and take long journeys to Mexico and Peru or wherever they want me, and I will sit in judgment on the work other chaps have done. And when we get back to our car at night, or to the section house, for it will be very rough sometimes,” — Hope pressed his hand gently in answer,— “I will tell you privately how very differently your husband would have done it, and you, knowing all about it, will say that had it been left to me, I would certainly have accomplished it in a vastly superior manner.”

“Well, so you would,” said Hope, calmly. (363)

Hope’s readiness to take this secondary role after showing herself capable of such leadership and courage not only serves as an argument for how the New Woman — independent, athletic, adventuresome — does not fundamentally threaten the dominant masculine paradigm; it also represents the methods by which the person of the corporation served as helpmeet and enabler for the United States’ project of imperialist expansion.

By locating the spirit of the corporation in a strong American woman with domesticating ambitions, the novel paints the project of corporate imperialism as a benign and generous one. Nowhere in the novel is this more apparent than in Hope’s interactions with an Olanchoan family that cooks dinner for the traveling party. In contrast to the attitudes of the men in the novel, for whom thanking Olanchoans is an unusual and noteworthy act, Hope allows her own happiness to

extend to her empathy with others, thereby treating the Olanchoans as people, albeit “simple strangers” (321).¹⁸ In one such instance, Hope both takes control over the men around her and uses that to engage in a sort of generous diplomacy with the Olanchoans entertaining them:

“Please give me some money,” Hope said to Clay. “All the money you have,” she added, smiling at her assumption of authority over him, “and you, too, Ted.”

The men emptied their pockets, and Hope poured the mass of silver into the hands of the women, who gazed at it uncomprehendingly.

“Thank you for your trouble and your good supper,” Hope said in Spanish, “and may no evil come to your house.”

The woman and her daughters followed her to the carriage, bowing and uttering good wishes in the extravagant metaphor of their country; and as they drove away, Hope waved her hand to them as she sank closer against Clay’s shoulder.

“The world is full of such kind and gentle souls,” she said. (319-20)

This moment of connection between women, hampered as it is by the narrative assumption of Olanchoan inferiority, reinforces one of the novel’s fundamental premises: that corporate exploitation of Latin American nations is beneficial for the exploited as well as the exploiter, and that, through the process of being “civilized,” the colonized nations get more than their fair share of recompense for having their resources taken away from them. With the partnership of corporate power and American ingenuity, the novel asserts, the process of extraction puts back more than the exploited land deserves—that is, if one takes as a given the assumptions of inferiority inherent in the corporate imperialist scheme.

Corporations, Governments, and Monsters: The Battle of Group Selves

In *Soldiers*, the corporate body of the Valencia Mining Company is overshadowed and supported by the larger body of the United States, such that the corporation’s most important

¹⁸ See, e.g., Clay “unexpectedly” thanking the Olanchoan dignitaries for their extensive concessions early in the novel: “The breakfast lasted far into the afternoon, and, inspired by the success of the banquet, Clay quite unexpectedly found himself on his feet with his hand on his heart, thanking the guests for the good-will and assistance which they had given him in his work. ‘I have tramped down your coffee-plants, and cut away your forests, and disturbed your sleep with my engines, and you have not complained,’ he said, in his best Spanish, “and we will show that we are not ungrateful” (72).

work is as an agent and emanation of a larger national self, one which the reader is asked to identify with. Meanwhile, the inchoate Olanchoan government of “half-breeds” behind it, vaguely supported by Nature as embodied in the mountains, can offer little resistance to the imperialist corporate project (37). Repeatedly, the heroes of the novel actively police membership in both the corporate body and the U.S. body, refusing the Opposition’s attempts to acquire membership in the corporation in a move that precipitates war—and, in turn, the end of that war comes with the active involvement of U.S. military power.

As part and parcel with the novel’s corporate imperialist mission, the people of Olancho repeatedly express their gratitude for the small portion of the mining revenue that they are allowed to keep by contract. The novel asks us to believe, in the words of Clay, that Olanchoans “have no knowledge of [the ore’s] value, and are too lazy to ever work it themselves” — that is, that they are both ignorant of the global market and incapable of being an equal participant in it (31). Indeed, Alvarez, the president of Olancho (who Clay entertains in his newly-built bungalow as practice for the Langhams) places himself explicitly below the mining company out of a sense of deep obligation for the deal: “It is my wish. Mr. Clay, that you will command me in every way; I am most desirous to make the visit of Mr. Langham agreeable to him, he is doing so much for us.” (72) The “good” Olanchoans welcome the civilizing mission of the corporation and the ten percent of the revenue they receive from it – or so the reader is led to believe.

Only the leader of the opposition, General Mendoza, challenges the American monopoly on stock in a company whose existence is based upon removing Olanchoan natural resources. Mendoza, a “Spanish-American” (275) of indeterminate ethnicity — Gibson illustrates him as a portly tanned man of European descent, but at the moment of his death the novel refers to him as “a tall man with a negro’s face” (64-65, 344) — acts as the villain of the novel, the man whose

opposition to Alvarez leads him to foment a revolution.¹⁹ Before all this, however, he visits Clay one evening before Langham's arrival to make his opposition to the mines' concession apparent. Pointing out that the Government has given away the nation's natural resources "not only to aliens, but for a share which is not a share, but a bribe" (54-55), Mendoza throws into relief the assumptions that led Olancho to have such a small share of the profits from their own land.

Subsequently, Mendoza argues against the restriction of membership in the corporate body to U.S. Americans:

why, if this mine is so rich, why was not the stock offered here to us in this country? Why was it not put on the market, that any one might buy? We have rich men in Olancho, why should not they benefit first of all others by the wealth of their own lands? But no! we are not asked to buy. All the stock is taken in New York, no one benefits but the State, and it receives only ten per cent. It is monstrous. (57-58)

Mendoza's use of the word "monstrous" in the context of membership in the corporate body evokes the sense of being the victim of an uncanny being that rampages through the countryside, devouring resources of value and leaving scarred landscapes in its wake. In an attempt to make a mixed corporate body of both Olanchoans and U.S. Americans acceptable, Mendoza points out that if profits were to benefit the elite of both nations, then the Olanchoan elite would have no incentive to claim half of the revenue for the State:

"...if the Senators in Opposition were given a chance to subscribe, I am sure they would see that it is better wisdom to drop their objections to the concession, and as stockholders allow you to keep ninety per cent of the output. And, again," continued Mendoza, "it is really better for the country that the money should go to its people than that it should be stored up in the vaults of the treasury when there is always the danger that the President will seize it; or, if not this one, the next one." (59-60)

Although Mendoza's point is economically sound, the casual way he refers to the unlawful seizure of national resources reveals his true purpose, that of enriching his own pockets. The

¹⁹The novel uses "Spaniard" or "Spanish-American" to signify "Latino," seemingly unaware of the complex hierarchy based upon race (specifically, upon descent from Spanish colonists versus indigenous people and/or Africans) existing in many Latin American countries during this period.

“people” of the country, to Mendoza, are the elite, in much the same way that he portrays a group of wealthy men purchasing the stock “in New York” and equates that with the United States as a whole.

Clay initially entertains the notion of Mendoza purchasing stock, only to suggest that they may “save you the formality of purchasing the stock outright by sending you its money equivalent” — a suggestion Mendoza eagerly welcomes under the euphemism of a “retaining fee [to] be your representative” (60-62). Either through a prioritization of salary work over stock ownership or through a recognition that the imperial corporation would not allow U.S. Americans to be united with Olanchoans on an equal basis through joint membership in the corporate person, Mendoza’s acceptance of Clay’s counter-proposal reads on one level as a bribe, but on another level as little different than the favor the company has shown the current party in charge of the Olanchoan government.²⁰

With an outrage that, I suggest, stems more from Mendoza’s attempt to claim equality with U.S. Americans than his play for a bribe, Clay slaps down Mendoza’s objections with threats of force:²¹

Clay took a step forward and shook his finger in the officer’s face. “Try to break that concession; try it. It was made by one Government to a body of honest, decent business men, with a Government of their own back of them, and if you interfere with our conceded rights to work those mines, I’ll have a man-of-war down here with white paint on her hull, and she’ll blow you and your little republic back up there into the mountains. Now you can go.” (63)

In Clay’s portrayal, the negotiation over the concession consisted of a meeting of the minds between two collective entities — the Olanchoan government and the “body” of the Valencia

²⁰ I acknowledge that by reading this scene sympathetically to Mendoza, I am going against the novel’s castigation of this character. I maintain, however, that the fact that Mendoza explicitly attempts to join the corporate body, and that he makes points that an objective reader would identify as accurate criticisms of the Valencia Mining Company’s actions in Olancho, creates a space in which a sympathetic reading is appropriate.

²¹ Interestingly, Gibson illustrates this moment, subtitled “Now you can go,” with Clay standing, hands in his pockets, while the shorter Mendoza looms cross-armed over a toppled chair. No hint of Clay’s aggression appears in the image, only suave relaxation contrasting with Mendoza’s sullen irritation (64-65).

Mining Company — with the larger entity of the United States government looming protectively over the “body of honest, decent business men” like a mother hen over her chick.²² Instead of the U.S. and Olancho being equal and independent nations, Olancho can barely treat with a single corporation on an equal basis, its claim to be an independent “Government” belied by the derisive way in which Clay threatens to deploy military force to remove all vestiges of civilization from the “little republic.”²³ Clay’s emphasis on the “white paint on her hull” serves not only to identify these ships as American — U.S. vessels of the period were typically painted white — but to reinforce the racial and ethnic superiority that Clay claims over the supposedly inferior “Spaniards” and “Spanish-Americans” of Olancho (Library of Congress). As we see after the revolution, Mr. Langham shares Clay’s assumption that the United States government will represent the corporate interests in Olancho even if he leaves Olancho entirely, although characteristically Langham represents the conflict as diplomatic rather than militaristic: “The State Department at Washington can fight with Mendoza for the mines.” (323)

In turn, citizenship in Olancho presents as a self-interested endeavor under the veneer of independent government. As Clay rallies the “native soldiers” for action against Mendoza, he claims that the “greater” cause “was there desire to preserve the Constitution of the Republic” and thereby put the popular Vice President Rojas into power instead of Mendoza. Instead of leaving it as a matter of principle, however, Clay continues inciting the soldiers to fight by describing the “less worthy and more selfish” motivation underlying the conflict, explaining:

The Olancho mines, which now gave work to thousands and brought millions of dollars into the country, were coveted by Mendoza, who would, if he could, convert them into a monopoly of his government. If he remained in power all foreigners would be driven out

²² The unspoken Titan looming over the Olanchoan Government is arguably that of Nature as embodied in the mountains and the ore they harbor, an entity that, as shown *supra*, U.S. engineering and technology can relatively easily conquer.

