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Ownership, ontology and the contemporary dance commons

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Keywords: Commons, gift, dance ontology, social obligation, ownership

Abstract
This paper considers the ‘commons’ in relationship to contemporary dance in the UK. I highlight the norms and expectations that shape the sharing of dance in this context by outlining four implicit rules that govern circulation and ownership. I go on to highlight how dance’s circulation outside of legal structures is in part due to its ontology, through the examination of choreographer and visual artist Florence Peake’s work RITE (2018) and its relationship to Le Sacre du printemps (The Rite of Spring) (Nijinsky 1913).

Introduction

Contemporary dance is an embodied art form without a single, widely adopted form of notation. It commonly circulates similarly to oral traditions, via person-to-person teaching, copying and adaptation.¹ Although copyright has at times been pressed into service to

¹ see Pouillaude 2017, Pakes 2020.
regulate dance’s circulation, works, movements, and ideas are often exchanged, reperformed and reworked without recourse to legal structures or financial transactions. In this article, I draw on interviews, and writing in Dance Studies to explore the notion of the ‘commons’ as a way of understanding ownership in UK contemporary dance. I draw attention to some features of the commons in relation to this field, including the conditions and motivations underpinning the ‘free’ sharing of dance which demonstrate a range of nuanced relationships to dominant economic structures. Considering the concept of the commons helps me to highlight the norms and expectations that are embedded within the transmission of contemporary dance and outline four implicit rules that govern the sharing of dance within sites of free or open exchange in the contemporary dance community. I go on to discuss the example of Le Sacre du printemps (The Rite of Spring) (Nijinsky 1913) and a related work, RITE (Peake 2018) to highlight how dance’s circulation outside of legal structures is in part due to its ontology. As Kraut suggests “the issue of dance’s compatibility with intellectual property rights bears directly on questions about the ontology of performance”.3

The term ‘contemporary dance’ does not refer to a single style but draws on a range of different techniques and approaches.4 There are problems with the term contemporary

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2 Between 2016-18 I interviewed 19 artists and three representatives from dance companies and organisations working in the UK and USA. The interviews were part of two separate projects, funded by the Digital Catapult and Coventry University respectively and covered a range of topics, with some artists discussing funding, ownership, value, circulation and their motivations for making work.

3 Kraut 2016: 132.

4 See Kwan 2017, See Whatley, this issue.
when used in relation to dance, such as its association with the West and the exclusions this association can bring.\(^5\) As SanSan Kwan suggests: “although “contemporary” broadly signifies current time, in the dance world (and in other arts worlds) it becomes attached to specific cultural notions that are reserved for Euro-American artists, and thus the term is fraught with expectations, exclusions, and prejudices”.\(^6\) In what follows, my observations are primarily based on my knowledge of contemporary dance in the UK (where I am based) and interviews with artists in the UK and USA. I am not proposing that these geographical and cultural contexts represent all contemporary dance practices and acknowledge that this paper presents a context-specific, Western view of the contemporary dance commons, the role of copying and the regulation of ‘gifts’.

As both Anthea Kraut’s\(^7\) and Harmony Bench’s\(^8\) work demonstrates, the issues I discuss are not exclusive to the field of contemporary dance. I therefore move between using the terms ‘dance’ and ‘contemporary dance’ to recognize that these issues extend beyond the field of practice we might call contemporary dance. In this paper I am nevertheless primarily focused on this art-form.

**Copying and the commons**

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\(^5\) Kwan 2017.

\(^6\) Kwan 2017: 47

\(^7\) Kraut 2016

\(^8\) Bench 2020
Copying is central to the circulation and transmission of dance and is at the heart of many choreographic and compositional processes. Technique classes often involve students copying exercises and phrases from the teacher and this practice is also used in creative contexts. For example, Marquez&Zangs, a UK based choreographic duo who worked together between 2013-18, described how they often copied things from YouTube and worked with other artists’ movement to choreograph their works. They expressed scepticism towards the notion of originality and suggested that they would view being copied as a sign of success. At times, Marquez&Zangs copied explicitly, meaning that they use spoken or written text to make clear the origins of the movement. At other times, their sequences were made up from snippets of movement from videos they found online which were adapted and recontextualised. These fragments become part of new sequences. As these two approaches demonstrate, there are different forms of copying. As well as overt copying, many dancers and choreographers have been through training regimes that involve extensive copying, meaning that movements arising from various places can be seen to implicitly inform their practice and movement style. Furthermore, these different forms of copying might merge in practice, as there is slippage between explicitly referring to a movement idea, using it as stimuli for new movement and implicit influences.

The relationship between copying and creativity highlights a paradox at the heart of contemporary dance. Laurence Louppe suggests that contemporary dance prioritizes

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10 Interview with author 2016.
uniqueness and even depends ontologically upon originality.\textsuperscript{11} She argues that original intentions and codes, contents, and modes of actualization must be present for something to qualify as a work.\textsuperscript{12} Furthermore, Rudi Laermans points to at the role of art works’ uniqueness and originality in how they are experienced and valued.\textsuperscript{13} Yet, despite the imperative for originality, contemporary dance techniques are largely taught through copying. This tension is acknowledged by choreographer Susan Rethorst, who writes that many students find, “the task of being ‘true to oneself’ a never ending battle, causing agonies about overinfluence, going too close to someone else’s work was as if too close to a flame”,\textsuperscript{14} highlighting how contemporary dance depends simultaneously on copying, individualism, creativity, and newness. Students and artists must negotiate how to find their own artistic identity while also working with other people’s movement ideas. While this negotiation is undoubtedly present for artists working in other art-forms, I suggest that dance’s particular mode of body to body circulation means that the tension between copying and creativity is more acute. For example, while the interpretation of movement scores does occur in some areas of dance making and training, the lack of universal notation for dance means that the form does not have the same traditions of interpreting a text or notation as the other performing arts. Instead, dancers in many different genres are often taught to copy and ‘re-emboby’ or adapt movement within their own bodies.

