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Introduction

MY AIM IN THIS BOOK is to explore how nineteenth-century persons experienced and understood metamorphoses of personhood. Each of the personal transformations in this account was connected to one man—the jurist Travers Twiss—and, although the analysis encompasses many persons, two are at the heart of my story. One was a woman, Pharaïlde van Lynseele, who married Twiss and, in doing so, changed herself from a London streetwalker into Lady Travers Twiss. The second was an artificial person, the International African Association, which Twiss helped King Leopold II of Belgium transform into the Congo Free State.

Many Victorians, notably jurists, understood that there were two kinds of persons: natural and artificial. Of course, there were Victorians and others subsequently who thought the idea of artificial persons, or corporate legal personality, to be confusing and misleading. It is true that nineteenth-century English philosophers, notably Jeremy Bentham, dismissed the notion of artificial persons, and it has been argued that the idea suffered a decline from the late eighteenth century.¹ According to this account, the concept of artificial persons was briefly revived in the late nineteenth century by Otto von Gierke. Inspired by German Romanticism, Gierke theorised the real existence of collective fellowships prior to their recognition in law. His work further inspired late-nineteenth-century and early-twentieth-century English legal historians and political theorists, notably F. W. Maitland, the Victorian historian of the common law, Harold Laski, and Ernest Barker.² Following this brief

1. For the Utilitarians' attack on the concept, see Quentin Skinner, "A Genealogy of the Modern State," *Proceedings of the British Academy*, vol. 162, (2009), 355–356.

2. David Runciman, *Pluralism and the Personality of the State* (Cambridge, 1997). For analysis of the debate over "real" personality versus artificial personality, see Ron Harris, "The Transplantation of the Legal Discourse on Corporate Personality Theories: From German Codification to British Political Pluralism and American Big Business," *Washington and Lee Law Review* (2006), 1421–1478.

revival, the notion of artificial personality is said to have once again declined as it came under attack from philosophers such as John Dewey, the American pragmatist.³

What such an account neglects is the fact that the concept of artificial personality flourished amongst lawyers in the nineteenth century, both on the Continent and in England. English jurists sought to respond to and accommodate the critiques of Bentham and his follower John Austin, and in this respect, their thought diverged from their Continental colleagues, but they nevertheless clung to the notion of artificial personality.⁴ The concept flourished, in particular, amongst ecclesiastical lawyers, and amongst international lawyers who used it to understand the nature of the state and to think about relations between states.⁵ In England, both international and ecclesiastical lawyers were, in common with their Continental colleagues, practitioners of

3. John Dewey, "The Historic Background of Corporate Legal Personality," *The Yale Law Journal*, vol. 35, no. 6 (April 1926), 655–673. Dewey was not entirely opposed to the idea of fictitious personality, but believed it became confused with the notion of associations having "real personality."

4. For the response of English international lawyers to Austin, see Michael Lobban, "English Approaches to International Law in the Nineteenth Century," in Matthew Craven, Malgosia Fitzmaurice, and Maria Vogiatzi, eds., *Time, History, and International Law* (Leiden, 2007), 66.

5. On the Continent, the concept of the artificial personality of the state was fundamental for international lawyers from the naturalists early in the century through to the generation of "liberal" jurists of the *Institut de droit international*. See, for example, in Germany, Jean-Louis [Johann Ludwig] Klüber, *Droit des gens moderne de l'Europe*, 2 vols., (Paris, 1834), 32, who argued that when a certain number of people united in a country with a fixed abode, they "formed a state," and their "union is considered to be a moral person"; Johann Kaspar Bluntschli, *The Theory of the State* (Oxford, 1895; first published in German in 1875), 22: "The recognition of the personality of the State is thus not less indispensable for Public Law (*Statsrecht*) than for International Law (*Völkerrecht*)." In France, Paul Pradier-Fodéré, in *Principes généraux de droit, de politique et de législation* (Paris, 1869), 187, argued that a "nation" was united "by ideas, by a soul, by all that makes a moral person"; and Frantz Despagnet, in *Cours de droit international public*, 2nd ed. (Paris, 1899), 77, wrote: "A state has two essential characteristics: juridical personality and sovereignty." In England, the civil lawyer George Bowyer could write: "All persons, whether natural or artificial, that is to say bodies politic, are capable . . . of taking under testamentary dispositions": Bowyer, *Commentaries on the Modern Civil Law* (London, 1848), 134. Travers Twiss, the subject of this study, wrote in his *The Law of Nations* (1884), 152: "De Wolff developed this doctrine more fully, perceiving that Nations were Composite Bodies, having in their collective capacities a Moral Being of their own." In Scotland, James Lorimer wrote of "jural persons, whether natural or artificial": Lorimer, *Institutes of the Law of Nations*, vol. 1 (Edinburgh, 1883), 134. In the Anglophone world, most international lawyers tried to accommodate Bentham and Austin's critiques. Henry Wheaton, for example, in the United States, citing Bentham and Austin, conceded the Utilitarians' point that international law was not law at all in the positive sense because it lacked a legislating sovereign: Wheaton, *Elements of International Law*, 6th ed. (Boston, 1855), 18–19; he nevertheless wrote about such sovereigns in terms that were strongly suggestive of an artificial personality, speaking

the civil law. In their understanding of artificial personality, they followed both Roman law, which had developed the idea in order to give legal status to groups of people, and early modern philosophers, such as Thomas Hobbes, who distinguished artificial persons from natural persons in order to describe the authority and agency of groups or representatives. “A Person,” Hobbes wrote, “is he, *whose words or actions are considered, either as his own, or as representing the words or actions of an other man, or of any other thing to whom they are attributed, whether Truly or by Fiction.* When they are considered as his owne, then he is called a *Natural Person*: And when they are considered as representing the words and actions of an other, then he is a *Feigned or Artificial Person*.”⁶ Similarly, F. W. Maitland was able to observe, “Besides men or ‘natural persons,’ law knows persons of another kind . . . Like the man, the corporation is . . . a right-and-duty-bearing unit. Not all the legal propositions that are true of a man will be true of a corporation. For example, it can neither marry, nor be given in marriage, but in a vast number of cases you can make a legal statement about x and y which will hold good whether these symbols stand for two men or two corporations, or for a corporation and a man.”⁷ In fact, even marriage law could have a bearing upon the understanding of certain corporations.

Like Hobbes, Victorian lawyers believed that these two concepts of persons were connected. Their understanding of artificial persons, which included corporations such as the church, companies, and the state, was to a large degree analogically modelled upon natural persons. Their concept of natural persons was also shaped by the broader context in which personhood, natural and artificial, was understood, and so changes to the understanding of artificial persons could also have an impact upon natural persons. For example, when Victorians argued for emancipation, they also argued for the freedom of artificial persons, such as the church, from interference in its affairs by the state, and those debates informed arguments for the freedom of natural persons, as much as the reverse was true. It would seem, therefore, if one wants to understand personhood as Travers Twiss and his contemporaries understood it, that it would be desirable to reconstruct, as much as possible, all the multiple layers of thinking that surrounded that concept. A thorough approach to understanding natural persons could not neglect the broader context of artificial persons, nor could any account of artificial persons ignore the rich material on

of the “being of the state,” which, in relation to the “society” of states, was “one and the same body” with a “perpetual” existence: *Elements of International Law*, 31.

6. Thomas Hobbes, *Leviathan*, ed. Richard Tuck (Cambridge, 1991), Ch. 16, 80 (111 in this edition). All underlining, italics, and strike-throughs are in the original texts unless otherwise stated.

7. F. W. Maitland, *The Collected Papers of F. W. Maitland*, ed. H.A.L. Fisher, Vol. 3 (Cambridge, 1911), 307.

natural persons. Nevertheless, the many excellent histories of persons, natural and artificial, tend to do precisely that: namely, ignore those broader contexts.

There are, however, some highly suggestive studies of the relations between natural and artificial persons, notably Ernst Kantorowicz's *The King's Two Bodies*. After F. W. Maitland had explored the legal fiction of the artificial person of the sovereign, Kantorowicz argued for the historical importance of the concept, "to bring into agreement the personal with the more impersonal concepts of government."⁸ He showed how early modern sovereigns used the mystic fictions of the artificial person of the sovereign to maintain authority in an environment in which the person of the sovereign did not have a monopoly on the use of force nor the institutions to maintain authority available to modern states. Nevertheless, such fictions continued to play a role in maintaining authority into the nineteenth century (not to mention the twenty-first). In some extreme instances, such as of the Congo Free State, the element of fiction was initially more important, particularly to the act of the creation of the person of the state, than any real power. Medieval thinking thereby remained salient well into the epoch we consider modern, and it is perhaps, in this context, less strange that amongst his armory of mystic fictions employed to justify the creation of the Congo Free State from a private company, Travers Twiss appealed to the precedent of the Order of Knights of the Hospital of St John of Jerusalem, which had established sovereignty first over Rhodes and then Malta.

