

The Man Who Mistook His Wife for a Book
誤把妻子當作書的男人

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1. Introduction: The Self Owning Self And the Problem of Relationality

This paper examines the link between ideas of personhood and self that underlies western liberal property regimes. It attempts to understand the manner in which thinkers like Locke create a co-terminus between the ‘self’ and ‘own’. It then poses the question of whether we can look at alternative ideas of the self within western and non-western metaphysics, and how the move towards a relational self helps us rethink our assumptions about property and personhood, especially in relation to the world of knowledge and culture.

My account of the puzzle of property and personhood, in relation to intellectual property begins with what seems to be a standard copyright dispute. In 1999, three members of the eighties band Spandau Ballet, sued Kemp, the fourth member of the band for not sharing the royalty in a song “Glow”, which they claimed they were joint authors of¹. Kemp claimed that he was the sole author of the song, and that he was not obliged to pay them any share of the royalty. The aggrieved members of the band argued that while Kemp presented the ‘bare bones’ of a tune to the other band members, the band went through a process of jamming – whereby “someone started to play and the rest joined in and improvised and improved the original idea”, in other words that the creation of the songs were necessarily a collaborative process and that the songs should be considered a work of joint authorship.²

The court went into an analysis of the manner in which music was created, and while acknowledging that while there was a collaborative process that went into the composing of the music, they held that it was Kemp who should be considered the sole creator of the songs. They argued that Kemp “developed, and fixed in his musical consciousness, the melody, the chords, the rhythm or groove, and the general structure of [each] song from beginning to end...” before playing it to the band and inviting the band as a whole to rehearse its performance as an ensemble with a view to recording it. The judge accepted that the other band members’ vocal and instrumental performances were skilful individual interpretations of the musical works that Kemp had composed. He however held that an interpretation of a musical work was not the kind of contribution that the law of copyright could accept as sufficient to constitute the interpreter an author of that work: “the contributions need to be to the creation of musical works, not to the performance or interpretation of them”

One of the points raised by the aggrieved band members was that Kemp did not have any final musical notations to prove that he had written the song on his own. The judges argued that while “[p]opular music is not usually created that way, and [that] Gary Kemp did not create his music that way” (ibid) because he never wrote his music down on paper, what Park J. looked for in the evidence, and duly found there, was an image of Kemp “fix[ing] in his musical consciousness” (ibid), if not in notated sheets of music, every element of each musical work which was in dispute between the parties on his own³

¹ Hadley v Kemp [1999] EMLR 589

² For an excellent account of this case and the problems that copyright law has with musical works, see, Anne Barron, Copyright Concepts and Musical Practices: Harmony or Dissonance, (2006) Vol.15(1) Social and Legal Studies; For an interesting account of ideas of creativity and ownership amongst musicians in India see, Rajesh Mehar, Understanding Notions of Creative Ownership Among Contemporary Musicians in India, <http://community.livejournal.com/whosemusic/>

³ Hadley v Kemp [1999] EMLR 589

1. 前言：擁有自我的自我以及關係性的問題

本文檢視關於人的概念以及自我的概念之間的關連，這之間的關連乃是西方自由主義傳統下的財產權制度的基礎，本文試圖瞭解思想家如 **Locke** 等如何將「自我」以及「所有」二者視為一體之兩面，本文接著將探討我們能否將目光移轉到西方與非西方形上學中關於自我的不同概念，以及此種朝向關係性自我的轉向如何能夠有助於我們重新思考我們對於財產以及人的預設，尤其是在知識與文化的世界中。

我對於財產以及人的概念之間的想法，在智慧財產權的部分起於一個看起來是典型的著作權爭議。在 1999 年，風行於八〇年代的 **Spandau Ballet** 樂團的三名成員主張他們同為歌曲 *Glow* 的共同作者，但卻沒有分到歌曲的權利金，因此這三名成員一起控告了該團的另一名成員 **Kemp**。**Kemp** 則聲稱他是這首歌曲的唯一作者，他並沒有義務和另外三名成員平分權利金。作為原告的三位成員們指出，當時 **Kemp** 呈現在其他團員之前的只是一個旋律的粗胚，樂團成員們透過一個 **jamming** 的過程——即「由某人開始演奏而其他成員漸漸加入，在此即席演奏的過程中逐漸修飾改善最原初的想法」，也就是說，歌曲的創作必然是一個集體合作的過程，而歌曲應被認為是幾位成員的共同著作。

法院分析音樂創作的方式，認為雖然在作曲部分有成員共同創作的過程，**Kemp** 仍是歌曲的唯一作者。法院認為 **Kemp** 「在他的音樂意識 (**musical consciousness**) 中發展了歌曲的旋律、和弦、節奏以及（每一首曲子）從頭到尾的大致架構，並使之成形」之後才在樂團之前演奏並邀請樂團整體以錄音為目標來排練。法官同意樂團其他成員的演唱與器樂表演的部分是就 **Kemp** 所譜之曲的巧妙的個人詮釋，但法官認為對於一首音樂著作的詮釋，著作權法認為詮釋者尚不足以被視為該作品的作者：「貢獻必須是在於音樂作品的創作，而不是音樂作品的表演或詮釋」。

做為原告的樂團成員所提出的一點是 **Kemp** 並沒有任何最終版本的樂譜來證明該首曲子是他自己所譜寫，法官認為「流行音樂的創作過程通常不是如此，**Gary Kemp** 也並不是以此方式來創作他的音樂」，因為他從來不曾將他的樂曲寫在紙上，而 **Park** 法官在本案中試圖尋找並尋獲的證據，是 **Kemp** 的一個形象——即 **Kemp** 即使未將歌曲具體地寫在樂譜上，「每件有爭議的音樂作品的每個元素都由他自己在他的音樂意識中成形」。

To buttress his argument, Park J. held that “In my Judgement a song devised by Mr. Kemp and worked up by him in his own mind to the developed stage at which he presented it to the band was already a musical work.... [Moreover] the songs in their recorded form [i.e. the form in which they were played and sung by the band as a whole after lengthy rehearsals] were the same musical works as the songs which Mr. Kemp had composed in his mind and his memory.

The Spandau Ballet case serves as an interesting, and in many ways typical problem that copyright law faces in its adjudication of claims of authorship and creativity. My interest in the case emerges from the ways in which the case attempts to deal with the questions of collaboration, property and personhood. In the Spandau Ballet case, there seems to be three distinct sets of claims made about relationships that emerge:

1. Kemp’s claim (affirmed by the court) that the song was written solely by himself and hence it is his own song (relationship to self)
2. As a result he owns it exclusively (relationship to the work)
3. And he is entitled to exclude his collaborators from a share in the royalty arising from the song (relationship to others)

This goes into the heart of the issue, and is in many ways central to our understanding of the philosophical divide that exists in debates on intellectual property. At the heart of the debate lies the issue of property and personhood. The language of Property narrates the individual as a proprietor of one’s own person, and it gives rise to a theory of personal identity in which the self and the own are often equated as being the same, or at least existing within the same orbit of meaning whereby the one can be used interchangeably with the other. It flows directly from liberal political theory in which every individual is considered to be the proprietor of his own person.

2. Locke and the Equation of My Self/ My Own

The philosopher who is most often identified with this theory of property and the self is of course John Locke. Locke remains one of the exemplar philosophers of the seventeenth and eighteenth century, a period in which many of our ideas of selfhood emerge. In many ways, the question of personal identity was the prime question that motivated Locke’s enquiry, and his theories set the stage for the philosophic and juridical establishment of what Macpherson calls the theory of “possessive individualism”.⁴ While the question of personal identity troubled many philosophers even before Locke, it was with the publication of Locke’s *Two Treatises on Government* and *Essay Concerning Human Understanding* that we have the establishment of the most coherent argument linking theories of identity to property. It is interesting to note that Locke initially did not have a chapter on consciousness and identity, and it was at the suggestion of William Molyneux, that he included a section on *principium individuationis* to the second edition of his essay.