While individual movements or short movement phrases might be copied and reproduced

\textsuperscript{11} Louppe 2010, 203.
\textsuperscript{12} Loupe 2010, 203.
\textsuperscript{13} Laermans 2015, 253 - 254
\textsuperscript{14} Rethorst 2000.
quite freely, in the UK, dance works are automatically covered by copyright, providing they meet the criteria of being capable of being performed, original and fixed.\textsuperscript{15} However, although these legal structures that exist to prevent artists from copying other people’s works too closely, copyright is rarely enforced. Writing in 2015, Whatley et al point out that despite dance being recognised in UK copyright since 1911, there have only been three cases in which dance and been considered judicially.\textsuperscript{16} Arguably, copying is so central to the way that the form is taught and developed that movement is not often associated with proprietary value. While dance artists might earn money from making and performing dance, particular ways of moving and the principles which underpin the skills required to create movement commonly circulate between artists outside of legal and financial structures.

In different ways, Ramsay Burt (2017) and Harmony Bench (2020) both use the concept of the commons to interrogate non-financial forms of exchange in dance.\textsuperscript{17} The term was originally used to describe communal land and physical resources\textsuperscript{18} but is increasingly also used to refer to knowledge and in relation to digital systems.\textsuperscript{19} Drawing on work by Charlotte Hess and Elinor Ostrom,\textsuperscript{20} Burt proposes that contemporary dance can be

\textsuperscript{15} Whatley et al 2015: 70-71.

\textsuperscript{16} Whatley et al 2015: 70.

\textsuperscript{17} Burt (2017), Bench (2020), see also Kraut 2016: 152-53

\textsuperscript{18} see Hardin 1968, Ostrom 1990.

\textsuperscript{19} Burt 2017: 5-6.

\textsuperscript{20} Hess and Ostrom 2007.
understood as a knowledge commons, suggesting that “many aspects of dance as an art form — such as dance techniques, theatrical devices, generic compositional structures or improvisational processes — are common-pool resources accessible to dance artists”.21

Burt proposes that when people contribute to a commons, “[t]hey do so for the common good and not for profit”.22 Burt’s larger argument is that some areas of contemporary dance practice are engaged in acts of ungoverning dance, meaning “giving it independence from its institutional constraints through aesthetic deconstruction”23 His thesis centers on a specific area of European contemporary dance practice, demonstrated by the work of Xavier Le Roy, Jonathan Burrows and Maria La Ribot, as well as a newer generation of artists whose work follows similar principles.24 He characterises this work as having a “conceptually based approach”25, suggesting that it “exists somewhere in-between the areas of dance and visual

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21 Burt 2017: 19. Bench articulates a slightly different view which ‘includes movement as common-pool resource and shared vocabulary as explored by Burt, but it also includes the common as a shared orientation.’ She suggests this shared orientation arises from ‘commoning practices’, a notion articulated by Elizabeth Dillon (Bench 2020: 8).

22 Ibid. 2017:6


24 Burt 2017:5.

25 As Burt points out (2017: 10), there has been some debate in the field of contemporary dance about the relevance of the term ‘conceptual dance’ to describe work by choreographers that is driven by concepts. See Burrows, Bel, Cvejić and Le Roy, ‘Not Conceptual’ (2007):

https://www.youtube.com/watch?v=Ekdl-87T2z0
art”. Burt goes on to suggest that through its aesthetic, this type of work “challenges and disrupts the way that the experience of beholding art has been turned into a consumer activity, part of a market”. His principle argument is that the work challenges normative expectations of dance which arise from institutional structures and is therefore engaged in a form of ungoverning, through which dance critiques and decouples itself from institutions and the ‘dance market’. 26

For Burt, the contemporary dance commons operates on two levels, through the sharing of physical resources such as space, and through the sharing of artistic practices the latter being linked by Burt to the concept of the ‘knowledge commons’. Burt points out how the notion of the commons has been used by political philosophers in critiques of neoliberal politics and suggests that the commons provides an alternative way of thinking about how decisions can be made. Burt suggests that the controls that are applied through the market enclose or privatise artistic practices.27 Copyright can be understood as one such mechanism inasmuch as it recognises intellectual property (in the form of works) as belonging to particular people or groups and provides a framework through which the monetisation of this ownership is possible, suggesting a form of enclosure.28

Burt points out that the idea that resources are shared within the commons does not mean that people don’t make money from their practices, but suggests that the money that artists

26 Burt 2017: 4-5.


make through teaching, for example supports their ability to keep working as artists, rather than enabling them to make a profit. A similar point is made by Laermans in relation to independent artists in the Brussels contemporary dance community. He suggests many contemporary dance artists sacrifice the potential of economic stability for the development of their artistic subjectivity. We might suggest therefore that although making money is a motivating factor for artists, it is not generally their primary motivation. However, this claim cannot be applied to all individuals working in contemporary dance. Furthermore, as Burt points out, commercial companies sometimes operate rather differently.

The idea that artists are not motivated by profit seems central to Burt’s suggestion that the commons offers a useful way to think about the way dance practices are shared. The attitudes of some of the artists I interviewed towards economic gain resonated with Burt’s and Laermans’ observations and I also found that some artists are motivated by factors such as connecting with audiences and peers, as well as artistic and personal fulfilment. Therefore, while money might not be a primary motivation, besides needing to earn enough to support themselves, their motivations did not seem wholly focused on the pooling of resources or development of artistic subjectivities, but also partly on developing other forms of ‘symbolic capital’. Furthermore, some of the connections and networks gained through dance making may in turn lead to financial gain.