By acting in relation to each other, natural persons form societies. The artificial persons of sovereigns also act in relation to each other and similarly form societies: namely, societies of nations. In creating societies, however, persons natural and artificial establish rules about who can belong, including rules about how persons are created. During the nineteenth century, while those rules were exclusive, they were subject to debate and to changes about broadening membership. In Victorian England, for example, enfranchisement in political society was closely controlled along the lines of property and gender, but those restrictions were progressively liberalised over the course of the century. The categories of political society and the class-based concept of "Society" were closely aligned (albeit that "Society" could include women), and the liberalisation of one encouraged the liberalisation of the other.

One of the rules controlling membership in society, and the nature of membership, concerned how persons are created. There was a difference between a "natural person" in law and what we describe in the twenty-first century as a human being. Thomas Hobbes had written, in the seventeenth century, that natural persons excluded "Children, Fooles, and Mad-men that have no use of

8. Ernst Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton, 1957), 5; Maitland, "The Corporation Sole," in *The Collected Papers of F. W. Maitland*, Vol. 3, 242-243.

reason.”⁹ He was largely following the law with these categories. Women, while possessing personhood, had their legal personality incorporated into that of their husbands when they married. As William Blackstone put it: “By marriage, the husband and wife are one person in law.”¹⁰ These rules of inclusion and exclusion persisted into the nineteenth century, but came under pressure to be more expansive. Pressure for the enfranchisement of women was first felt on the question of their separate legal personality, which would enable them, for example, to possess property apart from their husbands.¹¹ These expansions in the creation of natural persons were made by the Married Women’s Property Acts of 1870 and 1882.

The judgement of insanity removed legal personality from people in the nineteenth century, but the growing, albeit small, numbers of people in asylums, and the development of state asylums, suggests that sanity was one area in which liberalisation made little progress.¹² The definition of insanity was shifting from a moral to a physiological question, reflected in Britain in the 1845 Lunacy Act, and while there were pressures for due process in the incarceration of allegedly insane people, the same Act removed the right of patients to use the law to contest their detention.¹³ Lunacy set limits upon liberalisation and personal transformations. Michel Foucault may have been wrong about the “great confinement”—his thesis that incarceration in state-run lunatic asylums expanded in the seventeenth and eighteenth centuries, with the rise of the modern state, excluding all who did not fit its definition of reason and enlightenment—but it is self-evident that any definition of liberty in a liberal state will set limits upon inclusion, although in Victorian Britain, proofs of insanity relied upon a very poor science of the mind.¹⁴ Indeed, two of the natural persons who are the subject of this book experienced the threat of losing legal personality through the judgement of lunacy—one was tried but

9. Hobbes, *Leviathan*, Ch. 16, 82 (113 in this edition).

10. Sir William Blackstone, *The Commentaries on the Laws of England*, 4 vols. (London, 1876), Vol.1, 418 (Ch. 15, iii).

11. Lee Holcombe, *Wives and Property: Reform of the Married Women’s Property Law in Nineteenth-Century England* (Toronto, 1983); Mary Lyndon Shanley, *Feminism, Marriage, and the Law in Victorian England* (Princeton, 1989).

12. Roy Porter, *Madness: A Brief History* (Oxford, 2002), 94–95, 112; Thomas Knowles and Serena Trowbridge, eds., *Insanity and the Lunatic Asylum in the Nineteenth Century* (Abingdon, 2014); W. F. Bynum, Roy Porter, and Michael Shepherd, eds., *The Anatomy of Madness: Essays in the History of Psychiatry: Institutions and Society* (London, 1985).

13. Norman J. Finkel, *Insanity on Trial* (New York, 1988).

14. For problems with Foucault’s “great confinement” thesis, notably that asylums prior to the mid-nineteenth century were generally private, see Edward Shorter, *A History of Psychiatry* (New York, 1997), 16–17; Roy Porter, *Mind-Forg’d Manacles: A History of Madness in England from the Restoration to the Regency* (London, 1987), 8; Serena Trowbridge and Thomas Knowles, “Introduction,” in Thomas Knowles and Serena Trowbridge, eds., *Insanity and the Lunatic Asylum in the Nineteenth Century*, 3.

acquitted, and the other was incarcerated and lost her life. In each case, the perception of insanity was the cost of personal transformation or, one might say, a cost of overstepping the limits of liberal inclusiveness.

Despite such limits, the understanding of natural personality was expanding within Europe. There was similar pressure to expand the rules governing the creation of artificial persons. While nineteenth-century liberals did much to free individuals, they did not perceive the category of individuals and the rights that attached to them simply to be constituted entirely by natural persons. They were equally, if not more concerned with group personalities, and with the rights which attached to those communities, and when they sought to liberate individuals, they also sought to liberate those groups in their relations to the state as much as they sought to enfranchise natural persons. Since the Reformation, the state had jealously claimed a monopoly over the creation of artificial persons, particularly the church, with all such entities said to be the product of law. European states extended this understanding into the society that existed between them, the society of nations, claiming that they held a monopoly over who could be admitted to their society, while also insisting that all members must be states. In the nineteenth century, however, there was growing debate about whether artificial persons were subject to the state or could have an independent existence.¹⁵ This debate was conducted in particular over religious associations during the course of the century. Within the Church of England, the group known as the Tractarians argued for less control of the church by the state, claiming that the church and its members were answerable to a higher power than the state. Similarly, the emancipation of Catholics and of the Catholic Church within England and Ireland led some to argue that the affairs of the church could be conducted alongside those of the state, and be determined outside the state by the Pope, rather than being subordinate to it. Travers Twiss contributed to these debates, taking the position that the Church of England, and the Catholic Church in England, were subject to the will of the state, reflecting the broader position that all artificial persons are created by the laws of the state. Late in the century, and in the early twentieth century, the “pluralists,” led by F. W. Maitland, J. N. Figgis, G.D.H. Cole, and Harold Laski, argued for the rights of associations separately and not dependent upon the state.¹⁶

15. Harold J. Laski, *Studies in the Problem of Sovereignty* (New Haven, 1917); F. W. Maitland, *State, Trust and Corporation*, eds. David Runciman and Magnus Ryan (Cambridge, 2003). See also Runciman, *Pluralism and the Personality of the State*. The second half of the twentieth century witnessed a similar debate about whether natural persons possess legal personality outside the state in terms of their possession of human rights: Mark Mazower, “The Strange Triumph of Human Rights, 1933–1950,” *Historical Journal*, vol. 47, no. 2 (2004); Samuel Moyn, *The Last Utopia* (Cambridge, Mass., 2010).

16. Runciman, *Pluralism and the Personality of the State*.

Just as there were arguments for relaxing and broadening the conventions governing both natural and artificial subjects of the state in the nineteenth century, so too was there pressure for the expansion of international society. In the eighteenth century, as sovereign states came to dominate global society, the law of nations made it clear that it would be “ridiculous,” in the words of the eminent jurist Emer de Vattel, for any person other than a sovereign to claim membership in that society.¹⁷ In practice, non-state organisations, including the church and chartered companies, such as the Dutch and English East India Companies, continued to wield power on the international stage, often with quasi-sovereign pretensions.¹⁸ Sovereign states, however, jealously guarding their own authority, increasingly sought to restrict such powers in practice as well as theory, and the late eighteenth century and first half of the nineteenth century saw a rapid decline in the powers of those organisations. Questioning of this very restrictive understanding of international society in the nineteenth century included debate over whether non-state artificial persons, such as chartered companies and organisations like the International Red Cross, could be admitted once again to international society. By the twentieth century, this broadening of membership even encompassed natural persons who could be considered subjects of international society by virtue of their possession of human rights.¹⁹

The move towards a broader understanding of international society also included debates over whether non-European peoples could be admitted to membership. Since at least the sixteenth century, non-European peoples often had been included in the categories of either madmen or children in terms of their legal status. The sixteenth-century Spanish theologian Francesco de Vitoria had famously rejected the notion that non-Europeans were mad, and his judgement was celebrated by nineteenth-century jurists, but he concluded that the same people were very likely in the infancy of their civilisations and

17. Emer de Vattel, *The Law of Nations* (Northampton, Mass., 1805), bk. 2, §96. See also Travers Twiss, *The Oregon Territory* (London, 1846), 112–113.

18. For chartered companies with sovereign pretensions or as self-styled “commonwealths,” see Andrew Fitzmaurice, *Humanism and America: An Intellectual History of English Colonisation, 1500–1625* (Cambridge, 2003); Philip J. Stern, *The Company-State: Corporate Sovereignty and the Early Modern Foundations of the British Empire in India* (Oxford, 2011); Edward Cavanagh, “A Company with Sovereignty and Subjects of Its Own? The Case of the Hudson’s Bay Company, 1670–1763,” *Canadian Journal of Law and Society*, vol. 26, no. 1 (2011). For the understanding of various kinds of non-state communities as bodies politic, including companies, church, and cities, see Phil Withington, *The Politics of Commonwealth: Citizens and Freemen in Early Modern England* (Cambridge, 2005). For studies building upon this insight, see Henry S. Turner, *The Corporate Commonwealth: Pluralism and Political Fictions in England, 1516–1651* (Chicago, 2016).