²³ As John Seelye points out, this threat is also “[a] hard-fisted projection of what would become the new imperialism in action [and] a very particularized notion of the Monroe Doctrine” (Seelye 210).

of the country, and the soldiers would be forced to work in the mines without payment. Their condition would be little better than that of the slaves in the salt mines of Siberia. Not only would they no longer be paid for their labor, but the people as a whole would cease to receive that share of the earnings of the mines which had hitherto been theirs. (333-34)

As Beatriz Urraca observes, Clay's speech frames Latin America as "a path to riches" rather than a "land of ideas" like the United States, a move that acts in tandem with the commercial objectives of the "new North American empire:" "Clay's goal in controlling the outcome of the revolution is not to duplicate the United States in Olancho — if this happened, the competition for power in the Americas would mean that the United States was no longer the strongest nation — but only to create the perfect conditions for its economic exploitation" (Urraca 37).

Although this speech might be seen as an opportunity to show off Clay's rhetorical powers of leadership, most of his rallying cry is narrated in the third person, further separating the target audience of the novel from a materialistic, self-serving argument that the novel suggests is only fit for Olanchoans. Meanwhile, Clay's use of the word "share" creates a deceptive sense of ownership in an enterprise whose revenue would barely trickle to the Olanchoan people even under a Rojas government.

In contrast to the novel's dismissive depiction of Olanchoans, being a true "American" in *Soldiers* means being recognized as expert both in military savvy and in management skills. Clay receives the culminating honor of his success in the revolution not from the fervent praise of grateful Olanchoans, but rather from the casual observations of marines who arrive after the bulk of the fighting is over. In this moment, Clay's Americanness — absent the conventional trappings of military rank and attire, but shining through powerfully in his actions — receives formal recognition from the avatars of U.S. military power:

“Are you from the States?” [the naval officer] asked as they moved toward the man-of-war’s men.

“I am, thank God. Why not?”

“I thought you were, but you saluted like an Englishman.”

“I was an officer in the English army once in the Soudan, when they were short of officers.” Clay shook his head and looked wistfully at the ranks of the blue-jackets drawn up on either side of them. . . . “I have worn several uniforms since I was a boy,” said Clay. “But never that of my own country.”

...

“Even if you haven’t worn our uniform, you’re as good, and better, than some I’ve seen that have, and you’re a sort of a commander-in-chief, anyway, and I’m damned if I don’t give you a sort of salute.”

Clay laughed like a boy as he swung himself into the saddle. The officer stepped back and gave the command; the middies raised their swords and Clay passed between massed rows of his countrymen with their muskets held rigidly towards him. . . . [A]s he rode out into the brilliant sunshine, his eyes were wet and winking. (350-52)

As Amy Kaplan notes, Clay’s unprepossessing, utilitarian attire, combined with his adoption of transnational customs, serves to make Clay “more authentically American than the uniformed marine by rendering his nation’s qualities universal and self-evident in his own body” (Kaplan 105-06). While the marine relies on the formal trappings of his membership in the U.S. navy, Clay’s efficacy in managing Olanchoans, combined with his fervent, religiously-tinged avowal of national belonging, earn him the closest thing to formal U.S. governmental recognition that this novel provides.²⁴ In this homoerotic moment, Clay passes through a “mass” of men with guns, the symbols and instruments of their military force, “held rigidly towards him” as if aroused by Clay’s virility; in turn, Clay becomes overwhelmed with emotion as he receives the admiring ardor of the U.S. military’s group body.

Imbued with both corporate competence and U.S. military recognition, Clay ends the novel able to encompass the whole world in his vantage point, imagining a future in which he and Hope together can take the corporate imperial project on the road (361-63). With Clay’s corporate membership secured by marriage into the primary stockholder’s family, and his

²⁴The U.S. consul in Olancho praises Clay repeatedly through the novel, but not formally in the person of his office.

American bona fides proven by the agents of U.S. imperial power, Clay becomes a sort of corporate superhero-for-hire, spreading U.S. imperialism one profit-making venture at a time.

CHAPTER 5

“A Force Born Out of Certain Conditions:” Corporate Power and Limitations in *The Octopus* (1901)

Two years after the success of *Soldiers of Fortune*, Frank Norris, in the midst of writing a relatively unsuccessful “love story” featuring a “New Woman of the 1890s” (*A Man’s Woman*, completed June 1899) came up with the idea that would animate him during his final years (McElrath and Crisler 332). As he wrote to William Dean Howells in March 1899:

My Idea is to write three novels around the one subject of *Wheat*. First, a story of California (the producer), second, a story of Chicago (the distributor), third, a story of Europe (the consumer) and in each to keep to the idea of this huge Niagara of wheat rolling from West to East. . . . The idea is so big that it frightens me at times but I have about made up my mind to have a try at it. (McElrath and Crisler 334)

The sense of terrifying bigness that filled Norris merely in the contemplation of the Epic of the Wheat would extend to the novels he composed under its umbrella, particularly the first, *The Octopus: A Story of California*. To research his Epic of the Wheat, he spent much of 1899 in California, consulting newspaper accounts from the *San Francisco Chronicle* and *The Wave*, meeting with officers of the Southern Pacific, visiting wheat ranches, and, most importantly, researching the Mussel Slough Tragedy, a fictionalized version of which would become the central drama of the novel (McElrath and Crisler 341-52). Although “it seems that when he came to San Francisco Norris was intent upon writing a ‘muckraking’ book like Zola’s *Germinal* that singlemindedly championed the cause of ‘the people’ oppressed by a ruthless corporation” (McElrath and Crisler 341) it appears that his predisposition, combined with his reliance on the “notoriously anti-railroad” *Chronicle* for the facts of the Mussel Slough Tragedy (Deverell 143),

became somewhat counterbalanced by his interactions with officers and operatives of the Southern Pacific, interactions that led to an at once adulatory and fearful portrayal in the novel of the management structure of the Pacific and Southwestern Railroad.

In the dissertation's final chapter, I turn to Frank Norris's *The Octopus: A Story of California*, whose pointed criticism of corporate power has made it one of the most famous texts in American literature. A loose fictionalization of the 1880 shootout between San Joaquin Valley ranchers and the Southern Pacific Railroad that became known as the "Mussel Slough Tragedy," Norris's novel forms the first part of a projected trilogy, the Epic of the Wheat, engaging with the movement of wheat from the fields of California to the markets of Chicago to, in the envisioned third book, the hungry people of Europe. It is in *The Octopus*, however, rather than the commodity trading-focused *The Pit*, where Norris' pointed views on the expansion of corporate power become most apparent. The novel envisions the turn-of-the-century landscape of California — and of the United States more generally — as a battlefield of Titans, where group persons, mostly corporate, do battle, leaving "the People," as Norris calls the ordinary, non-stock-owning citizenry, to suffer the casualties. Complicating the simplistic portrayal of corporations as evil monsters that occupies some of the novel, however, is a remarkable sympathy or admiration of corporate efficiency, particularly in the person of the railroad's leader, Shelgrim, and its agent, S. Behrman, whose grudgingly sympathetic portrayal foreshadows Dreiser's later fictionalization of Yerkes into Cowperwood. Meanwhile, the ordinary people subject to the titular Octopus's reach cannot be said to be entirely innocent victims; rather, the touch of the Octopus's tentacle awakes an animality within them, as they attempt to transform into a body that can do battle with corporate power.

**Bureaucracy Turned Deadly:
Middle Management and the Problem of Agency**

The pinnacle of middle management, S. Behrman, agent of the Pacific and Southwestern in *The Octopus*, embodies the terrifying power that the massive size of the railroad corporation enables. As the historian Richard White observes, “everything” that the real Southern Pacific Railroad, fictionalized as the Pacific and South West Railroad, “could do Norris encapsulated in S. Behrman,” even though “the Southern Pacific had no operative as terrifyingly competent as S. Behrman” (R. White 233). Like Robert Clay in *Soldiers of Fortune*, S. Behrman is superhumanly good at his job, to the point of being unrealistic; while the character was a “composite” of real Southern Pacific representatives, White observes, “[l]ooking for Behrman’s equivalent in archives is like looking for Superman and finding only Clark Kent” (R. White 234). Whereas *Soldiers* portrays Clay’s work on behalf of the mining company as the civilizing extension of American power to an inferior nation, however, S. Behrman acts upon a land that has already been colonized and converted to part of the United States, and thus the imposition of his power upon his fellow Americans comes off as frightening rather than ennobling.

S. Behrman first appears in the novel in the form of corporate speech, in a double set of advertisements that establish him as a ubiquitous feature of the novel’s social world. The first, a simple sign that describes his role in terms of a land agent, seems benign enough, even though the location of his business — “Opposite the Post Office” — hints at the ways in which the railroad absorbs and conquers the role of the federal government. The more ominous message, however, is “freshly painted” on the adjoining “horse-trough:” “S. Behrman Has Something To Say To *You*.” (8)¹ As a land agent, S. Behrman would interact most directly with those who had contracted directly with the railroad for their ranches, but his role would be limited for the other strata of society. The horse-trough, however, a utility providing water equally to humans and

¹This and subsequent citations are to the following edition: Norris, Frank. *The Octopus: A Story of California*. 1901. The Complete Works of Frank Norris. New York: P. F. Collier & Son, 1905. Print.

animals alike, serves one's most basic needs, and using this as a vehicle for such an all-encompassing statement cements the railroad's penetration into every facet of life in Tulare County.² This form of the land agent's name — "S. Behrman" — appears continuously through the novel, rarely to be replaced by a more colloquial or casual form of address. His name in advertisements is the essence of the person, such that S. Behrman seems to have no being independent of the railroad that employs him or the role in which he is employed.