30 Laermans 2015: 290-293.
32 Bourdieu 1984. This is also discussed by Laermans 2015.
33 See Laermans 2015: 251.
Mark Franko, Harmony Bench and James Leach have each written about dance’s circulation in relation to the anthropological concept of the ‘gift’.\(^{34}\) Referring to Jacques Derrida, Franko suggests that the gift's contradiction is that it must not call forth reciprocation, however, he points out that Mauss foregrounds that there is always obligation to return the favour.\(^{35}\)

Leach draws attention to the way that gifts establish lasting relationships between people. Outlining the difference between gifts and commodity forms, he suggests:

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\text{The gift in classical anthropological theory is a form of transaction that creates and maintains ongoing relationships between the transactors. At the other end of the (simplified and highly abstracted) continuum lies the commodity form, a transactional form that implies no future relation between the transacting parties but an overarching set of laws that govern such decontextualized transactions.}^{36}
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Leach points out that performances are the conventional commodity form for dance. A person buys a ticket and attends a performance, and the transaction is over. However, he suggests that gifts, on the other hand, are given away in part to establish lasting

\(^{34}\) Franko 2004, Bench 2016, Leach 2014, see also Kraut 2016: 137.

\(^{35}\) Franko 2004: 117.

\(^{36}\) Leach 2014:467-68
relationships between the giver and receiver. He makes these observations in relation to dance makers’ efforts to communicate with their audiences through means other than performances to establish more personal and longer-term relationships.

Bench explores the relationship between the gift and the commons. In relation to dance’s circulation through digital media, she argues that ‘dance circulates in digital cultures as a gift but the content of this gift belongs to a common’. She draws a distinction between that which is offered as a gift and that which is “given”, that is what is broadly available because it is already held in common, pointing out that there are constant negotiations about who has authority to ‘give, retain, collect, and/or profit from a corporeal common’.

As well as establishing relations between people, the giving of a gift can be seen to further benefit the giver through the acquisition of status or prestige. In relation to contemporary performances, Tim Jeeves draws a connection between gift-giving and Pierre Bourdieu’s notion of ‘symbolic capital’. Discussing the gains made by a gift-giver, Jeeves writes,

As Bourdieu points out, recognition of these gains is typically taboo, but nevertheless, gift, typically presented as being outside the realm of capitalist

37 Leach 2014: 468.
38 Bench 2020: 141.
39 ibid: 160.
gain, is seen to risk reintegration when the movements of symbolic capital are considered.41

This suggestion from Jeeves is helpful for highlighting the nuanced relationship between some contemporary dance artists and capitalist structures. While artists might ‘gift’ practices and resources to the community, the motivations for ‘free’ sharing are varied. Offering works-in-progress, online recordings and free workshops, for example are ways for artists to raise their profile as well as fulfil artistic interests. There might be an expected return in the form of connection to others in the community, increased audiences, and future revenue opportunities. Therefore, while the gifting of dance doesn’t directly accrue money, it can be in part motivated by forms of return that will raise both the profile and indirectly, the income of artists, therefore responding to the demands of capitalism.42 Considering the anticipated return of the gift sheds some light on the motivations underpinning the sharing of dance and therefore raises questions about the potential of dance as a commons to challenge neoliberal capitalism, by demonstrating how dance practices remain embedded within the logics of capitalism.43 Commons can be seen to provide spaces for the ‘free’ sharing of space, resources, movements and so forth, which have the potential to be properties through legal and economic structures. This

41 Jeeves 2016:162.

42 See also Bench’s discussion of content creators Fersing and Fontaine’s online ‘gift’ and the way this adds to their own portfolios and demonstrates their ‘skills for hire’ (2020: 170-71).

43 Bench (2020: 141) discusses the relationship between gift and market economies, which she points out ‘are not antithetical to each other’.
propertization perhaps happens infrequently in some areas of contemporary dance due to the way that communities negotiate exchange through four unwritten rules, related to *acknowledgment, adaptation, quantity* and *community*.\(^{44}\)

**Governing circulation**

In her discussion of African American dance communities in the early 20\(^{th}\) Century, Kraut examines ‘the codes and conventions that governed the practice of borrowing fellow performers’ moves, explaining that these protocols acted like an alternative system of intellectual property rights protection’,\(^{45}\) resonating with Bench’s reference to the ‘unstated social obligations that gifts entail’.\(^{46}\) Reflecting on my knowledge of contemporary dance in the UK, interviews with artists in the UK and USA and writing on dance, I wish to draw forth and name four implicit rules that govern the circulation of both works and practices within the areas of contemporary dance practice I am most familiar with: *acknowledgment, adaptation, quantity* and *community*. I suggest these are commonly adhered to by artists and therefore act as a non-legal mechanism for supporting the fair sharing of movement.

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\(^{44}\) See Singer 1986 for a discussion of why some USA based choreographers chose not to register their works for legal copyright protection and instead relied on social practices to protect their rights.

\(^{45}\) Kraut 2016: 133.

\(^{46}\) Bench 2020: 166.
The first rule is that the source of the movement should be acknowledged. Kraut describes dancer Johnny Hudgins’ motivations for securing copyright of his choreography, suggesting that attribution was more important to him than preventing the use of his routine and that ‘he sought the cultural capital of artistic credit, not the economic capital of royalties’. The prioritizing of attribution over controlling the circulation of dances is reflected in some areas of contemporary dance. For example, another choreographic duo, Igor x Moreno who are based in the UK and Sardinia and have been making work since 2007, say that they are relaxed about the idea of aspects of their works being used by other choreographers as long as they are acknowledged. Equally, they described how they collate the names of artists and writers whose work inspires their own into an ongoing bibliography.