19. Astrid Kjeldgaard-Pederson, *The International Legal Personality of the Individual* (Oxford, 2018), 16–20.

so might be included in the category of children.²⁰ Victorians were inclined to come to the same conclusion—the infancy of non-Europeans fitted their progressive understandings of history—although they increasingly debated the possibility of admitting legal personality to non-European nations in international society. Nevertheless, just as the liberal state limited membership in the society of natural persons according to the possession of reason (amongst other attributes), so too liberal understandings of international society restricted membership to sovereign persons who were judged to be adult.²¹

These two movements in the transformation of membership of both societies, of natural and artificial persons, involved transformations in the status of the persons who were their subjects. Societies may broaden through two processes: that is, either because the definition of the society itself and who can be a member changes, or because the understanding of the potential member changes. In seeking to understand the expansion of society, we must consider both of these processes. Discussions of the expansion of political society in Victorian England often focus upon expansion of the franchise through measures such as the Reform Bills, which changed the definition of that society itself.²² The understanding of political society was expanded when the bar of membership was lowered to include all householders in the Reform Act of 1867. A political society could expand, however, without necessarily changing the understanding of that society. Frequently, society expands when persons acquire the qualities that provide membership. Similarly, membership in “respectable society” could be broadened by changes in individuals’ possession of the necessary qualities of respectability rather than changes in the idea of respectability itself.²³ The broadening of international society was also

20. For the celebration of Vitoria by nineteenth-century jurists, see Andrew Fitzmaurice, *Sovereignty, Property, and Empire, 1500–2000* (Cambridge, 2014), 254–255.

21. There are numerous studies on liberalism and international society. See, for example, Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge, 2001); Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth-Century British Liberal Thought* (Chicago, 1999); Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, 2005); Duncan Bell, *The Idea of Greater Britain: Empire and the Future of World Order, 1860–1900* (Princeton, 2007); Karuna Mantena, “The Crisis of Liberal Imperialism,” in Duncan Bell, ed., *Victorian Visions of Global Order: Empire and International Relations in Nineteenth-Century Political Thought* (Cambridge, 2007); Jennifer Pitts, *A Turn to Empire: The Rise of Imperial Liberalism in Britain and France* (Princeton 2005); Jeanne Morefield, “Covenantants without Swords”: *Idealist Liberalism and the Spirit of Empire* (Princeton, 2005); and Fitzmaurice, *Sovereignty*.

22. Robert Saunders, “The Politics of the Reform and the Making of the Second Reform Act, 1848–1867,” *Historical Journal*, vol. 50, no. 3 (2007), 571–591; Eugenio F. Biagini, *Liberty, Retrenchment and Reform: Popular Liberalism in the Age of Gladstone* (Cambridge, 1992).

23. Michael J. D. Roberts, *Making English Morals: Voluntary Association and Moral Reform in England, 1787–1886* (Cambridge, 2004), 206–207.

as much about who possessed the qualities for membership—for example, whether non-European peoples possessed statehood—as it was about changing the definition of those qualities—for example, whether statehood was a condition.

Given that society could expand through changes in the qualities of potential members, the expansion of any society—political society, respectable society, or international society—would require a certain kind of improvement (or, rather, what was represented as improvement) on the part of those members. For this reason, nineteenth-century European discourse was profoundly concerned with the question of improvement and personal transformation.²⁴ This book explores both processes of expansion: namely, that which required changing definitions of the various kinds of society, and that which emphasised the improvement and transformation of persons.

Travers Twiss is at the heart of this story. Twiss was not a particularly remarkable intellectual, but he had a long life—from 1809 to 1897—in which he engaged with many remarkable people and events. As a jurist, Twiss was certainly eminent, one of the leading international lawyers of his generation. His career began at Oxford, where he taught at University College. He then moved to a practice in civil law at the Doctors' Commons, the college of civilian lawyers in London. Prior to the college's decline in the 1860s, the jurists in the Doctors' Commons dealt with all matters of ecclesiastical law, including marriage law, as well as the law of nations. From this platform, Twiss was appointed to numerous offices in the church, including Chancellor, or judge, in the Consistory courts of several dioceses, as well as Vicar General, the most senior legal figure, to the Archbishop of Canterbury. Alongside this flourishing practice in ecclesiastical law, he worked in the Admiralty Courts, and in 1867, he was appointed Queen's Advocate General, effectively the Attorney General for international law. Fortunately, he was scrupulous, both as an Advocate in the Ecclesiastical Courts and Admiralty Courts and as Advocate General in the Admiralty Courts, in making copies of all his opinions during his career in the courts, from the 1840s to the '70s, which survive in eight manuscript volumes.²⁵

Twiss never, however, reached the heights of male contemporaries such as John Stuart Mill, Thomas Babington Macaulay, Matthew Arnold, or Henry Maine, although he worked with many of the prominent intellectuals and politicians of his time—in England, and in Europe as well, particularly Austria

24. The classic study is Asa Briggs, *The Age of Improvement, 1783–1867* (Harlow, 1959), which is concerned not just with the Victorians' own belief in improvement but with what Briggs saw as the reality of improvement in social conditions. For representations of improvement, see Richard Foulkes, *Church and Stage in Victorian England* (Cambridge, 1997), 69–91.

25. [Travers Twiss], *Law Officer's Opinions, 1862–1886*, Harvard Law Library Historical and Special Collections, MS 1110, 8 vols.

and Belgium, and globally. He also had a deep involvement with what might be called London's demi-monde, and he attempted to bridge these different worlds in a number of ways.²⁶ He and others left a relatively detailed record of his dealings in all the domains in which he associated. His ordinariness is in itself useful.²⁷ He was an observer of events, although never just an observer—he also actively participated. He studied ideas closely, but he only ever understood them as part of political action. His changes of outlook reflect the tide of political thought in the nineteenth century. Conservatives, liberals, and radicals were polarised in the 1840s, divided between those who believed that reform was necessary and those, such as Twiss, who saw reform as a threat to the order of things. By the 1860s and until the '80s, a consensus between liberals and conservatives had grown, with a broad spectrum of support for reform, and Twiss pursued the new possibilities in a number of ways.

My account does not focus upon Twiss alone. Rather, it examines his web of relations with other persons and the transformations of those persons. In the first half of his life, Travers Twiss was ambivalent, at best, about his contemporaries' interest in social transformation. In particular, he was disturbed by the connection between such interest and the liberation of individuals through expansion of the franchise, as well as nationalist aspirations to liberate whole peoples from empires. His concerns about liberation movements reached their height at the time of the 1848 revolutions. He most fully explored his conservative approach to social change through the close friendship he developed with the exiled former Chancellor of Austria, Prince Klemens von Metternich. Metternich had been the architect of the Concert of Europe, which was the product of the Congress of Vienna in 1815, and as such, he was perhaps the most important European statesmen of the first half of the nineteenth century. The purpose of the Concert of Europe was to maintain a balance of the great powers in post-Napoléonic Europe. As far as Metternich was concerned, the cost of the stability and order of that balance would include suppressing liberal movements for change, such as that which exploded in revolutionary France in 1789 and destabilised Europe for the following twenty-five years. The Concert of Europe created a society of states and empires that was closed and resistant to change.

The 1848 revolutions threatened to demolish the Concert of Europe as they unleashed nationalist movements that could permanently alter the composition and balance of the great powers. Those revolutions sought two kinds of freedom: freedom of natural persons, through claims for political

26. Kellow Chesney, *Victorian Underworld* (Harmondsworth, 1970), 363. "Nothing formed so close a bond between the underworld and respectable society as prostitution."

27. For the usefulness of "middling figures" in intellectual history, see Emma Rothschild, "Language and Empire, c. 1800," *Historical Research*, vol. 78, no. 200 (May 2005), 209–210.

emancipation of middle- and working-class people, and freedom of artificial persons, particularly in the emancipation of nations within empires.²⁸ The two struggles were deeply connected, and it was difficult to support one without supporting the other, so that opposing nationalism, for example, would (and did) often also mean opposing the struggle for political rights. As a relatively young jurist, Travers Twiss was a great enthusiast for the stability provided by the Congress of Vienna, and when Metternich sought a collaborator who could voice opposition to the forces of liberalisation and nationalism, Twiss proved to be an enthusiastic partner. Metternich repeatedly stated that the struggle in 1848 and 1849 was the same as that which he had faced in 1813 and 1814: “Everything that we find in the question of Germany today and that is in play more generally in 1849 formed a great subject of meditation for me in the years 1813 and 1814. Everything that presents itself today to the eyes of the masses like a great discovery has for me no other value than strength and weaknesses which I already knew.”²⁹ For ten years, the pair shared their ideas on how to deal with change, as well as their thoughts on all the major events following 1848, through the Crimean War, the Indian Rebellion, and the unification of Italy, and they left an extensive correspondence on those subjects. Fortunately, that correspondence survives in hundreds of letters held in the Bibliothèque nationale de France, Paris, and in Metternich’s papers in the National Archives in Prague, and yet, surprisingly, they have been almost entirely ignored by historians, despite the rich portrait they provide of this dramatic period of history.³⁰

Twiss frequently urged Metternich, a notorious reactionary, at least to appear to be liberal, or a “liberalist,” as he put it. “Will you not,” he asked, “add the word liberalist to your vocabulary?” He supported this plea with the apocryphal story that the theologian John Wesley justified the use of popular tunes for his hymns with the response that he “did not wish the Devil”—in this case the liberals—“to have all the good music.” In this way, Twiss observed, Wesley “sanctified by use terms hitherto profane.”³¹ As this advice to the prince suggests, he had a Machiavellian appreciation that appearances in politics were as important as reality. He also proved himself sufficiently flexible in

28. Eric Hobsbawm, *The Age of Revolution: 1789–1848* (London, 2010; first published 1962); Douglas Moggach and Gareth Stedman Jones, eds., *The 1848 Revolutions and European Political Thought* (Cambridge, 2018).