Consider for instance the following statement by Locke

⁴ C.B. MacPherson, *The Political Theory of Possessive Individualism: Hobbes to Locke*

為支持他的論證，Park 法官表示：「在我的判決中，由 Mr. Kemp 在他腦中所起頭並發展的歌曲在他呈現於樂團之前便已是一首音樂著作」，（甚且）樂曲在他們被錄音的形式（即樂曲由樂團整體在漫長排練之後表演及演唱的形式）仍是 Kemp 先生在他的頭腦與記憶中所譜的同一件音樂作品。

Spandau Ballet 樂團案例是著作權法在面對有關作者及創作的爭議的一個有趣且典型的案例。我對這個案例的興趣起於本案中對於共同創作、財產及人的概念所嘗試做的處理，其間所產生的關係似乎有三種不同的訴求：

1. Kemp 的訴求（為法院所接受），認為該首歌曲是由他自己所獨立創作，因此是他自己所擁有的歌曲（與他自己的關係）。
2. 因此他對該首歌曲有排他性的所有權（與該作品的關係）。
3. 他有權排除與他共同創作者與他分享因此首歌曲所衍生的權利金（與其他人的關係）。

這帶我們進入這個議題的核心，並在許多方面上是我們理解目前有關智慧財產權論辯中所存在的不同哲學思考的關鍵。這些論辯的核心是關於財產與人的概念的問題。財產權的語言將個人描述為他自己這個人的所有者，而由此產生關於個人認同的理論，在此理論中，自我與所有經常被劃上等號，或至少是在一個可以被交互使用的意義範疇中，這種想法是由自由主義政治理論而來，在自由主義政治理論傳統下，每一個個人被認為是他自己這個人的所有者。

2. Locke 與我自己／我所有之間的等號

最經常被與此一關於財產權和自我的理論劃上等號的哲學家想當然爾是 John Locke。Locke 向來是十七、十八世紀代表性的哲學家，許多關於我們對於自我的概念源於此一時期。在許多面向上，自我認同是當時主要激發 Locke 的問題，而他的理論為後來 Macpherson 所稱「所有式的個人主義 (possessive individualism)」理論建立了哲學與法學的基礎。有關個人認同的問題困擾著許多甚至在 Locke 之前的哲學家，而直到 Locke 的政府論二講 (Two Treatises on Government) 以及人類理解論 (Essay Concerning Human Understanding) 出版之後，才建立了連結認同理論與財產權概念的最為一貫性的論點。有趣的是 Locke 起初並沒有一個關於意識與認同的章節，而是在 Willaim Molyneux 的建議之下，他才將個體性原則 (*Principium individuationis*) 加入他文章的第二版。

以下面 Locke 的這一段話為例：

*“Identity of persons lies not in having the same numerical body made up of the same particles, nor if the mind consists of corporeal spirits in their being the same. But in the memory and knowledge of ones past self and actions continued on under the consciousness of being the same person whereby every man owns himself”.*⁵

In Locke consciousness is the question of mental operations that appropriates the self to itself, where to appropriate means to identify with or to make a property of. The use of the word *own* is both as an adjective (my own thought) and as a verb (to confess). The relationship between the self and the own is therefore dependent on a circularity whereby ideas of identity and identification on the one side and appropriation on the other continuously exchange their function and become virtually equivalent. The relationship between the self and the own is dependent on a self fulfilling prophesy where “what I can consider as me, myself is my self and ‘my’ self is some ‘thing’ that I own, or that I must own (confess) is mine, was done or thought by me, has become my own because I appropriated it to me by doing it or thinking it consciously”.⁶

This duality also informs much of western metaphysics and political theory, whereby consciousness sets the criteria of personal identity, and a political theory where the possessive individual can become generalized or universalized because any individual ought to be considered as proprietor of his own person or a self owning personality to the extent that s/he is such a proprietor. Balibar, citing Derrida, claims that this reason for this equivalence is the metaphysics of (a)appropriation where linguistic expression is provided by the circularity of meanings between my self and my own; or the fact that you can explain self only by referring to own and own only by referring to the self; This is at the heart of European psychological, moral and juridical and political individualism and at the surface of it, it does seem that my self and my own is one and the same thing.

In a fascinating re-reading of Locke, Balibar begins with what seems to be a linguistic problem within Locke, but soon turns out to be plagued with all kinds of metaphysical problems. The co-terminus of the self and the own in Locke appears at first glance to pose a problem of translatability. For instance if you attempt to translate the dual terms self/own into French, then while the self can more or less accurately be translated as *Moi/ Soi*, the closest French word for Own is *Le Propre* or *Propre* (with its very close relation to property). The pair self/own and *Moi/proprie* however cannot be considered as accurate equivalents. One could blame the inherently flawed project of translation, but this linguistic problem for Balibar becomes a far more serious problem. Balibar for instance argues that this problem could well be treated on par with other conceptual/linguistic problems that have plagued philosophers for years such as the precisely meaning of the word being in different languages. He wonders if it is the semantic coincidence available in English that enables an easy co terminus between the self and the own that provides for Locke’s theory of identity and property.

⁵ John Locke, Journal entry for 5 June 1683

⁶ See, Etienne Balibar, *My self and My own: One and the Same?*, in Bill Maurer and Gabriele Schwab, *Accelerating Possession: Global Futures of Property and Personhood*, (New York: Columbia Univ. Press, 2006)

「人的認同不在於有著由同樣粒子組成的同樣數量的身體，也不在於其由生物性的肉體精力所構成的記憶，而由於人對於過去的自我與行動的記憶與知識在作為同一個人的意識下持續著，因此每個人擁有他自己。」

Locke 理論中意識是在精神層面對於自我概念的佔有 (appropriation) 的問題，佔有在此是指與之產生認同或將之佔為一己之財產。所有／承認 (own) 這一詞的使用同時是作為形容詞 (我自己的想法 my own thought) 以及動詞 (承認 to confess)，在「自我」與「所有／承認 (own)」兩個概念之間因此有著相互依賴的循環關係，其中一方面是關於認同與同一性的概念，另一方面則是佔有的概念，由於二者間意義不斷進行地交換而使二者幾乎相互等同。自我與所有之間的關係仰賴於一個自證其實的預言，即「我所認為是我自己的是指：我自己是我的自己而『我的』自己是我所擁有的某種『東西』，或我必須承認 (own/confess) 是我所有的、我所做的或我所想的，這都變成是我所有的，因為我透過作為或有意識地思考而將之佔為我所有」。

此一雙重性也有助於瞭解西方形上學與政治理論，因為意識作為個人認同的準則，而在這個政治理論中由於任何個人都理應被當作他自己的所有者或者一個擁有自我的人，以致於每個人都作為一個所有者，因此所有性的個人逐漸得以被一般化與普世化。Balibar 援引 Derrida 指出畫出此一等號的原因是出自關於佔有的形上學，在其中語言表達被我自己和我所有這種意義的循環所限制，或由於事實上我們只能透過所有的概念來解釋自我的概念，反之亦然。這是歐洲心理學、道德學、法學和政治學的個人主義的核心，而由表面看來，它的確似乎認為我自己和我所有是同一件事。

在一段對於 Locke 的精彩重新闡釋中，Balibar 由一個看似 Locke 中語言學的問題出發，但隨即為各種形上學的問題所困擾。Locke 中猶如一個銅板的兩面的自我與所有概念起初看來是一個可翻譯性的問題，舉例而言，如果你試圖將這個有雙重意義的自我／所有的詞翻譯成法文，雖然自我可以多多少少翻譯成 Moi/Soi，最接近所有的法文詞彙則是 *Le Propre* 或 *Propre* (這個詞的意義與財產權關係十分密切)。英文的自我／所有 (self/own) 和法文的 (Moi/proper) 卻無論如何如法相同。我們可以說翻譯本質上就無法避免錯誤，但此一語言學上的問題對於 Balibar 而言卻是一個更為嚴重的問題，比如說 Balibar 認為這個問題可以被想作其他長期以來困擾哲學家的概念性／語言學性的問題，如存在 (being) 這個概念在不同語言中的確切意義。他懷疑是否英語語義上的巧合性有助於建立自我與所有之間的關連性而促成了 Locke 認同與財產權的理論。

To test Balibar's hypothesis, I attempted to look for an equivalent in Hindi of the idea of my self and my own; The closest translation that I could find emerges from the phrase "Mere Apne" which is the equivalent of "My Own". Where the word Apna refers to the idea of own, but not merely in terms of possession. The phrase Mere Apne could refer to something as being mine, but at the same time this claim is not limited only to an assertion of delineation and exclusion, but refers instead to a certain idea of relationship of proximity between the self and an other. The word Apnaapan for instance translates as closeness, so that *Mere Apne* is a reference to the idea of a relational proximity;

This is interestingly mirrored by Balibar's reading of a poem by Browning

My own, confirm me! If I tread This path back, is it not in pride To think how little I dreamed it led To an age so blest that, by its side, Youth seems the waste instead?