A case well-known in contemporary dance further highlights the importance of attribution. In 2011, pop star Beyoncé Knowles released a video to accompany her single Countdown. This video references a range of previous images, films and dances, such as Flashdance (1983) and Funny Face (1957). Two of the works referenced, Rosas danst Rosas (1983) and Achterland (1990) were choreographed by Flemish contemporary choreographer Anne Teresa De Keersmaeker. In response, De Keersmaeker claimed that her work had been ‘plagiarised’ (in Jennings 2011: np.) Claims of plagiarism in dance point to the importance of attribution. In her discussion of choreographic plagiarism, Miriam Giguere suggests: “[w]ithout repetition and elaboration, a field does not progress. The message is not that

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47 Kraut 2016: 151.

48 Igor x Moreno 2018.
sampling or borrowing is wrong, only that the context of the borrowing must be considered and attribution given”.49

Acknowledgment might take the form of attribution, as is perhaps expected in cases where the copying of movement aims for replication. However, acknowledgment can also take the form of an expression of thanks or gratitude.50 Discussing fans’ reproductions of music videos, Bench points to the importance of gratitude in response to the gift.51 I use the term acknowledgment as a broader practice than attribution. While attributions are used to locate a choreographer’s movement when it has been replicated, acknowledgement might also take different forms, such as thanking others who have inspired, taught or supported the development of a work, without attributing ownership to these people.

The second rule is adaptation. Kraut explains how dancers would often attend shows put on by their contemporaries to discover new moves that they then incorporated into their own routines but that it was expected that copying was accompanied by ‘improvements’.52 Kraut refers to dancer Ethel Waters’ articulation of a ‘code of ethics’ that governed the circulation of steps in tap dance communities,53 which included not replicating steps exactly but developing modifications. When movement is translated from one body to another some

52 Kraut 2016: 133-7.
53 Kraut 2016: 139-40.
adaptation is inevitable, meaning that the concept of copying functions differently to other mediums. French choreographer Jérôme Bel goes as far as suggesting that: “it is impossible to quote dance because you cannot reproduce it, which makes for the interest of theatre. Anything you see on a stage is a living action that cannot ever be reproduced”.  

Nevertheless, while dance’s form of reproducibility may always be inexact, the intention to copy exactly is different to the intention to adapt a movement or work, as can be seen in the distinction between a choreographer aiming to revive an existing work or rework it to create a new version.  

In contemporary dance, the adaptation that is involved in copying and re-embodying a movement is often described as making a movement ‘one’s own’.  

Laermans discusses the process of copying a movement from its original creator and adapting it in relation to the notion of ‘de-authoring’, suggesting it is an important part of the creation and transmission of movement. For a dancer or choreographer to assert their individual style allows them to maintain subjectivity and appears to be important when making claims for originality, ownership and authorship. 

The third rule concerns the *quantity* of movement copied. Looking at the practices and opinions of some contemporary dance artists, it seems that taking small sections of movements, or movement ideas from other places is accepted, whereas copying an entire...
work without permission would not be. However, what constitutes an acceptable quantity remains open to negotiation and interpretation. For example, Igor x Moreno (2018) suggested that they wouldn’t mind being ‘quoted’, but that they would object to someone restaging a complete work without prior consent. Where the line is between a ‘quote’ and a restaging is not clearly delineated, but something that is seemingly determined by the people involved in each case. This is demonstrated by Ravetto-Biagioli and Biagioli-Ravetto’s discussion of Riff in this issue and the way that the contract between Sperling and the choreographers whose work he used stipulated that Sperling ‘would only select a 30-second extract from that work’, thus making it clear that the work was being quoted rather than restaged.

The fourth and final rule is that there is an expectation that dances circulate primarily within their original community. The term ‘contemporary dance community’ is frequently used in colloquial and scholarly contexts. While there is debate as to who this refers to, the nature of this community and the use of the term, the notion remains commonly in use.\(^{59}\) In the context of dance, communities might coalesce around particular practices, geographical locations, or as ‘Funmi Adewole writes, ‘shared background, heritage, experience, or circumstances.’\(^{60}\) The internet has extended and reconfigured dance communities by allowing for artists to connect with a far greater number of people in different contexts. However, the circulation of dance online has not collapsed the notion of communities, and there is still an expectation that particular styles should circulate, for the most part within

\(^{59}\) See Bauer 2007, 61-64.

their originating cultural, artistic and/or economic contexts. \(^{61}\) As is evident with the Beyoncé/De Keersmaeker case, when movements enter new contexts, debates about the ethics of the transmission often arise. \(^{62}\) Bench suggests, ‘[a]s dances travel beyond the communities that provide them with context, questions of cultural theft and appropriation arise’. \(^{63}\) When movement is decontextualised through copying issues of power and privilege are foregrounded. Bench points out that ever since Brenda Dixon Gottschild’s seminal work \(^{64}\) highlighted how ballet choreographer George Balanchine had drawn on African American cultural practices \(^{65}\) ‘dance scholars have been grappling with the politics of how dance steps and movement aesthetics travel across boundaries of race, nation, and culture. Particularly vexing is that such sharing of movement inevitably occurs amid an imbalance of power’. \(^{66}\) I am not suggesting that when dance’s circulation remains within the contemporary dance community it is necessarily free from power imbalances. Rather, I

\(^{61}\) see Bench 2020: 137-187.

\(^{62}\) See Bench 2020: 181 - 186 and Kraut 2016: 263-280. This recontextualisation is central to Kraut’s analysis of the case, which proposes that: “In appropriating the white avant-garde, Beyoncé reverses the racialized logic of property that has helped underwrite the development of choreographic copyright in the United States” (2026: 264).

\(^{63}\) Bench 2020: 141.


\(^{65}\) Bench 2020: 143.

