

Principles of ownership and the transmission of knowledge in contemporary dance and Irish traditional music: social norms and legal contexts.

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### Abstract

Drawing on the contributions to this special issue, this paper offers a synthetic description of the principles of ownership, sharing, and reward that guide and stimulate the creative practices of contemporary dance. It aims to contextualise these practices within a series of concerns around the protection and perpetuation of valuable cultural and artistic practices. This contextualisation is intended to 'clear the ground' for the contributions that follow by establishing the relevance and interest of the genre for other domains, and attending to contemporary conditions of cultural production including those of intellectual property law, commercialisation, and community/commons formation. I show how this work offers an illuminating model of social process in which value created in common is linked, through reputation, attribution, recognition, and innovation, to people without property becoming the dominant mode of ownership.

Keywords: dance, commons, community, sharing, transmission, copyright

This paper offers a synthetic description of the principles of ownership, sharing, and reward that guide and stimulate the creative practices of contemporary dance. It aims to contextualise these practices within a series of concerns around the protection and

perpetuation of cultural and artistic practices. This contextualisation is intended to ‘clear the ground’ for the contributions that follow by establishing the relevance and interest of the social principles of ownership apparent in the genre, for other domains. The contributions attend to contemporary conditions of cultural production including those of intellectual property law, commercialisation, and community/commons formation. Just as with traditional knowledge and cultural heritage, the issue of control over intellectual and cultural property in dance and traditional music is fraught given that they do not lend themselves well to notation in a fixed medium as per IP standards. The contributions raise many important issues about protecting culture that must be transmitted and performed, and offer, through careful explication, an illuminating model of social processes in which value created in common is linked to persons, through reputation, attribution, recognition, and innovation without property being dominant.

Some time ago, Michael F. Brown’s concisely laid out a series of issues with the protection of heritage and intangible cultural property.<sup>1</sup> His summary took account of scholarship and policy initiatives in the light of changing technological and political realities. He highlighted, on the one hand, the rise of the ‘Information Society’<sup>2</sup> and on the other, a growing trend towards ‘heritage nationalism’. Neither have run their course fifteen years on, and many of the problems he delineated then are chronic, built in, as it were, to a complex political economy of claims to identity, disputes over resources, appropriative capital, economic and political inequalities, and so forth. Brown’s elegant summary resulted in a call for attention to *alternative ecologies of knowledge* in which ‘[t]he dematerialization of heritage – the rising salience of stories, designs, musical forms, and information in discussions of heritage

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<sup>1</sup> Brown 2005.

<sup>2</sup> Castells 2000.

protection – offers the prospect of more comprehensive management of traditional cultural productions, yet it also creates daunting complexities for policy makers’.<sup>3</sup> Our volume here attends to these issues by outlining the principles and expectations that are built in, as it were, to the creative social processes of dance and music making we consider. By making these principles, and their situation explicit we aim to offer a contribution to thinking more widely about how and where bodily, practice based, and material forms of knowledge are and can be said to be, ‘owned’.

The rise of digital technologies is so pervasive that it is not separable from any discussion of ownership and transmission of contemporary art forms or other forms of heritage. We recognise the integration of these technologies into everyday practices. As Ravetto-Biagioli and Biagioli-Ravetto, and Whatley both describe (this volume), digitization presents unanswered questions for dance about how access, use, and re-use should be regulated (if at all), questions that are by no means unique to contemporary dance, as many areas of intangible heritage face similar concerns. As the terms under which knowledge was previously shared (in small communities, governed by norms and expectations of reciprocity and behavior) do not automatically attach to knowledge made available on digital media, many beyond the dance community express concern over the social implications of the move towards digital forms of knowledge.<sup>4</sup>

What then are we able to say about the specifics of digital innovations in how they affect sharing and transmission? It is here that the weight of existing laws and precedents come most clearly into conflict with the established principles that are embodied within so many

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<sup>3</sup> Brown 2005: 41.

<sup>4</sup> Coombe 2003.

traditional and collaborative practices, and why we have established a two-pronged approach to our endeavour. By including other forms of collaborative and bodily practice in our frame (such as traditional Irish music and dance, and Greek traditional dance), we establish a foundation that is already aware of and attuned to the cultural and historical specificity of different collaborative modes of practice. By attending to the shape and consequences of laws and precedents upon those practices, we open the space for a conversation about what is and what is not appropriate within them (to these specific practices) and thus what it is we might be looking to take from the practice of contemporary dance as a model for thinking about collaborative and traditional knowledge forms more widely.