Baibar initially reads the poem the poem as being addressed to oneself, or as self interpellation, and an appeal to memory, but later realizes his mistake when discovers another segment of the poem

My own, see where the years conduct! At first, 'twas something our two souls....

My perfect wife, my Leonor,
Oh heart, my own, oh eyes, mine too,
Whom else could I dare look backward for,
With whom beside should I dare pursue
The path grey heads abhor?

So what began as a mere linguistic dilemma drives us back to the foundational question of the nature of self and subjectivity which are invoked when we speak of something being our own. The idea that 'my own' could possibly refer not merely to a sovereign claim but also to a relationality conflicts with the world of property norms where a reference to an own is an act that makes a claim of absolute possession; declares the ability to exclude others and asserts the legal ability to alienate what you own.

And yet at the same time it seems that there indeed does exist a large set of claims within diverse cultural traditions where a claim towards something or someone may lie more in the domain of your relation to the person or object than as a claim of possession. In nehiyawin (Cree cosmology) to refer to something as mine does not imply necessarily ownership, but refers instead to a relational proximity to objects (animate and inanimate) and beings and the accompanying responsibilities and obligations that emerge from such a relational proximity.

為了來測試 Balibar 的假說，我試圖尋找印地語中與我自己和我所有的概念等同的詞彙。我所能找到的最接近的翻譯是由 Mere Apne 而來，而與「我所有」的概念等同，Apna 一詞意指「所有」，但不只是「佔有、控制」(possession) 之意，Mere Apne 可指某件事物是我的東西，但同時這種主張不只是畫出領域的或排他的主張，而指某種自我與他人之間的親近 (proximity) 關係。舉例而言，Apnaapan 這個字可以為親密 (closeness)，因此 Mere Apne 可指一種關係性的親近性 (relational proximity)。

有趣的是 Balibar 對於 Robert Browning 一首詩作的理解也反映了類似的情況：

我的所有，請給予我肯認！當我尋原路而回，如果想到我多麼不曾夢想它會將我朝向幸福的年代，我是否無法引以為豪？而在這道路旁，青春似乎僅是一片荒蕪嗎？

Balibar 起初認為這首詩是自己對這著自己說話，或者是一種對自己的質問，以及對於記憶的訴求，但在發覺這首詩的另一個段落之後則理解了他先前所犯的錯誤：

我的所有，看看這些日子帶領我們往哪去！起初，它曾是某種我們兩個靈魂所...

*我完美的妻子，我的 Leonor
這心，是我所有，這雙眼，也屬於我
還有誰我膽敢回頭去尋找呢？
還有在誰的身邊我膽敢去追求？
那許多白頭老人所恐懼的道路*

因此起初僅是語言學上的矛盾，卻把我們帶回了我們每每提及某件事物是我們所擁有所時所引發的關於自我與主體性的本質此一根本性的問題，所謂「我所有」的概念可能可以指稱不僅僅是獨立至高的主權概念，而同時也是一種與財產權規範世界的關係性的衝突，在此指稱某一事物是某人所有的行為是在作一種絕對性的佔有／控制的主張，對外週告此人有能力排除其他人並主張此人依據法律可以讓渡其所有物的能力。

但同時我們也可以看到在不同的文化傳統中一個對某一事物或某人的主張可能並不僅止於對之加以佔有／控制的主張，例如在 Nehiyawin (Cree北美洲原住民 Cree 族的宇宙觀) 中，指稱什麼東西是我的並不必然是一種所有權的主張，而是一種對於（有生命或無生命的）物體與存有一種關係性的親近性，同時伴隨著在此一關係性的親近性中所由生的責任與義務。

3. Relational Proximities and the Reworking of the Self

And the distance between two such sites can be measured as a stretch of songs
Bruce Chatwin, Songlines

Thinking of our relation to the world of knowledge and culture via the trope of proximity enables us to rethink our relations to our work, to our selves and to each other, not as distinct sets of legal relations bound together by the idea of rights, but as a continuum which blurs the boundaries between rights, obligations and relationalities. Consider for instance the following statements, each of which refer to a certain claim which sounds deceptively similar but are in fact exist on very different ethical and legal registers.

This is my Pen

This is my Friend

This is my Poem

While the first statement refers to the classical conception of the claims of possessive individualism where the self/ owner exist as interchangeable concepts. This is 'my' pen and hence I own it. The second statement takes us into the domain of relational proximities where an assertion of someone being your friend does not lead to an assumption, either of ownership or of exclusion but into the domain of your closeness/ *apnaapan* that you share with your friend. Thus the statement that this is my friend could well be mapped in terms of its presence in Hindi as *Mere Apne* or a sense of own which leads to an understanding of how close you are to someone.

The third statement is perhaps the most deceptively because to assert that this is my poem within the social imaginary of intellectual property is to make a claim that sounds very much like This is My Pen, whereas in fact it might be more accurate to think of it in terms of This is my friend. And it is in this liminal space where poems look like pens, that friendships get lost and property takes over.

What is it about the logic of property and the language of rights in the domain of the intangibles that create this act of misrecognition? The ontological character of information and knowledge and cultural practices provide them with an unboundedness, and very much like the world of social relations, they are not exhausted by acts of circulation. When was the last time when we heard of a problem of someone having too many friends. The imposition of strictly defined norms of property rights with its imagination of legitimate rights holders and trespassers enforce a transition which converts the possibilities of friendship into acts of hostile takings.

3. 關係性的親近性與自我概念的重新建立

而這兩個點之間的距離可以用歌曲的伸展來測量

Bruce Chatwin, Songlines

由親近性這樣的觀點來思考我們和知識與文化世界的關係，有助於我們重新思考我們和我們作品、我們和我們自己以及我們彼此之間的關係，這些關係不是一套由權利概念所包裹起來的特別的法律關係，而是一個在權利、義務和各種關係之間界線模糊的連續體，舉例來說，我們可以來想一下以下的幾種陳述，每一個都指向一種聽起來很相似但其實在道德上和法律上卻十分不同的主張。

這是我的筆。

這是我的朋友。

這是我的詩作。

第一個陳述是典型所有式的個人主義的主張，其中自我以及所有者二者乃是可以交互使用的概念。這是「我的」筆，因此我擁有它。第二的陳述則帶領我們進入關係性的親近性的範疇，其中一種某人作為你的朋友的主張並不會帶有一種所有權或排他性的預設，而是一種你和你的朋友所共同分享的親近性的領域。因此這個關於「這是我的朋友」的主張與其印地語中與之對應的 *Mere Apne* 十分接近，這種所有的概念應理解為你與某人之間的親近性。

第三個主張或許是最令人困惑的，因為在智慧財產權的社會想像中「這是我的詩作」是一種聽起來非常像「這是我的筆」的主張，然而事實上這個主張卻更接近於「這是我的朋友」的意義。在這種詩作看起來像是筆的情況下，友誼的意義消逝而被財產權的觀念取而代之。

在無體物的領域中這種財產權的邏輯和權利的語言為何會造成這種錯誤認知？由於資訊、知識與文化踐行的本質，資訊、知識與文化帶有一種無邊界性，而且非常接近社會關係的領域，它們並不會因為流通而耗竭。我們幾時聽說過有人覺得有太多朋友是一種問題？倘若強加嚴格定義的財產權規範以及其所想像的合法權利所有者和侵犯權利者等觀念，將使可能是友誼的關係在這種轉譯的過程裡被轉換為帶有敵意的侵佔行為。

The role of intellectual property and the language of rights creates a normativized and legalized domain in which our experience of social relations, with their attendant complexities are unavailable to us except as juridically defined sets of relations. It would be useful at this stage for us to return to our title character whose is derived from one of Oliver Sack's case studies, viz. that of Dr. P, the man who mistook his wife for a hat. Sack informs us that Dr. P suffers from a peculiar neurological disorder that affects his ability to retain visual recognition, while retaining this ability to discern abstract figures leading to a series of misrecognitions, where he is unable to distinguish his foot from his shoe and his wife from a hat.