\(^{66}\) Bench 2020: 143-4.
want to stress that, as Bench’s work highlights, the relationship of dance to its community provides context and social norms.67

I suggest that these four rules, or ‘code of ethics’68 rather than economic exchange, at times underpin the circulation and reuse of contemporary dance, thus giving rise to forms of exchange that are free in financial terms, but governed by particular expectations. This situation resonates with McDonagh’s discussion of Irish traditional music (this issue) and the way that at a local level, any conflicts between musicians are generally resolved via social norms as opposed to legal decisions. Furthermore, writing in 1984 Barbara Singer proposed that some USA based choreographers had developed ‘self-imposed customary rules’ and that these offered a superior means to copyright for ‘recognizing and protecting’ their artistic rights.69 The question of how the rules that govern dance’s circulation develop and are learned is complex and answering it is beyond the scope of this paper, however, echoing Bench’s point about the role of socialization in understanding the obligations related to gifts,70 I suggest that broadly speaking these rules are learned and shaped by members of the community through their interactions with others and observation of behaviours in training, artistic and social contexts.

67 Bench (2020: 166) points to the role of social context in the reciprocation required in response to gift, suggesting that ‘socialization within a cultural group trains participants in the unstated social obligations that gifts entail.’

68 Waters in Kraut 2016: 139-40.


70 Bench 2020: 166.
Ontology and ownership

While practices can be codified and registered using trademarks or other similar licenses, only works are automatically protected by copyright in UK law (assuming they meet the conditions of being performable, original and fixed through documentation or recording).\textsuperscript{71} As Whatley et al point out, ‘for copyright to exist there must be a ‘work’’.\textsuperscript{72} However, in some areas of contemporary dance, the slippage between works and practices is not always clear. Choreographers often share works-in-progress or other aspects of the creative process and these sharings can take the form of performative events, blurring the distinction between process and performance.\textsuperscript{73} Furthermore, at times it is only through such sharings that the work (albeit in an ‘unfinished’ form) is manifest, with production stopped or stalled before the work is complete.\textsuperscript{74} Such examples demonstrate, to some extent, Burt’s suggestion about the commons and also point towards the uneasy fit of

\textsuperscript{71} The definition or lack thereof of a choreographic work in copyright law in the United States through the 20th Century has been shown by Kraut to be problematic and in particular impacted unfairly on the ability of some African American artists to gain legal protection (Kraut 2016: 165-210). See also Pakes 2020: 181-182.

\textsuperscript{72} Whatley et al 2015: 71

\textsuperscript{73} See Performing Process: Sharing Dance and Choreographic Practice (Blades and Meehan eds. 2018) for discussions about the formats, methods and philosophical and political implications of this form of sharing.

\textsuperscript{74} see Blades 2019: 69-70.
copyright law to some areas of contemporary dance.\textsuperscript{75} It is not straightforward to determine exactly when process becomes a work or when a work is ‘complete’ and therefore fixable through recording.

The relationship between intellectual property law and the identity and ontology of dance works has been explored by Conroy,\textsuperscript{76} Kraut,\textsuperscript{77} Pakes\textsuperscript{78} and Van Camp\textsuperscript{79} and I propose that examining dance work ontology can also shed light on the nuances of dance’s alternative ownership economy. While there is slippage between works and practices, they nevertheless often have slightly different forms of circulation. Generally speaking, teaching practices relies on the idea that the practice is then available for the students to adopt, adapt and use in their own way. Dance works on the other hand, are ‘sold’ as artistic entities through performance, as Leach points out. They are therefore shared with an audience in a different way and are offered up for appreciation, rather than with the goal of advancing and supporting other people’s practices. Furthermore, the appreciation of a work by an audience contributes to a choreographer’s standing within the field, meaning that the copying of the work or part of it might pose a challenge to a choreographer’s artistic identity.

\textsuperscript{75} Singer describes how the definition of ‘choreographic work’ in the 1976 copyright act in the USA ‘suggests a definition far narrower than that customarily followed by the choreographic community’ (1984: 297).

\textsuperscript{76} Conroy 2013: 112-119

\textsuperscript{77} Kraut 2016:12 and 228-23

\textsuperscript{78} Pakes 2020: 179- 182

\textsuperscript{79} Van Camp 2019, 2006
in a different way to the replication elements of practice shared through a workshop, for example.

Thinking about what kind of thing a dance work is helps to shed light on the way they circulate and their role within the ‘contemporary dance commons.’ The ontology of dance works has been discussed by scholars such as Renee Conroy, Bojana Cvejić, David Davies, Graham McFee, Aaron Meskin, Anna Pakes, Frédéric Pouillaude, Sarah Rubidge and Julie Van Camp. Some, such as McFee argue that dance works are abstract ‘types’ which are repeatable entities that have enough essential characteristics to be re-performed, despite variations in their ‘tokens’ or performances. Pakes elaborates a type/token framework, arguing that dance works can be understood as ‘repeatable patterns of action-types’ and Pouillaude suggests that publicity and durability are key features for dance works.

Copying and adapting works happens in different ways. Processes of re-staging an existing work, or developing a new version, described as re-staging, revival, reworking, reenactment, reconstruction, revision and reinvention are central to many areas of dance practice. A choreographer might make changes to their own works over time, re-stage a work by

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82 2020: 119.

83 2017: xxvii.

84 see Franko 2018: 27
another choreographer or use an existing work by someone else as stimuli for a new version. Reenactment has been given particular attention in contemporary dance practice and theory in recent years\textsuperscript{85} and there are numerous examples we could draw on to demonstrate the way that dance works appear to evolve through various forms of re-performance and re-making. My primary interest here is in works that are made in relation to existing works, but that don’t aim to reenact or to revive the original, but to make a new version.

Perhaps the most well-known example of a work that manifests through multiple different versions is *The Rite of Spring* originally choreographed by Vaslav Nijinsky for the Ballets Russes to Igor Stravinsky's musical score. The work premiered at Théâtre des Champs-Elysées in Paris on 29 May 1913. The ballet depicted a pagan ritual during which a young woman dances herself to death. Allegedly, the audience were so shocked by the work that a riot broke out.\textsuperscript{86} After a brief tour, the work was unperformed for long enough to be considered ‘lost’,\textsuperscript{87} a claim that raises ontological questions about what it would take for a dance to be lost and recuperated.\textsuperscript{88} Despite its attribution as a ‘lost’ work, *The Rite of Spring* has been re-made on a scale that is arguably impossible to measure. Writing in 2017, dance scholar Lynn Garafola describes work done by herself and other scholars to track the number of dance versions of *The Rite of Spring*. She suggests that the latest precise figure

\textsuperscript{85} see Franko 2018.