### *Creativity and the emergence of principles of ownership*

Contemporary dance is an embodied art form that combines rigorous physical and mental training with an exceptional emphasis on creativity.<sup>5</sup> The genre is one in which new work is expected and produced by artists (Blades, this volume), and thus new 'material' is constantly being asked for and generated. This material exists in movement patterns, 'phrases' in the language of many its practitioners, that are combined into or sequenced to make a dance work. Phrases are generated in a number of ways in the dance studio, with improvisation often key. The embodied nature of dance means that it circulates fluidly, with movements, ideas and knowledge exchanged from body to body without explicit formal

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<sup>5</sup> Significant examples of contemporary dance (those that do not involve the human body – see Cjević 2015, 6-14) do not adhere to the description given here of the practice of 'contemporary dance'. In this volume the focus is on dance in which the human body performing movement recognized as dance is integral to the creation process.

transaction.<sup>6</sup> Artists share their unique practices as a way of creating dialogue with other artists and contributing to the development of the art form.<sup>7</sup> Movements are often re-embodied and re-worked to varying degrees during pedagogical and choreographic processes.<sup>8</sup> These practices are generally accepted within ‘the community’, relying on assumed norms of behaviour and reciprocation. This ecology has been described as a form of ‘commons’,<sup>9</sup> implying choreographic knowledge is a shared resource. The introduction of the term ‘community’ by these writers reflects an important aspect revealed in the papers which follow. That is, contemporary dance practitioners consider the ‘domain’ in which they work to be made up of multiple people making art works which in some way connect them all together. ‘Community’ is a *self-designation* and points to an underlying sense of something in common. We explore, in context, what this ‘commons’ might be.

Complicating a notion of commons however<sup>10</sup> some have theorised the apparently freely offered contributions of dance makers in relation to the anthropological notion of the ‘gift’<sup>11</sup> as a way of conceptualising the transactions that take place between dance makers in the ‘community’. While such descriptions require reflexivity (it is in how the specifics of exchange and thus transaction occur that the interest lies, not in identifying them as within a particular typology of economy), these analyses do suggest a different political economy to that in which conventional intellectual property operates. Part of the ‘ground clearance’ of this volume is to establish the need for a specific and nuanced description of creation and exchange within particular dance making and pedagogical processes. Why? As Michael

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<sup>6</sup> Colin and Sachsenmaier 2016, Kraut 2016.

<sup>7</sup> Burt 2017, Laermans 2015.

<sup>8</sup> Faure 2000.

<sup>9</sup> Bench 2016, 2020; Burt 2016.

<sup>10</sup> see Ravetto-Biagioli 2020; Blades, this volume.

<sup>11</sup> Franko 2004, Jeeves 2016.

Brown wrote, there is value in 'emerging ethnographic studies of views of cultural ownership in specific places, as distinct from the abstract and often romanticized depictions of traditional ownership practices that typically dominate policy discussions in multilateral organizations such as UNESCO'.<sup>12</sup>

Choreographic processes in contemporary dance have been studied from a range of perspectives. However, despite this range of approaches, there is to date a lack of detailed ethnographic examination of ownership and sharing within that creative process. One counter example, Rudi Laermans' exemplary study *Moving Together* (2015) explores ownership within the creative process, providing detailed descriptions based on the Brussels dance community, and the work of the choreographer, Anne Teresa De Keersmaeker. As the detail and theoretical sophistication of that work demonstrates, the subject is as rich and as complex as any genuinely 'thick description' of the nesting of interpersonal, institutional, and societal/cultural relations anywhere. His work leaves no doubt that there are specific conditions, expectations, and assumptions that shape the field of contemporary dance making, knowledge sharing, and pedagogy.

Any attempt to distill general rules and understandings within the contemporary dance community needs to take into account the specifics of time, place, politics, and history (Davies and Leach, this volume). This is particularly so when this relates to knowledge sharing, and to make it the specific focus of scientific attention and research, When Marcel Mauss referred to the gift as a 'total social fact',<sup>13</sup> he asserted that gift-exchange relations are a central part of the wider form of sociality in which specific personhood and political

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<sup>12</sup> Brown 2005: 47

<sup>13</sup> Mauss 1990: 78; Gofman 1998: 65-68.

institutions are also major elements. Many anthropologists spend their scholarly careers describing the inextricable mutual constitution of 'elements' that practitioners or analysts focus upon. One must remain skeptical of simply removing the notion 'gift' from the wider social context in which it has meaning, and redescribing another society's practices using the concept. The complexities of exchange are based in specifics as to how and where persons come to be constituted in a particular society, how their products attach or are detached from them in the process of exchange, and logics of recognition which also involve gender, societal hierarchies, belief systems and so forth.