Sacks writes that

"By and large; he recognized nobody: neither his family, nor his colleagues, nor his pupil; nor himself. He recognised a portrait of Einstein, because he, : picked up the characteristic hair and moustache; and the saint thing happened with one or two other people. 'Ach, Paul!' he said, when shown a portrait of his brother. 'That square jaw, those big teeth, I would know Paul anywhere!' But was it Paul he recognised, or one or two of his features, on the basis of which he could make a reasonable guess as to the subject's identity? In the absence of obvious 'markers', he was utterly lost. But it was not merely the cognition, the gnosis, at fault; there was something radically wrong with the whole way he proceeded. For he approached these faces - even of those near and dear - as if they were abstract puzzles or tests: He did not relate to them, he did not behold. No face was familiar to him, seen as a 'thou', being just identified as a set of features, an 'it'. Thus there was formal, but no trace of personal, gnosis".⁷

Just as Dr. P provides us with a fascinating case study of how a neurological condition may completely alter our abilities to see and relate to the phenomenological world; We can perhaps think of intellectual property rights as a peculiar affliction -founded on very particularized ideas of property and personhood- but narrated as universal truths, which prevent us from seeing our acts of reading, writing, creating, sharing and borrowing in terms of the relational world that they occupy, and instead we see them abstracted of their social relations.

The equivalent of Dr. P in the world of ideas is Daniel Defoe, the great chroniclers of Piracy's golden era who writes that "A Book is the Author's Property, 'tis the Child of his Inventions, the Brat of his Brain; if he sells his Property, it then becomes the Right of the Purchaser; if not, 'tis as much his own, as his Wife and Children are his own".

So here we have before us the case study of Daniel Defoe, the man who mistook his wife for a book. His condition (unlike Dr. P's) is not an isolated malady and increasingly large number so people are showing symptoms similar to Defoe's, encouraged and enabled by the large institutional sponsors of the malady such as the WIPO and whose contagion is ensured by instruments such as the TRIPS agreement.

JGA Pocock says that if property is both an extension and a pre requisite of personality then we should be aware of the possibility that different modes of property may be seen as a generally encouraging different modes of personality⁸.

⁷ Oliver Sacks, the Man who Mistook his wife for a Hat

⁸ J G A Pocock, Tangata Whenua and Enlightenment anthropology, New Zealand Journal of History, Vol. 26, No.1 (1992), 28-33

智慧財產權的角色以及權利的語言造就了一個規範性的與法律化的場域，在其中我們除了由法律規範所定義的幾種關係之外，無法去經驗複雜的社會關係中的其他可能性。至此或許我們可以回到我們題目中這個由 Oliver Sacks 的個案研究中所衍生出的角色，亦即將帽子誤以為是他太太的 P 博士。P 博士為一種特別的神經性失調所擾，這種病症影響他視覺上的辨認能力，雖然他能保有辨認某些抽象事物的能力，但卻也引發了一連串的錯誤認知，包括他無法分辨他的腳和他的鞋、以及他的太太和他的帽子。

Sacks 寫道：

逐漸地，他沒有辦法辨認任何人：他無法辨認他的家人、他的同事、他的學生，甚至無法認出他自己。他可以辨認出愛因斯坦的肖像，因為他可以認出愛因斯坦那有特色的頭髮和鬍子，而他也可以由特徵認出另外一兩個人。當他看到他的弟弟的肖像時，他叫出「啊，Paul！」：『那方形的下巴、大牙齒、我到哪都認得出 Paul』，但那是因為他認得 Paul 或是因為由於 Paul 的一兩個特徵讓 P 博士得以就這個主體的身份做出一個合理的猜測呢？在沒有明顯特徵的時候，他完全地迷失而無法辨別，但這不僅是知覺或直覺出了問題，而是其他更嚴重的問題。因為當他去接近這些臉孔時 – 即便是與之親近且親愛的人們 – 他把它們當作抽象的拼圖或測驗，他無法使自己與他們相關連，他沒有看見他們。沒有一張臉龐對他來說是熟悉的，沒有一張臉龐可以被視為一個有意義的他者，P 博士將這些臉龐都當作一系列的特徵，視之為抽象的它者。因此在這樣的認知中只有形式化的意義，而沒有任何與個人生命相關的痕跡。

就如同 P 博士這個有趣的個案研究告訴我們神經失調的情況如何全然地改變我們去觀看世界的各種現象並與之相關連的能力，我們或許可以來思考智慧財產權作為一種特別的病症——這種病症由於一些關於財產權與人的概念而生 – 但卻被描述為普世性的真理，使我們無法看清我們自己閱讀、書寫、創作、分享以及借用的行為是在一個這些行為彼此互相關連的世界中，反之，我們看待這些行為時是將它們從這些社會關係中抽離的。

在創作的世界中與 P 博士等同的人物是 Daniel Defoe——Defoe 是海盜的黃金年代的偉大編年史家，他寫道「一本書是其作者的財產，『是他的創作的孩子、他的大腦的小孩，如果他販賣他的財產，那麼它就變成買主的權利，如果他不販賣他的財產，那麼就如同他的妻子和孩子是為他所有一般，是他的所有物』。

所以在我們眼前有 Daniel Defoe 提供的案例，一個誤把書跟他的妻子等同的人。（和 P 博士的情況不同）他的情況並不是一個單一的病例，而漸漸地、在大型制度性機構如世界財產權組織對此種疾病的鼓勵與支持之下，越來越多的人出現與 Defoe 同樣的症狀，而這種疾病的傳染也由如與貿易相關的智慧財產權協定這樣的法律文件所確保。

JGA Pocock 說如果財產權同是人格的延伸與前提要件，那麼我們應該意識到不同的財產權模式也會促成不同模式的人格。

4. Different traditions of the Self

'A song', he said, 'was both map and direction-finder. Providing you knew the song, you could always find your way across country.'

'And would a man on "Walkabout" always be travelling down one of the Songlines?'

'In the old days, yes,' he agreed. 'Nowadays, they go by train or car.'

'Suppose the man strayed from his Songline?'

'He was trespassing. He might get speared for it.'

'But as long as he stuck to the track, he'd always find people who shared his Dreaming? Who were, in fact, his brothers?'

By rethinking our relationship to knowledge and culture from the perspective of ownership to the idea of proximity we can create a different ethical register through which we can examine the relationship between property and personhood. For Locke and many other thinkers within the western metaphysical tradition, the idea of a distinct self serves as the basis for a range of concerns from self-identity to moral agency to property. This account of the self that is mobilized within the tradition of possessive individualism has been challenged both within the western tradition as well as by non western accounts of the self. It is my argument that proximity may indeed be the basis through which alternative accounts of the self may be forcefully articulated as it is accompanied by a whole host of ethical principles such as generosity, obligation etc which may help us order a different mode of dealing with our poems. Proximity or closeness is marked by a relationship of care and if we are to revisit the three modes of relationality invoked in the Spandau ballet case example, we see that the Proximity reworks the way we see the three relations:

A relation to the self (To be an author is not just to own a work but to own up to a work)

A Relation to the work (Taking care of what you own, or a duty of care that emerges from proximity)

A Relation to Others (Relating to others is predicated on an ethical bond)

In contrast, the opposite of an ethic of care and proximity is the violence of brutality, which motivates Daniel Defoe to mistake his wife for a book. The idea of a relational self argues that it does not make sense to speak of an essential core, which is the basis of a sense of unified self and self identity. Let us consider two challenges to the idea of the unified self that informs western metaphysics. The first challenge emerges from the contrast between the idea of the self in western philosophy, and its absence in the non-western tradition.