\textsuperscript{86} Garafola 2017: 18.

\textsuperscript{87} Hodson and Archer 1999.

\textsuperscript{88} see Pakes 2020: 241-58.
was 181 versions, recorded in 2002 by Stephanie Jordan and Larraine Nicholas but that the centenary of the work in 2013 saw ‘countless new productions’. The numerous versions of this work each relates differently to Nijinsky’s ballet and Stravinsky’s score and there are arguably no single features of the movement structure, narrative, score, set or costume that appears in every version.

The case of *The Rite of Spring* demonstrates how dance’s particular ontology and reliance on body-to-body transmission contributes to its open form of circulation. It seems that the work has become a catalyst for multiple new works and restagings in part due to the way that the work was ‘lost’ and therefore cannot be identified with a particular structure of movement and in part to the fluid way that dance works circulate more generally. Millicent Hodson and Kenneth Archer’s reconstruction of the work in 1988, which claimed to be the original choreography has come to associate a particular movement sequence with the work, but there are questions about whether this can legitimately be considered an instance of Nijinsky’s choreography.

Dance and visual artist Florence Peake’s 2018 work *RITE* follows the convention of reinvention associated with *The Rite of Spring*. *RITE* has had multiple different manifestations. I saw a performance of the work by Katye Coe, Iris Chan and Susanna Recchia at Palais de Tokyo in Paris in April 2018. As the audience arrive, the performers, dressed in overalls, are walking around and on top of a large mound of clay which has been

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89 Garafola 2017: 17.

90 see Pakes 2020: 269.
dumped on the floor of the gallery. They appear to be preparing it with their feet. As the audience gathers, Coe walks to the back of the space and removes her overalls. Chan and Recchia follow and all three of the performers start to cover themselves in clay. Coe and Chan build structures on each other’s faces, mirroring the shape of the bones. Recchia smooths clay over her body, perched on a mound toward the back of the space. Their work with the clay is methodical and focused. Once their bodies and faces are covered, the three women spray water over the clay. Moving in the wet clay, their movements become less controlled and their interactions less predictable. They slip and slide, run, fall and throw themselves into the clay. The energy builds and the movement becomes faster and more frantic. They throw wet clay into the air and on to the ground. There is no music, the sounds of the bodies moving among the clay create the soundscape. As I watch, I look for movement references to other versions of The Rite of Spring but cannot identify any. Nevertheless, the structure of the piece; the removal of clothes, the wetting of the clay, the throwing, tracks a familiar energetic arch, building towards an energetic finale. The climax, however, is unexpected due to the sudden inclusion of Stravinsky’s famous score. For the first time, the performers move in unison, performing a vigorous set sequence, which echoes the drama of the music. They perform repeated reaching arm gestures, with their heads and arms reaching repeatedly and forcefully into the air. Despite the movement being different to the version that we might think of as closest to Nijinsky’s choreography (as staged by Millicent Hodson and Kenneth Archer in 1988), the energy and dynamics are reminiscent of the final scene, during which a young woman dances herself to death.

So, how does RITE relate to The Rite of Spring and what kind of ontological framework can help us explain this relationship? As mentioned above, the type/token schema has been
explored by philosophers in relation to dance. Pakes examines this framework in relation to reenactment.\textsuperscript{91} Under this view, a type is an ideal, abstract entity with set properties that cannot change. Tokens, on the other hand, can differ from one another, however, they must meet some minimal constraints of the type in order to be considered a token of that particular work. Pakes explains that this schema, ‘maintains that performances must obey certain minimal constraints, or adequately meet the identity conditions pertaining to that work, if they are to count as being of that dance’.\textsuperscript{92} Pakes proposes that identity conditions might include elements of a work’s movement material, spatial organisation, motifs, the musical score, and the costumes.\textsuperscript{93}

Philosophers have explored the nature of essential or ‘constitutive’ and contingent properties in relation to the performing arts.\textsuperscript{94} Pointing to the flexibility of interpretation

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\textsuperscript{91} Pakes 2018.
\textsuperscript{92} Pakes 2018: 82.
\textsuperscript{93} Pakes 2018: 82.
\textsuperscript{94} For example, in relation to performable works David Davies suggests ‘in spite of sometimes radical differences between performances classified as being of a given work, there are certain essential features of that work that they share’, going on to ask ‘but what are these essential features? and — to deepen the mystery — what kind of thing is a performable work such that it can allow both repetition and difference in this way?’ (2011: 24) Pouillaude extends Nelson Goodman’s distinction between autographic and allographic art forms, suggesting that allographic works have constitutive properties, which must be present in any correct instance of the work which are contrasted with contingent properties, that are open to interpretation by the performer. While performable works
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inherent to the performance of dance works, due to its lack of universal notation and reliance on oral transmission, Pouillaude argues that:

‘We therefore have to understand the choreographic work not as a clear and distinct set of prescriptions but more as a framework for variation that fixes some features of identity and some limits, but cedes ground, via the vagaries of history and the fluidity of transmission, to myriad and concurrent and equally legitimate “versions”’\(^95\)

The frequent reinvention of *The Rite of Spring* highlights questions about the nature of a work’s identity. As Pakes points out, the choreographic invention present in reenactment challenges the plausibility of the type-token schema.\(^96\) This is further demonstrated by Peake’s work. For example, which properties of *RITE* might signify the ‘minimal constraints’ necessary for us to recognise it as a version of *The Rite of Spring*? *RITE* features no recognisable movement references to *The Rite of Spring*, the music appears only in the last ten minutes of the piece and the title uses only a single word from the original. While the empirical properties it shares with Hodson and Archer’s version of Nijinsky’s work are scarce, what does emerge in Peake’s work are some of the core themes of *The Rite of Spring* related to its context and significance. The theme of ritual and sacrifice is echoed in raw, primal energy of the movement. Speaking in 2018, Peake draws a link between the famous

\(^{95}\) Pouillaude 2017: 208.