Recent work using ethnographic material about contemporary dance, for example, has highlighted how the personal, and the interpersonal, shape the flow of movement in creative improvisation in a way which both draws upon and challenges western assumptions about individuals and their singular capacity for internal creativity. These point to how there is something emergent in the dance studio which is neither of one body or of many individual units coordinating.<sup>14</sup> It is something 'between' that draws on and explores the very nature of politics and domination, co-operation and engagement between bodies that are also persons: and that are situated in a particular society and history. Part of any description of ownership principles therefore needs to be quite clear in its contextualization. In other work, we have gone so far as to suggest that the 'material' worked upon in creative improvisation is the moral, social, and political reality of being a human being as a body, with a body as the only means we have of being at all.<sup>15</sup> Culture is embodied, therefore, in the very process of making artistic material in a specific historical and social milieu. Our approach then is to be interested in reciprocation, exchanges, and

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<sup>14</sup> Leach and Stevens 2020.

<sup>15</sup> Leach and deLahunta 2017: 464-5.

transmissions in their historical and social complexity. We would like to understand the principles and assumptions that shape creative collaborative processes in this field and in addition, illuminate processes of making and transmission in an artistic genre that has been overlooked by social science in current understandings of practice-oriented creativity.

Approaches to art in the social sciences have been supplemented in recent decades by a focus on creativity,<sup>16</sup> social process,<sup>17</sup> and 'making'<sup>18</sup> that highlight process and emergence, and the role of skilled engagement with materials. However, dance has been notably absent from this development. By looking at a form of creativity based in the emergence of ideas and forms through bodily movement (i.e. that is embodied, unarticulated) there is scope to add to this. We lack descriptions of dancers' understanding of their relations with one another, and how the unfolding of these relations is the material worked upon in dance creation. Two or more bodies improvising together in the dance studio work with the shape of their interaction, exploring both structure and time through how each other feel and respond in the interaction itself.<sup>19</sup> Choreographic material works on a world of relations to space and social other, relations that constitute and unfold these things. Philosophical articulations of understanding dance in this way can be discovered in the work of Manning and Massumi, Gil, and Noë.<sup>20</sup> We suggest that further detailed ethnographic investigation of the process offers a significant addition. Ownership refers to the conditions of transactions, obligation, and sharing of dance, and we propose to make apparent the frames under which these actions are made possible. In a recent article on the circulation of music and value in

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<sup>16</sup> i.e. Hallam and Ingold 2007.

<sup>17</sup> Leach 2002.

<sup>18</sup> Ingold 2012.

<sup>19</sup> Stevens and Leach 2016.

<sup>20</sup> Manning and Massumi 2013, Gil 2009, Noë 2007.



Melanesia, Monika Stern and I make a strong claim that there are discernible principles at work that govern the creation and circulation of music and dance in that region. Artistic material made under these conditions generates enduring value, and enduring connections. It facilitates social reproduction through ownership attributions that are not 'property'.<sup>21</sup> Analogously, contemporary dance, as the contributions here attest to, resists propertization.<sup>22</sup> What then are the specifics that generate this 'resistance' and what do they have in common with other bodily forms of knowing and heritage?

The framing for these writings is to interrogate what gets created and exchanged in contemporary dance describing how 'ownership' figures in these processes. We notice for example that although property makes occasional appearances within, and perturbations in the domain of contemporary dance, or traditional music (McDonagh this volume), it somehow does not have much purchase and the domain, and the self-defining community remains resilient. What then is it that is made and circulating in this arena that property does not 'attach to'?<sup>23</sup>

### *The context of intellectual property*

The performative nature of the material, the nature of the knowledge involved, and the flexible and changing modes of collaborations within the communities of dancers and choreographers we address creates significant challenges to intellectual property law's ability to comprehend and regulate these practices; challenges that many who are

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<sup>21</sup> Leach and Stern 2000.

<sup>22</sup> Ravetto- Biagioli 2020: 101.