His physical body reinforces this impression; when the reader finally meets S. Behrman in the flesh, we see that he is a "large, fat man" wearing the physical mark of the "iron horse" that employs him: "A light-brown linen vest, stamped with innumerable interlocked horseshoes, covered his protuberant stomach, upon which a heavy watch-chain of hollow links rose and fell with his difficult breathing, clinking against the vest buttons of imitation mother-of-pearl" (52, *see also* 155).³ The watch-chain S. Behrman wears hints at the role that the railroads played in enforcing standardized time, even as the use of "imitation mother-of-pearl" buttons on his horseshoe vest echoes nature warped and copied by the industrial complex (see R. White 150).

S. Behrman's strength comes from his incarnation of the corporate structure, as his versatility illustrates the pervasiveness of the railroad into every aspect of life in the San Joaquin Valley. On one level, S. Behrman operates in a completely licit manner, taking on the role of "banker," "real estate agent," "political boss," and most importantly, "the representative of the Pacific and Southwestern Railroad":

The position he occupied on the salary list of the Pacific and Southwestern could not readily be defined, for he was neither freight agent, passenger agent, attorney, real estate broker, nor political servant, though his influence in all these offices was undoubted and enormous. But for all that, the ranchers about Bonneville knew whom to look to as a

² Even to use the trough, one has to bend down as if in homage to S. Behrman: "Presley straightened up after drinking from the faucet at one end of the horse-trough" (8)

³ The novel does not use the then-common term "iron horse" to refer to a locomotive or the railroad more generally, but Norris does describe the "terrific clamor of [the locomotive's] iron hoofs" (40).

source of trouble. There was no denying the fact that for Osterman, Broderson, Annixter, and Derrick, S. Behrman was the railroad. (53)

Norris here deals with the problem of the corporation's vastness and mutability by incarnating the entire structure into a single individual—but whereas other portrayals of the corporation during this period consider the corporation as located in its primary stockholder, Norris, like Davis, reads the corporation as embodied in its middle management. Indeed, although Shelgrim, the railroad president (who appears late in the novel) is an active presence in the rancher's minds, he is always twinned with S. Behrman, the railroad's tangible and real as opposed to Shelgrim's ideal and distant body.⁴ As Michaels has noted, Behrman embodies the corporation even insofar as to lead the ranchers to speak of those who serve him as his "hands:" "as if we didn't see that Christian and Delaney are S. Behrman's right and left hands" (353; Michaels 208).⁵

Equating S. Behrman with the railroad is ultimately metonymy, however, and Harran Derrick, one of the ranchers, acknowledges as much even as he castigates S. Behrman's effectiveness:

"He's the man that does us every time," cried Harran. "If there is dirty work to be done in which the railroad doesn't wish to appear, it is S. Behrman who does it. If the freight rates are to be 'adjusted' to squeeze us a little harder, it is S. Behrman who regulates what we can stand. If there's a judge to be bought, it is S. Behrman who does the bargaining. If there is a jury to be bribed, it is S. Behrman who handles the money. If there is an election to be jobbed, it is S. Behrman who manipulates it. It's Behrman here and Behrman there. It is Behrman we come against every time we make a move. It is Behrman who has the grip of us and will never let go till he has squeezed us bone dry." (83)

⁴ See, e.g., the aftermath of the shootout between the railroad and the ranchers: "vowing with inarticulate cries that neither S. Behrman nor Shelgrim should ever live to consummate their triumph" (390).

⁵ Although most of the novel embraces a more real-entity notion of the corporation as a monstrous entity, traces of artificial entity notions remain, most notably in family connections—namely, the novel repeatedly observes that Christian is also S. Behrman's cousin (353). By incorporating middle management's family into the corporate structure, Norris hammers home yet again the engulfing power of the Octopus.

In his frustration, Harran toggles back and forth between seeing Behrman as an actor working on behalf of the railroad and seeing Behrman as the railroad himself. This vacillation speaks to the larger problem of group personhood, a doctrine that, in the moment this novel was being composed, led some to call it an outgrowth of will and others to call it an outgrowth of law. Although Behrman may or may not be a shareholder of the P. and S.W., he embodies the corporation of which he forms an essential part of the structure, even as he can (and does, by the end of the novel) exist independent of it.

Although Behrman does not maintain a corporate self exclusively to himself, as Dreiser's Cowperwood or even Davis's Langham do, the fact that he acts as one of many cells in a single organism makes him even more terrifying than if he were simply two persons in one, exemplifying the more unsettling aspects of real entity theorists' insistence on corporate personhood as a result of collective will. As a member of one of the United States' first corporate bureaucracies, the railroad, S. Behrman has a degree of power nearly unmatched among the general salaried public, including the responsibility of "forecasting" what the rates should be from year to year (Zunz 39, 49, 53-54). Although viewing the corporation as equal with S. Behrman makes envisioning the corporate person easier — Annixter even goes so far as to speak of the railroad as an old-fashioned partnership of "S. Behrman, Shelgrim and Co." (261) — the fact that S. Behrman is actually just a member of the corporate bureaucracy, such that it acts "through S. Behrman" (213) but is not encompassed by him, indicates both the ranchers' incapacity to understand their situation (and, by extension, the inscrutability of the corporate structure to ordinary citizens) and their helplessness in the face of the railroad, whichever face they may identify as its own.

While serving the railroad, S. Behrman's claim that "there ain't anything that can touch me" (455) holds true, as he survives two near-certain deaths "untouched" (406). His connection with the railroad, however, becomes fractured when he receives his reward for his service in the fight between the railroad and the ranchers, a reward that changes the way he views himself:

He knew just how great was his share in the lands which had just been absorbed by the corporation he served, just how many thousands of bushels of this marvelous crop were his property. Through all these years of confusion, bickerings, open hostility and, at last, actual warfare he had waited, nursing his patience, calm with the firm assurance of ultimate success. The end, at length, had come; he had entered into his reward and saw himself at last installed in the place he had so long, so silently coveted; saw himself chief of a principality, the Master of the Wheat. (446)

Imagining himself "master" rather than manager of resources greater than himself, S. Behrman, who could manage half the state of California when acting on behalf of the corporation, finds himself incapable of managing the Wheat.⁶ While inspecting the torrent of wheat going to feed the starving in India — a torrent caused by his cost-cutting refusal to store his wheat in sacks — Behrman falls into the pile of wheat and drowns in it (466-69). Many critics have observed that this moment is, in the words of Walter Benn Michaels, a "moment when appetite fails" — when the limitations of the human body become apparent, as even the gluttonous S. Behrman cannot swallow the wheat (Michaels 184; *see also* Henderson 143). Extending Michaels' point, I would emphasize that S. Behrman's death comes as a direct result of acting independently instead of as part of the corporate structure. As Behrman separates himself from one group person—the Octopus—he is forcibly incorporated into another, the Wheat.

If S. Behrman acts as the "hands" of the railroad, then the "head" of the railroad is the mysterious Shelgrim, president of the Pacific and Southwestern, and potentially a fictionalized

⁶ This failure reinforces the theme in *The Octopus* and its sequel, *The Pit* (1903), that the Wheat is a force that cannot be controlled, and those who attempt to control it are doomed to suffer and fail like Curtis Jadwin with his corner.

version of the actual Collis P. Huntington.⁷ Like his subordinate S. Behrman, Shelgrim first appears in the novel by reference, his name imbued with the strength of his corporate role:

Shelgrim! The name fell squarely in the midst of the conversation, abrupt, grave, sombre, big with suggestion, pregnant with huge associations. No one in the group who was not familiar with it; no one, for that matter, in the county, the State, the whole reach of the West, the entire Union, that did not entertain convictions as to the man who carried it; a giant figure in the end-of-the-century finance, a product of circumstance, an inevitable result of conditions, characteristic, typical, symbolic of ungovernable forces. In the New Movement, the New Finance, the reorganization of capital, the amalgamation of powers, the consolidation of enormous enterprises —no one individual was more constantly in the eye of the world; no one was more hated, more dreaded, no one more compelling of unwilling tribute to his commanding genius, to the colossal intellect operating the width of an entire continent, than the president and owner of the Pacific and Southwestern. (79)

The power Shelgrim possesses is hammered home through repeated mentions of his massive size (“big,” “pregnant,” “giant,” “colossal”), but although Shelgrim is indeed a large man physically, none of these mentions of size have to do with his natural body (*see* Clarke 112). Instead, his vastness comes from his name, just as the core of corporate identity lies in the name by which the enterprise does business. Here, Shelgrim represents the “New Finance” in which the corporation has taken over the American economic landscape. In a novel obsessed with innovation – whether in railroading, communication, or farming techniques — Shelgrim epitomizes the underlying industrial system that facilitated and spearheaded that creative process.

Even as Norris emphasizes the newness of the system, however, naming Shelgrim the “owner” of the Pacific and Southwestern recalls older forms of business organization, a move that, like Davis’s Langham in *Soldiers of Fortune* and Dreiser’s Cowperwood in the Trilogy of

⁷ Although scholars have discussed Norris’s interview with Huntington (one which Norris claimed in correspondence that he scheduled) as a moment that leads Norris to “shift sides” and sympathize with the railroad, and Donald Pizer claims two separate meetings between Norris and Huntington took place (in “spring” and “late August” 1899, respectively), the historian William Deverell has found no trace of any meeting with Norris in Huntington’s papers (Eby 36; Pizer 134; Deverell 141, 227-28 n.75).

