THE DAGUERREOTYPE PATENT

RICHARD BEARD AND THE EMERGENCE OF PHOTOGRAPHY IN BRITAIN

A PATENTE DO DAGUERREÓTIPO

RICHARD BEARD E O SURGIMENTO DA FOTOGRAFIA NA GRÃ-BRETANHA

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ABSTRACT

This article explores the legal conditions for the production of daguerreotype photography in the UK. Focusing on the control of the patent by the merchant Richard Beard, I consider the form of authorship that emerged for portrait commodities across multiple studios and makers. I argue that the author of these works should be properly understood as "Beard patentee" regardless of who made the actual image and that this form of authorship is imbued with the categories of English property law.
Keywords: daguerreotype; authorship; social class; Richard Beard.

RESUMO

O ensaio explora as condições legais para a produção de fotografia daguerreotipada no Reino Unido. Com foco no controle da patente pelo comerciante Richard Beard, considera a emergência de uma forma de autoria para os produtos de retratos em vários estúdios e fabricantes. É defendido o argumento de que o autor desses trabalhos deve ser corretamente entendido como "detentor da patente de Beard", independentemente de quem fez a imagem real, e que essa forma de autoria está imbuída de categorias inglesas de direitos de propriedade.
Palavras-chave: daguerreótipo; autoria; classe social; Richard Beard.

RESUMEN

El ensayo explora las condiciones legales para la producción de fotografía de la especie en el Reino Unido. Con foco en el control de la patente por el comerciante Richard Beard, considera la emergencia de una forma de autoría para los productos de retratos en varios estudios y fabricantes. Se defiende el argumento de que el autor de esos trabajos debe ser correctamente entendido como "poseedor de la patente de Beard", independientemente de quién hizo la imagen real, y que esa forma de autoría está imbuida de categorías inglesas de derechos de propiedad.
Palabras clave: daguerreotipo; autoría; clase social; Richard Beard.

A BERROTYPE PROCESS?

Who invented the daguerreotype? This is akin to asking "who is buried in Isaac Newton"s Tomb?". The evident response to the former is Daguerre, just as Newton is to the latter. Those more familiar with the daguerreotype invention story would probably say "Daguerre-Niepce"; while aficionados of early photography might even offer: "Niepce-Daguerre-Niepce Jnr.". English common law disagreed. As far as lawyers and senior Law Lords were concerned

Figure 1 - Beard Patentee, Portrait of a Man. Cropped. Ninth-plate; case 3 ½ x 4 inches; c.1843/4. Collection of the author

the unequivocal answer to this question of the daguerreotypes invention was Miles Berry. According to Berry, "at the time of applying for and obtaining the letters Patent" he was "the first and true discoverer and importer of the invention" (Berry, 1842). Not only did Berry invent the daguerreotype, but the law insisted that between 14th August 1839 and the 23rd June 1841 he was the sole practitioner of the invention in the territory of England, Wales and the Town of Berwick upon Tweed and all Crown Colonies and Plantations Abroad.

On 13th September 1839, only seven days after the publication of Daguerre´s *An Historical and Descriptive Account* (Daguerre 1839a; 1839b), M. Sainte Croix gave demonstrations of the daguerreotype process at number 7 Regent Street. He followed this with further public

elucidations at the Argyll Rooms on Regent Street; at his private apartment (charging 2s admission) and then at the Adelaide Gallery on the Strand.[1] Ste Croix subsequently worked in Birmingham during October and then in Liverpool (James, 1993, p. 108-9; Wood, 1993). The chemist J. T. Cooper also lectured at the Royal Polytechnic Institution on the invention.[2] In 1840, the French glass-merchant Antoine Jean François Claudet imported daguerreotypes from Paris, which he sold from his business premises at 89 High Holborn. Claudet charged between one and four guineas for these images. It is possible that he also began experimenting with the process (Claudet, 1868; Johnson 1868).[3]

According to Helmut Gernsheim, daguerreotypes were also on sale in 1839 at the premises of a chemist named Robinson, on Store Street, Bedford Square, London (Gernsheim, 1955, p. 88). In November 1839, Dr J. P. Simon, a medical man living in Dover, issued his own translation of Daguerre´s manual and, in the months that followed, he gave demonstrations (Adamson, 1993, p. 314; *The Dover Telegraph*, 9 May 1840; Simon, 1839; *The Literary Gazette*, 1839; Smee, 1843).[4] By September 1840 Simon had succeeded in making portraits. In 1840, J. F. Goddard conducted experiments to improve the process at the behest of the merchant Richard Beard. The optician J. B. Dancer claimed to have made daguerreotypes in Liverpool in 1840 (Dancer, 1886; Wood, 1993). We know that the Belfast engraver Francis S. Beattie had succeeded in making daguerreotypes by September 1840 (Beattie, 1879). However, Goddard and Simon, Ste Croix, Beattie, Dancer and Cooper were invisible to the law and Claudet would prove to be some strange exception. Berry was the sole practitioner in spite of these activities. In fact, Berry was the sole and exclusive user of the daguerreotype apparatus even though he never used it.