4. 關於自我概念的不同傳統

他說：「一首歌同時是地圖和指針，如果你知道那首歌的話，你永遠都可以找到橫越國家的道路。」

「那旅者會不會一直都是在歌行的道路上旅行呢？」

「在過去的日子裡確是如此」，他表示同意，「但今天他們是乘坐火車或汽車。」

「假設旅者迷失了他歌行的道路呢？」

「則他會侵犯了別人的領域，或許他會得到原諒。」

「但只要他一直停留在這條道路上，他就永遠都可以找到和他有著同樣的夢的人嗎？而這些人事實上是他的兄弟嗎？」

從所有權與親近性的概念的角度來重新思考我們和知識與文化的關係，我們可以創造出一個不同的道德性指標來檢視財產權的概念和人的概念之間的關係。對 **Locke** 以及許多其他西方形上學傳統的思想家而言，所謂獨特的自我的概念是從自我認同到道德能力到財產權等各種問題的基礎，這種獨特的自我的想法是在所有式的個人主義之下所促成，而這樣的自我概念已經受到西方與非西方傳統對自我的其他想法所挑戰。我認為親近性確實可作為發展出關於「自我」概念的另類想法的基礎，因為親近性伴隨著一系列的道德原則，例如慷慨、義務等，有助於我們以不同的模式來處理我們的詩作。親近性是一種關懷性的關係，這種關係要求我們去重新審視如在 **Spandau Ballet** 的例子中所呈現的三種不同的關係。我們可以看到親近性的概念重新建構了我們看待這三種關係的方式。

和自我的關係（作為一個作者不只是去擁有一件作品的所有權而是對這件作品坦承以待）

和作品的關係（照顧你所擁有的、或是一個由親近性所衍生的關懷的責任）

和他者的關係（和其他人的關係是基於一種倫理性的連帶）

與關懷的倫理和親近性相對的是殘忍的暴力性，而這使得 **Daniel Defoe** 誤將他的妻子當作一本書。關係性的自我的概念認為沒有必要討論自我的本質核心的問題，即一種統一性的自我和自我認同概念的基礎。讓我們來思考對於這個西方形上學中重要的統一性的自我概念的兩個挑戰，第一個挑戰源自於西方哲學中自我的概念之間的對比，以及這種對比在非西方傳統中的缺席。

Balagangadhara argues the basic idea of the self in Western cultures consists of a sense of ‘an inner core which is separable and different from everything else. In such a culture, when one speaks of *finding oneself* one means that one should look inside oneself, get in touch with an inner self that is there inside oneself, and peel everything away that surround this core. To such a self, even its own actions can appear strange’⁹.

Furthermore, Western culture allows each of us a self: a self waiting to be discovered within each one of us; something which can grow and actualize itself; that which either realizes its true potential or fails to do so. Such a versatile self has various properties. One of them is its reflexivity: the self is aware of itself as a self, or it has self-consciousness. Consequently, human beings who are endowed with such selves are all self-conscious beings. As we know, most philosophers are agreed upon that self-consciousness typifies the uniqueness of human beings, and that this distinguishes Man from the rest of Nature.

He then attempts to contrast the idea of the self in non western cultures by using an interesting example. He says that if you were to look at the different ways in which a culture talks about persons, you would often find that in western cultures, in answer to a question like “What kind of a person is he”, you would find straight forward answers such as “He is a friendly person” but the same question may elicit a different response in a non western culture, such as “He comes home every week to enquire after my health” According to Balagangadhara, while this initially seems like a wrong answer or an indirect answer, he claims that these kind of answers are very typical in a country like India. He says that by reading these answers in fact as direct answers, we can see the answer asserting an identity relation between actions and persons. That is, a distinction is not made between an agent who performs the action and the actions that the agent performs. An agent is constituted by the actions which an organism performs, or an agent is the actions performed and nothing more. And this appears to me to be the concept of ‘self’ that is present in the Indian culture”.

Thus for him, the ‘self’ of a person is nothing other than the actions that it performs. But even the actions do not exist in isolation, and are dependent in turn on how another person construes them: Y constructs X's ‘self’ in the same way X constructs Y's ‘self’. Y is very crucial for the construction of X's ‘self’, because in the absence of Y the actions that X performs are meaningless. That is, Y is required so that X's actions may be seen as some specific type of action or the other. If we were to restrict ourselves to X in order to talk about its ‘self’, so that we may contrast this notion with that of the West, we could say that its ‘self’ consists of a bundle of meaningless actions. Because of this, the ‘self’ of X crucially depends upon continuously being so recognized by Y. According to Balagangadhara, there is nothing unusual about this, and it gestures to the fact that we are all relational selves, and one is only a son, a father, a friend, etc. to the extent you are so recognized. And you can only be thus recognized when you perform those actions which are appropriate to the *station* of a son, father, friend, etc.¹⁰.

⁹ S.N.Balagangadhara, *Comparative Anthropology And Moral Domains, An essay on Selfless Morality and the Moral Self*;

¹⁰ Ibid.

Balagangadhara 認為西方文化中關於自我的基本概念是由一種「與所有其他事物可分離且不同的內在核心」的概念所組成，在這樣的文化中，當一個人說他「尋找自我」時他所指的是他應該往他自己的內在去尋找，去接觸他自己內在的自我，並且剝除包裹環繞著這個核心的其他事物。對於這樣的一個自我而言，即便是他自己的行為他也可能會覺得是奇怪的。

甚且，西方文化允許我們每一個人有一個自我：一個在我們每一個人內在等待著被發掘的自我，這個自我會逐漸增長並實現它自己，它有可能可以實現他真實的可能性，或者也可能無法實現。這種多才多藝的自我有著許多不同的特質，其中之一是他和自己的關係，自我可以知覺他自己是作為一個自我，或者是有著自我意識。其結果，擁有著這種自我的人類便成了有著自我意識的生命體。我們都知道，多數哲學家都認為自我意識是人類所獨有之特性，而這是區別人類和其他自然世界的特質。

Balagangadhara 接著以一個有趣的例子試圖提供一個非西方文化中自我的概念作為對照，他說如果你去看不同文化中討論人的方式，你經常會發現在西方文化中回答像是「他是什麼樣的人」這樣的問題時，你會發現一種直接的答案，例如「他是一個友善的人」，但是同樣的問題在非西方文化中可能會得到一個不同的回答，例如「他每個禮拜都會回家來詢問我的健康情況」。**Balagangadhara** 認為乍看之下這可能是錯誤的或間接的回答，但這的確是在像是印度這樣的國家中典型的回答方式，他說這些回答方式事實上可以被看成是直接的回答，我們可以看到這個回答中說明了行動與人物之間的同一性關係，亦即，我們不在行動者和他所從事的行動之間做出區別。一個行動者是由生物性的行動所組成，或者是說行動者僅僅是他所採取的行動，對我來說這就是印度文化中可以看到的關於「自我」的概念。

因此對 **Balagangadhara** 而言，一個人的自我除了他所表現的行動之外別無其他，但這些行動也不是隔絕於其他事物的，而是要看其他人如何看待這樣的行動：Y 建構了 X 的自我，而同樣地 X 也建構了 Y 的自我，Y 對於 X 的自我的建構而言十分重要，因為若沒有 Y，X 所表現出的這些行動也失去意義；亦即 Y 的存在是必要的，因為如此 X 的行動才能被視為是某一種特別的行動。如果我們在討論 X 的自我時將自己限制在 X 本身，以將這種自我的概念與西方的自我概念相互對照，那我們可以說 X 的自我包含著一系列無意義的行動，因此，X 的自我仰賴於不斷地被 Y 所認知。按照 **Balagangadhara** 的想法，這沒什麼特別的，而這只是告訴我們事實上我們都是關係性的自我，一個人只有在被其他人如此認知時、並且在被認知的限度內，才能作為一個兒子、一個父親、一個朋友等。而你也只有當你可以被如此認知時你所表現的行動才會被認為是作為一個兒子、父親、朋友等合宜的行動。