\(^{96}\) Pakes 2018, 2020. Pakes explores the notion of historical fictions as a way of understanding reenactment.
story of the riot at the premiere of *The Rite of Spring* and the current socio-political context in the UK and Europe, referring to the fracturing of Europe and the rise of fascism that was taking place at the time of Nijinsky’s premiere.\(^97\) She describes using the ‘primal, visceral and instinctive body as a force against fascism’.\(^98\) Thus implying that contextual rather than empirical characteristics of *RITE* are what relate it to Nijinsky’s work. We might conclude that *RITE* is not an instance of *The Rite of Spring* and that Peake has created a new work altogether, which draws on a small quantity of features from *The Rite of Spring*. It seems this would be the outcome of adopting Pakes’s view.\(^99\) Furthermore, following Pouillaude’s distinction between a version, which is attributed to the original choreographer, and a reinterpretation which is ‘signed by a choreographic author and establishes a new work in its own right’ \(^100\) would also suggest that *RITE* is not a version of *The Rite of Spring*. However, the implication of this is that there are multiple works called *The Rite of Spring*, or variations on that title which don’t necessarily share anything other than an interest in a particular work and reference to that work’s title. This is a plausible outcome, but in my view doesn’t

\(^97\) De La Warr Pavillion 2018, np.

\(^98\) Peake in De La Warr Pavillion, 2018, np

\(^99\) Pakes addresses questions of reworking in relation to work identity in depth in Chapter 8 of *Choreography Invisible*. She focuses on *Swan Lake*, another work that has been restaged and reworked numerous times, arguing that this work exemplifies an older, more flexible model of production than the authored choreographic work (2020: 192). She goes on to suggest that ‘the various *Swan Lakes* performed between 1895 and 2015 are not (or at least not all) tokens of a single dance work-type.’ (2020: 192).

\(^100\) Pouillaude 2017: 220.
seem to quite reflect community practices around The Rite of Spring, which appear to recognise its multiple versions as more closely related to one another and arguably as different instances of the same thing. 101

Garafola suggests that The Rite of Spring’s status as a ‘lost’ work means that it ‘comprises a body of ideas rather than a detailed choreographic script and that this conceptual freedom allows for both the ballet’s continual reinvention and for the persistence of ideas associated with the original’. 102 She goes on to suggest that the work’s ‘transgressiveness’, underscored by the riot that allegedly took place at the premier contributes to one set of ideas about the work, therefore, demonstrating how RITE responds to features of The Rite of Spring without replicating particular movements. 103 This suggestion implies that dance works, or at least some dance works, might be identifiable through the adoption and adaptation of particular ideas or themes, rather than through the replication of a set of fixed empirical properties. 104

101 Pakes also challenges the idea of a work-version, arguing that if a version is not merely a performance because it departs so significantly from what it is that constitutes that work, ‘how can something genuinely constitutive of a work change, or be absent, and yet the same work survive?’ (2020: 205).

102 Garafola 2017: 18

103 Garafola 2017: 18.

93 . Maaike Bleeker draws attention to the role of thought in reenactment in dance, proposing it involves an ‘attempt to grasp (aspects of) the artistic thought embodied in the creations of others. Reenacting these thoughts is not a matter of (or an attempt at) redoing the thinking process of the choreographers who created these dances, but rather of grasping the logic of the thought embodied in the dance’ (2018: 242). 104
The implication is that each aspect of the original is open to interpretation and modification, so thinking of a work as having set empirical features doesn’t seem to be able to account for the way that they are copied, adapted and reworked. Recalling Pouillaude’s view, quoted above we might think of dance works as comprising a ‘framework for variation that fixes some features of identity and some limits’. This fixing of identity features is not achieved through a single ideal performance, or via writing. Crucially, this flexibility in terms of how performances and versions appear demonstrates how fixing the work through the documentation of a single performance will not adequately capture it, pointing to the problem with the fixation requirement for copyright.

Reflecting on these ontological issues leads me to my key point. Open-ness as a proprietary stance within the contemporary dance community I am familiar with is linked to the nature of dance work ontology. More specifically, thinking about dance works as possessing essential empirical features does not allow us to fully grasp how it is that works circulate in this context. This is where ontology and ownership intersect. Examining dance work ontology points to some of the reasons why copyright, with its focus on a stable, finished and fixed work does not seem to resonate with many contemporary dance practitioners. Dance works are often fluid and adaptable. This feature of their ontology is something that artists must decide how to negotiate and I am not suggesting that all artists readily accept works or movement being reproduced. However, with copyright not easily aligning with dance work ontology, not to mention the complications of making a legal claim, open attitudes towards the circulation of dance are common. The rules I outlined previously
arguably function as an alternative to legal structures as a result of the nature of dance works and, I propose set the ‘limits’ on work identity referred to by Pouillaude.

