

## **Labor and/as Love: Roller Derby as Constructed Cultural Commons**

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### ABSTRACT

This paper examines women's roller derby through the lens of Frischman, Madison, and Strandburg's Constructed Cultural Commons (CCC) framework. Roller derby (in its most recent incarnation, which began in 2001) is an all-women sport that combines serious athletic competition with a distinctive aesthetic that combines punk and camp. Roller derby is not just an athletic diversion for its participants, but a full-blown sub- and counterculture that provides a sense of identity and belonging to its participants. And perhaps most saliently for this paper, roller derby is not a professional sport. No one makes money from any aspect of derby; instead, the sport and its surrounding culture were created and continue to grow thanks to the voluntary effort and inspiration of thousands of the enthusiasts who devote their free time to it. This study of roller derby begins by examining the sport and its surrounding subculture in light of the CCC framework. I ask and answer three descriptive questions: what aspects of roller derby are governed as commons, how are those commons governed, and why are these aspects so governed? The answers to these questions yield insights about what it means to analyze any cultural phenomenon as a CCC. This inquiry suggests that some forms of production produce commons as outputs, rather than just use them as inputs; indicates that the limited-group character of natural resource commons may not translate to the CCC setting; and shows that the choice to govern a resource as a commons can be a decision about how to construct the character of the affected communities rather than just a means of achieving greater efficiency. Finally, the paper reflects on two overarching issues about the project of CCC more generally. First, it posits a taxonomy of commons that subdivides cultural commons into several subtypes, suggesting that there are fundamental differences between cultural commons that are designed for the purpose of profit and those that aren't. Second, it reflects on the questions that CCC analysis forces us to ask about why people create intangible goods, and conjectures that the answer to this question often confounds traditional welfarist analysis, and frequently can and should be thought of as a labor of love.

## INTRODUCTION

My contribution to this symposium on constructing cultural commons is about roller derby. It is about how and why people create and draw from the shared body of knowledge and close-knit community that comprise the heart of roller derby. It is also about what their compulsion to engage in that sharing and creation means for our understanding of cultural commons and about production of information in the absence of pecuniary motivation more generally. I can't begin exploring these issues, though, without saying a few descriptive words about what roller derby is, in order to familiarize the uninitiated.

Roller derby is an American-born sport in which two teams of competitors on quad skates careen counter-clockwise around a (banked or flat) oval track.<sup>1</sup> Derby was first developed in the 1930s, and enjoyed brief but always temporary bursts of popularity throughout the twentieth century. In the past ten years, though, the sport has undergone a reinvention as an edgy subcultural phenomenon. As initially reimagined in Austin back in 2001, the new combines compelling (and real<sup>2</sup>) athletic competition as well as a performance spectacle tinged with equal parts punk and camp. Skaters are serious athletes, but they also sport fishnets, tattoos and names like Tara Armov, Raven Seaward,<sup>3</sup> and Gori Spelling. Skaters are almost all

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<sup>1</sup> The rules of derby are complex enough that it's often difficult for first-time observers to understand game action and strategy. Here are some basics: In most current iterations of derby, two teams of five skaters each compete. The teams consist of one jammer and four blockers. Points are scored when a jammer laps (passes twice) one of the opposing team's blockers. The bouts are broken down into four quarters of varying lengths, and the units of play are "jams" of 60 or more seconds. Full contact is legal subject to hockey-style rules (e.g., lateral hits are allowed but tripping, elbowing or pushing from the rear are not). This brief description is a mere incomplete sketch of the game's rules. If you want more information, go here: [http://en.wikipedia.org/wiki/Roller\\_derby#Rules](http://en.wikipedia.org/wiki/Roller_derby#Rules).

<sup>2</sup> I add this parenthetical because many people wrongly believe roller derby to be a "fake" sport like pro wrestling. It's not. The outcomes of bouts are unplanned. The action is unscripted. If you don't believe it, check the bruises on any given skater after a bout.

<sup>3</sup> Get it?

women,<sup>4</sup> and they (in combination with the many men and women who don't skate but are crucial to making derby happen) have created something extraordinary: not only a series of entertaining bouts for public consumption, but also a distinctive countercultural community that provides a sense of belonging and identity for those who are part of it.<sup>5</sup>

This case study seeks to add to the growing discussion about cultural commons by focusing on the world of roller derby itself, rather than the bouts that are exhibited for the public.<sup>6</sup> In 2001, the contemporary roller derby world was born spontaneously and without any overriding pecuniary motivation. Ten years later, it continues to thrive thanks to the ongoing collaborative efforts of the thousands of people who devote themselves to derby without any expectation of financial reward. This case study illustrates not only how this particular cultural commons is constructed and governed, but also provides an opportunity to think more generally about why such commons arise in the first place, and about what the prevalence of such commons means for the dominant financial-incentivist account of intellectual property.

The ensuing discussion proceeds in three primary parts. First, I offer a few preliminary thoughts about what a constructed cultural commons is and how roller derby fits (and does not fit) into this rubric. Second, I examine roller derby from the cultural-commons perspective outlined in Brett Frischmann, Michael Madison, and Kathy Strandburg's "Constructing Cultural Commons"<sup>7</sup> (to which I'll refer throughout in various iterations as "CCC"). In this part, I pose three

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<sup>4</sup> *But see* <http://www.mensderbycoalition.com/> (providing an overview of MRDA, the Men's Roller Derby Association). There are 16 men's roller derby leagues nationally, as opposed to hundreds of women's roller derby leagues.

<sup>5</sup> This paragraph is of necessity a very brief and incomplete sketch of the sport. I provide a longer (several-page) description and history of roller derby in a related paper, Dave Fagundes, *Talk Derby to Me: Emergent Intellectual Property Norms Governing Roller Derby Pseudonyms*, 90 TEX. L. REV. \_\_ (forthcoming 2012). Two great books that address the topic in detail are JENNIFER BARBEE & ALEX COHEN, *DOWN AND DERBY: THE INSIDER'S GUIDE TO ROLLER DERBY 11-12* (2010) and CATHERINE MABE, *ROLLER DERBY: THE HISTORY AND ALL-GIRL REVIVAL OF THE GREATEST SPORT ON WHEELS* (2007).

<sup>6</sup> As I explain in more detail below, derby bouts are not commons in any sense, but private entertainment goods like a movie or a baseball game.

<sup>7</sup> 95 CORNELL L. REV. 657 (2010).

descriptive questions that seek to examine roller derby through the lens of the CCC analysis. The answers to each of these questions generate insights about on this emergent form of analysis. Second, I explore what this case study about roller derby as a cultural commons tells us about the study and production of cultural commons generally. In particular, I reflect on what "cultural commons" means (and why it matters), and then ask what we gain by studying phenomena through that lens. This latter question leads me to the conjecture that is this essay's primary contribution: That the production of cultural goods cannot be fully understood in terms of the desire for financial remuneration, or even by traditional welfarist considerations. Rather, I suggest that to a large extent this kind of cultural production can be understood only as something incommensurable with other forms of reward. Instead, it has to be understood as something that I call, for lack of a better phrase, a labor of love.