Let us now turn to another attempt at characterizing this idea of relationality or proximity, this time within more contemporary western philosophy. Levinas is one of the key thinkers working with the idea of proximity within the western philosophical tradition, and his work has inspired a range of ethical philosophers as well as legal scholars to think through questions of obligations that we may have to others. For Levinas, proximity implies a “closeness to others who can be approached but never reached”. He says that while we are never exactly the same as another person, it is precisely in the trauma of that distance that our sense of responsibility arises from. It is clear that unlike the non western idea of relationality which arises from a close sense of relationships, Levinas has a more expanded idea of relating. For him “The relationship of proximity cannot be reduced to any modality of distance or geometrical contiguity, or to the simple ‘representation’ of a neighbour; it is already an assignation, an extremely urgent assignation – an obligation, anachronously prior to any commitment.” In Levinas the ability to be in a proximate relationship is what ‘intimates’ an other, and this intimation forms the essence of who we are and why we have a responsibility to others. Levinas also sees Proximity as a complete experience, which in many ways exceeds our theories and ideas of the world.

The similarities between the idea of the relational self in non western thought and proximity in Levinas is striking. Levinas is impressively nonchalant about other pressing concerns within western metaphysics including intentionality or an essential self that defines our being. He is instead more concerned with the domain of experience and how we act responsibly. The ability to act responsibly is in turn dependent on the ability to adequately respond, and the instantiation of a response dilutes any unified sense of self, since neither the self nor intentionality makes any sense outside of its relation to another. "I'm already obligated and called before any decision on my part." Therefore, there is no point in asking whether or not my act(ion) of responsibility is free or voluntary. If responsibility is prior to freedom, neither chosen nor not chosen, it is out of the question to ask under what circumstances I am responsible.

Desmond Manderson reads Levinas into legal theory via the route of the law of negligence. He argues that the law of negligence serves as the legal equivalent of proximity, since it is founded on the ethical responsibility that is owed to the other. And while the responsibility precedes the law serves as the third framed through which this responsibility of one person to another is formalized via rules (the duty of care) and reasonableness (the standard of care). Thus while Proximity allows for an encounter with the other (through the openness and responsiveness of this concept) and reasonableness (the standard of care) allows for the balancing of this responsibility with the duty that is owed to other others. This is particularly interesting for any one interested in the world of knowledge and cultural production, since the language of openness has emerged as a very strong alternative to the closed worlds of proprietary information.

In an insightful passage, Jacques De Ville states that “When Antigone buried her brother, she did not do so only out of love. She did so out of justice. For she knew that the real worth of any society is judged by its treatment of those whose interests cannot be calculated and whose rights cannot be claimed. Do we ignore those who can offer no protest but silence? Antigone could not...and she is not alone. In all societies today, those in the light of whom we are judged include the very sick, and the very poor”.¹¹

¹¹ Jacques De Ville, Rethinking Proximity with reference to Levinas and Derrida,

現在我們來考慮另一個描述這種關係性或親近性的常識，這次我們帶進一個比較當代的西方哲學家 Levinas，他是在西方哲學傳統中討論親近性的主要思想家之一，而他的作品也啟發了許多倫理哲學家以及法學者對於我們對其他人所可能有的義務的思考。對 Levinas 而言，親近性隱含一種「對於可以被接近但永遠不能被佔為己有的他者的親密性」。他指出由於我們永遠不會和另一個人成為一體，而正是因為這種距離感所造成的創傷，我們的責任感也由之而生。我們知道，不像非西方關於關係性的概念是源於一種關係上親近的感覺，Levinas 對於關係這件事有更為複雜的想法。對他而言，「親近性的關係不能被簡化為距離或幾何上的接近性，或者僅僅是關係親近者這樣簡單的意義，而是一種權利義務的轉讓、一種至關重要的轉讓——一種責任，而且是發生在承諾之前的一種責任」。對於 Levinas 而言，能處於一種親近性關係之中的能力是一個人如何能與他人相親近的關鍵，而這種親密感成為我們是誰以及我們為什麼對於他人有責任的基礎，Levinas 也認為親近性是一種整體的經驗，在許多方面上都超出我們目前對於世界所發展出的理論與觀念。

在非西方思想中的關係性自我的概念與 Levinas 思想中親近性的概念之間有著驚人的相似性，Levinas 對於其他西方形上學傳統中的重要定義何謂我們的存有的問題，如意圖或本質性的自我等，是著名的漠不關心。他關心的比較是關於經驗的範疇以及我們如何能有責任地行動。有責任地行動的能力反之仰賴於我們能合宜地回應的能力，而這個回應的例證動搖了任何一種一致性的、本質性的自我的概念，因為不論是自我或意圖都必須要在他和其他人之間的關係中才有意義。「在我做出任何決定之前，我已經對別人負有義務並為人所委託」，因此我們不需要問我履行責任的行動是不是自由的或是自願的，如果責任是在自由意識之前，而不是自由意識去選擇或不選擇的，則不需要問說在什麼樣的情況之下我必須負擔責任。

Desmond Manderson 在法學理論中以關於過失的法律來理解 Levinas，他認為關於過失的法律是法學中與親近性等同的概念，因為它是以一個人對其他人的倫理性責任為基礎。若責任的存在先於法律並形成第三種架構，以之形成一個人對其他人的責任規範（關懷的義務）以及合理性（關懷的標準）。因此親近性允許人與他人（透過這個概念的開放性與迴響性）的接觸，而合理性（關懷的義務）則允許這種責任與對他人的義務取得平衡。對於任何對於知識及文化生產世界有興趣的人來說這尤其有趣，因為開放性的語言已經成為私有資訊的封閉世界之外強而有力的另類選擇。

在一個精彩的段落中 Jacques DeWille 指出「當 Antigone 埋葬他的哥哥時，她的出發點不只是為了愛，同時也為了正義，因為她知道評斷任何社會的真正價值是去看這個社會如何對待那些利益無法被計算的人以及那些權利無法被主張的人。我們是否忽略了那些無法抗議只能保持沈默的人？Antigone 不能對他們視而不見，而她並不孤獨，在今天的所有社會，評斷我們的人包括那些重病與貧窮者」。

Derrida built on Levinas' idea of proximity to closely examine the idea of hospitality, and in his usual style, he rejects any easy, sugar coated idea of the idea of hospitality and extends the idea of what it means to be hospitable to difficult terrains in which the identity of the Host/ Guest become inert changeable. For him, Hospitality presupposes an interior - space, house, home - where the host can welcome the guest, the stranger and the other. Derrida reminds, however, that "in order to constitute the space of a habitable house and a home, you also need an opening, a door and windows, you have to give up a passage to the outside world" (Of Hospitality 61). In relation to the world of academia and the traditionally hierarchical modes of the production of knowledge, the idea of hospitality can be a highly unsettling concept. What does it mean, for instance for a university - an institution with a colonial legacy - to be hospitable. What does it mean for western intellectual traditions with their universal histories of humanity to be hospitable to experiences outside of Europe? And similarly what does it mean for all the postcolonial scholars working with a justified epistemic anger, to look at a temporary détente from the language of 'neo colonial' hegemony etc.

Revisiting Locke with some Proximity

While it is tempting to contrast the idea of the relational self to the Lockean idea of the autonomous individual, I suspect that the task may turn out to more difficult, and if we turn for instance to Locke's theory of relations, there are certain productive contradictions that emerge. Locke in his consideration of consciousness claims that the mind, rather than passively receiving phenomena constantly upon them, and comparisons arise when the mind does not reflect on things as such but when it considers them 'in conformity to any other'. Objects are thus related to each other by the mind. He argues that there may be certain properties, for instance that of being white which may not be a relational fact. But when we think of a relational idea, Locke suggests that when we think of someone as a husband or as whiter than someone else, the mind is actually going beyond the particular to some other person or persons distinct from the self and a relation is the result of this activity of the mind which has simultaneously considered two distinct things.