Desire, makes the railroad intelligible.⁸ In the imagination of the ranchers, Shelgrim and the corporation are one and the same, with Shelgrim's subordinates merely marionettes animated by Shelgrim's will: "He sits in his office in San Francisco and pulls the strings and we've got to dance." (80) At the same time, however, Shelgrim is a "product of circumstance, an inevitable result of conditions;" even as Shelgrim cows an entire nation, he is himself subject to vast forces beyond his control, thereby undermining his individual agency even as the novel claims that he compels "unwilling tribute" from an entire nation (79).

Shelgrim has an opportunity to justify himself at the end of the novel, when the itinerant poet Presley visits his offices in San Francisco. Gazing at the unpretentious office building housing the Pacific and Southwestern Railroad, Presley imagines it as "the centre of all that vast ramifying system of arteries that drained the lifeblood of the State. . . . Here was the keep of the castle, and here, behind one of those many windows, in one of those many offices, his hand upon the levers of his mighty engine, sat the master, Shelgrim himself" (412). In Presley's vision, the corporate headquarters is at once the head of a monster, the center of a disembodied circulatory system, the control room of an engine, and a feudal keep housing its lord. In this scattered and haphazard consolidation of ancient and modern imagery, the corporation becomes so muddled as to lose all sense of its true nature, its vastness giving way to the familiarity of identifying a single human as its "master." Instead of seeing the corporation as embodied in the building that houses its central bureaucracy (as Dreiser did with Cowperwood's headquarters in *The Financier*), Presley facilely equates Shelgrim with the entirety of the P. and S.W., attributing every action of

⁸ Collis P. Huntington, on whom many claim Shelgrim was modeled, was not the sole owner of the Southern Pacific, just one of the "group of fat men in an Octopus suit fighting over the controls" (R. White 260). Although Huntington shares some features with Shelgrim, including their fondness for skullcaps, identifying Shelgrim as Huntington does not add significantly to the analysis of Shelgrim as a corporate figurehead; as Deverell observes, "[even] patent parallels to real figures — Shelgrim as Collis Huntington, for example — cannot be read as biography" (Deverell 143, 244 n.43).

the railroad to one supervillain: “Why not see, face to face, the man whose power was so vast, whose will was so resistless, whose potency for evil so limitless, the man whom for so long and so hopelessly they had all been fighting” (413).

Inevitably, Shelgrim fails to live up to the hype, his humanness and humaneness confounding Presley’s facile expectations. Seventy years old, with an “iron-gray beard” to match the iron of the railroad, Shelgrim’s appearance — disheveled “silk skull-cap” and “worn waistcoat” aside — is that of an elderly Atlas, accustomed to carrying the world on his shoulders:

the enormous breadth of the shoulders was what, at first, most vividly forced itself upon Presley’s notice. Never had he seen a broader man; the neck, however, seemed in a manner to have settled into the shoulders, and furthermore they were humped and rounded, as if to bear great responsibilities, and great abuse.

...

Presley, his senses never more alive, observed that, curiously enough, Shelgrim did not move his body. His arms moved, and his head, but the great bulk of the man remained immobile in its place, and as the interview proceeded and this peculiarity emphasized itself, Presley began to conceive the odd idea that Shelgrim had, as it were, placed his body in the chair to rest, while his head and brain and hands went on working independently. (414-15)

Shelgrim is at once a Titan supporting the vast network of the railroad with the muscular strength of his body, and a disembodied mind, animating appendages with a life independent of the whole. In Presley’s perceptual confusion, Shelgrim embodies in miniature the corporation’s capacity to delegate functions to various middle management functionaries without involving the center in every decision, even though he had previously described Shelgrim as individually behind every decision of the organization.

Instead of reassessing Shelgrim as a natural person based on his generosity to individual employees and his appreciation of art, Presley concludes that the failure of his own imagination

was not that he did not see Shelgrim as an individual, but rather that he did not see him as “large” enough:

he had been prepared to come upon an ogre, a brute, a terrible man of blood and iron, and instead had discovered a sentimentalist and an art critic. No standards of measurement in his mental equipment would apply to the actual man, and it began to dawn upon him that possibly it was not because these standards were different in kind, but that they were lamentably deficient in size. He began to see that here was the man not only great, but large; many-sided, of vast sympathies, who understood with equal intelligence the human nature in an habitual drunkard, the ethics of a masterpiece of painting, and the financiering and operation of ten thousand miles of railroad. (416)

Presley’s description of his own failings in perception — [no] standards of measurement in his mental equipment would apply” — speaks equally well to the vastness of the corporate behemoth of which Shelgrim is president: a network spanning thousands of miles, with thousands of employees, most of whom would never meet the man who owned the stock of their employer. The only way Presley can account for the vastly different scale between individual humans and the corporate person is to imagine the stockowner in front of him as somehow made both “great” and “large” by familiarity with the personal and market forces that govern the modern world.

The Octopus may be pernicious, but it is awe-inspiring as well, and that intimacy with the sublime gives Shelgrim’s defense of the railroad a certain believability:

“try to believe this — to begin with — *that Railroads build themselves*. ... You are dealing with forces, young man, when you speak of Wheat and the Railroads, not with men.... The Wheat is one force, the Railroad, another, and there is the law that governs them—supply and demand. Men have only little to do in the whole business. Complications may arise, conditions that bear hard on the individual —crush him maybe— *but the Wheat will be carried to feed the people* as inevitably as it will grow. ... Blame conditions, not men.”

“But—but,” faltered Presley, “you are the head, you control the road.”

“You are a very young man. Control the road! Can I stop it? I can go into bankruptcy if you like. But otherwise if I run my road, as a business proposition, I can do nothing. I can *not* control it. It is a force born out of certain conditions, and I—no man— can stop it or control it. ... Can any one stop the Wheat? Well, then no more can I stop the Road.” (417)

Shelgrim's claim that the railroad corporation arises independently, without state intervention, echoes the claims of Real Entity theorists that the corporate person exists even without recognition by the state. By this telling, the corporation comes into being as one of many forces; although it implicitly results from the responses of individual humans to the forces of supply and demand, it consolidates individuals into a single group person, "the Road," that cannot be controlled by any single constituent member.⁹ If the reader is to believe Shelgrim, then the corporation is but one of the forces that rule the naturalist novel's world, an entity arising out of but ultimately independent from the humans that comprise it, unthinking and relentless in its obedience to the laws of the market.

Shelgrim's philosophy differentiates him from his subordinate, S. Behrman; it is hard to imagine that an individual who refuses to name himself as controlling the Road of which he is president would ever imagine himself capable of being "Master of the Wheat" (446). More than that, however, Shelgrim's portrayal of the railroad as transcending any one individual makes the Octopus vastly more terrifying than any one "ogre," however villainous, could ever be. Once created, the corporation lives on, theoretically immortal, existing independently of those whose will brought it into being. If an individual as "many-sided" as Shelgrim cannot control the railroad, then the only potential hope for those not in the corporation is to unite in a colossus of their own, turning everyday life into a battle of monsters.

The World-Devouring Corporation: Construction and Destruction

This battle of monsters appears in both *Soldiers of Fortune* and *The Octopus*, but with significantly different overtones. In *Soldiers*, Davis portrays the struggles of the corporation as a

⁹ In another similarity to some real entity theorists' writing, Shelgrim's portrayal of the railroad is so abstract from reality as to bear little resemblance to it. For a meticulously-researched portrayal of the bumbling, corruption-filled boondoggle that was the railroad business in the late nineteenth century, see White.

beneficent, civilizing entity, taming unruly Nature as embodied in the South American landscape. Although wheat farming in *The Octopus* is superficially a similar sort of resource extraction – indeed, one of the ranchers, a former gold miner, views mining and farming as fundamentally the same endeavor (51) – the railroad corporation, whose cooperation is required to get the resources to market, acts on the landscape around it to fundamentally different ends.

Although it is Frank Norris’s portrayal of the railroad as “the Octopus” that lives on in popular imagination, the notion of calling the railroad “the Octopus” was not Norris’s own. Even the historian Richard White, whose *Railroaded* exposes “the group of fat men in an Octopus suit fighting over the controls” of the Southern Pacific Railroad, acknowledges that the historical Octopus—a political campaign over rate-fixing in the 1880’s—was “the only briefly successful Southern Pacific political machine of the era” (R. White 269, 169). Although the metaphor may have been used much earlier, Norris’s titular image owes much to G. F. Keller’s famous political cartoon “The Curse of California,” published in the satirical San Francisco magazine *The Wasp* in August 1882. Depicting the Southern Pacific as a giant cephalopod with financiers Mark Hopkins and Leland Stanford for eyes, Keller transforms the railroad into a “monster,” gaping maw ready to swallow farmers and miners alike as it looms over the graves of those killed at Mussel Slough.¹⁰ The image of a corporation as a cephalopod was a compelling one, and was repurposed by different artists to portray transportation trusts, Standard Oil, and other monopolies throughout the late nineteenth and early twentieth centuries (“The Image of the Octopus: Six Cartoons, 1882-1909”).

Norris may have been borrowing the notion of the “railroad monster” from Keller and others like him, but *The Octopus* complicates Keller’s iconic image by illustrating the monstrous

¹⁰ Keller was not the first to use the image of the octopus to critique large organizations, but he popularized it in cartoons targeting the railroad as well as “Chinese ‘coolies’” (Salzman and Brown 30).

capacities inherent in group personhood more generally—not just the railroad, but the humans, machines, and animals that comprise the different forces battling in the San Joaquin Valley. By looking at the novel through two bookending incidents—the massacre of the sheep and Dyke’s flight from the law—I argue that not only is the railroad corporation revealed as a monstrous entity, but that the individuals who struggle with the corporation have a hybrid human-animal identity even as the mechanisms of the railroad itself become animal-machine hybrids. Later in this chapter, I will look more globally at the three forces struggling with each other in the novel—the League, spearheaded by the Derrick family; the Railroad and the Trust that controls it; and Nature, as expressed in the Wheat—and attempt to determine which one, if any, wins the battle of Titans at the end of the novel.