29. Metternich to Twiss, Brighton, January 29, 1849, Bibliothèque nationale de France, Fol/ R.D./13810, 41v. See also Metternich to Twiss, Brighton, February 15, 1849, Bibliothèque nationale de France, Fol/ R.D./13810, 58: “Nothing that happens today seems to me to be a novelty. On the contrary, everything sends me back 35 years.”

30. Twiss wrote to Metternich in both French and English, while Metternich wrote in French. All translations are mine.

31. Twiss to Metternich, December 2, 1848, National Archives of the Czech Republic, Prague, RAM-AC/ 10/ 774, 88–89.

his early career to support genuine reform in some circumstances, such as at the universities, but in the first half of his life, he nevertheless remained fundamentally conservative in his approach to the expansion of international society, political society, and even London “Society.”

Twiss was himself transformed. While, for much of his early life, he held strong conservative instincts, sometimes concealed under the cloak of a liberal, in his later life, he supported events that fully embraced the possibilities of social transformation, and might even be described as radical, and yet he covered such alignments with a cloak of conservatism. His transformation occurred mid-century, corresponding with a broader shift in Victorian culture. Britain in the 1830s and '40s was troubled by religious conflict, with the Tractarian movement struggling for a return to pre-Reformation purity in the established church, as well as greater autonomy of the church from the state, while the enfranchisement of Catholics inspired fears of their disobedience to the state. The 1840s also brought famine, particularly in Ireland, with the repeated failure of crops. The consequent pressure to repeal the Corn Laws, and provide untaxed grain, deepened division between the landed aristocracy and the working and merchant classes of the cities. The revolutions of 1848 raised the possibility that autocratic governments throughout Europe would topple, while, at the same time, they threatened to tear apart the stability that had been established by the Concert of Europe. That wave of revolutionary sentiment was feared in Britain, particularly due to the resurgent demands of the Chartist movement.³² It has often been argued that these conflicts receded rapidly in the 1850s, and that is true domestically, but conflict remained a serious problem for Britain in its empire and in the international sphere. It was engaged in the dispiriting Crimean War from 1853 to 1856, and just as that concluded, India rose in rebellion against British rule in 1857, while the struggle for Italian unification in 1859, aided by Napoléon III in France, renewed fear of expansionist Bonapartes. Nevertheless, the 1850s saw a shift in mood domestically, and by the early 1860s, the unrest of the previous decades had given way to what has been described as the Age of Equipose, a time of conversation in politics rather than conflict, and a period in which liberal reform promised to resolve the causes of unrest.³³ Toleration of Catholics progressed, the Tractarian movement collapsed with the conversion of some of its leaders to Catholicism, Prime Minister Robert Peel

32. Margot Finn, *After Chartism: Class and Nation in English Radical Politics, 1848–1874* (Cambridge, 1993); John Saville, *1848: The British State and the Chartist Movement* (Cambridge, 1987).

33. Jonathan Parry, *The Politics of Patriotism: English Liberalism, National Identity, and Europe, 1830–1886* (Cambridge, 2006); Boyd Hilton, “Moral Disciplines,” in Peter Mandler, ed., *Liberty and Authority in Victorian Britain* (Oxford, 2006), 224–246; W. L. Burn, *The Age of Equipose: A Study of the Mid-Victorian Generation* (London, 1964); Saunders, “The Politics of Reform.”

succeeded in repealing the Corn Laws, and the promise of political reform and expansion of the franchise was offered as a solution to working-class unrest. Under a liberal hegemony, society was to be governed not by the State but by the “moral action of individuals,” who were to be guided by moral codes and non-State institutions.³⁴

Having been conservative throughout the first fifty years of his life, by the early 1860s, Travers Twiss had embraced the notion that the moral action of individuals was the basis of political society, and he embraced the notion of individual improvement that made changes in the status of persons possible according to such an understanding of society and government. We could, therefore, see his transformation in thinking as symptomatic of the broader shift in mid-Victorian culture. A closer examination, however, of the events which defined his transformation reveals in a very specific way what the moral action of individuals could produce. Aided by Twiss, the actions of the different individuals with whom he engaged led to their own transformations. Those transformations shared common elements, not simply the common element of Twiss himself. Two such events in his life are salient, and they share a striking commonality: namely, while both involve the transformation of individuals through moral action, both pursue moral action in a way that broke the codes by which such action should be constrained.

While Twiss had close ties with many of the most eminent people of his time, figures such as Metternich and the Archbishop of Canterbury, he also had important relationships at the other end of society, amongst people who originated from the poorest classes. Notably, he had important relationships with two women who were at one time prostitutes—Agnes Willoughby and Pharaïlde van Lynseele.³⁵ Both of these women succeeded in transforming themselves. Lynseele was the daughter of peasant farmers in Belgium. Like many young women of her generation, she was drawn from rural poverty into urban prostitution, and to London, where many Belgian and French

34. Peter Mandler, “Introduction” to Mandler, ed., *Liberty and Authority in Victorian Britain*, 18. See also Roberts, *Making English Morals*.

35. There is debate in current scholarship regarding use of the terms “prostitute” and “prostitution.” Many feminist historians now prefer the term “sex work,” reflecting the contemporary “legitimation of prostitution as a profession,” while also recognising the agency of the women involved, while “prostitute” can be viewed as pejorative. Others, however, argue that in cases where poverty and unemployment force women into the profession—for example, in developing countries—the terms “prostitute” and “prostitution” more aptly reflect situations in which women’s choices were constrained. I will follow those historians in using “prostitute” and “prostitution” because, although this book will explore the degree to which these women struggled against constraints and exercised some degree of agency, their choices in Victorian society were nevertheless driven by poverty and dependence. For these debates and the preference for the use of the word “prostitute” in the context of poverty and economic development, see Mina Roces, *Women’s Movements and the Filipina, 1986–2008* (Honolulu, 2012), 2–3.

prostitutes worked.³⁶ There she met Twiss, and she subsequently adopted the persona of a parentless child of Dutch or Polish nobility (depending upon the version) in order to marry him. This book provides an account of her transformation, and of their marriage.

One of the assumptions of this book has been resisted by both social historians and intellectual historians alike: namely, the claim that supposedly elite figures and people from the bottom orders shared ways of thinking and shared concepts and behaviours in ordering the social and political world. It is a mistake to confine intellectual histories to the so-called elites, albeit that literate figures in the past often make the life of the historian easier by leaving clear statements of their thoughts. Moreover, by expanding the scope of intellectual history, we can address one of its greatest shortcomings. While intellectual history has advanced remarkably as a discipline in the past fifty years, it nevertheless remains largely, although not exclusively, confined to coherent, systematic treatises written by men because the great majority of manuscripts and printed texts, prior to the twentieth century, were written by men. If, however, intellectual history can take as its domain “the social imaginary, the complete range of the inherited symbols and representations that constitute the subjectivity of an age,” then it must encompass representations beyond those that came from the printing press, including all forms of meaningful action by women.³⁷

Women from the past often come to our attention because of their association with scandal, and this is true of Pharaïlde van Lynseele. As Judith Surkis remarked, “sensational stories” generate “troves” of archives.³⁸ Rather, however, than those scandals placing women on the margin of history, historians such as Natalie Zemon Davis have used the stories of women to place scandal in the “mainstream of history” by providing a bridge between representation and social and political life.³⁹ In Victorian Britain, prostitutes were often the cause of scandal because they “focused anxieties associated with industrialisation and capitalism more generally”: they destabilised gendered understandings of morality; they were perceived as victims and agents, crystallising concerns about free will; and they were believed to carry disease, particularly sexual diseases.⁴⁰ In order to

36. Judith R. Walkowitz, *Prostitution and Victorian Society: Women, Class, and the State* (Cambridge, 1980); Judith R. Walkowitz, *City of Dreadful Delight: Narratives of Sexual Danger in Late-Victorian London* (Chicago, 1992), 22–23; Deborah Epstein Nord, *Walking the Victorian Streets: Women, Representation and the City* (Ithaca, 1995).

37. Quentin Skinner, “Motives, Intention, and Interpretation,” in Skinner, *Visions of Politics. Vol. 1: Regarding Method* (Cambridge, 2002), 102.

38. Judith Surkis, “Of Scandals and Supplements: Relating Intellectual and Cultural History,” in Darrin M. McMahon and Samuel Moyn, eds., *Rethinking Modern European Intellectual History* (Oxford, 2014), 94–95.