The fairly loose conditions for work identity that I have advocated raise questions about how we recognise a performance of a particular work as opposed to another work or something else altogether. I suggest that the four rules I outlined previously inform the qualitative recognition of dance works, meaning that — in particular in cases where a work is reenacted, revised or reworked — the legitimacy and accepted ownership of the work is constrained by the community and an implicit understanding of acceptable practices, rather than copyright and a fixed version of the work.\textsuperscript{105} I am not suggesting that each individual audience member’s reading of the work wholly determines its identity, rather that the underlying codes of the community inform the way that works and performances are understood in relation to one another and therefore shape how both ownership and ontology is recognised. For example, \textit{acknowledgment} is important for identifying a performance as a version of a particular work. New versions of a work frequently use the same title as the original work or a modification of it and will usually refer to the choreographer. If a performance includes enough properties of a work to be recognisably derivative, but the choreographer is not acknowledged, the work might be considered plagiarised and audiences familiar with the original are likely to view the performance as something other than a legitimate version of the work. This also points to the role of the \textit{community} as practices are constrained by the habits and expectations of those working

\textsuperscript{105} Julie Van Camp explores the role of social practices in copyright infringement cases, arguing that the practices of art communities determine the identity of works of art (2006).
within the context within which it is made as well as the instincts and judgments of those working out whether or not a performance is truly an instance or version of an existing work and therefore how to understand ownership.\textsuperscript{106} The process of locating the work in relation to others and recognising the connections, similarities, and derivations of movement, styles, ideas and images not only shapes how audiences think about ownership, but also foregrounds the ontological nature of dance works, as comprising a wide range of features, arguably none of which are essential to a new version of the same work. This interplay further demonstrates how it is that ownership, the practices of the contemporary dance commons and dance ontology intersect.

\textit{Adaptation} and the \textit{quantity} of movement used are also central to identifying a performance as a version of a particular work, especially when it involves reworking. Some adaptation is unavoidable, even in cases where someone is aiming to restage a work exactly, each dancer will adapt and interpret the movement differently to the previous person who performed it. However, how readily we identify a performance as an instance of an existing work depends on our previous knowledge of that work and the way that adaptation has been used. As already discussed, the \textit{quantity} of properties adopted and extent of the adaptation work together to locate the work either as a version of a previous work or as a different work altogether. In order to be recognised as a version of an existing work, the adaptation should maintain the presence of sufficient properties to be

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\textsuperscript{106} See Kraut (2016: 140-41) for a discussion of how dancers responded to the recognition of exactly replicated steps: ‘the Hoofers Club community reacted to acts of infringement in a conspicuously corporeal manner, interrupting the performance and rowdily shaming the copycat’.
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recognisable but this doesn’t mean any individual properties can be considered essential, and the precise quantity and exactly what these properties are remains open and is determined by the community.

Burt’s argument about what is shared within the commons focuses primarily on the pooling of knowledge via resources and practices, rather than the sharing of dance works. However, he does discuss re-working, foregrounding the way that works become part of memory and proposing that ‘[h]istories and memories of theatre dance are, in effect and by default, a shared resource, a knowledge commons and not something that can be bought or sold as private or commercial property’. Their immaterial nature means that works circulate in part through these memories, as exemplified by reworkings. Burt points out that re-working can lead to legal issues, but suggests that such instances are indicative of different, more hierarchical structures to those that operate in the communities he discusses. RITE and its relationship to Rite of Spring further exemplifies this proposition. While in the UK, works are legally owned, some seem to become part of the ‘contemporary dance commons’. While the ownership of different versions might be attributed to the choreographer who made them, to pin down the ownership of a work like Rite of Spring doesn’t seem to fit. The work as a ‘body of ideas’ is available for anyone to rework and if the four rules of acknowledgment, quantity, adaptation and community are adhered to, these versions are likely going to be accepted as legitimate versions of The Rite of Spring.

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Conclusion

The fixation condition for copyright appears to demonstrate the implicit adoption of the type/token schema whereby each correct performance of the work adequately captures its essential features, meaning that a single recording could provide sufficient insight into the work’s features to attribute ownership. However, examining *RITE* and its relationship to *The Rite of Spring* has demonstrated some of the problems with the type/token framework, perhaps pointing to one of the reasons that copyright law is not often drawn upon to manage ownership in dance. The fixation requirement does not adequately reflect practices as it associates the work with a particular set of movements, recordable through a single performance. Considering the work as identifiable through features other than movement foregrounds some of the complexities of managing and asserting ownership, demonstrating how the ontology of dance informs its circulation.

While there is slippage between works and practices, generally speaking, works circulate in a different way to practices and might problematise some aspects of the idea of the commons as a pool of shared resources. However, while artists might feel stronger assertions of ownership over an entire work than a practice, or sequence of movements, there is always the potential for new versions to be developed and they therefore still circulate at times without recourse to copyright law. There are, of course artists and companies that develop mechanisms through which to control and monetise their practices,

110 See Wilson (2010) for a discussion about the relationship between types/tokens and intellectual property law.

111 See Pakes 2020 for a helpful exploration of alternative ontological schemas and their feasibility in relation to dance works.
however, this is not easy to do due to the nature of dance ontology and the common practices of exchange within the field.

The fours rules I have articulated in relation to acknowledgment, quantity, attribution and community can be seen as a response to the ontology of dance works. Social practices have developed for managing circulation and these give rise to a ‘contemporary dance commons’ inasmuch as they maintain contemporary dance's circulation outside of legal and economic exchange. We might then understand the commons in contemporary dance as an unintended outcome of dance ontology and the way social practices have developed in response. These rules allow for artists to own their work and be credited for it without recourse to copyright law, meaning that while artists might make money from their works through performances, they are not commonly bought and sold as property. However, it is the existence of intellectual property law that allows for the commons to function as a concept as commons exist in relation to enclosures, such as copyright.

While The Rite of Spring offers a rather particular example and not many works are ‘lost’ in this way, I suggest that we might think of works more generally as comprising ideas, themes and contextual properties as well as movement, music and so forth. While I don’t suggest that dance work ontology is entirely determined by the views of the community, I argue that implicit rules related to acknowledgment, adaptation, quantity and community that underscore the sharing that takes place in the field also operate in the identification of a work, in particular when processes of reworking are involved. Recognising the role of these rules in work-identification helps to further foreground the way they function to govern ownership in contemporary dance.
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