In a novel filled with horrific scenes of shootouts and starvation, arguably the most graphic depiction of suffering is not human at all, but rather the sheep slaughtered by a speeding locomotive at the beginning of the novel. As a passenger engine passes Presley one evening, it appears more or less benign, although foreign in its fusion of steel, oil, steam, and a vague animality: “with a quivering of all the earth, a locomotive, single, unattached, shot by him with a roar, filling the air with the reek of hot oil, vomiting smoke and sparks; its enormous eye, cyclopean, red, throwing a glare far in advance, shooting by in a sudden crash of confused thunder; filling the night with the terrific clamor of its iron hoofs” (40). The true horror begins after the engine passes, when Presley hears “[p]rolonged cries of agony, sobbing wails of infinite pain, heartrending, pitiful” and follows the sounds of “all but human distress” to their source (40, 41):

In some way, the herd of sheep—Vanamee’s herd—had found a breach in the wire fence by the right of way and had wandered out upon the tracks. A band had been crossing just at the moment of the engine’s passage. The pathos of it was beyond expression. It was a slaughter, a massacre of innocents. The iron monster had charged full into the midst,

merciless, inexorable. To the right and left, all the width of the right of way, the little bodies had been flung; backs were snapped against the fence posts; brains knocked out. Caught in the barbs of the wire, wedged in, the bodies hung suspended. Under foot it was terrible. The black blood, winking in the starlight, seeped down into the clinkers between the ties with a prolonged sucking murmur. (41)

Vanamee, the John Muir-esque wandering shepherd with psychic powers, had formed part of Presley's imagined pastoral vision for his "de Profundis," his Epic of the West. By slaughtering Vanamee's sheep, the railroad destroys these vestiges of a presumably better time, even as it prefigures the shootout by the ditch that will kill several of the landowners in the novel. These parallels, however, do not fully explain the graphic brutality of the scene, in which the railroad appears to literally suck the sheep's blood, turned black by night and contact with the iron darkness of the steam engine. By virtue of colliding with the "iron monster," the sheep are reduced to their component parts, no longer embodiments of pastoral virtue but rather an assemblage of "little bodies" with "backs" and "brains" struck in unnatural positions. Most powerful of all are the cries; the surviving sheep express their commonality with humans through wails that inspire empathetic suffering in the hearer, such that that Presley flees the scene "almost running, even putting his hands over his ears until he was out of hearing distance of that all but human distress" (41).¹¹

Although the sheep had clustered together in a "herd" or "band," this "innocent" collective action cannot resist the individual locomotive, just as aggregate notions of the corporation had become insufficient to deal with the corporate entity. After the slaughter, Presley imagines the locomotive as merely a "symbol" of a larger collective, the Railroad:

the galloping monster, the terror of steel and steam, with its single eye, cyclopean, red, shooting from horizon to horizon; but [Presley] saw it now as the symbol of a vast power,

¹¹ This scene provides an illuminating contrast to Davis's *Soldiers of Fortune*, in which the mining railroad symbolizes progress as it crushes the relics of the past: "Thousands of land-crabs, painted red and black and yellow, scrambled with a rattle like dead men's bones across the rails to be crushed by the hundreds under the wheels of the Juggernaut" (130).

huge, terrible, flinging the echo of its thunder over all the reaches of the valley, leaving blood and destruction in its path; the leviathan, with tentacles of steel clutching into the soil, the soulless Force, the iron-hearted Power, the monster, the Colossus, the Octopus.

This powerful description animates much of the rest of the novel, which expends significant energy showing how monstrous, cold-hearted, and powerful the Octopus is in California. In almost an afterthought, however, S. Behrman later appears at the rancher Annixter's home to complain about the broken fence, pointing out "We—the railroad—can't fence along our right of way," and that the slaughter of the sheep, far from benefiting the railroad, has actually damaged the system of ballast that keeps the railroad ties in place (60). Arguably, therefore, the "massacre" of sheep is not the railroad's fault, but rather is a direct consequence of Annixter's failure to keep the fence in repair. Even if we are to follow Presley's lead and blame the railroad for the slaughter, we must acknowledge that, although the railroad causes suffering again and again in *The Octopus*, it is rarely clear how, if in any way, the railroad benefits from this suffering. If the railroad is indeed a "monster," it is not a very intelligent one.¹²

Again and again, however, *The Octopus* portrays its titular corporation as a "iron-hearted monster of steel and steam," a malevolent creature bent on feeding itself at the expense of the entire state of California (204, 234, 286). At times, as with the sheep incident discussed *supra*, a part stands in for the whole. More often, however, the novel describes the Octopus as a creature whose entire body can only be imagined rather than seen. Only in the "commissioner's official railway map of the State of California," which appears in the turncoat Lyman Derrick's office, is the true form of the railroad monster revealed:

¹² Indeed, one could argue that part of what makes the railroad monstrous is not simply its corporate form, but the fact that it does not exploit that corporate form effectively, repeatedly failing to pay dividends for its stockholders: "If you enforced those rates, Mr. Harran...we wouldn't be able to earn sufficient money to meet operating expenses or fixed charges, to say nothing of a surplus left over to pay dividends —' 'Tell me when the P. and S. W. ever paid dividends.'" (54)

The whole map was gridironed by a vast, complicated network of red lines marked P. and S. W. R. R. These centralized at San Francisco and thence ramified and spread north, east, and south, to every quarter of the State. From Coles, in the topmost corner of the map, to Yuma in the lowest, from Reno on one side to San Francisco on the other, ran the plexus of red, a veritable system of blood circulation, complicated, dividing, and reuniting, branching, splitting, extending, throwing out feelers, offshoots, tap roots, feeders — diminutive little blood-suckers that shot out from the main jugular and went twisting up into some remote county, laying hold upon some forgotten village or town, involving it in one of a myriad branching coils, one of a hundred tentacles, drawing it, as it were, toward that centre from which all this system sprang.

The map was white, and it seemed as if all the color which should have gone to vivify the various counties, towns, and cities marked upon it had been absorbed by that huge, sprawling organism, with its ruddy arteries converging to a central point. It was as though the State had been sucked white and colorless, and against this pallid background the fed arteries of the monster stood out, swollen with life-blood, reaching out to infinity, gorged to bursting; an excrescence, a gigantic parasite fattening upon the life-blood of an entire commonwealth. (210)

In one sense, the “system of blood circulation” that is the P. and S.W. forms part of the larger body of California, its system allowing the products of even a “forgotten village” to flow to San Francisco, where they can go out to the world, replaced by international trade goods that will flow back to the ends of the little “feelers” at the edges of the system. Just as an organism cannot survive without the flow of oxygen to all of its cells, so too does California arguably need the railroad system to enable its participation in a global economy. Even as the passage allows for this sympathetic reading, however, it perverts the notion of the railroad-as-circulatory-system by imagining a parallel existence for that system in which it is a “parasite” sucking the “life-blood” of the state, leaving the land “white and colorless” with only the “fed arteries of the monster” visible. Tellingly, the passage does not imagine this “life-blood” actually flowing anywhere, only swelling the “arteries... to bursting.” Even though later in the novel the indulgent life of railroad executives will be contrasted with the starvation of the Hooven family, there is no sense here that the profits of the railroad will actually go to any human, even the stockholders (who, as established earlier, do not receive dividends on their stock [54]). The consumption here

is consumption without purpose or benefit, a mechanical devouring by an entity that has no other function.

Instead, the railroad monster seems designed specifically to thwart natural humans from the consumption they need to fuel their lives. When the court decision comes down declaring that the ranchers' occupation of their land is "wrongful" and thus that the railroad has sole title to their wheat farms, Magnus's dreams of extending his mining success to a trans-Pacific wheat trade — "first the mine, now the ranch; first gold, now wheat" — collapse within him (233):

Between them and the vision, between the fecund San Joaquin, reeking with fruitfulness, and the millions of Asia crowding toward the verge of starvation, lay the iron-hearted monster of steel and steam, implacable, insatiable, huge—its entrails gorged with the life blood that it sucked from an entire commonwealth, its ever hungry maw glutted with the harvests that should have fed the famished bellies of the whole world of the Orient. (234)

Again, by imagining the corporate person as a corporeal entity, the novel creates a monster that can only grotesquely imitate natural life. The "iron-hearted monster" consumes, but does not reproduce — it only engorges itself further. The language of the passage vacillates between images of the satiation that would be the lot of a natural creature ("gorged," "glutted") and the incapacity of satiating a synthetic creature ("insatiable," "ever hungry"). As a non-natural entity that nonetheless has taken form through the exercise of capital, the railroad overpowers the group person of the "whole world of the Orient,"¹³ as a system whose nominal purpose is transit somehow becomes an emblem of stasis.¹⁴

After the massacre at the irrigation ditch, Presley, overwhelmed by emotion and outrage, simulates the process of the novel's composition by writing an impassioned screed against the power of the corporation in his journal. At first, Presley seems to acknowledge the corporate

¹³For a discussion of the racial implications of the novel's othering of starvation onto Asian countries despite Norris's avowed plan to set the third novel of the trilogy, "The Wolf," in Europe, *see* Lye, Hsu 44-53.