39. Surkis, “Of Scandals and Supplements,” 94.

40. Mary Poovey, *Making a Social Body: British Cultural Formation, 1830–1864* (Chicago, 1995), 88.

evade prosecution and incarceration, prostitutes were adept at creating multiple identities, including several aliases and numerous addresses—both strategies that Lynseele had employed. Indeed, prostitutes invented new personalities for their very survival, while lawyers did so to create the fictions upon which the law depends. Where prostitutes surpassed lawyers was in their ability to perform this creative task outside the codes that governed society, or at least outside the codes of the law and polite society. In Lynseele's multiple personalities, Twiss encountered someone who ignored the trammels of social codes.

Lynseele and Twiss seized upon the potential for her metamorphosis from a streetwalker into a member of Victorian Society, a “lady by blood,” as Twiss would later describe her. Even if the liberal spirit of the time inspired such an idea, it did not extend to welcoming prostitutes into Society. Lynseele and Twiss understood that artifice was necessary to enact transformation. The representation of a woman who was a Belgian-born prostitute as a Polish (or Dutch) noblewoman might well be classified as one of the notorious instances of imposture that are common to all ages but seemed to fascinate Victorians in particular.⁴¹ It might not, that is, be described within the scope of moral action that aimed at emancipation or the improvement of the individual. One reason, however, that Victorians were so fond of such stories of imposture was that they were a species of the broader phenomenon of transformation which was so important to improvement. Imposters did not usually describe themselves as such—they were social climbers, seeking advancement (and for this reason, in part, I will avoid the language of imposture, as it was generally not employed in reference to Lynseele). Their main objective was to change their status rather than to deceive, but in order to do this they were obliged to break social codes. Deception was their method rather than their end. Victorian liberalism and scepticism of government did not unleash a state of license—society was governed by strict codes, including those based on class. Individuals at the bottom of society sometimes had to break those codes if they wished to rise to the top. The same restrictions applied when people in higher social classes, including at least one person in this study, wished to descend.⁴²

41. Rohan McWilliam, “Unauthorised Identities: The Imposter, the Fake and the Secret History in Nineteenth-Century Britain,” in Margot Finn, Michael Lobban, and Jenny Bourne Taylor, eds., *Legitimacy and Illegitimacy in Nineteenth-Century Law, Literature and History* (Basingstoke, 2010), 67–92; Rohan McWilliam, *The Tichborne Claimant: A Victorian Sensation* (London, 2007); Diane Atkinson, *Love and Dirt: The Marriage of Arthur Munby and Hannah Cullwick* (London, 2004); Kirsten McKenzie, *Imperial Underworld: An Escaped Convict and the Transformation of the British Colonial Order* (Cambridge, 2016). See also Natalie Zemon Davis, *The Return of Martin Guerre* (Cambridge, Mass., 1984).

42. For the tensions created by deliberate social descent, often through the performance of false identities, see Seth Koven, *Slumming: Sexual and Social Politics in Victorian London* (Princeton, 2004).

Breaking codes came with a social cost, and most people who pursued such a course tried to hide their actions.

The reinvention of Pharaïlde van Lynseele involved multiple layers of proofs, including the performance of rituals, around the marriage and her presentation to Society, that were essential to the creation of a new person. Lynseele and Twiss travelled separately to Dresden in 1862, where they married in the chapel of the British Legation, away from the public gaze.⁴³ Twiss was aware that marriages in legations were not subject to the same proofs of identity that were required in consulates by the Consular Marriage Act of 1849. There was no need for prior residence in the parish or a public declaration of the marriage. He knew this because he was Chancellor, the most senior legal officer, of the Consistory Court of the Diocese of London, the diocese that was responsible for chaplaincies on the continent. Proving the adage that the poacher makes the best gamekeeper, he subsequently sat on the 1868 Royal Commission on the Law of Marriage, which recommended closing the loophole.⁴⁴ Once married, Lynseele was transformed into a new legal person. Under the law of coverture, her legal personality was “incorporated,” as William Blackstone put it, with that of her husband.⁴⁵

When Mrs Twiss returned to London, she successfully joined Society. She was introduced to the Court of St James on May 16, 1863, and was presented by Lady Lucy Alcock to the Princess of Wales, who was standing in for the Queen, still in mourning for the death of Albert.⁴⁶ In 1867, on accepting the position of Queen’s Advocate, Twiss was knighted.⁴⁷ Lady Twiss, as she was now, was again presented at court, completing her admission to social personality. Lynseele and Twiss had brilliantly, almost flawlessly, orchestrated her transformation into a member of Society. One of Lynseele’s former clients, however, a poor lawyer called Alexander Chaffers, publicly denounced her as a prostitute. When Twiss and Lynseele’s suit against him for libel collapsed in 1872, they were ruined, and Twiss was obliged to resign all of his many public offices.

It is difficult to explain why the couple, despite having taken great care with the reinvention of Lynseele, had pursued a course that was so dangerous not only for Twiss himself but also for Lynseele. It was not uncommon for men to have affective relationships with their mistresses, so emotion alone does not explain the need for the change in status. The moment of Lynseele’s

43. “Certificate of Marriage for Travers Twiss and Pharaïlde Rosalinde van Linseele, August 29, 1862,” National Archives, London, *General Register Office: Miscellaneous Foreign Marriage Returns*, Class: RG 34; Piece: 1.

44. *Report of the Royal Commission on the Laws of Marriage, Presented to Both Houses of Parliament by Command of Her Majesty* (London, 1868), 88.

45. Blackstone, *The Commentaries on the Laws of England*, Vol. 1, 418.

46. *The Times* (May 18, 1863), 5; *Morning Post* (May 18, 1863), 2.

47. *Western Daily Press* (August 20, 1867), 2; *Yorkshire Post and Leeds Intelligencer* (November 6, 1867), 3; *Alnwick Mercury* (November 16, 1867), 6.

metamorphosis is important: namely, the period of high liberalism between the 1850s and '70s, a moment of great social emancipation and expansion of the franchise. This was a movement in which all political interests shared—Liberals, Conservatives, Whigs, and Radicals—while disagreeing on the particular forms of emancipation.⁴⁸ Twiss's professional life was closely involved in the creation of new artificial persons in law, such as bishops, and questions of metamorphoses, such as the presence of Christ in the host. When he participated in Lynseele's transformation into a noblewoman, he took the phenomenon of social transformation to what was for him a new level, a radical act of creation, but it was an act that was consistent with the broader social and political mood for personal metamorphoses. Placing his behaviour in such a context may be said only to describe the act, rather than explain it, and that may be true, but the aspect whereby this act simultaneously fulfilled a creative impulse and pursued the contemporary concern with liberty may be said to, in fact, give as deep an understanding of motivation as we can expect from any account of social actions.⁴⁹

One reason Victorians were fascinated by myths of metamorphosis was because their creative aspect made change possible in a society which increasingly valorised improvement and transformation. The moment was a time of increasing social mobility not only for men but also for women (for example, with the first of the Married Women's Property Acts, passed in 1870). William Gladstone described the moment as "the age of extended franchises."⁵⁰ At the same time, it should be said, measures such as the Contagious Diseases Acts, introduced shortly after Lynseele and Twiss's marriage, could make life for prostitutes and the poor extremely difficult.⁵¹ The acts sought to control venereal disease and, as such, sought to control prostitutes, who were identified as the cause of the problem. Feminists and reformers such as Harriet Martineau and Florence Nightingale condemned the laws, although as Mary Lyndon Shanley has observed, nineteenth-century women's emancipation movements largely followed liberal principles and therefore sought the *legal* emancipation of women but did little to address the poverty of many women and class subordination.⁵² For Lynseele, marriage would lead to both her legal obliteration,

48. Saunders, "The Politics of the Reform and the Making of the Second Reform Act, 1848–1867," 571–591; Boyd Hilton, "Moral Disciplines," 224–246; Burn, *The Age of Equipoise*.

49. Skinner, "Social Meaning and the Explanation of Social Actions," in *Visions of Politics: Vol. 1: Regarding Method*, 137.

50. Gladstone, cited in Saunders, "Politics of Reform," 582.

51. Walkowitz, *Prostitution and Victorian Society*; Walkowitz, *City of Dreadful Delight*, 22–23.

52. Walkowitz, *Prostitution and Victorian Society*, 75–77; Helen Rogers, "Women and Liberty," in Peter Mandler, ed., *Liberty and Authority in Victorian Britain*, 137–138; Shanley, *Feminism, Marriage, and the Law in Victorian England*, 12.

under the law of coverture, and to economic and social emancipation. She was prepared to trade her autonomous legal personality as a *feme sole* for material comfort and social elevation. The Married Women's Property Acts of 1870 and 1882 would restore her legal personality in England, but they did not protect her autonomy.