<sup>23</sup> Flessas 2008: 396-8.

concerned with the loss or appropriation of intangible heritage have long articulated.<sup>24</sup> Just as with traditional knowledge and cultural heritage, the whole issue of control over intellectual and cultural property in dance is not only fraught because that the form does not lend itself well to notation in a “fixed medium” as per IP standards. There is also something fundamental in the way in which the ‘in between’ unfolds from these practices, and forms a core part of their realization of value, that is lost in the abstraction of making a knowledge object.<sup>25</sup>

While intellectual property law remains central in the context of the public performance and dissemination of the final ‘product’ of dance,<sup>26</sup> the practices of authorship, attribution, and credit sharing (as well as those regarding the sharing of knowledge between generations and with others outside the community) are regulated by norms developed by the participants themselves – norms that may be both only partially explicit and may change in time with the structure of the community, and in response to new technologies and internal developments (such as the introduction of digital documentation). When a dance artist works with a well-known choreographer, they are not just making their body available as material for the artist, but also contributing their creativity and ideas (Davies, this volume). In return, perhaps they learn technique, styles, or ways of generating movement ideas. Attribution may be a kind of reciprocation, but the realities of cultural and institutional expectations may interfere or distort the distribution of benefit. When one emerging dance maker (for example) allows another dancer to use her choreography and the performance is successful, who gains from the valuable reputation and through what mechanism? Given

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<sup>24</sup> Dutfield and Posey 1998.

<sup>25</sup> See Leach 2012 for a discussion of the political economy behind ‘making knowledge objects’.

<sup>26</sup> Leach 2014.

that contemporary dance as discussed here is situated within the commodity economies of western Europe, how do such mechanisms operate without devolving to property and intellectual property ownership?

The issues we identify in the dance domain overlap with significant challenges faced in the digitization of intangible cultural heritage (ICH) more widely. After more than 15 years, the World Intellectual Property Organization's efforts to broker consensus around the text of a treaty for the protection of "traditional cultural expressions" are deadlocked. Over the same period, we have come to understand more about the inherent limitations of national intellectual property laws where embodied and collective creativity are concerned.

Meanwhile, the implications of new technology for the collection and circulation of detailed information about making art and culture have become increasingly apparent. The obvious benefits of digitization in terms of building general knowledge seem to be offset, to an extent not yet fully understood, by the risks it poses to cultural survival.

In a more recent piece, Michael F. Brown highlights various 'perils' involved in heritage management.<sup>27</sup> He identifies two major factors that give rise to these perils: 'administrative mind' and over-zealous state involvement. The former, often arising from good intentions to protect and preserve the diversity of national or global heritage, requires the cataloguing and categorization of aspects of peoples' practices. These thus become both concretised, and the administration and policing of the boundaries of such practices (or the groups that they are said to belong to) results in a removal of control over them from the practitioners themselves. The concerns Brown outlines when it comes to state involvement in heritage

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<sup>27</sup> Brown 2014.

are multifaceted, but to summarise and focus on just one, the state, in its guise of protecting national interests may well and in multiple documented cases does, have different interests from the practitioners or guardians of heritage (see McDonagh this volume). These problems are exacerbated rather than diminished when the heritage in question is 'intangible', that is, when it is not fixed objects but ideas, practices, arts traditions and so on. Brown is one of many in recent years who have talked of an impasse in the application of Intellectual Property law when it comes to preserving and protecting intangible heritage.<sup>28</sup> Brown's argument allows a clear sight of the fact that as he puts it 'Even thoughtfully designed heritage-protection laws and policies tend to be flawed affairs' (Brown 2014: 176). Is this because UNESCO and WIPO are apparently only able to conceive of 'protection' through 'property'?

Where can we look for inspiration in the light of this near universal agreement about the inadequacy of intellectual property as a way out of the need to treat the creators and guardians of artistic and other intangible creations with fairness and respect? As Brown puts it: 'The multiple deficiencies of an IP based model have led the heritage-protection movement to cast about for more promising frameworks'.<sup>29</sup> Such a search would have to acknowledge the structural and logical difficulties that Brown highlights and delineate an approach that does not aim for more control, but seeks to shape where and indeed if, such control by administrators, experts and the state are appropriate and helpful at all. At the very least such an approach promises to make visible and legible the different interests and assumptions of those looking to protect intangible heritage.

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<sup>28</sup> see eg. Jaszi 2015; Chon 2012.

<sup>29</sup> Brown 2014: 172.

Our volume is exemplary of this effort – that is, we examine the practice and context of one particular contemporary area of the production of intangible art work to show how its principles and self-organisation *function* and point out how the mores and social principles involved are complex, embedded in particular historical and cultural places, and thus both differ and (inevitably) overlap with wider assumptions and principles in law and the administration of business in which they exist.

We do not seek to recommend principles from one domain of practice for others, but to recommend an approach to thinking about ownership and transmission, protection and artistic/community/social regeneration that attends to the concerns, interests, practices and underlying values of practitioners in *any* of the fields that could be designated cultural heritage. Methodologically, we intend to point to a research process which we believe will have a series of concrete and practical outcomes in the end: one that begins from understanding the principles of ownership and sharing in different practices, made possible by a detailed description of those practices. In this volume, we take one practice that is accessible to us (contemporary dance), and move from there to examine what is or is not appropriate under current law and precedent to that genre.