## I. OF COMMONS AND COMMONSINESS

Traditional, physical commons are fairly well defined. They are rivalrous natural resources made available only to members of a limited group.<sup>8</sup> The classic example is, of course, the English village green. This was a grassy area made available only to town residents for grazing their livestock. Elinor Ostrom's foundational work, *Governing the Commons*, showed that many other natural resources were governed in a commons-like way, such as fisheries or forests.<sup>9</sup>

CCC, by contrast, is about cultural rather than natural resources, about goods that are intangible rather than physical. The meaning of "commons" in the cultural context thus necessarily differs from that used in the natural resources setting. To take just one instance, physical commons govern exhaustible resources, and so require active management to avoid the tragedies that Hardin named after them.<sup>10</sup> By contrast, cultural commons govern nonrivalrous resources, and do not require management of their allocation to the same extent, since they do not face the same concerns about depletion. Perhaps because of this distinction, a wider variety of subject matter

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<sup>8</sup> See Solum (defining commons); Ostrom (providing examples of natural resources commons).

<sup>9</sup> Ostrom, *Governing the Commons*.

<sup>10</sup> Garrett Hardin, *Tragedy of the Commons*.

can be regarded as being governed as cultural commons. Some of the very different examples of resources discussed as cultural commons include patent pools,<sup>11</sup> universities,<sup>12</sup> and peer-produced resources like Wikipedia.<sup>13</sup> I understand the authors of CCC to have explicitly left the definition of “commons” more capacious, seeking to encourage analysis of divergent subject matter through the CCC lens, rather than to construct a rigid descriptive point about what commons are and are not.<sup>14</sup>

It may be more useful, then, not to think about information goods in terms of whether they are or are not commons in a binary sense, but rather to think about the aspects of a commons they possess—that is, their “commonsiness.”<sup>15</sup> Numerous aspects of roller derby are commons-like, or “commons-y.” The entire sport grew up spontaneously and because people were excited about it, not because anyone was looking to cash in on it.<sup>16</sup> Its production was and is collaborative and distributed. Many people from around the world contribute their labor to complete modular tasks that, in the aggregate, create new roller derby leagues and enrich the ever-expanding international roller derby community. This distributed, incremental, and non-profit form of production is reminiscent of the production open-source software.<sup>17</sup> The roller derby world is also commons-y in the sense that it is, in differing ways, made available only to a limited group—the limited cohort of people who comprise the roller derby

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<sup>11</sup> CCC

<sup>12</sup> CCC/Universities.

<sup>13</sup> Mehra/Hoffman, *Wikitruth Through Wikiorder*.

<sup>14</sup> See FMS, *University as a Commons*, *infra* note 68 at 366 (observing that “commons is not a singular concept,” and that “[c]ommons have multiple levels sources, and products”). This is not to say that anything cultural counts as a commons, or that it is not worthwhile to ask what the boundaries of the term are. The latter question is particularly important, and I return to it in Part III.

<sup>15</sup> While this is clearly a reference to Steven Colbert’s zeitgeisty term “truthiness,” I should stress that by “commonsiness,” I mean some feature that actually is like a commons, rather than something that is seems true but is actually not. <http://en.wikipedia.org/wiki/Truthiness>.

<sup>16</sup> Which is not to say that since its inception, some people inside and outside the derby world have not tried to cash in on it. Some leagues, such as the LA Derby Dolls, have accepted funding from outside investors, and this has created tension between those leagues and WFTDA, which seeks to limit its membership to non-profit leagues.

<sup>17</sup> Lerner & Tirole; Cathedral/Bazaar.

community itself. But in other respects, derby seems to confound commonsiness, because what derby people create cannot easily be reduced to a good, like a group of pooled patents or a new version of OSS. Derby fits uncomfortably into the notion of cultural commons, but I think that makes it more rather than less promising as a subject of study. The peculiar project of examining roller derby through the CCC lens may do more to tell us about the promise and meaning of cultural commons than more obviously apt examples.

## II. ROLLER DERBY AS A CULTURAL COMMONS

This Part examines roller derby through the lens of the CCC approach. I organize this inquiry somewhat differently than did the authors of CCC, referring to three sets of similar questions that, I think, get to the same basic issues. The first question starts with *what*. *What* is the cultural commons that is at issue in this case study? The second question starts with *how*. *How* is the commons of roller derby governed, and in particular, how do roller derby's authority figures deploy rules to effect this governance?<sup>18</sup> The final question starts with *what*. *What* problem is a commons designed to solve for roller derby, and what is the reason that derby participants choose to use a sharing arrangement rather than a more traditional, for-profit approach?

### A. What is governed as a commons?

The initial question is a descriptive one: What aspects of roller derby can be regarded as a cultural commons?<sup>19</sup> In the context of

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<sup>18</sup> I include in this inquiry the degree of openness that roller derby exhibits. While this could be regarded as a "who" question (who is entitled to share in the commons resource?) I think of it more as a part of the "how" question—i.e., about how the commons is governed. Choosing to leave a resource open, or deciding to render it partially open, are all decisions about how the resource should be distributed.

<sup>19</sup> CCC defines constructed cultural, as opposed to natural-resources, commons, as "environments for developing and distributing cultural and scientific knowledge through institutions that support pooling and sharing that knowledge." CCC, *supra* note 19 at 659. I use a slightly broader definition of "cultural commons," because I don't think the term needs to be limited to knowledge-sharing arrangements, but can extend to any shared information or intangible good. Mark Schultz' work on sharing of jamband recordings is an example of a cultural commons that governs a resource that does not amount to "knowledge" per se, but rather an entertainment good (recordings of bands like the Grateful Dead and Phish). See *generally* Mark F.

natural resources, this is usually a straightforward task, since the governed resource is typically some well-defined aspect of the physical environment from which the members of the commons seek to extract value (e.g., fish from the ocean, crops from a forest).<sup>20</sup> In the context of cultural commons, the question may also be straightforward. Patent pools, for example, raise no conceptual difficulties in locating the subject matter governed by their iteration of commons. With other kinds of cultural commons, though, this is a harder task, since the subject matter at issue may not have a discrete character susceptible to creating clearly defined boundaries.

Roller derby falls into this latter category. As I mentioned briefly above, roller derby fits strangely into the notion of cultural commons. One could say that all of derby is a commons (or at least that it's commonsy), given that the derby world is an intangible thing that is made available only to a limited group. And while I thinking about derby world as comprising a commons in its entirety is plausible, in this section I seek to refine the analysis by specifying particular aspects of roller derby that can be said to be governed as commons. Identifying such aspects presents a challenge. The most familiar cultural product generated by derby leagues is bouts—inter- or intra-league matches—that the public can observe for a fee. But these bouts don't comprise a commons, since they are open to everyone who can afford a ticket rather than just a limited group, and because they require paid admission for access. Access to bouts is just a plain old private good, because they are excludable (it is easy enough to keep ticketless people from watching bouts—doors to the venue serve this purpose) and rivalrous (there are a finite number of tickets, and every ticket I buy is one that you can't).<sup>21</sup>

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Schultz, *Fear and Norms and Rock & Roll: What Jambands Can Teach Us About Persuading People to Obey Copyright Law*, 21 BERKELEY TECH. L.J. 651 (2006).

<sup>20</sup> Not all commons are equally easy to define discretely. A shared forest may be defined by traditional boundaries, but fugitive resources like fish in the sea present a much harder, though not insurmountable, case. ELINOR OSTROM, *GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION* 18ff (1990) (discussing the collective governance of the ocean fisherman of Alanya, Turkey, in overcoming such a challenge to creating discrete boundaries).