¹⁴By using the term "artificial" or "non-natural" here, I am merely drawing a contrast between natural persons and corporate persons. The notion of corporation as monster as used in this novel, by imagining a body that is created out of will and action rather than legal formalities, owes much more to real entity theory than artificial entity theory.

structure of the railroad, imagining it as a group of humans rather than a monster, even as he exaggerates himself, as observer, into a figure that embodies all others: “They have done it, S. Behrman and the owners of the railroad have done it, while all the world looked on” (389). As he becomes more lost in his screed, however, he loses track of the individuals in the mass and sees only the vast entity itself, one of a population of proto-Lovecraftian monsters that dominate the nation:

The Railroad will prevail. The Trust will overpower us. Here in this corner of a great nation, here, on the edge of the continent, here, in this valley of the West, far from the great centres, isolated, remote, lost, the great iron hand crushes life from us, crushes liberty and the pursuit of happiness from us, and our little struggles, our moment's convulsion of death agony causes not one jar in the vast, clashing machinery of the nation's life. ... Are there no other Trusts between the oceans than this of the Pacific and Southwestern Railroad? Ask yourselves ... every citizen of every State from Maine to Mexico, from the Dakotas to the Carolinas, have you not the monster in your boundaries? If it is not a Trust of transportation, it is only another head of the same Hydra. Is not our death struggle typical? Is it not one of many, is it not symbolical of the great and terrible conflict that is going on everywhere ... Is our State of California the only one that has its ancient and hereditary foe? Are there no other Trusts in these United States? Ah, you people, blind, bound, tricked, betrayed, can you not see it? Can you not see how the monsters have plundered your treasures and holding them in the grip of their iron claws, dole them out to you only at the price of your blood, at the price of the lives of your wives and your little children? (390-91)

Initially, the fearsomeness of the railroad comes from its hugeness, as befits a period in which large entities seemed to be making the individual obsolete; as Clarke writes, “often this social transformation – the loss of individualism, the appearance of massive institutions – was expressed simply as a fear of bigness in the presence of which human beings seemed to be shrinking” (Clarke 107). Here, not only is the railroad itself a hybrid of machine and human, its “iron hand” destroying the remote inhabitants of California, but the United States itself has become a monstrous machine, an entity that, no longer human, no longer can perceive suffering. In Presley’s imagination, the entire citizenry of the United States has a “monster in [its] boundaries,” a living, giant machine of a trust that exploits the people beyond their individual

biological capacities. Most terrifying of all is the implication that the government itself is merely the body and each corporation is a head of the Hydra, so that an entity that is supposed to represent the “citizen” is now a collectivity of artificial persons, the natural turned monstrous.

In turn, the predation of corporate entities upon “the People” converts “the People” from predator into prey, from human into animal. At the news that the railroad has set the land price much higher than expected, the ranchers find their animal natures flaring up inside them: “It was the human animal hounded to its corner, exploited, harried to its last stand, at bay, ferocious, terrible, turning at last with bared teeth and upraised claws ... ready to bite, to rend, to trample, to batter out the life of The Enemy in a primeval, bestial welter of blood and fury.” (200) Only by engaging with the corporation as animals themselves can the ranchers hope to battle the monstrousness of the corporate entity.

This animalizing effect returns later in the novel when Dyke, a railroad engineer turned hop farmer, realizes the rate increase on hops will mean his financial destruction:

He had been merely ... a victim of the insatiate greed of the monster, caught and choked by one of those millions of tentacles suddenly reaching up from below, from out the dark beneath his feet, coiling around his throat, throttling him, strangling him, sucking his blood. For a moment he thought of the courts, but instantly laughed at the idea. What court was immune from the power of the monster? Ah, the rage of helplessness, the fury of impotence! No help, no hope—ruined in a brief instant—he a veritable giant, built of great sinews, powerful, in the full tide of his manhood, having all his health, all his wits. How could he now face his home? ... The tentacle held fast. He was stuck. (254-55)

At the touch of the Octopus, Dyke shrinks from a “veritable giant” into a “victim.” Robbed of redress by the combination of Trust and government, Dyke loses not only his independence, but also his strength in relation to his mother and daughter, the “home” he can no longer engage with. Driven to madness, Dyke turns fugitive; as Annixter observes, he devolves fully from an individual into a “wild animal” that is merely the object of a hunt: “now you’re going to hound

him over the State, hunt him down like a wild animal, and bring him to the gallows at San Quentin” (305).

Annixter himself, however, complicates this narrative by appearing as a hybrid of human and animal even before the railroad victimizes him. A well-educated rancher with the nickname “Buck,” Annixter sees himself as animal in relation to others:

Oh, I know what they call me—‘a brute beast, with a twist in my temper that would rile up a new-born lamb,’ and I’m ‘crusty’ and ‘pig-headed’ and ‘obstinate.’ ... It’s my fault, but there’s not a horse about the place that don’t lay his ears back when I get on him; there’s not a dog don’t put his tail between his legs as soon as I come near him. The cayuse isn’t foaled yet here on Quien Sabe that can throw me, nor the dog whelped that would dare show his teeth at me. (169-70)

In mastering all of the other animals around him, Annixter becomes a “brute beast” himself, seeking to dominate even the woman he loves (263). It is difficult not to see in Annixter’s description of himself a parallel to how the railroad appears to ordinary humans; like the railroad, Annixter inspires fear and subjugation in the entities around him. Indeed, it is at Annixter’s ranch, on the very day of the massacre at the irrigation ditch, where the ranchers drive hundreds of rabbits into a pen, the “living, moving, leaping, breathing, twisted mass” of fearful creatures slaughtered, not by dogs (who “refused...to do the work”), but by humans (363-64).¹⁵

The slaughter of rabbits becomes conflated with the killing at the ditch in Presley’s mind, such that the railroad employees become cannibalistic devourers of the very flesh of the ranchers:

Because the farmers had been killed at the irrigating ditch, these others, Gerard and his family, fed full. They fattened on the blood of the People, on the blood of the men who had been killed at the ditch. It was a half-ludicrous, half-horrible “dog eat dog,” an unspeakable cannibalism. Harran, Annixter, and Hooven were being devoured there under his eyes. These dainty women, his cousin Beatrice and little Miss Gerard, frail,

¹⁵ Although the novel attempts to other the violence by claiming that the “Anglo-Saxon spectators drew away in disgust, but the hot, degenerated blood of Portuguese, Mexican, and mixed Spaniard boiled up in excitement at this wholesale slaughter,” the “Anglo Saxons” do nothing to stop it, and instead enjoy the barbecued rabbits in a genteel picnic (363).

delicate; all these fine ladies with their small fingers and slender necks, suddenly were transfigured in his tortured mind into harpies tearing human flesh. ... Yes, the People would turn some day, and turning, rend those who now preyed upon them. It would be “dog eat dog” again, with positions reversed, and he saw for one instant of time that splendid house sacked to its foundations... (441)

Membership in the corporate body (through virtue of being part of a stockholder’s family) turns even the “small,” “dainty,” “frail” women into monsters of Greek mythology, in this case not the Hydra but the harpy.¹⁶ Although this vision horrifies Presley, he cannot imagine revenge as anything but turnabout as fair play; the “popular force” of the People must cannibalize the railroad and its members, the cycle of violence perpetuated repeatedly as a series of animalistic entities devour each other in turn (Berte 213).

And yet Dyke, the “giant” turned animal by the touch of the railroad’s tentacle, provides a vision of synergy between human, animal, and machine, even as the corporation pursues him. Fleeing S. Behrman and the other railroad agents, Dyke uses the instrument of the railroad’s power against it, taming the “iron brute” that serves his enemy:

But as Dyke neared the depot at Guadalajara, his eye fell upon the detached locomotive that lay quietly steaming on the up line, and with a thrill of exultation he remembered that he was an engineer born and bred. The train crew scattered like frightened sheep before him, but Dyke ignored them.

...

Smoke, black and boiling, shot skyward from the stack; not a joint that did not shudder with the mighty strain of the steam; but the great iron brute—one of Baldwin’s newest and best—came to call, obedient and docile, as soon as ever the great pulsing heart of it felt a master hand upon its levers. It gathered its speed, bracing its steel muscles, its thews of iron, and roared out upon the open track, filling the air with the rasp of its tempest breath, blotting the sunshine with the belch of its hot, thick smoke. (343-44)

Here, the power of the locomotive is viewed on its own, as an individual entity that, although it may be a product of one corporation (the Baldwin Co.) and utilized by another (the P. and S.W.), is not intrinsically evil. Instead, the locomotive acts as an ideal domesticated animal, “obedient

¹⁶The choice of a harpy is a curious one, since harpies were divine agents of punishment, servants of the Furies and of Zeus. The usage of this particular monster seems to imply that Annixter and company somehow deserved their fate, even as the rest of the passage belies this reading.

and docile,” as Dyke engages in an empathic bond between himself and the “iron brute” he controls. For once in the novel, the power of the machine is directed towards a positive use, revealing itself as an instrument rather than a “symbol” of a terrifying collective.¹⁷

When Dyke is finally forced to abandon the locomotive, he does so with surprising regret, explicitly differentiating the individual railroad car from the Railroad that was his enemy:

The released engine, alone, unattended, drew slowly away from him, jolting ponderously over the rail joints. As he watched it go, a certain indefinite sense of abandonment, even in that moment, came over Dyke. His last friend, that also had been his first, was leaving him. He remembered that day, long ago, when he had opened the throttle of his first machine. To-day, it was leaving him alone, his last friend turning against him. Slowly it was going back toward Bonneville, to the shops of the Railroad, the camp of the enemy, that enemy that had ruined him and wrecked him. For the last time in his life, he had been the engineer. (347-48)

This moment, laden with surprising nostalgia for Dyke’s years working for railroad corporations, acts as a rare callback in the novel to more benign portrayals of life in the corporate structure like *Soldiers of Fortune*. In Dyke’s imagination, the “machine” becomes his “last friend,” his individual will overwhelmed by the larger collective will of “the Railroad.” By implicit contrast, the reader is reminded of the many years in which the will of the Railroad and Dyke’s will were the same, when engineer, machine, and corporation acted in synergy. The Octopus of the

¹⁷ Much later in the novel, the harvester machine is portrayed as a similarly ambiguous creature, enlisted in the service of S. Behrman but not intrinsically predatory:

The steam hissed and rasped; the ground reverberated a hollow note, and the thousands upon thousands of wheat stalks sliced and slashed in the clashing shears of the header, rattled like dry rushes in a hurricane, as they fell inward, and were caught up by an endless belt, to disappear into the bowels of the vast brute that devoured them. It was that and no less. It was the feeding of some prodigious monster, insatiable, with iron teeth, gnashing and threshing into the fields of standing wheat; devouring always, never glutted, never satiated, swallowing an entire harvest, snarling and slobbering in a welter of warm vapor, acrid smoke, and blinding, pungent clouds of chaff. It moved belly-deep in the standing grain, a hippopotamus, half-mired in river ooze, gorging rushes, snorting, sweating; a dinosaur wallowing through thick, hot grasses, floundering there, crouching, groveling there as its vast jaws crushed and tore, and its enormous gullet swallowed, incessant, ravenous, and inordinate. (447)

The difference between the harvester machine and the Railroad Monster is that the harvester devours in the service of processing and making the Wheat transportable by removing it from the stalk and sacking it, not swelling itself endlessly with no output as the novel imagines the Octopus doing.

novel's title may be a devouring monster, but in this moment of Dyke's imminent capture, a fleeting vision of a different incarnation of the corporate body flickers into view.¹⁸

The Battle of “Monsters” and the (In)Effectiveness of Incorporation

Whereas *Soldiers of Fortune* portrayed commerce as a straightforward battle between good and bad collectivities, with the collaboration of the Valencia Mining Company and U.S. national power winning out clearly over the inferior muddle of Olancho, *The Octopus* offers up a naturalist dystopia in which several group entities struggle for prominence. Although the Derrick family, owners of the Rancho de los Muertos (whose very name, “Ranch of the Dead,” hints at their fate), attempt to utilize one of the oldest conceptions of group personhood—that of the family—to battle the railroad trust, the League they form falls victim to the weakness of assuming biological and social ties can overwhelm the force of corporate temptation. Wrestling against both League and Trust is Nature, embodied in the Wheat, whose restless inexorability cannot be contained by human collaboration, however well-organized. In the end, even as *The Octopus* shows how powerful humans can be when united in the corporate body, all of this power proves insufficient to battle a collectivity that exists beyond incorporation, a Nature always already embodied in a collection of forces that no artificial entity, however powerful, can resist.

Once the ranchers realize that the Railroad intends to offer their land for sale at a price far higher than that they had expected, the “League of Defence,” or simply “The League,” comes into being (204). At the moment of its inception, the novel notes the common beliefs animating the group of ranch owners gathered together in Annixter's barn: “One spirit alone was common

¹⁸ Dyke is eventually sentenced to life imprisonment, which forcibly puts him in another animalistic human group: “the pariah dogs of society... men below the beasts” (450).

to all — resistance at whatever cost and to whatever lengths” (202). Animated by this common spirit, the group person arises, “the beginnings of a vast organization, banded together to death, if needs be, for the protection of our rights and homes” (202). Tellingly, at the moment of the league’s inception, the very passion that enables it to be created out of common spirit can be seen as its downfall; the ranchers only wish to enlist something approximating the Railroad to battle it on equal terms, rather than having a clear vision of an overarching goal that transcends mere opposition: “Just what was meant by the League the others did not know, but it was something, a vague engine, a machine with which to fight” (202). In a ritual that gives the League the veneer of formality, the ranchers collaborate on a “set of resolutions...having the force of a pledge” that each one signs, the act of signature formalizing the shared resolution that gives rise to this group person in a real entity sense.

Although Annie Derrick, Magnus Derrick’s wife, fears “the ruthless, unscrupulous battle to the death with the iron-hearted monster of steel and steam” that the League has bound itself to, and attempts to stop her husband from signing, the bond of marriage is insufficient to resist the collective force of the League (204):

It was the uprising of The People; the thunder of the outbreak of revolt; the mob demanding to be led, aroused at last, imperious, resistless, overwhelming. It was the blind fury of insurrection, the brute, many-tongued, red-eyed, bellowing for guidance, baring its teeth, unsheathing its claws, imposing its will with the abrupt, resistless pressure of the relaxed piston, inexorable, knowing no pity. (204-05)

From its inception, therefore, the League aims to act as the embodiment of “the People,” the vast masses victimized by the Railroad. As Cedarquist later observes, this group person, if it acted collectively, could easily overpower any Trust it faced: “If it is not a railroad trust, it is a sugar trust, or an oil trust, or an industrial trust, that exploits the People, *because the People allow it...* The People have but to say ‘No,’ and not the strongest tyranny, political, religious, or financial,

that was ever organized, could survive one week” (221). If the League were to fully rally the People, then it might have a chance of winning this battle of monsters: ““You and your League are trying to say “No” to the trust. I hope you will succeed. If your example will rally the People to your cause, you will. Otherwise—’ he shook his head” (221).

What Cedarquist sees—as few others in this novel do—is the fundamental distinction between the League and the People. The League consists only of the ranch owners, not the tenants or employees or any of the other individuals who are arguably as entwined in the battle with the railroad as the ranch owners themselves. This failure of imagination on the League’s part makes it just another “machine” (353) or “monster” that battles the Railroad, one privileged group entity fighting another, as Hilda imagines: “the great League, which all the ranchers were joining, was a mere form. Single-handed, Annixter fronted the monster. But for him the corporation would gobble Quien Sabe, as a whale would a minnow (235).” Dependent on the luxury of ownership and status, the League is just another corporate body, its high aims reducible to a desire to profit off of the land.

Although Hilda, besotted with Annixter, sees Annixter as the “front” of the League, its actual president, Magnus Derrick, sees the League as a way to perpetuate his own power and the power of his family. Frustrated by his incapacity to resist the Railroad, “the Governor”—his nickname a reminder of his role as father to Lyman and Harran as well as his failure to be elected Governor of California years ago—dreams of using the League as an agent of renewal, to transform him from a colloquial “Governor” into an actual one: “Oh for one moment to be able to strike back, to crush his enemy, to defeat the railroad, hold the Corporation in the grip of his fist, put down S. Behrman, rehabilitate himself, regain his self-respect. To be once more powerful, to command, to dominate” (136). In a novel where the preeminent example of

corporate leadership, Shelgrim, laughs at the notion that he can master the corporate entity he arguably governs, this fantasy of domination, of employing the group body of the League as his “fist” to destroy the Railroad, illustrates how hopelessly behind the times Magnus really is.

Taking his nickname a bit too seriously, Magnus trusts that if he uses the same illicit tools as the “Corporation” does (namely bribery) and gets his son Lyman to be a Railroad Commissioner, then the power of family bonds will naturally be pre-eminent and Lyman will obey the will of the League as made tangible in his father’s commands. Betraying his father, Lyman actualizes his own dreams of becoming Governor of California by accepting the patronage of the railroad. Once Magnus realizes this, he attempts to reassert his claim on Lyman’s loyalty by asserting his familial control over him: “It is no longer as Chairman of the Committee I speak to you, you a member of the Railroad Commission. It is your father who speaks, and I address you as my son” (322). Lyman’s shifted loyalty apparent, Magnus futilely attempts to repudiate the family ties which, he belatedly realizes, cannot hold the weight he had placed upon them when opposed by corporate power: “‘I am no father to this man, gentlemen,’ exclaimed Magnus. ‘From now on I have but one son’” (324). His ideals betrayed, his notions of the world proven outdated, and his son Harran killed at the irrigation ditch, Magnus collapses into himself, becoming a pitiful shell of his former self to the point where he agrees to become a clerk for S. Behrman and pledges to “turn Railroad” (454).

Although the League attempts to imitate the Railroad, to act as a monstrous group person that can battle the Octopus on an equal footing, its organizational flaws doom it from the start. Chief among those failings is its incapacity to properly manage its resources, a glaring contrast that the engineer-turned-hop-farmer Dyke observes in S. Behrman just before Dyke’s own downfall:

There was the enemy, the representative of the Trust with which Derrick's League was locking horns. . . . Daily, almost hourly, Dyke was in touch with the ranchers, the wheat-growers. He heard their denunciations, their growls of exasperation and defiance. Here was the other side— this placid, fat man, with a stiff straw hat and linen vest . . . never ruffled, never excited, sure of his power, conscious that back of him was the Machine, the colossal force, the inexhaustible coffers of a mighty organization, vomiting millions to the League's thousands.

The League was clamorous, ubiquitous, its objects known to every urchin on the streets, but the Trust was silent, its ways inscrutable, the public saw only results. It worked on in the dark, calm, disciplined, irresistible. Abruptly Dyke received the impression of the multitudinous ramifications of the colossus. Under his feet the ground seemed mined; down there below him in the dark the huge tentacles went silently twisting and advancing, spreading out in every direction, sapping the strength of all opposition, quiet, gradual, biding the time to reach up and out and grip with a sudden unleashing of gigantic strength. (251)

The League is a group entity like the Railroad, its collective will bringing it into being in accordance with real entity theory. Collective action, however, depends on efficient management, and the science of management, pioneered and refined by corporations and their agents, helped cement the power of corporations in this period of American history (*see* Zunz; Chandler; Noble). The “terrifyingly competent” S. Behrman can be calm in the face of conflict because he trusts in the unity and the ubiquity of the corporate structure, its resources marshaled unanimously, any internal conflict invisible, as it proves the frightening power of collectivity (R. White 233). Meanwhile, the League, animated by fear instead of the logic of profit, lacking the resources or intricate structure of its opposition, belies its unity with its “clamorous” speech, its network superficial when contrasted to the methodical “dark” complex of the Railroad.