The collaborative and embodied forms of knowledge in contemporary dance are largely inaccessible unless experienced directly through body-to-body transmission.<sup>30</sup> The recent appearance of artist led experiments that try to bridge this gap with computer aided

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<sup>30</sup> Pakes 2003, Parviainen 2002, Snowber 2012.

recording and processing (visualization) offer a unique opportunity to understand the effect of digitization on these kinds of knowledge forms. The results of these experiments have been a modest in number, but high-profile proliferation of diverse projects attempting to realize customized approaches responding to the interests, desires and methods of the particular artist(s) (eg. Paxton 2008). At the same time, advances in networked computer technologies and streaming video appear to offer a public platform for diverse dance artists to share their moving ideas easily and worldwide. William Forsythe's *Improvisation Technologies* (1999) is a seminal example, initially created as an annotated video to teach dance making techniques to members of his company, it was subsequently published and is widely used both with and without Forsythe's approval (Vass pers. comm), in dance pedagogy worldwide. Then there is You-tube etc., social media video platforms that apparently make everything accessible. But as I come onto below, much is also lost in these forms of digitization. This is most apparent in the abstraction of knowledge from the social conditions of its production.

In much heritage and cultural property, we are interested by knowledge forms that cannot and or perhaps should not be separated from the bodies and processes of their production. Contemporary dance provides a proximate and pertinent example for us because of its living *form* in the context of contemporary art, because of the necessarily collaborative nature of much of its process, because it *is* process based, and also because of motivations and ethics on the part of many practitioners that constitute it as a self-described 'community'. We are concerned with various phenomenon that are not objects, therefore not property, or not appropriately property.

### *Body to body transmission*

Dance tends to be concerned with the ownership of movement and performances that are current. There is a processual, affectual articulation of connections to the material. This is perhaps made clearest in relation to the notion of 'loss'. Loss of what? What part of a dance could be thought to be lost (Blades, this volume)?<sup>31</sup> In seeking to address this question, we point to the importance in dance of the inbuilt assumptions and reciprocations that give the genre its creative form, and which are part and parcel of what Blades terms its 'ontology'. To have them shorn from work is to decontextualise dance to detrimental effect.

deLahunta's chapter engages with the question of under what conditions might the bodily, tacit and experiential knowledge of dancer artists be communicated when they are not working together in the same space, where this knowledge is being transmitted from body to body. deLahunta experiments with notions of 'tacit knowledge' that come from Polanyi, and Collins,<sup>32</sup> but settles instead on a description of 'trade literature'. For context, Polanyi and Collins wrote about science which has an explicit knowledge component – they were not trying to replace explicit knowledge with tacit, or argue they were equally valid ways of knowing, but that the one (explicit) relies upon the other (tacit). deLahunta plays with how this could look, or play out for dance. His contribution 'clears the ground' by looking closely at what dance makers communicate and how that communication can be located outside the body. He uses the concept of a professional trade literature to draw attention to a variety of publications by dance artists who have a desire to share their practical knowledge with wider audiences, and discusses how this communication might take place effectively

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<sup>31</sup> Pakes 2020.

<sup>32</sup> Polanyi 1964, Collins 2010.

(or not). deLahunta describes an autobiographic trajectory of involvement with projects that sought to make explicit the structures and processes that lie behind dance making, but also expresses the recognition that there are aspects of this bodily practice which resist transmission. They are too deeply engrained, too much of a 'skill' in Bateson's terms (that of having to remain below the level of conscious thought in order to be achieved).<sup>33</sup> Using detailed descriptions of four examples of trade literature in dance, he describes how prior knowledge in dance practice gives a special access to the contents of this literature that is professionally communal. It is thus a form of ownership, by marking out inclusion, which claims knowledge, but not property. These observations, arising from many years work on articulating 'choreographic ideas' reveal a kind of relationship to the body and practice which are put into relief (much as in the Ravetto-Biagioli and Biagioli-Ravetto's paper) by conventional property and intellectual property thinking. Dance's ephemerality may be stilled and captured by technology, but what is not there for capture is the unsaid and unarticulated that dancers know in each other and that generate the trust and exchange that they operate. To communicate something is to possess it however briefly,<sup>34</sup> to have it in oneself to 'express' and thus deLahunta's highly thoughtful and informative paper gives us a clearer sense of what it is that dance makers possess and transact between themselves. As Ravetto-Biagioli and Biagioli-Ravetto put it (this volume): 'This suggests that dance is more than just performing or copying ostensible movement - movement that can be replicated by watching a film or video'. And in turn, that involves us in what several papers question here – the 'ontological' nature or status of dance.