<sup>21</sup> See Lawrence B. Solum, *Questioning Cultural Commons*, 95 CORNELL L. REV. 817, 823-24 (2010) (creating a taxonomy of goods, including private goods, in the context of cultural production).

There are, though, at least two aspects of roller derby that can be more particularly specified as a commons, at least as I use the term “commons” in this paper: intangible resources that are shared among some clearly defined group. The first is the knowledge that leagues use to develop themselves, and that skaters use to gain competitive skill. In terms of its status as a sport, roller derby is not a for-profit endeavor that is capitalized by outside investors like a professional football or baseball team. Quite the contrary. Roller derby is characterized by a do-it-yourself attitude that relies on the human capital of participants to build and sustain leagues,<sup>22</sup> and on shared knowledge about how to develop and hone skating skills in order to excel as athletes. Consistent with this collaborative ethic, information that is crucial to the development of leagues and individual skaters is not jealously guarded, treated as a trade secret, and sold, but instead is freely and widely shared—treated, in other words, as a cultural commons.

League creation is happening at an increasingly fast pace throughout the country, and indeed the world. There are now over 500 roller derby leagues worldwide, as opposed to 50 in 2005 and 5 in 2003.<sup>23</sup> Creating new leagues raises numerous planning and organization problems, but fortunately these problems tend to be the same regardless of geography. Also fortunately, the roller derby world openly shares the aggregated knowledge that other leagues have accumulated about league development. Related, because most skaters who begin the sport do not already know how to execute the numerous sophisticated athletic skills that are required to compete in a roller derby bout, all leagues (not just nascent ones) share the problem of training new skaters to develop these skills. Here, too, derby girls share knowledge about skating freely and with little cost.

Sharing both of these types of knowledge happens in several contexts. There are numerous message boards and websites on which relative newbies can ask basic organizational questions about league development in order to avoid reinventing the wheel, as well as

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<sup>22</sup> And financial capital as well—most derby leagues don’t make enough money to survive on their own and instead rely on dues from participants to sustain themselves.

<sup>23</sup> See BARBEE & COHEN, *supra* note 5 at 71.



questions about skill and training issues.<sup>24</sup> Many derby girls have posted training videos to YouTube, reducing the costs associated with disseminating information about skating skills.<sup>25</sup> RollerCon is a yearly event attended by thousands of derby people. It provides seminars on a wide variety of topics, and exhibits a high degree of openness. In order to present at RollerCon, you need only have an idea and some connection to the derby world.<sup>26</sup> Finally, informal word of mouth plays a crucial, though not easily identifiable role in knowledge sharing. The idea that knowledge about how to create new sports leagues or how to develop athletic skill is widely available is hardly new. Any given sport will have a wealth of such information available; the difference with roller derby is that this information is usually kept as a trade secret<sup>27</sup> or packaged and sold for profit.<sup>28</sup>

Knowledge about how to create a derby league and how to skate well bears certain features of commons.<sup>29</sup> It is a nonrivalrous information good that is widely shared among a defined group (here, derby people). Access to this knowledge is rarely limited to derby people in some formal way, though, so in this sense derby knowledge does not have the strongly group-delimited feature of commonsy forms of knowledge production such as patent pools, nor the actively managed feature of other commonsy forms of knowledge production like university libraries. There is, of course, some necessary degree of moderation and control over the content that is produced on websites and at RollerCon, but this degree of control is light indeed. The derby knowledge commons is much more an emergent than an intentional phenomenon. As the authors of CCC put it, “Commons can be

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<sup>24</sup> E.g., Yahoo! Boards. [But these aren't that well-organized, typically of derby. There's not a sophisticated organizational scheme as with other boards (e.g., Wikipedia; it's more like K5, perhaps). Example is threads complaining about the Master Roster.]

<sup>25</sup> E.g., Bonnie D'Stoir.

<sup>26</sup> Some of these resources aren't totally free. Trainers often require a fee to provide in-person services to startup leagues, though typically this is only for travel, so the services and knowledge are provided for free. RollerCon charges for attendance, but this fee is plowed back into derby's development.

<sup>27</sup> Discuss example of MoneyBall. The A's never would have shared their novel, quantitative way of evaluating player skill with anyone else until Billy Beane's vanity got to him and he spilled the beans in exchange for fame.

<sup>28</sup> Consider one of any kajillion how-to guides for sports.

<sup>29</sup> See CCC, *supra* note 19 (equating commons with shared, managed knowledge resources).

designed, but commons also happen.”<sup>30</sup> Derby knowledge clearly belongs to the latter category.

I suggest that another aspect of derby, which does not so comfortably fit even my broader definition of commons, should also be regarded as commonsy: the social world of roller derby itself. People who are part of the derby world can freely take part in the sport’s distinctive camp/punk subculture, in the form of events like dances or group dinners, or simply through the informal interactions that thrive among and characterize most close-knit groups. A significant source of roller derby’s appeal is that it provides a unique<sup>31</sup> countercultural milieu in which participants can find a sense of belonging and identity. Indeed, for many derby people, this sense of belonging and identity provide the primary driver for their participation in the sport.<sup>32</sup> Thinking about this aspect of derby as a commons is important because it is central to the character of the sport itself, which is not just an athletic competition but also a subculture. Part of what makes the story of derby compelling is that it is not just a story about the emergence of a volunteer sport like little league, but that derby people have joined to participate in and create a countercultural world all of their own, largely any desire or expectation for profit. It is in this sense that derby has the kind of open character typical of commons.<sup>33</sup>

One might counter that that community cannot be regarded as the kind of “good”—tangible or otherwise—that is the stuff of a commons.<sup>34</sup> We do not typically regard people as consuming community as they might consume natural resources like timber or fish, and we do not typically regard people as using community as they might use intangible resources like knowledge or a pool of

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<sup>30</sup> CCC, *supra* note 19 at 846.

<sup>31</sup> Truly: there is nothing like the derby subculture in the world, at least not to my knowledge.

<sup>32</sup> This assertion is obviously a broad and imperfect generalization. Obviously derby girls have a variety of motives for wanting to participate in the sport. Some people may be exclusively interested in the athletic competition aspects of roller derby, and may not be compelled at all by the opportunity it provides to be part of a distinctive social group.

<sup>33</sup> See CCC, *supra* note 7 at 699 (“A commons is a rhetorically open place.”).

<sup>34</sup> Solum, *Questioning Cultural Commons* (suggesting that the CCC conception of commons is problematically overbroad).

patents. For a few reasons, though, I think the community that roller derby provides can be regarded as a commons as much as shared knowledge about derby can. Fellowship is a nonrivalrous,<sup>35</sup> incorporeal resource that is nonrivalrous and intrinsically nonexcludable, but is rendered excludable in that it is limited to those who are part of the relevant insular community (i.e., the roller derby world). Moreover, the sense of kinship that derby provides is something that its participants want to get out of their experience. In this sense, then, community is a resource that derby enables its members to extract. This extraction does not look like the consumption that members of natural-resource commons make of, say, timber or fish, but that's to be expected, because community is a nonrivalrous, intangible resource.