As is frequently the case, however, when examining the lives of people who left few written records of their own, it is more difficult to develop an understanding of Pharaïlde van Lynseele's life than it is to do the same for Twiss. The defamation trial which followed Alexander Chaffers's revelations is one of the most important sources on the life of Lynseele, and I discuss that trial and the events surrounding it in detail. Nevertheless, the reports of the trial and Twiss's own letters do not explain Lynseele's decisions. Accordingly, I have turned to a convention of micro-history whereby we may reconstruct one life by reference to the conventions which prevailed amongst people in similar situations in a similar time and place.⁵³ In this instance, I have done this by reference to the life of Agnes Willoughby (as she was generally known and generally chose to be known prior to her marriage), or Agnes Rogers. I have chosen Willoughby for this reason but also because she too was a prostitute who had Travers Twiss as her "protector" at one time. There are important differences between Willoughby and Lynseele—differences, in fact, that help shed light on Lynseele's story. But there are also important similarities, notably that Willoughby, too, transformed her status through marriage to an aristocrat. In her case, she did not take the precaution of changing her identity, and the consequence was disastrous for her new husband, William Windham, who was put through an insanity trial by his family in the Chancery Court. The published court record of the trial has been used in some accounts of Willoughby's life. There are further and untapped sources, however, that provide a vast amount of evidence for Willoughby's life and for the trial, and those are the papers of the Windham family in the Norfolk Record Office. The family hired lawyers to investigate both Willoughby and Windham, and their reports, as well as the papers of the various lawyers employed in the insanity trial, an unabridged transcript of the trial, and the letters of the family, of William Windham, and Agnes Willoughby herself, provide a rich account (again, not previously used by historians) of Willoughby's circumstances and the conventions by which her world was governed. They also provide insight into Lynseele's world.

Finally, amongst the people who were important in Twiss's life, I examine his relations with an artificial person, the International African Association, and his role in transforming that corporation into another kind of artificial person: namely, a state, the Congo Free State. King Leopold II of Belgium

53. Natalie Zemon Davis, "On the Lame," *American Historical Review*, vol. 93, no. 3 (June 1988), 572–603; "About an Inventory: A Conversation between Natalie Zemon Davis and Peter N. Miller," <https://www.youtube.com/watch?v=hwiR3dz4Wg8>.

established the Association in 1878 as a purportedly humanitarian organisation for ending the slave trade and bringing “civilisation” to the Congo, which was said to lack that attribute.⁵⁴ His real purpose was to create a vast personal empire. The Belgian government wanted nothing to do with his plans, fearing that its neutrality would be endangered. Leopold therefore determined to transform his company into an independent state, rather than a colony. He faced, however, a great obstacle: the system of states established by the Concert of Europe and the Congress of Vienna, and the corresponding understanding of the international order established in the law of nations in the eighteenth century. This society was highly inelastic, virtually closed to the admission of new members.

After he resigned from all his offices in 1872, Twiss vainly sought new roles, discovering that he was blocked from all positions in England. By 1877, however, he had found Leopold II, who needed a lawyer prepared to challenge the prevailing understanding of the international order. Correspondence in the Royal Palace in Brussels shows that Twiss worked for Leopold through the late 1870s and 1880s, laying down the path that could lead to the transformation of Leopold’s private Association into a state, a path that triumphed over the very rules of international society that Twiss had championed in the first period of his career. His case rested upon three points. First, he argued for the admission of non-European states to international society (permitting African peoples to cede their sovereignty to private companies); second, he argued for the admission of certain “private corporations,” as he put it, to that order (allowing those companies to receive cessions of sovereignty even when the companies were not themselves the agents of sovereigns); and, third, he claimed that such a corporation could be transformed into a new state. Such radical expansion of the understanding of international society necessitated a radical change in the status of an artificial person.

It is important to point out that there were many precedents for European corporations, notably chartered companies, assuming quasi-sovereign powers in the process of European expansion across the globe. Corporations such as the Virginia Company, the English and Dutch East India Companies, and the Hudson’s Bay Company had for centuries employed their own armies and waged wars, signed treaties, established their own “commonwealths,” and, above all, claimed to have established a certain kind of civil society that we associate with states.⁵⁵ In this sense, these corporations were actors in international society. But these “company-states,” in Philip Stern’s apt phrase, always acted with the sanction of their sovereigns. Sometimes that sanction only came

54. Adam Hochschild, *King Leopold’s Ghost* (Boston, 1998).

55. For chartered companies as bodies politic, see Fitzmaurice, *Humanism and America*, and Stern, *The Company-State*; Cavanagh, “A Company with Sovereignty and Subjects of Its Own?”

retrospectively—for example, when conquests were approved by sovereigns as *faits accomplis*—but, once these corporations were established, sovereignty always followed. What Leopold and Twiss achieved in their transformation of the International African Association into the Congo Free State broke from this history of European colonising corporations. It was achieved without the sanction of any state. Although sovereign of Belgium, Leopold had acted as a private individual. The Association itself was not acting in Africa with the support of any state. When Twiss and Leopold succeeded in having the Association recognised as an actor on the international stage, the radical nature of this act was that it was unprecedented that a private person—albeit an artificial person—had been recognised as having standing in international society. It augured a dramatic transformation of international society itself in the twentieth century whereby various kinds of artificial persons were recognised to have standing in international society.⁵⁶ In this instance, where the law of artificial persons led, natural persons followed. Widening recognition of the status of artificial persons was succeeded by the recognition of the standing of natural persons in international society through twentieth-century human rights discourse.

Twiss's contribution to creating the Congo Free State was not simply discursive. In 1884, Prince Bismarck of Germany, in cooperation with the French, issued invitations to all the powers to come to Berlin to determine rules for the carve-up of Africa without deepening already festering conflicts between the great powers.⁵⁷ Britain reluctantly agreed to attend the conference. It assembled a delegation of experts. Twiss had never lost his status as one of the most eminent international lawyers of his generation and now was known for his expertise on Africa as well. What was not clear to the Foreign Office was the degree to which he was working for Leopold (it is only the letters in Leopold's private correspondence that reveal the true nature of Twiss's relationship with Leopold's plans). His recent publications on the status of "Oriental" nations and private associations in international law had been presented as contributions to theoretical debates, not as lawyer's briefs. They were all the more influential for their seeming impartiality. Twiss's old colleague and friend Lord Granville, who was once more Foreign Secretary, accordingly put Twiss forward as the legal advisor to the British delegation to the Berlin Conference,

56. For the rise of early-twentieth-century claims of international standing for artificial persons, see Natasha Wheatley, "Spectral Legal Personality in Interwar International Law: On Ways of not Being a State," *Law and History Review*, vol. 35, no. 3 (August 2017), 753–787.

57. S. E. Crowe, *The Berlin West Africa Conference, 1884–85* (London, 1942); Ronald Robinson and John Gallagher with Alice Denny, *Africa and the Victorians: The Official Mind of Imperialism* (London, 1965), 172–177; William Roger Louis, *Ends of British Imperialism: The Scramble for Empire, Suez, and Decolonization* (London, 2006), 75–126.

although he had no official status, possibly because the air of scandal still stuck to him.⁵⁸ Twiss gratefully accepted the invitation and the return to the performance of public duties for Britain. What the Foreign Office did not know, although later suspected, was that Twiss would be working for them *and* Leopold. The interests of the two parties were far from the same. Leopold, and his International African Association, were not invited to the Conference because it remained the case in 1884 that only sovereign states could talk to each other about matters of international life. Twiss's presence at the Conference was therefore crucial to Leopold.

Twiss chaired the committee on the occupation of territory and was in constant contact with the Foreign Office.⁵⁹ It quickly became apparent that none of the major powers wanted any of their rivals to gain control over the Congo—a territory the size of Western Europe itself. Bismarck accordingly realised that the best way to block the ambitions of all, while at the same time creating an entity that was a threat to nobody (nobody in Europe, that is), was to grant sovereignty to Leopold's company. This required a revision of who could participate in international society, and almost overnight, the great powers embraced Twiss's proposals. The Congo Free State was born. It was not a colony, because it had not been colonised by another state, and it was not quite like any other state either. It was an unfettered liberal individual for, as is now notoriously known, the sole purpose of extracting resources from the Congo, creating an economy in which the butchery of humans was not just an accident but a necessary part of its business. When the question of its constitution arose, Twiss produced one that he had written at Leopold's request the year before.⁶⁰ By this time, the Foreign Office realised his double role, but they accepted it phlegmatically.⁶¹ They were not unhappy with the outcome of the Conference, and Twiss had served them well in other important respects. At the same time, he had helped establish a very important precedent in international law. From the late nineteenth century, and throughout the twentieth, private associations, such as the Red Cross, companies, and even individuals, in human rights discourse and in the prosecution of war crimes, progressively came to be accepted as potential subjects of international law. The last quarter of the nineteenth century even saw a resurgence of chartered companies

58. Telegram Malet to Granville, Berlin, 12 Nov 1884, National Archives, London, FO 84/1814/310; Granville to Malet, Foreign Office, 14 Nov 1884, National Archives, London, FO 84/1814/348.

59. On Twiss as chair of the sub-committee on occupation, see Malet to Granville, 19 January 1885, National Archives, London, FO 84/1820/58.

60. *Projet. La constitution de l'État—L'Afrique Equatoriale*, National Archives, London, FO 84/1814/220-221.

61. T. V. Lister, memo, Nov 23, 1884, National Archives, London, FO 84/1815/214; Julian Pauncefote, Memo, 6/11/84, National Archives, London, FO 84/1814/222.

making sovereign claims to territory.⁶² The franchise of international society was greatly expanded.