Animating the battle of League versus Railroad is Nature as embodied in the Wheat, an entity fundamentally inhuman that acts as a contrast to both natural persons and the artificial group persons they create. Although several characters, including Presley, observe “the earth, the mother,” only her fellow mother, Annie Derrick, sees early on how fearsome the vast land actually is:

She recognized the colossal indifference of nature, not hostile, even kindly and friendly, so long as the human ant-swarm was submissive, working with it, hurrying along at its side in the mysterious march of the centuries. Let, however, the insect rebel, strive to make head against the power of this nature, and at once it became relentless, a gigantic engine, a vast power, huge, terrible; a leviathan with a heart of steel, knowing no compunction, no forgiveness, no tolerance; crushing out the human atom with soundless calm, the agony of destruction sending never a jar, never the faintest tremor through all that prodigious mechanism. (133)

Although these thoughts “did not take shape distinctly in her mind,” emanating formlessly much like Nature itself, Annie Derrick’s description of the “gigantic engine” of nature uncannily echoes Presley’s critique of the “vast, clashing machinery of the nation’s life,” which goes on indifferent to the human suffering it creates (133, 390). By this telling, the “human ant-swarm” of well-organized collective action is revealed to be a trick of scale, all its ordered workings dwarfed into nonexistence by a collectivity that simply exists without having to actively subordinate its individual components.

Presley only comes to a brief glimpse of this after meeting Shelgrim, but instead of seeing only the land as Nature, Presley imagines Nature as encompassing sociological phenomena as well as biology:

Forces, conditions, laws of supply and demand — were these then the enemies, after all? Not enemies; there was no malevolence in Nature. Colossal indifference only, a vast trend toward appointed goals. Nature was, then, a gigantic engine, a vast Cyclopean power, huge, terrible, a leviathan with a heart of steel, knowing no compunction, no forgiveness, no tolerance; crushing out the human atom standing in its way, with Nirvanic calm, the agony of destruction sending never a jar, never the faintest tremor through all that prodigious mechanism of wheels and cogs. (417-18)

As several scholars have noted, Norris’s conception of Force as something universally immanent and indestructible owes much to the teachings of his professor of natural history at Berkeley, Joseph LeConte (Berte 204; Pizer 145). Taking as a jumping-off point the laws of thermodynamics, combined with a Darwinist perspective of nature as moving relentlessly forward regardless of individual desires or idealistic notions, Norris imagines Nature as a fusion

of the novel's "twinned representations of generative power — the machine and the mother" (Seltzer 27-29). In another sense, however, the notion of Force can be seen as a replacement for the group-will that animates the corporation — or, more precisely, the group-will that gives life to the corporation is an echo of the Force that animates the "gigantic engine" of Nature. By interpenetrating economic laws with environmental conditions in its imagination of Nature, this passage reinforces the notion that however hard the corporation may try, it cannot overpower the conditions under which it arises and under which it must operate.

In its closing, the novel suggests that to fight the relentless strength of Nature is ultimately to act against humanity's best interest, in a self-conflicting, utopian notion of good coming out of evil. Contemplating the events that have transpired in the novel, Presley lists out the horrific consequences of the "fight of Ranch and Railroad," the myriad ways in which "that galloping monster, that terror of steel and steam," had left "blood and destruction in its path" (472). Despite the catalogue of suffering, Presley finally views the situation in the rosy terms of Vanamee the shepherd, insisting on the ultimate good of the world's workings:

Men—motes in the sunshine—perished, were shot down in the very noon of life, hearts were broken, little children started in life lamentably handicapped; young girls were brought to a life of shame; old women died in the heart of life for lack of food. In that little, isolated group of human insects, misery, death, and anguish spun like a wheel of fire.

But the WHEAT remained. Untouched, unassailable, undefiled, that mighty world-force, that nourisher of nations, wrapped in Nirvanic calm, indifferent to the human swarm, gigantic, resistless, moved onward in its appointed grooves. Through the welter of blood at the irrigation ditch, through the sham charity and shallow philanthropy of famine relief committees, the great harvest of Los Muertos rolled like a flood from the Sierras to the Himalayas to feed thousands of starving scarecrows on the barren plains of India. Falseness dies; injustice and oppression in the end of everything fade and vanish away. Greed, cruelty, selfishness, and inhumanity are short-lived; the individual suffers, but the race goes on. Annixter dies, but in a far distant corner of the world a thousand lives are saved. The larger view always and through all shams, all wickednesses, discovers the Truth that will, in the end, prevail, and all things, surely, inevitably, resistlessly work together for good. (472-73)

If we are to believe Presley's conclusion—and he has been far from a reliable arbiter of the truth during the course of the novel, vacillating from theory to theory—then what makes all the suffering worth it is the maintenance of the Wheat's collective force and its ability to respond to the needs of a mass of humans, even though it may trample individual ones. The Wheat is at once “indifferent to the human swarm” and directed by it, moving its mass from the farm of Los Muertos to the “starving scarecrows” of India. Norris's language here casts the transnational hungry masses as animalistic (a “swarm”) or devoid of humanity altogether (as “scarecrows”). This self-conflicted conclusion reveals the novel's troubled relationship to the problem of the group entity.¹⁹ In *The Octopus*, group persons—whether formed with legal recognition, like the railroad, or by humans acting with a common will, like the League—are merely simulacra of the workings of the natural world. One must trust that the “all things, surely, inevitably, resistlessly work together for good” because of the very inevitableness of those actions. The alternative is simply too terrifying, even for the world of the Octopus.

¹⁹ In contrast, Donald Pizer has asserted that “[one] is supposed to take away from [the novel]...both a realization of the evil that men can do when driven by greed and the realization of a benevolent God that operates within the natural processes that govern all experience” (Pizer 148).

CONCLUSION

The Possibilities of Personhood

Around the turn of the twentieth century, the corporation took on meanings beyond its nominal role as a form of business organization. As a trope, the corporation held a multiplicity of valences that made it a potent touchstone for social, political, and cultural movements alike, particularly oppositional movements that saw corporate personhood as a form of preferential treatment designed, above all, to serve the interests of oligarchs and other affluent Americans from the Gilded Age to the present.

As I show in this study, however, the legal fiction of corporate personhood also bore with it a democratizing potential. The idea that a group, working together, can become in itself one being under the law meant that extending agency beyond its traditional possessors (property-holding white male citizens) could also become a possibility. From Wharton's assertion in *The Fruit of the Tree* that corporate power could empower women to Sinclair's juxtaposition of tormented livestock and privileged bulldog in *The Jungle*, corporate personhood opened the way for imagining new possibilities for the extension of rights and agency to myriad entities.

As I explore in the second chapter, until the mid-nineteenth century, group personhood was most often applied to women in the form of coverture, a doctrine that "covered" the person of a married woman with the person of her husband. By becoming part of a group person—that of the married unit—a woman lost her own individuality. As Wharton's novel shows, however, the corporation, as a form of group personhood that did not erase the individual personhood of its

members, offered new possibilities for women to take advantage of the power of the group entity. Bessy Westmore's empowerment through stock ownership is all the more powerful because she utilizes it to selfish ends—to serve her own desires, and to serve as a marker of distinction between herself and her second husband. Transmitting stock ownership to Cecily, even as it continues the larger emphasis on family and society that animates this novel's treatment of the corporation, reinforces the promise that a profit-seeking corporation can bring power to women as much as men. This power is more explicitly seized by Richard Harding Davis's Hope Langham. Hope, like Bessy, acts as the animating spirit of the corporation with which she is involved, but where Bessy shirks the responsibility of governance, Hope takes it upon herself. In so doing, Hope unites with the model of middle management to become an active traveler of the world rather than a woman confined to the drawing room, successfully incorporating the group person of a marriage into the larger group person of the corporation.

In this era of the corporation, novelists imagined the group person as extending beyond the traditional dyad of marriage, exploring how uniting under a common doctrine could make a collective person out of individuals in myriad situations. In *The Jungle*, only the promise of socialism lifts Jurgis out of corporate oppression; unified under a common belief system with his fellow workers, Jurgis not only participates in a vision of an utopian future in which “Chicago will be ours!,” but, by virtue of membership in the Socialist collective, breaks out of the “wild beast” self that his employer had imposed upon him (Sinclair 413, 367). By comparison, the grower's collective in *The Octopus*, although it too consists of individuals uniting towards a common goal and in opposition to corporate power, lacks a coherent doctrine binding its adherents together, instead only operating as “a vague engine, a machine with which to fight” (Norris 202). As real entity theory would predict, without a shared ideology, the group cannot

fully become a person, and thus fails in its battle against the fully realized yet monstrous railroad. At times these novels build concentric circles of personhood, as in *Soldiers of Fortune*, where the protagonists become self-actualized by membership in the Olancho Mining Company, which in turn serves the larger ideology of U.S. imperialism.

Perhaps the most tantalizing expansions of personhood in these novels' imaginations occur with entities that exist beyond the human. In both *Soldiers of Fortune* and *The Octopus*, nature becomes personified; but while the landscape of Olancho seems to offer itself up to the conquering drill of the miners, Norris's Wheat transcends the conflicts between grower and railroad to emerge as the final victor, an entity that cannot be resisted, let alone defeated. The Wheat forces the humans in *The Octopus* to recognize its power and agency, operating as "indifferent to the human swarm" just as a human may lightly swat away a swarm of gnats (Norris 473).

The utilization here and in *The Jungle* of animal language to refer to humans hints at a grander expansion beyond the metaphorical—that of extending personhood to nonhuman animals. If the boundary between animal and human is indeed this porous, and individuals like Jurgis Rudkus can descend into bestiality and rise again, then so too can individual animals rise up beyond their subjugated status and become persons in their own right. In this moment, where children and animals were being conflated by the very societies established to protect their rights (Pearson), and corporations would become portrayed as grotesque chimeras of human and cephalopod (Norris, Keller, Luks, Keppler), novelists like Sinclair portrayed animals as complex entities that could exist on both sides of the management/labor divide. In *The Jungle*, even while pigs going to the slaughter are "so very human in their protests—and so perfectly within their rights!," Admiral Dewey, purebred bulldog, defends the privilege and power that the pigs'

slaughtered bodies provide (Sinclair 41). To use Wharton's terms, the uneasy ambivalence evoked by the simultaneous "usness" and not-usness" of animals transforms, with this new, more expansive notion of personhood, into an awareness that the expansion of rights need not leave the nonhuman behind (Edith Wharton Collection).

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