The way that derby people “use” their community, though, is similar to the way that they “use” the derby-knowledge commons.<sup>36</sup> Just as skaters use common knowledge resources to learn how to build a league or become a better athlete, they use derby's various community-building events to gain a richer sense of belonging in the derby world. And just as there are discrete sources of shared knowledge about roller derby, formal and informal,<sup>37</sup> so are there discrete events that enable community building, both formal (parties, team meetings, group dinners) and informal (the myriad interpersonal

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<sup>35</sup> Community is a distinctive kind of nonrivalrous good. It actually requires some critical mass of simultaneous users to create and enjoy it. One might imagine that community has club-good aspects because at a certain level of volume, adding community members might detract from a sense that the community is exclusive, and begin to erode the quality of the good. This may be true with respect to some communities, but I've rarely seen this with respect to roller derby. Part of the reason may be that derby consists of many groups within groups, like Russian nesting dolls: there is the derby world writ large (comprised of tens of thousands of people), which in turn consists of many leagues (which number in the three figures at most), which in turn consist of teams (no more than twenty skaters). As leagues grow, they tend to spin off additional teams, creating additional nodes around which sub-communities can coalesce. And in any event, the bond that roller derby creates among its participants seems strengthened, not weakened, by the sport's metastasis, as the widespread sense of sisterhood that prevails at mass events like RollerCon or Derby Nationals indicates.

<sup>36</sup> Or that anyone “uses” knowledge. It might be that knowledge is not so much “used” as experienced, since “use” suggests exhaustion of the good at issue.

<sup>37</sup> See *supra* pp. \_\_\_ (discussing the sources that derby girls use to share knowledge about the sport).

interactions that comprise any richly connected group). Knowledge and community are similar also insofar as participating in “consumption” of these goods tends to enhance, rather than diminish them. Successive users build on previous insights about skating skills or what equipment to use in Yahoo! discussion threads, so that the resource becomes richer thanks to increased participation. And derby’s community is similarly enhanced by the growth of the derby world, in that more members of the community make the derby world a larger and more varied group to be part of.

Asking these descriptive questions reveals that in one major respect, roller derby possesses features typical of a commons, cultural or otherwise. Natural resources commons typically involve extraction of physical goods for use as an input into some private gain. In the classic illustration, residents of a town use grass from a village commons to feed sheep or other livestock for sale or personal consumption. Most cultural commons share this quality too, such as where members of a patent pool use commonly-held patents as an input to create a new invention. And derby shares this quality. Skaters use knowledge or community as an input to generate new leagues, better skills, and a broader, richer derby world.

This discussion also reveals, though, one way in which the commons of roller derby are different than some other commons. Many commons (especially physical ones, but some cultural ones) use shared resources as inputs to create private goods (grass for a fatter, tastier sheep, pooled patents for a lucrative new invention). But roller derby uses common resources as inputs to create outputs (cultural goods in the form of greater knowledge and a richer derby community) that are also commons. Other cultural commons have this distinctive feature of having commons on both the input and output side of the ledger. Wikipedia furnishes an example. The distributed peer producers who create that well-known online encyclopedia take general knowledge about the world and repackage it into a well-organized and accessible form that is also a commons.<sup>38</sup> Other examples abound, especially in the context of distributed peer production.<sup>39</sup>

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<sup>38</sup> See Mehra/Hoffman, Wikitruth Through Wikiorder.

<sup>39</sup> Example: L&T, open-source software.

The point can be taken one level further. Productivity that is characterized by commons on both the input and output side of the ledger also have a tendency to blur the distinction between inputs and outputs itself. With most traditional commons, as people extract from commons, they diminish them (as with rivalrous natural resources) or at least don't add to them (as with patent pools). But with derby, as skaters extract from the knowledge commons, they also participate in it productively, responding in internet discussion threads or informal knowledge sharing in a way that enhances rather than diminishes the resource. And the derby community grows richer, not weaker, as more people join and take part in it. The traditional idea that inputs are diminished to create outputs does not operate here. Just the opposite: These inputs are enhanced rather than lessened when they are used to create outputs.

B. How is roller derby's commons governed?

The next question begins with *how*. How are the aspects of roller derby that comprise a commons governed? I include within this inquiry the related question of the openness of the commons resource. The roller derby world itself is governed by a complexly nested series of governance sources, with WFTDA creating general, constitutional-style rules (e.g., what the rules of play are, or how intraleague competition is structured), and individual leagues creating more granular, operational rules (e.g., how long skaters have to compete before they can take a derby name, or how the people in charge of various responsibilities will be chosen).<sup>40</sup> These forms of governance contribute indirectly to the governance of derby's commons, in that they both require a degree of openness in how that resource is managed. WFTDA does not explicitly make allocative decisions but it does require that member leagues operate on a non-profit basis, and pushes against possible professionalization by establishing an inclusive ethic that prioritizes inclusion of skaters on the basis of effort and commitment rather than solely athletic ability.<sup>41</sup> Leagues, by contrast, do make some decisions that affect allocation by limiting access to the insular derby world pursuant to certain criteria. Skaters are expected to meet certain standards in order to remain part of a

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<sup>40</sup> See OSTROM, *supra* note \_\_\_ at 141 (distinguishing between constitutional, collective, and operational rules for governing natural resources commons).

<sup>41</sup> WFTDA rules/principles on this.

league. These standards vary to an extent, but two primary examples include a dues requirement<sup>42</sup> and an expectation of minimal volunteer participation in the management and maintenance of the leagues (preparing the venue for bouts, helping sell tickets or drinks at bouts, cleaning up after bouts).

WFTDA and leagues have some impact on the contours and character of the derby world, but they don't manage the commons of roller derby in the active, conscious sense that, say, a university oversees its commons (and certainly not in the sense that rivalrous natural resources commons must be intensively managed). These governance structures are marginal to the aspects of derby that are governed as commons—knowledge and community—because these resources don't need to be governed by a central authority.<sup>43</sup> Some commons are actively constructed and managed, but others (especially in the cultural-commons settings) just happen. And while roller derby's governance structures impart some shape and character to the commonsy aspects of the sport, to a large extent, derby's commons just happen. Knowledge about derby and the sense of community that is endemic to the sport arise and are distributed relatively little need for any authority to intervene thanks to the central role that social norms play within the derby world.

Roller derby is characterized by strong social norms that encourage members to contribute to the sport's collaborative, do-it-yourself ethic.<sup>44</sup> Skaters are not only expected to pay in order to compete as part of a team. Rather, all derby people have some responsibility to help develop the league. This could mean helping to

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<sup>42</sup> Does the dues requirement undermine derby's commonsy character because it means that participation is a purchased commodity, more like access to a fancy nightclub than something that is freely allocated? I don't think so. League dues aren't really a way of buying your place in the derby world. They are more a small hurdle to raise the costs of participation in order to exclude those who are not serious, and also a necessity (especially around the time of startup) to raise the money necessary for leagues to operate. Interestingly, skaters who contribute substantially enough to the management of a league (e.g., by serving on particularly time-consuming committees or taking on major leadership positions) have their dues obligations waived.

<sup>43</sup> WFTDA exists primarily to solve coordination problems, so that leagues are on the same page about what the rules for the sport are, and what the schedule is for end-of-season regional and national events.