For Locke, some relational terms such as "father and son", "lesser and bigger", "cause and effect" are self obvious, and they can only exist together and can explain each other. These correlative pairs "reciprocally intimate" each other, but it is not exactly clear whether there is a common relational tie connecting these correlative pairs; a common relation that each member of the pair has toward the other which makes this correlation possible. The limitation in Locke seems to emerge from the fact that he sees the ability of naming and identifying relations as emerging solely from the mind. In other words, the ontological status of relations seems unequivocally mind dependent in Locke. The question then that logically arises is how does the mind create a set of relationship to itself.

Derrida 在 Levinas 親近性的概念之上仔細地審視殷勤待客的概念，並依照他的慣常風格，他拒絕任何關於殷勤待客觀念的任何簡單的、包裹著糖衣的觀點，並將什麼是殷勤待客的觀點拉到一個主客角色可以互換的比較困難的場域。他認為殷勤待客這個觀點預設著一個內在的空間，如家屋、家等主人可以接待客人、陌生人與他者的空間，Derrida 提醒我們，但是「為了構成這樣一個適宜居住的家屋與家，你需要一個開放的環節，如門窗等，你必須提供外界這樣一個進入這個空間的管道」(On Hospitality 61)。在學術的世界以及傳統上知識生產的階層性模式中，什麼是所謂勤待客的概念可能非常的令人困惑。例如在大學這樣一個有著殖民歷史遺緒的機構中，什麼叫做殷勤待客？在西方知識份子傳統對於人性的普世性的歷史中，他們又是怎樣殷勤對待歐洲以外的經驗？同樣的，對於所有在認識論上抱持著正當的憤怒的後殖民學者而言，他們又是怎麼樣看待一個暫時與「新殖民主義」霸權語言等脫鉤的關係？

由親近性的觀點重讀 Locke

雖然我很想把關係性自我的概念與 Locke 對自主性個人的概念加以對照，我想這個工作會更加的困難，如果我們轉向如 Locke 關於關係的理論，我們可以看到一些有意義的矛盾。Locke 在考量意識時認為人的心靈並不只是被動地接受外界現象而是積極地與之互動，而當心靈不只是考慮事物本身而是將某些事物和其他事物一併考慮時，便有所謂的比較，事物因此是由心靈的作用而與其他事物相關連，Locke 認為或許有某些特質不是只是關係性的事實，例如某個東西是白色的。但是當我們去思考一個關係性的想法，Locke 認為當我們覺得某人是一個丈夫或某人膚色比其他人更白，則我們的想法確實不只是停留在這個人身上而更擴及其他人、其他不同於自我的人，而這樣的關係是我們同時考慮兩個不同事物的行為與想法的結果。

對於 Locke 而言，某些關係性的詞彙，例如「父親與兒子」、「比較小和比較大」、「原因和效果」等是很明白的，這兩種概念只能同時存在並互相解釋。這些相關的成對的詞彙對彼此而言是相互地宣告另一者的意義，但我們並不清楚是否在這些相關詞彙彼此之間是否有著共同的關係性的連結——一種這對詞彙中兩者共有的、使得這一種相關連性成為可能的關係。Locke 理論的限制似乎產生自他認為命名和確認關係的能力是為心靈所獨有，換言之，這些關係的本體性存在對 Locke 而言是依賴於心靈的，接下來的問題自然便是心靈如何創造出一系列和他自己的關係。

It is perhaps useful at this stage to return to the site of our original problem: the equation of self/own that emerges in Locke's theory of property and personhood; We began by locating the conceptual problem within a specific linguistic dilemma, viz. the manner in which English produces a duality of the self: a self who is owning and a self who is owned. Balibar says that while it could be argued that this linguistic dilemma could be dismissed as a performative contradiction, it would be more useful to look at the productive nature of this contradiction. And the manner in which it resolves the contradiction in Locke by introducing another element, viz. that of uneasiness.

Balibar argues that the process of identification or self interpellation performed in Locke (I Address my self) or the performative contradiction is taken into account within Locke already. For instance in his segment on consciousness, Locke argues that there is no consciousness which is not associated with desire and at the same time troubled and pushed by it towards ever new contents or ideas, so that the notion of a fixed or stable identity consciousness is a contradiction in terms. Consciousness is by its nature restless, it must escape itself towards new contents, its identity is associated with a perpetual flow, escape or train of ideas and the category that names this intrinsic association of consciousness is *uneasiness*. Balibar argues that we may therefore return back to Locke's identification of the self and own and what it means to understand them as being exactly the same thing; he says that what is owned by me inasmuch as I own it (speaking, thoughts, actions) was the uneasiness of this relation, and the fact that the identity or sameness of self and own do indeed exist, but only as an uneasy one.

He illustrates this by returning to his reading of Browning's poem in which the critical element causing the uneasy appropriation of identity (My Own, Confirm me) is the element of sexual difference, It is the other with whom I make one and the same precisely because we can never become identified, indistinguishable, in other terms, with whom I experience the uneasy relation of identity and difference, not only because it is conflictual; but because the identification of what is shared or what is the same and of what is separated or divorced can never be established in a clear cut and stable manner. The name of this uneasy experience conventionally is love. But we know that love is anything but a simple thing, perhaps because in love there is precisely so much consciousness associated with so much desire.

Returning to the IP debate

Let us now return to the domain that motivated this brief enquiry. The global acceleration of intellectual property norms in recent times is critically linked to a new articulation of our relationship to our self, our work and to others. The response that is required cannot be limited within the terms of political realism (whether of the left or the right) and the real potential of new modes of knowledge production and sharing (free software, open access) stem not from their status as solutions to the problem of 'knowledge or information deficit' alone, but in their rearticulation of alternative relationalities which are not troubled by the need to generate untroubled and easy cohesive accounts of the self/own. Our global contemporary is marked by all kinds of turbulences, which momentarily dislodge our stable notions of the nation, identity, property, stability, friend and enemies, self and other.

我們或許可以回過頭來看我們原初的問題由何產生：Locke 關於財產權和人的概念中所發展出的自我和擁有之間的等號。我們首先把這個概念性的問題置放在一個語言學的兩難中，即英語中所產生的自我的雙重性：擁有（事物）的自我以及被擁有的自我。Balibar 指出這個語言學的兩難可以被認為是一種表現性的矛盾，去尋找這個矛盾的本質或許更有幫助，而為能解決 Locke 的這個矛盾，我們可以帶進另一個元素，即不安或侷促感 (uneasiness)。

Balibar 認為 Locke 理論中認同的過程或自我質問等在 Locke 理論中的矛盾（我對我自己發言），Locke 都已經有作處理，例如說，在他關於意識的段落，Locke 認為凡意識皆是與慾望相關連的，而又同時為慾望所困擾，並被慾望推向新的內容或想法，因此固著的或穩定的認同意識是一個矛盾的概念，意識本質上是變動不拘的，他必須逃避他自己的控制以朝向新的內容發展、他的認同是一種不斷的流動、逃避或變動的想法，而這種與意識的內在關連即是所謂的侷促感。Balibar 認為我們或許可以回到 Locke 對於自我與所有的同一性以及將此二者認為同一所代表的意義來看，Balibar 指出某件事物之所以為我所有正是因為我擁有它（言說、想法、行動等）這件事正是這種關係中令人感到侷促不安的元素，因而自我與擁有的同一性事實上是存在的，但這樣的同一性卻是一種不安的同一性。

他回到他對 Browning 詩作中的閱讀來說明，詩作中構成認同的侷促不安感的關鍵要素（我所有的，請你給予我肯認）是一種性別上的差異，我創造和這他者的認同因為我們永遠不可能成為一體而無法被加以區別，換言之，我和此人經歷了關於認同與差異的一種不安的關係，並不是因為這個關係是充滿衝突的，而是因為在這個認同中我們永遠無法清楚地確認什麼是兩者共有的、什麼是相同的、什麼是可以被分離的。這種不安的經驗的俗名稱之為愛，但是我們知道愛不是簡單的事情，或許因為在愛戀中意識是如此與慾望緊密相連。