### *Ontology, Commons, and Community*

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<sup>33</sup> Bateson 1972: 138

<sup>34</sup> Mamadipudi, Schäfer and Bunning, in press.



Blades detailed paper analyses the central notion of 'commons' and thereby what exactly is created, out of what, and under what terms. Thus she also focusses on a 'community' of those who share a 'resource', but with a sharp analytic eye for questions of where and when a movement becomes a resource, and in what ways, what the fixing of a 'work' does in terms of both taking from and contributing something back to the 'community' or pool of resources. Blades offers a link here with other kinds of 'intangible heritage' where oral transmission, restricted circulation, master-pupil relationships, etc., are the norm. Yet crucially, and in parallel to Davies and Leach, she shows how the 'dance commons', reputation, and value are deeply embedded within the overall logic of western capitalism. Even as a protest against or conscious alternative to, it remains bound to the form of economy in which it arises and operates. That is perhaps one place where the gift analogy (if using a classical Maussian understanding of the term) breaks down. 'The commons' is part of a particular political economy and history, just as is the Maussian 'gift'. They are not equivalent descriptions. Both gift and commons tend to be used idealistically, but neither are universal human institutions. Blades makes beautifully clear how each description should be read in relation to ownership and sharing in contemporary dance.

The 'dance commons' Blades describes is a complex artefact of the need to copy, learn, share, and move; of the conventional funding structures that support this artistic genre;<sup>35</sup> of the role of reputation, recognition and visibility. These give shape to a 'commons' as not only something that exists to be drawn upon, but an achievement of the form itself. As Ravetto-Biagioli points out, 'commons' has two distinct meanings in Locke's philosophy of

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<sup>35</sup> Funding structures underpin the livelihood of the community, but not universally. In Blades' examples, the funding structures are those of the UK in the last decade.

property: that of a pool of resources, and more significantly, as an *agreement between* people on how to behave in relation to them.<sup>36</sup> It is this aspect of agreement that Blades uncovers. She concludes that 'Open-ness as a proprietary stance is linked to the open-ness of dance work ontology and identity.' Showing us the complex particularity of contemporary dance, the context of which is as deep seated as the possessive individualism, state support, and bureaucracy that frame it in a very specific historical moment.

One lesson we might take from this is that any attribution of cultural property will also be dealing with such deep complexities. The 'take away' is perhaps less the unsuitability of copyright, which seems obvious after reading Blades consideration of the way that dance is made, but more, the possibility that with an in-depth analysis of the 'ontology' of anything that is claimed as heritage, one could also draw out principles that already govern its creation and circulation. There are already norms and codes appropriate for those who wish to make use of it. These seem to be learned as aspects of how movement material is made in itself.

Of course, cultural property precedents are formulated not with the 'good actors' in mind, but against those who wish to appropriate things from others. The aim is protection, and it is not much good saying protection should follow the norms of the producers when that is patently not even part of the consideration for appropriators. Perhaps one thing to note here is that with its current status and state funding, contemporary dance has managed to flourish without fixity, without propertization, a move which Cultural Property, certainly in its bureaucratic form, relies upon and encourages. As Davies points out clearly in her

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<sup>36</sup> Ravetto Biagioli 2020: 15-18.

interview, there is nothing inherent in dance practice that means its practitioners have to avoid commodity forms and logics of transmission and control. Yet for her, those logics are allied to forms of damage – even of damage to the bodies of dancers themselves. Her thoughtful and articulate rendering of the link between an approach to dance which imposes forms of movement on dancer's bodies, their resulting lack of creative autonomy, and the celebration of a lone creative choreographer who apparently has all the ideas is illustrative of the way an art form can mirror the society in which it exists. Dancers become merely a vehicle for ideas and creativity located, and owned, elsewhere. They can be forced to perform in ways that are not sustainable, purely in terms of physical health. Moreover, as labor, dancers do not participate in the community or creation of the dance commons as a live and vital element of their own self-realization. The parallels with commodified heritage are clear.