<sup>44</sup> See TDTM (discussing social norms aspects of roller derby).

build or repair a banked track, serving on governance committees, providing some professional assistance to the league,<sup>45</sup> or helping to organize and execute bouts. The same basic principle of do-it-yourself reciprocity applies to the way derby's commons are generated as well. Skaters who have benefited from knowledge passed down from previous skaters are expected to exhibit the same degree of generosity to future skaters who may seek their help in training and/or to share their insights about skill development in public forums such as the Yahoo! discussion boards or RollerCon seminars. Skaters who have benefited from the rich sense of community created by the social events that leagues host are expected to help in organizing future events (or, less fun, cleaning up after past ones).

The informality of these sharing arrangements obviously raises a potential free-rider problem. An unscrupulous skater could, in theory, extract the benefits of these commons without reciprocating as expected. As we've seen, some obligations toward the sport are expressed in formal league rules requiring a base level of participation. But more than this rule structure, what prevents shirking is a series of strong, though imperfect, social norms that roughly calibrate the ability of skaters to participate in derby to their cooperation with the expectation that they will reciprocate. Some of these norms take the form of carrots. Derby people who help out the leagues receive benefits in the form of inclusion in elite events,<sup>46</sup> public praise,<sup>47</sup> and informal social capital.<sup>48</sup> Other norms take the form of sticks. The only well-known rule governing participation in the derby world is the "Douchebag Rule," which expresses a simple principle: Don't be a douchebag. The rule is a way of expressing an expectation of basic decency in a manner consistent with derby's punk-rock aesthetic. The basic notion of the rule is that derby people should do their part to

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<sup>45</sup> Since derby girls come from all walks of life, the assistance they provide will vary. It could be legal advice about liability-release forms, graphic design for bout-promotion posters, or nursing advice to injured skaters.

<sup>46</sup> E.g., LADD "Legends Dinner" for skaters and helpers who have supported derby at a high level for at least five years.

<sup>47</sup> E.g., LADD program thanking those who were instrumental in helping to prepare for bouts.

<sup>48</sup> Skaters and helpers who give substantial time and effort to help with league development tend to integrate most quickly and substantially with the rest of the group.

help, and that shirking won't be tolerated.<sup>49</sup> Like all norms, derby's informal enforcement system is leaky. The only way to enforce the "douchebag rule" is to rely on informal social ostracism. This sanction may seem weak, and in some instances it fails to achieve compliance.<sup>50</sup> However, since one of the primary amenities of derby is friendship, being alienated by other participants for failure to pull your weight is a more credible threat than it may be in other contexts.

A correlative point to the informal governance of roller derby's commons is their high degree of openness. This degree of openness varies somewhat with respect to the commons resource at issue. Some features of derby's knowledge commons are almost entirely open. The Yahoo! discussion boards are available to everyone who is not a spambot. Anyone who can buy a RollerCon ticket (which goes for about \$150) can attend the event. In neither event is access limited to people who have some preexisting connection to the derby world. But while in theory a non-derby person might be able to access these knowledge resources, as a practical matter this is extremely unlikely because the only way one might become aware of their existence is by being some sort of derby insider. So while these resources are theoretically open, the important point is that for all practical purposes, they are available only to derby people. Other aspects of derby's commons are limited to derby people in a more straightforward sense. Skaters are only made privy to training sessions if they are already members of a league, or at least if they are "fresh meat" looking to join the league in the first place. And you're only going to score an invitation to community-building derby events if you have some kind of insider status to begin with, which you would have had to earn by being part of and contributing to the derby world at some prior time.

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<sup>49</sup> The need for sanctions even when resources are nonrivalrous and don't raise tragedy-of-the-commons concerns derives from a general notion of "sap aversion" that is similar to the "douchebag rule." No one wants to be the kind of sap who follows the rules while others shirk. See Ernst Fehr & Simon Gächter, *Cooperation and Punishment in Public Goods Experiments*, 90 AM. ECON. REV. 980 (2000); see also Wendy J. Gordon, *Discipline and Nourish: On Constructing Commons*, 95 CORNELL L. REV. 733, 746 (2010) (discussing "sap aversion" in the context of cultural commons). In derby, the "douchebag rule" seeks to solve concerns about sap aversion by assuring that everyone does their share to contribute to the sport, and that no one takes advantage of its open character.

<sup>50</sup> Ringer/ringer example.



In terms of derby knowledge, the high degree of the resource's openness may seem puzzling. After all, if even derby outsiders can write and post on the Yahoo! RollerGirls boards, and can pay the fee to go to the seminars at RollerCon, then this threatens to degrade the dilute the quality of the knowledge generated at those sites by introducing the presence of people who don't know the sport. What cuts back against this concern is that while as a theoretical matter much of this knowledge is available to the public, a practical matter it is not. The people who read and post on the RollerGirls boards or attend RollerCon are almost without exception connected to the derby world in some way.<sup>51</sup> This is because only way you'd know that the Yahoo! RollerGirls board is around, or that RollerCon is even happening, is that the existence of these resources is something that you'd become aware of only if you were a derby insider. Much the same is true of the training seminars and informal knowledge-sharing systems that characterize the derby world. These means of accessing knowledge aren't closed off by some physical boundary or username/password hurdle, but as a practical matter their location within the insular derby community makes them unavailable to outsiders, and creates a line of demarcation between those to whom this knowledge is readily available and others who remain unaware of its existence.

A typical feature of commons as they are typically discussed in the legal literature is that access to commons is available only to members of a defined group. This feature is consistent across the literature on natural resources and cultural commons. In the former case, it's easy to understand why commons have to be limited. Natural resources are rivalrous and depletable, so that if they are opened to the world at large, they'll likely be exhausted. Limiting the commons to particular members counteracts this potential tragedy. In the cultural-commons setting, though, this concern is not available. Intangible resources are not exhaustible, so we need to tell a different story about why a constituent feature of cultural commons is that they are limited to a particular group. This concern can be recast as a question: Given that the resources governed by cultural commons are

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<sup>51</sup> In this respect, these knowledge resources are unlike many other internet discussion boards or conventions, which are hosted by experts but are frequented by the general public.

inexhaustible, why do we need to say that a constituent feature of these commons is their limited nature at all?

Thinking about how roller derby's commons is (and isn't) limited and governed gestures in the direction of a few possible answers to this question. First, perhaps the limits imposed on cultural commons (to the extent there are any) are less about profit motivation and more about creating identity-based amenities, such as the pleasure of being part of an elite institution like a university or a cool subculture like roller derby. This may do much to explain the relative success of social norms as means of governance in roller derby, while norms tend to be much weaker in natural resources where the goal is simply to extract maximum profit.<sup>52</sup> While sometimes people stick to social norms out of simple pecuniary self-interest, social norms may be more effective in communities where the expected rewards are not pecuniary, because the reputation harms of shirking are felt more strongly (and there are no financial benefits to weigh against those harms).

Second, perhaps we don't have to think of cultural commons as intrinsically limited to a certain group. Some cultural commons are so limited. Patent pools, for example, are limited to their members not out of concern that the resource is exhaustible (it clearly isn't) but because the members want to limit access to it on more of a trade-secret theory (i.e., to prevent others from capitalizing on the knowledge and competing with them). But some cultural commons simply don't seem to have the need to limit membership in the same way. Roller derby, for example, is limited largely in an informal way, pursuant to a social norm that delegates more amenities of inclusion to members who invest more substantially in the sport. Similarly, Wikipedia is open to all, but its community of more influential insiders is determined by informal norms (and some more formal rules) that correlate status and insider access with a willingness to devote one's time and effort to cultivating the resource.<sup>53</sup> So it may be that cultural commons construct their limits in this different, more organic way as a

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<sup>52</sup> Ostrom: weakness of norm governance in CA water disputes, compared with more successful use of norm governance in smaller communities with repeat players over time (e.g., Japanese mountain forests).