Many contemporary international lawyers described Twiss's arguments as "judicial heresies."⁶³ The proposals broke the codes of international society. Part of the context for Twiss breaking social codes in the invention of new persons was his experience of his own marriage. Given that nineteenth-century Europeans closely associated the liberation of natural persons and the pursuit of individual rights with the liberation of nations, through nationalist movements, therefore cases of the transformation of the status of natural persons form part of the context for transformations in the status of artificial persons. The ties between these two kinds of personal metamorphoses are, above all, contextual.

Context is fundamental to understanding the meaning of any particular act or event, so we must cast our nets widely in the pursuit of meaning.⁶⁴ It has been argued on numerous occasions over the past fifty years that histories of ideas should encompass a broader understanding of context than historians have been inclined to do.⁶⁵ The foundational methodological statements for intellectual history following the "linguistic turn" always required breadth, but practice has generally fallen short of theory. Gareth Stedman Jones argued, more than twenty years ago, that "if there is a concept of discourse capable of unifying social and intellectual history it is not likely to develop from the 'new' social theory proclaimed by Foucault and his followers, but rather from an extension of the insights pioneered in intellectual and cultural history."⁶⁶ If change has been slow, it may be because, as Chris Bayly wrote, "Many intellectual historians continue to equivocate on the question of how to relate

62. Steven Press, *Rogue Empires* (Cambridge, Mass., 2017).

63. See, for example, Louis Delavaud, "La France et le Portugal au Congo," *Revue de géographie* (March 1883); Anon., *Sir Travers Twiss et le Congo: Réponse à la Revue de droit international et de législation comparée et au Law Magazine and Review, par un membre de la Société Royale de Géographie d'Anvers* (Bruxelles, Office de Publicité, 1884); "Politischer Tagesbericht," *Norddeutsche Allgemeine Zeitung* May 6, 1884; "O Congo e a 'Revista de Direito Internacional,'" *La Correspondencia de Portugal* (January 7, 1884); Edward Hertslet, *Private Treaties with African Chiefs*, January 16, 1884, National Archives, London, FO 84/ 1808/ 238-243.

64. I am following Quentin Skinner's argument, in particular, in making this case. The argument that context is fundamental to establishing meaning could be said to be a commonplace of historical practice. Skinner, however, provided a philosophical explanation for why context is fundamental to meaning. See, Quentin Skinner, *Visions of Politics: Vol. 1: Regarding Method* (Cambridge, 2002), in particular "Meaning and Understanding in the History of Ideas."

65. See, for example, Ellen Meiksins Wood, "Why It Matters," *London Review of Books*, vol. 30, no. 18 (September 25, 2008), 3-6.

66. Gareth Stedman Jones, "Anglo-Marxism, Neo-Marxism and the Discursive Approach to History," in *Was Bleibt von Marxistischen Persepektiven in der Geschichtsforschung?* (Göttingen, 1997), 185.

intellectual history to social and political history, for the good reason that this is an enormously difficult enterprise.”⁶⁷ Such a broader approach is sometimes described as a social history of ideas or a rapprochement between ideological approaches to history and social theory.⁶⁸ Robert Darnton sought a similar reconciliation between intellectual and cultural history fifty years ago, using Clifford Geertz’s anthropology as the common basis of interpretation, arguing that “digging downward in intellectual history calls for new methods and new materials, for grubbing in archives instead of contemplating philosophical treatises.”⁶⁹ This study aims to broaden the use of context in the understanding of ideas in the way that such critics have suggested, grubbing in archives *and* dealing with philosophical, and legal, treatises.⁷⁰ One might ask what separates such a study from cultural history, particularly given that the two fields can draw upon similar materials and their boundary is unclear.⁷¹ Cultural history will use an artefact, such as a book or a discourse, to identify and understand a deep structure that we call “culture,” while intellectual history focuses upon what a person was doing when she or he wrote or spoke. I will avoid, therefore, describing this study as a “social history of ideas,” if doing so might suggest that its protagonists shared a “mentality,” an unconscious structure of ideas which accounts for the parallels in their inventions.⁷² Such mentalities, a question which interested the *Annales* historians, may well have existed in some form, but what interests me are the conscious responses of the women and men in this story to the problems they faced and the degree to which their thoughts and actions compare, despite the differences of class

67. Chris Bayly, *The Birth of the Modern World, 1780–1914* (Oxford, 2004), 284.

68. Samuel Moyn, “Imaginary Intellectual History,” in Darrin M. McMahon and Samuel Moyn, eds., *Rethinking Modern European Intellectual History* (Oxford, 2014), 112–140; William Sewell, *The Logics of History: Social Theory and Social Transformation* (Chicago, 2005); Quentin Skinner, “Motives, Intentions, and Interpretation,” in Skinner, *Visions of Politics: Vol. 1*, 90–102. For the term “social history of ideas,” see “Theories as Social Action: An Interview with Quentin Skinner,” at Collège de France, Books and Ideas, <https://booksandideas.net/Theories-as-Social-Action.html>: “Many have argued, with some justification, that to concentrate on linguistic contexts is too narrow, and that what is needed is a more social history of ideas.” Surkis, in “Of Scandals and Supplements,” argues for the complementarity of intellectual and cultural history while resisting their fusion.

69. Robert Darnton, “The High Enlightenment and the Low-Life of Literature in Pre-Revolutionary France,” *Past and Present*, vol. 51 (1971), 81.

70. As Darnton did, for example, in his essay on Rousseau: Robert Darnton, *The Great Cat Massacre and Other Episodes in French Cultural History* (London, 1984), 209–249.

71. Peter Gordon, “What Is Intellectual History,” Harvard Colloquium for Intellectual History (2012), <https://projects.iq.harvard.edu/harvardcolloquium/pages/what-intellectual-history>.

72. For the “*histoire des mentalités*,” see, for example, Lucien Febvre, *Le problème de l’incroyance au XVI^e siècle: La religion de Rabelais* (Paris, 1947). For a critique of such an approach, see Carlo Ginzburg, *The Cheese and the Worms: The Cosmos of a Sixteenth-Century Miller* (London, 1980), xix–xxiv.

which they attempted to overcome.⁷³ Carlo Ginzburg observed that his study of a sixteenth-century miller was dealing with a moment in which the gap between the cultures of social classes was widening and the possibility of common aspirations was being crushed.⁷⁴ In this study, by contrast, the central characters were attempting to bridge that gap, and in that context, the parallels in their ideas assume even greater importance. I prefer, therefore, to portray the reconstruction of context in this book as micro-intellectual history. Micro-history takes relatively minute events, or microcosms, and uses them to open up greater questions about history.⁷⁵ As Hamlet observed, “I could be bounded in a nutshell, and count myself a king of infinite space.”

One might push back against this justification for micro-intellectual history by pointing out that there are good reasons why intellectual history has focused upon contextualising a canon of coherent systematic treatises which, for specific historical reasons, happen to have been written mainly by men. Political traditions remain meaningful, John Pocock argues, largely insofar as they are self-referential. For Pocock, a body of political thought can only be said to exist when a context “lasts long enough to give discourse some command over itself.”⁷⁶ Conversations within and between cultures must be stable and durable in order to produce significant bodies of political thought. I hope to show, however, that, on a question such as the invention of persons, a vital question for political thought, non-canonical sources reveal that these conditions are met. Such sources, therefore, are both contexts and texts in the history of political thought. Pocock had earlier observed, “We need not therefore apologise for the unrepresentative elitism of studying only those readers whose responses were verbalized, recorded and presented. The *mentalité* of the silent and inarticulate majority should indeed be sought after and if possible recovered; it may have important information for us. But the history of *mentalités* is not identical with the history of discourse.”⁷⁷ He is right, of course, that it is not the same, but nor was discourse—if by that we understand a conscious system of signs with command over itself—restricted to published texts.

While micro-intellectual history is frequently biographical, it is not biography. It provides an understanding of people who found themselves entangled in the events and ideas of the time in which they lived. An account of their lives can thereby become a perspective upon such events and also upon reasons why they adopted and moulded certain ideas to their purposes. Context enables us to understand the vast vocabulary, conventions, and practices that

73. Ginzburg, *The Cheese and the Worms*, xxiii.

74. Ginzburg, *The Cheese and the Worms*, xxiv.

75. Two classic studies are Davis, *The Return of Martin Guerre*, and Ginzburg, *The Cheese and the Worms*.

76. J.G.A. Pocock, “On the Unglobality of Contexts: Cambridge Methods and the History of Political Thought,” *Global Intellectual History*, vol. 4, no. 1 (2019), 11.