*Fixation, technology, copy-loss.*

Ravetto-Biagioli and Biagioli-Ravetto open their paper with a long discourse on the notion of fixation in relation to dance, as it is the crucial move that makes dance into property (and recall Michael F. Brown on state codification in relation to cultural property<sup>37</sup>). As with several other contributions, they dwell on the 'ontology' of dance – what it actually *is* – in order to understand its relationship to a powerful element of the context of capitalism in which contemporary dance exists: the law of copyright. As with McDonagh, they show how the phenomenal existence that dance takes makes it a poor fit. However, unlike the examples McDonagh draws upon - which are about an evasion of property in some ways -

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<sup>37</sup> Brown 2014; see also Aragon and Leach 2008.

they show how this very ambiguity of form and existence is taken up by a particular artist to make a series of observations *in a dance work* which reflect (upon) this very ambiguity, and reveal how such work has intricate connections to memory, self, other, and presence in the domain/community. Matthius Sperling's dance work *Riff*<sup>38</sup> thus provides them the opportunity to conduct a detailed artistic analysis of negotiating the abstractions that Hetty Blades is able to distill from her research into dance (this volume). As Ravetto-Biagioli and Biagioli-Ravetto say, '*Riff* provides a paradigmatic example of the problem of belonging: who can own such creations if they can only be non-objects, moves and gestures articulated by multiple bodies and actors in response to each other? Finally, how can 'belonging' evoke both a sense of being part of a culture or group as well as holding exclusive ownership in a work?' (this volume).

In this 'ontology' of dance in relation to the law, they argue forcefully that dance resists property because, 'all possible 'fixations' of dance are inherently external to it as a work' ... [which]... points to a serious mismatch between law's conceptualization of copyright and that of dance by both its makers and its viewers' (ibid). The mismatch is 'systematic', in part because, 'the law implicitly acknowledges that the stability of dance as an object of property can result only from copying, not just 'fixing'. The property is the copy because only the copy has the qualities of an object'. (Being not the movement of the dancer, but its recording (copying) in some form that allows its fixation). Their paper then falls on the side of examining dance ontology's relation to the defining context of the law, complementing those contributions that examine this ontology also in context, but from the 'inside' of the practice, as it were.

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<sup>38</sup> Sperling 2017.

Whatley's paper offers a fascinating case study that highlights and exposes the mechanisms by which technology, and specifically video and digital motion capture is allied to both property and directly to its guarantor, the nation state. I wish to dwell for a moment on this alliance of technology and property. Ravetto-Biagioli and Biagioli-Ravetto show clearly that the mediums of recording increasingly available to dancers and choreographers are the very same as those that make the possession of dance less of a bodily and community matter and more of a legal and object-like one. In other words, video recording of dance is, as James F. Weiner argued, an act of transfiguration, and, 'the more totally [transfigurative] the medium, the more total the depicted object is transfigured - ... it is precisely the property of video that in bringing-forth the conditions of its own production as subject matter... conceals this very transfiguring effect'.<sup>39</sup> Weiner's point about the effects of apparently neutral media here is that they embody the metaphysic of their origin. Ravetto-Biagioli and Biagioli-Ravetto uncover just exactly how such a metaphysic operates with property as its constitutive component to eliminate the aspects of dance that lie behind the common understandings pointed to by deLahunta's 'trade literatures', Blades 'community', or McDonagh's 'social norms'. As Whatley writes in relation to video and motion capture techniques applied to Greek traditional dance, 'whilst different capture processes were employed to record each dance genre in order to share it more widely, the originating dance itself actually slips away and becomes ungraspable so instead 'returns' to the individual dancer or dancing ensemble, inseparable from its home community for the purposes of capture'.

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<sup>39</sup> Weiner 2001: 134.

Whatley's narration of the process of making these recordings returns us forcefully to both of Michael F. Brown's two elements troubling heritage protection: the nation state and its interests which rarely align with any group of communities', and the need for abstraction, fixation, and preservation. Whatley writes: 'Each dance genre is a complex movement system and the necessary segmentation of the practice, for capturing and analysis purposes, can mean that the dance as a coherent multi-level cultural expression effectively disappears through its atomization and categorisation'. Ravetto-Biagioli and Biagioli-Ravetto summarise: 'dance is more than its performing or copying ostensible movement – movement that can be replicated through watching film or video'. It is this 'more' which I in part characterise as that which is emergent from the relationships between bodies, or body-minds (Davies). In the making of dance, we can also locate the mores and principles, the norms and assumptions, that have helped make the genre resilient, able, as we see in Blades, and Davies, Ravetto-Biagioli and Biagioli-Ravetto etc., to adopt and utilize the property form at specific times and around the edges of their core interactions, but that also leads them to rely instead on, '*acknowledgement, adaptation, quantity, and community*', as Blades leads us to call them.