<sup>53</sup> Hoffman/Mehra.

means of incentivizing user investment in the development of the resource.

Finally, perhaps a premise of the question is flawed. Are all intangible resources really inexhaustible? Consider, for example, the subcultural aspect of roller derby. What makes its community distinctive, and enjoyable, is that it is relatively insular. Community is enhanced (and even dependent on) having some critical mass of participants to sustain it, but it has to be limited by some standard in order to maintain the sense of closeness and insularity that are constituent features of any community. Indeed, a community that is too broad ceases to be a community at all. So perhaps this aspect of roller derby's commons is rivalrous, though it is intangible, at least past a certain point. When the community becomes too large, each successive person's joining it depletes its quality for existing members.<sup>54</sup>

### C. Why are roller derby's commonsy aspects so governed?

The final question begins with *why*. Why is derby characterized by sharing rather than proprietary norms? In terms of why derby knowledge is treated as a commons, it is unsurprising that startup leagues and beginning skaters would prefer to have this information good so governed. Most leagues are animated by the same basic challenges when they start up—lack of capital, need for recruitment, a dearth of referees and other non-skaters to help with development, and somewhat surprisingly, a lack of the core skill itself—how to skate competitively in a roller derby bout.<sup>55</sup> Fresh meat skaters similarly share the same basic concerns with respect to skill development. A knowledge-sharing arrangement is ideal for both of these groups, because it makes sure that leagues don't have to reinvent

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<sup>54</sup> Cf. Solum comment discussing club goods. Derby seems to frustrate this prediction, though, because the sense of community has persisted—even grown—despite the sport's massive growth. Perhaps this is because the subculture has retained its countercultural character, and hence its insularity, despite its metastasis.

<sup>55</sup> Most participants are drawn to roller derby because of its distinctive style and the opportunity it provides for athletic competition, not because they have any background in competitive skating. (Some skaters do but they're the exception not the rule.) As a result, one of the startup challenges leagues tend to face is actually learning how to skate. After startup, this task becomes markedly easier as established skaters can train fresh meat.

the wheel every time they are started up, and that skaters don't have to engage in trial and error to develop skills. They can simply call on the preexisting, shared knowledge of other derby people who have gone down the same road before them, and have already created trusted methods of surmounting these same challenges.

This story helps to explain why new leagues and skaters prefer for derby knowledge to be governed as a commons, but that's the easy part. The harder question is why those who possess this knowledge don't parcel it out for a price, which they could probably do given the substantial demand for derby knowledge as leagues pop up all over the world.<sup>56</sup> Part of the answer lies in the dominant derby social norm of reciprocity. As we've seen, the roller derby world is animated by a sense of collaborative sharing. Skaters give generously of their time with no expectation of remuneration, but those who receive these benefits are expected to reciprocate.<sup>57</sup> Demanding that other skaters pay for knowledge that was conferred upon them for free would violate this share-alike principle. There may be an efficiency twist here, as well. Part of the richness of the derby knowledge commons lies in its peer-produced character, as members constantly hone the store of knowledge by adding their own insights. If knowledge were regarded as a commodity rather than a commons, people would likely jealously guard it like a trade secret, impoverishing the state of derby knowledge by robbing it of the collaboration and interchange it benefits from in its current form.

Another part of the answer lies in the distinction that some behavioral psychologists have drawn between market norms and social norms. In settings where the participants expect to engage in a commercial transaction, selling a good for a price makes perfect sense. When you go to a restaurant and the waiter brings the check at the end of the meal, it's neither surprising nor upsetting. But in settings where the participants expect to engage in friendly or romantic interactions, introducing a cash-transaction element would introduce an

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<sup>56</sup> There is a (slightly less interesting) answer to this question too. Most startup leagues generally lack capital, and would have a hard time paying trainers even if they wanted to charge a price for their services.

<sup>57</sup> The notion is somewhat similar to copyleft licensing, which allows free access to users on the condition that they also allow free access to future users. <http://en.wikipedia.org/wiki/Copyleft>

unacceptable element of commerciality to the interaction. If you went to a dinner party hosted by a dear friend, and offered her a \$100 bill by way of payment on the way out, you'd likely offend her deeply (and forfeit future dinner invitations).

The derby world is much more like the latter than the former case, in that the goal of participants is not to get rich.<sup>58</sup> Rather, people do derby in order to make friends, become part of a cool subculture, play a great sport, and maybe feel like a bit of a superstar when people cheer you on during bouts. To charge money for telling people how to start a league or how to become a better skater would be inconsistent with this volunteerist, non-profit ethic, as though derby were a commodity rather than a commons. And consider more broadly what derby would look like if leagues tightly guarded skating knowledge like trade secrets. The notion of a nationwide (and increasingly, international) derby community would falter because the knowledge would be regarded as a commodity, making leagues competitors rather than collaborators. The effect of even a bit of profit-seeking could be corrosive, since studies have shown that having just a few actors within an otherwise sharing-oriented community begin to seek profit instead can cause the entire project to change into one that is dominated by pecuniary rather than communal motives.

In terms of why derby girls govern community as a commons, there are at least two aspects to the story. One part of the explanation has to do with the nature of the resource itself. Community is intrinsically non-rivalrous and non-excludable, so governing it as a commons represents the most obvious default option. It's possible to make derby's community excludable simply by limiting access to it, but within the limits created by the derby world there's no way to parcel out community in discrete units or sell access in order that it would be rendered rivalrous. So community, and other nonrivalrous goods, may be often governed as commons because they have to be. They are either made available to all, in which case they would be public goods, or they are limited to a given group, in which case the label commons makes more sense.

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<sup>58</sup> Which would be a fool's errand anyway, since most skaters pay (rather than get paid) to do derby.

But even more than these practical constraints on creating excludability, the reason that derby's community aspects are governed as a commons are that doing otherwise would totally ruin their character. What brings people together in derby is that they are all part of a shared endeavor that they love. Even if it were possible to convert roller derby's community aspects into commodities, doing so would certainly undermine the sense of community the sport offers. Although it does take some social capital to become part of the derby world in order to share in the sense of sisterhood that is endemic to the subculture, this access is earned by investment in the shared endeavor of contributing to a league or team. To treat derby's community as anything other than a commons (at least for those who have access to it) would destroy this sense of camaraderie by introducing market norms into a context that is dominated by, and dependent upon, a sharing ethic.

Ostrom's foundational work regarded commons analysis as a way of solving a problem, and the authors of CCC similarly regard commons as a way of achieving efficiency in the collection and distribution of knowledge. Certain natural resources could be governed more efficiently as commons than as private goods. Some cultural commons have this character. Patent pools are an example of a commons that is deployed primarily to increase economic efficiency. In some respects, governing roller derby's commons has efficiency advantages. Treating knowledge about league development and skating skill as a commons rather than as proprietary information lowers the costs of league startup and player development, and helps to foment the spread of the sport around the globe.