77. J.G.A. Pocock, *Virtue, Commerce, and History* (Cambridge, 1985), 18.

can be brought to bear in order to understand any particular event, such as the transformation of the status of a person, natural or artificial. As Ludwig Wittgenstein observed, if we wish to understand a thing that we have not previously encountered—for example, a game of chess—we are obliged to bring our entire knowledge of games to bear upon the matter.⁷⁸ We must have a concept of games. It will help to have a concept of board games which have pieces. It will also help to have seen other people play board games, “and similar things.”⁷⁹ Living in a world of such “language games,” as Wittgenstein puts it, obliges us to understand all things, and to do all things, through processes of comparison and analogy.⁸⁰ Utterances acquire their meaning through association, through our comparison of them, with other things. When we wish to do something new, or to understand something new, we bring our almost infinitely complex store of language games to bear on the matter, searching for resemblances. It is for this reason that contextual intellectual history insists upon the recovery of context in order to understand the meaning of actions in the past. All we should add is that the kinds of things with which we compare in order to understand language games are almost limitless, as Wittgenstein showed, and certainly in cases such as personification, we must consider the strong “family resemblances” between the creation of natural and artificial persons.

In this particular instance, the micro-historical event upon which the rest of the study turns is the metamorphosis of Pharaïlde van Lynseele into a European noblewoman. That moment allows me to ask questions about transformations of persons, natural and artificial, more generally and to shed light upon the role played by transformation in Victorian culture and political thought. It then turns from the metamorphosis of Lynseele to the metamorphosis of the International African Association into the Congo Free State, in which Twiss also had a central role as a lawyer. The argument is that Lynseele’s transformation provided part of the context for Twiss’s understanding of changes in personhood that he brought to the case of the Congo association. This is not, however, to make a causal argument. We cannot say that Lynseele’s transformation caused Twiss to perform a similar transformation in relation to the International African Association, even though the circumstances of the first moment had a causal role in pushing him towards the second. Indeed, while causes may have a role in historical explanation, the more important point made here is that in order to understand what a person meant by a particular action, we need to understand the broader range of discourses which could inform that action. In particular, we should understand discourses that belonged to a similar class

78. Ludwig Wittgenstein, *Philosophical Investigations*, trans. G.E.M. Anscombe (Oxford, 1953), 31.

79. Wittgenstein, *Philosophical Investigations*, 31.

80. For language games, see Wittgenstein, *Philosophical Investigations*, 21, 23.

of action as that they were performing.⁸¹ There are connections between the different kinds of creations of persons, natural and artificial, in the lives of the people who performed them, and we, as historians, have ignored them.

Within the particular case of transformations of personal status, there are some very specific connections that Victorian jurists made between their understanding of artificial persons and natural persons. Twiss's marriage and his practice of international law were connected directly. His marriage scandal drove him into Leopold's arms, as the king proved to be the only person who was prepared to employ him in the 1870s and '80s. But there were deeper connections, which lay in the nature of the law itself. Having never been codified, English law contains many anomalies. Prior to, and to some degree even after, the Matrimonial Causes Act of 1857, one of the strangest of those anomalies was that marriage law, as a branch of ecclesiastical law, and the law of nations were unified in the practice of the civil lawyers who resided in the Doctors' Commons. Historians of international law in England have paid insufficient attention to the fact that, prior to the twentieth century, the lawyers who form the subject of their study were mainly employed in the pursuit of ecclesiastical law, and particularly marriage law. International law was a second string to their bows.⁸² The reason marriage law and the law of nations were combined in this way was because both, in contrast to most law in England, had a common basis in Roman and civil law. When the Church of England broke from Rome in the sixteenth century, it retained Roman law as the basis of ecclesiastical law, while civil law provided a common language for legal relations between all European nations.⁸³

One of the affinities between practicing in both those fields of law was in the creation of new legal persons. Every day in his legal practice, Twiss saw the potential for the transformation and creation of persons. He was responsible for the creation of the new person, or corporation, of bishops and archbishops. He ruled, as an ecclesiastical judge, on the correct interpretation of the creation of the body of Christ from the host. As Vicar General, he issued two-thirds of marriage licenses in England between 1852 and 1872—licenses that would, until the Married Women's Property Acts, transform the legal personality of both husband and wife as they became, as Blackstone put it, an incorporated whole. These were all conventional processes of metamorphoses, condoned and institutionalised by law. When he began to work for Leopold, however, he had to make a case for the metamorphosis of a person, a private corporation, into another kind of person, a state, that was not in any way condoned by law.

81. On cause and context, see Skinner, "‘Social Meaning’ and the Explanation of Social Action," in Skinner, *Visions of Politics: Vol. 1*, 128–144.

82. An exception is Lobban, "English Approaches to International Law in the Nineteenth Century," 66.

83. G. D. Squibb, *Doctors' Commons: A History of the College of Advocates and Doctors of Law* (Oxford, 1977).

It should be said that the formal conventions of law constitute only part of legal practice. Lawyers also work to a great degree through “informal law,” which bridges the gap between the reality of legal practice and the forms of law. Prominent amongst the types of informal law are legal fictions. The jurist A. V. Dicey complained that, prior to reform, in the mid-nineteenth century, “every branch of the law teemed with fictions.”⁸⁴ As J. H. Baker explained, “The object of legal fictions is that they allow the operation of the law to change while avoiding any outward alteration in the rules.”⁸⁵ An early-twentieth-century example of legal fiction was the “curious phenomenon of the arranged divorce” prior to the reform of marriage law.⁸⁶ With mutual consent as an insufficient ground for divorce, adultery was “stage managed” in cases where it did not actually exist. The husband would be obliged to go through with a “kind of ceremony” with a woman with whom he was not actually having an affair—preferably in a Brighton hotel, if in England—where the act of adultery could be independently witnessed. The use of legal fictions was particularly prevalent until the mid-nineteenth century, when democratic pressure was brought to bear to eradicate such deceits by changes in statute, although fictions remain extremely important to the practice of law.⁸⁷ The object of legal fiction, to allow reality to change without outwardly altering the rules, fitted very closely the objective of the fiction of Lynseele’s birth and noble heritage. The fiction enabled her, as a working-class woman, to become a part of English Society without altering any rules. It was a case in which the qualities of the potential member changed rather than the understanding of the society itself. While deceitful legal fictions allowed the law to work, they were deceits everybody involved in the theatre of the law understood and in which they participated. Lynseele and Twiss drew upon the practice of legal fictions, but they took such fictions to another level. While there were no obvious precedents in the law of nations for working outside recognised conventions and laws to create what Leopold required, Twiss’s participation in the creation of the new person of Lady Twiss was salient. Moreover, Pharaïlde van Lynseele and Twiss had exploited the laws of marriage to facilitate her

84. A. V. Dicey, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century*, ed. Richard VandeWetering (Indianapolis, 2008), 66.

85. J. H. Baker, *The Law’s Two Bodies: Some Evidentiary Problems in English Legal History* (Oxford, 2001), 35

86. Baker, *The Law’s Two Bodies*, 36.

87. On the prevalence of legal fictions prior to the nineteenth-century reform, see Michael Lobban, “Legal Fictions before the Age of Reform,” in Maksymilian Del Mar and William Twining, eds., *Legal Fictions in Theory and Practice* (Heidelberg, 2015), 199: “Very few indeed were those litigants whose case did not rest, in one form or another, on a legal fiction.” For the contemporary salience of legal fictions, see Baker, *The Law’s Two Bodies*, and Maksymilian Del Mar, “Legal Fictions and Legal Change in the Common Law Tradition,” in Del Mar and Twining, eds., *Legal Fictions*, 225–254.

transformation. Following the Married Women's Property Acts, she regained a legal personality.

The eminent jurist Hersch Lauterpacht observed in 1927 that international law developed largely through analogies taken from private law, but we can extend that insight.⁸⁸ International law also developed through analogies based upon the understanding that states are persons. This was well understood by the seventeenth century. For Thomas Hobbes, the state was largely modelled upon the image of the autonomous, and aggressive, rights-bearing individual who lived in a state of nature.⁸⁹ International society was precisely such a state of nature. In 1849, Twiss had written to his friend Prince Metternich affirming his own Hobbesian understanding of that analogy: "I have always considered the life of the individual man to represent the life of nations."⁹⁰ Richard Tuck has observed, "It cannot be a coincidence . . . that the modern idea of natural rights arose in the period in which European nations were engaged in their dramatic competition for the domination of the world."⁹¹ The expanded Victorian understanding of the possibilities for personal transformation—the creation of new autonomous individuals—was an inspiration to international lawyers in their understanding of the person of the state. Such states pursued expansion beyond Europe perhaps more aggressively than ever before (with the Congo Free State taking aggression to a new and unfettered level, even for imperial states). In order to do so, they were modelled upon the most radical understanding of the autonomous individual that had been produced in liberal thought. Pharaïlde van Lynseele and the Congo Free State were two such individuals, and their lives would demonstrate the tragic limits as well as the possibilities of the liberal world of personal transformation.

88. Hersch Lauterpacht, *Private Law Sources and Analogies of International Law: With Special Reference to International Arbitration* (London, 1927); Randall Lesaffer, "Argument from Roman Law in Current International Law: Occupation and Acquisitive Prescription," *European Journal of International Law*, vol. 16, no. 1 (2005).

89. Richard Tuck, *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (Oxford, 1999), 14–15.

90. Travers Twiss to Prince Metternich, February 6, 1849, National Archives of the Czech Republic, Prague, RAM-AC/ 10/ 775, 103.

91. Tuck, *The Rights of War and Peace*, 14.

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