### *Normative and informal*

Just as in the Whatley cases, music, movement and dance are often not just closely associated, but are actually central elements of each other. In the Irish Traditional music scene presented by McDonagh, dance is key to the structure of the music. He focusses on music in this case because while an integral part of Irish Traditional dance, it is also more readily subject to legal dispute and thus acquires, 'commodified property-object status in

intellectual property law'. Yet, McDonagh shows how 'like dance itself, Irish Traditional danced music tends to resist property categorisation and practitioners of traditional dance music often do not follow the Lockean liberal-utilitarian labour theory that artists should assert rights in their labours'. He describes three overlapping claims which situate the genre as heritage -- not intellectual property -- that much like the cases described by the other authors here, emphasise the passing on, person to person, of the music. This happens in the context of a sense of cultural nationalism, which in turn feeds a valuation by the state for its potential to be commodified without being alienated, generating income from tourism. These factors combine to make it possible for the genre to exist, 'somewhat outside the formal legal system', a space in which social norms take precedent. It thus sits within the same frame as Blades examination of already-made dance as a 'shared resource' that is governed by informal and normative codes. McDonagh returns us to the ways in which social norms and wider context inform and shape the ownership and transmission of dance even within the context of a nation state with clear interests in its existence. The ontology of this music/dance form shares much with contemporary dance in that it is both a constant source from which performance can be generated, its history is one of borrowing, and what is perhaps most central, is the *connections* that this borrowing generates. 'The music is in a constant state of redefinition... [and] while the individual is present, the overriding sense is on a collective sense of ownership'.

McDonagh complicates the story I outline above about the alliance between technology and property in an illuminating manner, showing how recording and sharing can be facilitated by digital communication technologies without that necessarily undermining the principles of sharing and reciprocity. He puts this down to the fact that, 'Here, the law is not paramount:

it is social norms that govern the use of Irish traditional music'. The fact the digital transmission seems more feasible/positive in this case than in others may indicate a disjuncture between dance as form and music as form. Even though Irish traditional dance music does not follow a property logic, it is still music, and as such it may be more suited to digital archiving and transmission than dance itself is. In fact, reminiscent of the positions of dance makers described in Ravetto-Biagioli and Biagioli-Ravetto, by Davies, and by Blades: 'the modes of transmission are constantly being expanded to encompass new technologies and elements of commercialism. Remarkably, this occurs without destroying the Irish traditional dance music's essential sociality and common sense of shared ownership'. McDonagh concludes that both UNESCO's formulation of Cultural Property, and WIPO's concept of Traditional Knowledge 'lack appeal as [they] would formalise the informal, normative ways by which traditional musicians share tunes.'

Siobhan Davies, DBE, the acclaimed London-based dance maker, tells of how, through the process of making dance works over a long career, she came to deal directly with issues and pressures around ownership and attribution. An inspiration to the aforementioned artist Matthias Sperling, these considerations came to shape her working practice. She articulates that the material she is interested in making is material that comes into being in ways that reflect alternatives to dominant cultural and institutional assumptions about how mind or intellect forms matter. She is also explicitly political, revealing how there is a gendered dimension to these assumptions. Locating her arts practice firmly in this context in this manner reveals how economic pressures on dance-makers often lead towards the work of 'individual creators' and 'individual minds', turning dancers and their bodies into 'receivers' of forms generated outside or beyond them. The underlying theme of ownership that runs



through the interview is central, as it is where and how Davies has made explicit an alternative to expected institutional hierarchies and modes of making work. Her reflection on her work leads us to think again about how and what is made ‘between people’, as exploratory work is undertaken in the studio. Despite the art form’s unique possibilities and approach to ownership, as described and elaborated in depth by Blades (this vol), it nevertheless is confronted by or also embodies widespread conceptions of the person and correct modes of institutional organisation in contemporary UK society. One might ask, how could it be otherwise? What is so captivating however is the way that there is a conscious and sustained effort on the part of the dance makers led by Davies to address and ethically engage this context. As with Sperling’s work discussed by Ravetto-Biagioli and Biagioli-Ravetto and Ravetto-Biagioli<sup>40</sup> this attention to the very conditions of making, its situatedness within a legal, institutional and social context, is both material for, and matters to, the makers of this form of contemporary art.

In sum, our volume shows that the field of contemporary dance—a dance genre emphasizing the making of new works that are embodied, performed, cooperatively produced and even collectively owned—involves complex processes of transaction, sharing, ownership and knowledge production. Considering different case studies, the collection which follows explores how traditional notions of property and cultural heritage are challenged by the specific sociality and aesthetic exchanges inherent in dance. The aim is to make these insights fruitful for a broader discourse and policy around protecting cultural heritage, thus taking the analysis beyond dance.

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<sup>40</sup> Ravetto-Biagioli 2020.

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