But the foregoing discussion in this subpart indicates that commons are about more than just solving a problem and/or enhancing efficiency. One reason that resources are governed as a commons may be necessity, such as in the case of roller derby's community. Of more moment, though, is the other explanation for treating derby's knowledge and community as commons. Here, the choice of governance in the form of commons likely derives more from a conscious choice about constructing the world in a particular way than simply a desire to achieve a more efficient means of allocation or

distribution. As we've seen,<sup>59</sup> the act of sharing itself generates a different atmosphere than commercial exchange. Derby people choose to govern their worlds in a commonsy manner because they like the collaborative sense of shared community that commons contribute.<sup>60</sup> So the choice to govern as a commons is not just a choice about efficiency, but is a choice for how to construct the relationship between the community's members and to create a commercial or collaborative milieu.

### III. ROLLER DERBY'S LESSONS FOR CULTURAL COMMONS

#### A. Crafting the contours of cultural commons

Let's begin with a taxonomy that describes some of the ways that capital is aggregated for the purpose of production. First, there are firms. These, according to Coase at least, arise when the costs associated with aggregating resources are lower than the transaction costs associated with using markets to acquire those same resources. Groups finding that it's in their interest to join together as a firm pool their resources, and then select managers to determine how these resources should be allocated. Law firms are a familiar enough example. It's easier and more profitable for partners to band together and capitalize Dewey, Cheatham & Howe than to individually transact for the resources needed for law practice, such as a library, secretarial support, photocopiers, and the like. These pooled resources are then allocated by the firm's partners, typically led by the managing partner.

In a commons, similarly, some resource is made available to a limited group of users. The classic example is the English village green, where townspeople (and only townspeople) were entitled to

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<sup>59</sup> See Part II.B, above, on sharing.

<sup>60</sup> This raises a related puzzle, which is whether some groups might not prefer commons so much that they opt for them even when they're not welfare-positive. If my conjecture about the atmospheric advantages of commons is right, this would have to be true (or at least plausible) in some cases. Some whisper of this is present in the derby world, where a nontrivial contingent wants to convert roller derby into a mainstream sport like tennis or basketball, complete with a pro league and ESPN coverage. It's far from clear whether this would sell, but it's interesting that so many derby girls react negatively to this idea, because even if it were profitable, it would change the DIY, volunteerist character of the derby world for (in their view) the worse.

graze their sheep on the central village green. Both firms and commons share two constitutive features: pooled resources and access only by a selected group. In both Dewey, Cheatham and the English village green there is a shared resource that can be accessed only by specified members of a particular group. The distinction between the two forms, at least according to the dominant, Coasean account of the firm, is that firms are centralized rather than distributed. This point has two valences. First, firms are characterized by management structures that dictate how the shared resources will be allocated, and second, the profits generated by the firm are pooled and then divvied up, rather than allocated exclusively to the user who produced them. By contrast, commons are distributed. That is, each individual member can choose how to use the outputs they extract without the input of a manager,<sup>61</sup> and profits accrue to each member separately based on however profitable their use of the commons resource turns out to be.<sup>62</sup>

We can further distinguish between natural resources versus cultural commons. In some respects, these two commons operate similarly. Patents, for example, may be pooled for many of the same reasons that timber or fisheries or village greens are. It may often be easier for a discrete group of patentees to share them rather than bearing the transaction costs associated with licensing discrete uses. The nonrival character of cultural commons may affect how such commons are managed, though. Because the subject matter governed by these sharing arrangements is typically nonrivalrous, there is less need to have a governance structure in place to limit extraction in the interest of avoiding exhaustion.

Within the cultural commons category, one further distinction may be possible. In many cultural commons (and certainly almost all natural resources commons), the common resource at issue is used as an input to create some private good for the benefit of the user. Members of a group fishery use their access to extract fish in order to

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<sup>61</sup> Limits on how much output each member can extract are likely dictated by some central governance authority. But these authorities, unlike in firms, do not dictate how those resources, once extracted, are to be used.

<sup>62</sup> Profits may be allocated differently, according to some pre-set sharing arrangement rather than to each member based on their productivity. Some patent pools have this structure.



make money or to eat. Members of a patent pool use their access to the shared patents in order to develop new inventions for their private profit.<sup>63</sup> In many other cultural commons, though the output of the commons, not just the input, is treated as a commons as well. This input/output quality tends to be characteristic of commons that are not designed primarily to earn profits for their members. Many peer production projects have something like this structure.<sup>64</sup> As I've discussed above, Wikipedia's distributed creators draw on a public resource (general knowledge about the world) to create another public one (an online dictionary).<sup>65</sup> Roller derby falls into this category as well. Derby girls who acquire knowledge about the sport are expected, per the subculture's reciprocity principles, to share whatever insights they may gain freely with other skaters. And to the extent that derby people enjoy the sense of community that the sport generates, they are expected to help cultivate this sense of community for others as well.<sup>66</sup>

This taxonomy introduces two additional valences along which cultural commons might be investigated. One is a why question: Why, or for what purpose, does a given commons exist—to gain profit for its members (e.g., patent pools) or for some non-profit motivation like expanding social knowledge (e.g., universities) or creating community for its participants (e.g., roller derby). The second question, which I think is related to the first, is a where question: Where is the commons? That is, is it just on the input side or on the output side as well? My conjecture is that where the motivation for the production at issue is not for profit, we will find commons on the input/output rather than just the input side of the ledger.

## B. Cultural commons and labors of love

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<sup>63</sup> The profit may accrue to an individual company or may be shared among the members of the group, but in any event it's certainly not shared with the public.

<sup>64</sup> Whether many of these peer-production projects are commons in a strictly defined sense is not clear, though. With Wikipedia, for example, one could say that users take a public good (knowledge) and recast it into another public good (knowledge in a different form).

<sup>65</sup> Wikipedia is not a commons, though, because access to it is not limited. It's more in the nature of a public good that is transformed by volunteer labor into another public good.

Samuel Johnson once said, “No man but a blockhead ever wrote, but for money,” proving that even august men of letters can get things totally wrong. It’s no surprise that people produce, and especially that they produce cultural artifacts, for a variety of motives far more mysterious and complex than the desire for a buck. The institution of gift-giving furnishes a ready example of the pervasive presence of altruism in human behavior.<sup>67</sup> We have been surrounded for centuries by institutions that generate and share knowledge freely rather than for profit: universities.<sup>68</sup> Perhaps less obviously, humans continue to spend enormous financial and personal resources on having children, even though studies increasingly show that reproducing tends to decrease happiness.<sup>69</sup> Modernly, the practice of peer production furnishes an example of conduct that confounds traditional rational-choice explanations of productivity.

CCC analysis forces us to confront these hard questions about why people produce, pushing past the obviously incomplete explanation that they do so solely for pecuniary reasons. The taxonomy of shared resources I outlined in the last subpart helps to isolate this issue by slicing the notion of commons along a different axis. Typically, the analysis of commons is structural, looking at how resources are governed in common rather than as private goods, and considering the mechanisms that they use to effect this governance. Taking this structural question one level further, asking how the outputs of the labor of the commons’ members is governed, exposes a different kind of fault line within the broader category of cultural commons. This move in turn raises a different level of analysis, one that is motivational, not structural. Patent pools are different than roller derby not only because the latter treats outputs as well as inputs

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<sup>67</sup> See generally LEWIS HYDE, *THE GIFT: CREATIVITY AND THE ARTIST IN THE MODERN WORLD* (1979) (characterizing exchange among creative artists as a kind of gift exchange).