回到智慧財產權的論辯

我們現在可以回到我之所以寫這邊文章的出發點，近年來智慧財產權規範的標準在世界各地都急速地升高，而這對我們如何能重新建構我們和我們自己、我們的作品以及他人的關係這件事而言至關重要，回應這樣的問題不能只侷限於政治現實主義（不論是左派或右派），新形式的知識創造與分享（如自由軟體、開放近用）的真正潛力並不單是因為他們提供「知識或資訊赤字」問題的解決方式，而在於他們如何重先建構一種不同的關係，而不會被為了追求一種簡單一致的自我／所有概念的需要所困擾。當代世界充滿著的各種喧囂暫時地解除了我們原本對於國族、認同、財產權、穩定性、友敵、自我與他者等穩定的看法。

The experience of turbulence in a plane induces the stranger next to you to momentarily become your most intimate human contact, when the uncertainty of the moment causes you to reach out to an unfamiliar but reassuring hand, only to be eclipsed later by the uneasy recognition of a compact of unfamiliarity having been breached. Our abilities to communicate and share ideas in ways that were hitherto unthought of, provides us with an opportunity to rework our accounts of our self and the possible horizons of the relations we inhabit. Foucault asks “What would be the value of the passion for knowledge if it resulted only in a certain amount of knowledgeableness and not, in one way or another and to the extent possible, in the knower's straying afield of himself? There are times in life when the question of knowing if one can think differently than one thinks, and perceives differently than one sees, is absolutely necessary if one is to go on looking and reflecting at all”. Seen in this light, what is narrated as transgressions in the world of ideas reappear as explorations and reinventions of the self, a curiosity about the other and perhaps a way of looking for your wife in what appears to be a hat or a book. Hospitality, gratitude, friendship, caring, owning (These almost sounds like archaic words from a distant time in a period when juridical relations replace social relations and contracts of adhesion are more powerful than word of mouth; Gratitude according to Simmel is the moral memory of mankind then it is perhaps time to refresh our memory dulled by the property and contract. And frankly, it does not matter where these mnemonic tools emerge from, either temporally or spatially. If our sense of self has been narrowed by its linguistic and umbilical affinity to the need to own, lets start exploring other semantic worlds where we can multiple and expand the idea of the self. Here are some to begin with:

The Etymology of data comes from the Latin Datum which means a thing given, and the neuter of which is to give. Similarly, the word daata in Hindi/Sanskrit is taken to mean "the giver", which suggests that one must always be generous with information, and make gifts of our code, images and ideas. To be stingy with data is to violate an instance of the secret and sacred compacts of homophonic words from different cultural/spatial orbits ('daata' in Hindi and 'data' in English) as they meet in the liminal zone between languages, in the thicket of the sound of quotidian slips of the tongue. Another entry point is the common root words that bind the word owe and own, so if intellectual property is about thinking of ways of owning the future, then perhaps we need to start thinking not only about how we own but also how owe the future. The point is not to take these systems of administering the world of knowledge and ideas as a given, but to think about the ways in which it enables us to work our relation to ourselves. As Patricia Williams reminds us, “The task . . . is not to discard rights, but to see through or past them so that they reflect a larger definition of privacy, and of property: so that privacy is turned from exclusion based on self-regard, into regard for another's fragile, mysterious autonomy; and so that property retains its ancient connotation of being a reflection of that part of the self which by virtue of its very externalization is universal. The task is to expand private property rights into a conception of civil rights, into the right to expect civility from others”.

在飛機上這種喧囂的經驗使得坐在你身邊的陌生人暫時成為你和人類世界最親密的對口，在不確定的時刻你伸手向一隻不熟習卻有安撫作用的手尋求慰藉，而只在後來才會不安地發覺和陌生人之間的規範被打破了，我們溝通和分享想法的方式是過去所無法想像的，這給予我們一個重新建立我們對於自我的概念以及我們所處環境中的各種關係的機會。 Foucault 曾問「如果我們對知識的熱情只能產生某種擁有知識的智慧而不能使得知者離開他的自身，那麼這種對於知識的熱情又有什麼價值呢？」在生命中，如果我們要繼續思考或反省的話，有時去問一個人是否能以和他思考方式不同的方式思考、並且看到和所見事物不同的東西，這是絕對必要的」。由這點來看，在創造的世界中被說成是犯罪行為的卻是自我的發掘與再創造、對於他者的好奇、又或許是一種誤把你的妻子當作是帽子或書的情況。在法律關係替代了其他社會關係、書面契約比口頭約定更為強而有力的這個世界裡，殷勤待客、對他人心懷感激、友情、關懷與擁有等詞彙聽起來像是十分陳腐的概念；如果像 Simmel 所說，心懷感激是人類的道德記憶，那麼或許現在就是去喚回已經被財產權和契約弄得死氣沈沈的記憶了。坦白說，這些工具從哪裡來並不重要，不論是時間性或空間性，如果我們對與自我的概念已經被英語中被侷限為語言學上具有臍帶般地親近性的擁有的需求，那麼現在我們來探討其他語言的世界以提供並拓展我們對於自我這個概念的想法，以下是一些初步的嘗試。

Data 這個字源於拉丁文的 **Datum**，指稱一個東西被給予的方式以及給予的中介物，同樣的，印地／梵語中的 **data** 是指「給予者」，亦即一個人對資訊必須始終慷慨，並且把我們的原始碼、圖片與想法贈與他人，在資料方面小氣是違反了在不同文化／空間軌道中兩個同音字之間（印地語的 **daata** 和英語中的 **data**）在相遇時秘密而神聖的約定，另一個可以嘗試的點是在 **owe** 與 **own** 兩個字的共同根源，因此如果說智慧財產權是有關於擁有未來的方式的思考，那麼或許我們也必須開始思考不只是我們如何擁有未來，也要思考我們對未來所負擔的義務。

重點是我們不能把目前管理知識與想法的世界的系統當作是自然而然的，而必須要去思考我們如何能發展我們和我們自己之間的關係，如同 **Patricia Williams** 所提醒我們的；我們的任務不是去拋去權利，而是去看透並超越它們，方能使它們反應出一個對於隱私權、對於財產權等的更廣的定義，因此我們對隱私權的理解從由一己出發的排他性轉向去理解其他人脆弱而神秘的自主性，而財產權的觀念也能保有它原始的意義，即財產權是作為部分自我的反射，而這部分的自我在本質上是其內在自我的外部表現。我們的任務是將私有財產權的理解擴張為公民權利的概念、以及期待其他人給予尊重的權利。

I end this piece with a small parable which many of us would have read while we were children. The story is from Antoine de Saint Exupery's tale about the Little Prince. A little prince visits a number of planets and encounters a range of different characters. In the fourth planet he meets a businessman who has owns millions of stars, and the reason why he owns them is because he was the first one to think of owning the stars. The Little Prince is perplexed, since he cant seem t find a reason for owning the stars beyond the fact that they can be put in a bank to enable the businessman to buy more stars. The Little Prince concludes stating that "I myself own a flower," he continued his conversation with the businessman, "which I water every day. I own three volcanoes, which I clean out every week (for I also clean out the one that is extinct; one never knows). It is of some use to my volcanoes, and it is of some use to my flower, that I own them. But you are of no use to the stars you own"

我以我們許多人小時候都讀過的一則小寓言作結，這個故事時來自 **Antoine de Saint Exupery** 的小王子。小王子造訪了一些行星並在過程中遇到了很多不同的人物，在第四個行星上他遇見了一個擁有數百萬顆星星的商人，而他之所以擁有這些星星的理由是因為他是第一個想到要去擁有星星的人，小王子對此感到困惑，因為除了可以把星星放在銀行裡以讓這個商人買更多的星星之外，他似乎找不到任何擁有星星的理由。小王子因此在最後說「我自己擁有一朵花」，他繼續告訴這個商人說：「我每天都幫他澆水；我擁有三座火山，我每個星期都幫它們打掃，因為我做這些事情對我的火山和花有些幫助，所以我擁有他們，但是你對你擁有的那些星星來說一點用處都沒有」。