<sup>68</sup> See Michael J. Madison, Brett M. Frischmann, & Katherine Strandburg, *The University as Constructed Cultural Commons*, 30 WASH. U. J.L. & POL’Y 365 (2009) (discussing the university as an instance of a cultural commons).

<sup>69</sup> See Jennifer Senior, “All Joy and No Fun: Why Parents Hate Parenting,” *NEW YORK MAGAZINE*, July 4, 2010, available at <http://nymag.com/news/features/67024/> (“Most people assume that having children will make them happier. Yet a wide variety of academic research shows that parents are not happier than their childless peers, and in many cases are less so. This finding is surprisingly consistent, showing up across a range of disciplines.”).

as commons, but also because derby, unlike patent consortia, are motivated other than by profit.<sup>70</sup>

Much has been written that seeks to explain why groups, such as derby skaters, or Wikipedians, or the distributed creators of Linux, engage in peer production in the absence of a pecuniary motivation.<sup>71</sup> One way to explain this is simply by expanding the welfare calculus to reflect these additional motivations. One could simply include intrinsic hedonic pleasure and sociopsychological benefits along with potential monetary gain into the overall cost-benefit evaluation, so that some combination of these three factors must overbear the costs of engaging in the production in order to cause people to engage in it.<sup>72</sup>

I offer a pair of conjectures that the motivations to create cultural goods, at least those that fall on what I call the input/output side of the scale, can be so easily added together a welfare curve merely as another variable, because they are incommensurable. Wealth, whether measured in dollars or euros or Israeli shekels, is a relatively easy kind of value-measurement to understand, with a shared understanding of its measurement scale, which works well for telling us how much an employer values us (salary) or how much a coffee costs (too damned much these days). Other values lack this quality. Constitutional scholars often speak of the importance of free speech or human dignity, for example, in terms that do not easily translate into dollar terms.<sup>73</sup> This explains why, for example, there are many people who won't do certain things even when they might be wealth-maximizing.<sup>74</sup> These non-commensurable values appear to confound traditional welfarist analysis because they simply cannot be

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<sup>70</sup> Motives are, of course, always mixed to an extent. One can imagine pooling patents for the purpose of profit, scientific investigation, or some of each.

<sup>71</sup> E.g., Benkler, Hoffman/Mehra, Lerner/Tirole.

<sup>72</sup> E.g., Benkler, Coase's Penguin (articulating a formula that includes sociopsychological factors as well as intrinsic hedonic enjoyment along with pecuniary reward in the additive cost-benefit calculus).

<sup>73</sup> See Cass Sunstein, *Incommensurability and Valuation in Law*, 92 MICH. L. REV. 779 (1994).

<sup>74</sup> For example, most people in a committed, exclusive relationship wouldn't have sex outside of that relationship even for a lot of money. This example may be naïve but I'd like to believe it's right. In any event, most people who engage in extra-relationship affairs do so for personal, not pecuniary reasons, which I think illustrates the point in a different way.

scaled together, any more than it would make sense to express love for another person in dollar amounts.<sup>75</sup> Motivations, too, may suffer from incommensurability problems. It's well-established that whether other motivations, such as altruism, are present, adding money into the calculus may decrease, rather than increase, the inclination to engage in whatever behavior is at issue.<sup>76</sup>

The collective construction of the roller derby world in particular seems to confound the traditional, additive welfarist calculus. Why people do derby varies from skater to skater. Possible motivations include fun, fellowship, and some sense of fame, and in all cases some complex mix of these and other rationales is at play. It's impossible to predict how the world would look different if skaters were paid to compete (though it's certainly hard to imagine them turning down the offer). But what's clear is that making derby a for-profit endeavor would profoundly change the character of its subculture, for all the reasons discussed before. Now, derby skaters share knowledge freely thanks to the community's collaborative spirit. People also spend substantial quantities of their free time clicking on NASA maps of Mars and correcting inaccuracies in Wikipedia entries. Whatever the particular motivation at issue, one thing that seems clear is that money cannot be lined up alongside the various other factors that motivate people to share derby knowledge freely, or to contribute to its insular community, or engage in any of the other activities that are driven by something besides a desire for wealth. Indeed, wealth-seeking and these other motivations likely operate at odds, rather than complementarily, with one another.

This point suggests a further one. Perhaps part of the reason that pecuniary and nonpecuniary motivations fit poorly with each other in a traditional welfare calculus is that they don't belong on the same side of the ledger at all. In a traditional welfarist analysis, people engage in labor because they are motivated by monetary rewards. The drudgery of labor can only be tolerated if there's a sufficient cash payout at the end of the day to make it all worth it. Derby and other collaborative/creative endeavors seem to confound

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<sup>75</sup> But cf. the practice of giving pricey engagement rings.

<sup>76</sup> E.g., Titmuss blood-bank study; Ariely.

this calculus. Why, a traditional welfarist may wonder,<sup>77</sup> would people engage in labor for free?

The answer to this puzzle is that in some contexts, labor is not a drudgery to be borne in exchange for some reward (whether money, or fame, or status). It may be that the traditional cost/benefit calculus fails to accurately describe how people actually think about production. The traditional approach is that we gag down the bitter pill of work in order for some kind of reward (typically, a salary), so that one would only engage in this exchange if the benefits overwhelmed the costs of the effortful endeavor. But roller derby seems to confound this notion that work is a drudgery cost that is expended in exchange for some sought amenity. Rather, in derby and other similar kinds of commonsy forms of production, the labor *is* the reward. People don't engage in these endeavors despite the fact that they are paid. The act of participating in peer production projects like Wikipedia, or roller derby, is itself the thing that people find rewarding. It is a labor of love.

Labors of love are hard to locate along a traditional cost-benefit curve, because love itself is mysterious and impossible to quantify, whether it's love for a person or an activity. One indication of a labor of love, though, may be the persistence of a given activity despite any other logical explanation, and often in the presence of substantial frustrations and burdens that appear to make the activity a net negative from the perspective of traditional cost-benefit analysis. Parents tolerate the myriad frustrations of child-rearing because they love their sons and daughters, and this dynamic seems uncaptured by the consensus studies showing that having children tends to make people less happy than they would be otherwise. Similarly, roller derby often seems to make the people who participate in it miserable, whether due to injuries, the myriad frustrations associated with league creation and management,<sup>78</sup> or just the immense time investment required to participate in the sport.<sup>79</sup> And yet people do it, despite the

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<sup>77</sup> As have so many of the people, academic and otherwise, to whom I've spoken about this issue.

<sup>78</sup> Hell on Wheels film chronicling the development and splintering of early roller derby in Austin.

<sup>79</sup> Any of a myriad posts from RGs lamenting the difficulty of the work/life/derby balancing act.

enormous difficulties they face. The women who manage the Master Roster, which administers the uniqueness of derby names, spend tens of hours a week on top of work and family obligations, on this project. And while their investment may be more substantial than average, all derby people give selflessly of their time and effort in the absence of any meaningful remuneration, and even though it appears to be welfare-negative. Why? The answer is as apparent to derby people as it is elusive for outsiders. People do derby because they love doing it.

#### CONCLUSION

There will be a conclusion in this space.