In 1839 Miles Berry – employee of the Patent Office and patent agent in the firm of Berry and Newton – registered Patent n. 8194: "A New or Improved Method for Obtaining the Spontaneous Reproduction of All Images Received in the Focus of the Camera Obscura". Berry received instruction from Daguerre and Niepce on, or around, 15th July 1839, probably via Antoine Perpigna the Parisian Avocat and Patent Agent who acted for the French inventors.

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1 *The Times*, 14 September 1839, p. 4; "The Daguerreotype in London", *Art-Union: A Monthly Journal of Fine Arts*, v. 1, n. 9, p. 153, 15 October 1839; "M. Daguerre's Process of Engraving", *Mirror of Literature, Amusement & Instruction*, v. 35, n. 973, p. 257-258, 19 October 1839. See also: Wood, 1993; James, 1993.

2 *The Times*, p. 1, 10 October 1839; p. 1, 12 October 1839.

3 It is usual to claim that Claudet purveyed daguerreotypes imported from France during this period, but did not make them. On at least two occasions he claimed to have produced daguerreotypes during 1840. In a letter to Peter Le Neve Foster of c.1853 he stated that he had practiced in 1840 (Claudet, 1868). John Johnson immediately disputed this suggestion (Johnson, 1868, p. 404). Even more tellingly, he stated, in an Affidavit in support of Beard's case against Jeremiah Egerton, that he had "used and practiced" the daguerreotype "since 25th March 1840 […] at the Adelaide Gallery and elsewhere". This was the date of his indenture with Berry, which certainly entitled him "to take and sell" daguerreotypes. We don't have to believe his claims and his formulations are not clear cut, but it seems unlikely that he did not avail himself of the conditions of his (expensive) indenture.

4 J. P. Simon's translation of Daguerre's, *A Practical Description of that Process called the Daguerreotype*… was published in 1839. *The Literary Gazette* published a notice for Simon's translation, noting that it was "an inferior and inadequate translation". Mention is made of a daguerreotype of Dover Castle by Simon in Smee (1843, p. 284-287).

Although, Berry did this as agent for Daguerre and Niepce, in English law he "received a communication from a foreigner residing abroad" and became the patent holder within the delimited territory. This conferred on him the "whole profit benefit commodity and advantage […] accruing or arising by reason of the said invention" (A Writ of Privy Seal, 1839). Berry received monopoly control of the daguerreotype process in the specified territory and the use of the invention required written consent from him or his representatives; almost certainly, this meant paying him a fee. Six months later, on 14th February 1840 Berry enrolled the patent completing the process.

Of course, Berry was not interested in "making, putting in to practice or vending" the daguerreotype process. On 30th March 1840 he wrote to the Board of the Treasury on behalf of Daguerre and Niepce soliciting: "Her Majesty or the Government of England to purchase the said Patent right for the purpose of throwing it open in England for the benefit of the Public and preventing this important Discovery being fettered or limited by individual interest or exertion" (Treasury Board Papers, 1840). Misrecognising the character of the British capitalist state, it appears that Daguerre and Niepce took out an English patent intending to treat with the British Government for a grant or pension. When this policy proved fruitless, they adopted the course of selling licences, and then disposed of the patent.

In his capacity as patentee Berry issued two licences (and, almost certainly, a third to Richard Beard and William S. Johnson) to use the daguerreotype apparatus and process: the first in September 1839; the second in March 1840. A notice in the *Times* announced: "under a licence from the Patentee – Mr J. T. Cooper will exhibit the pictures and all the particulars connected with this beautiful and important art by means of a LECTURE, in the Theatre of the Polytechnic Institution […] on Tuesdays, Thursdays and Saturdays, at 2 o'clock". It seems that this licence did not allow Copper to sell daguerreotypes ("Daguerreotype", *The Times*, p. 2, 8 October 1839). The Polytechnic Institution was one of the paradigmatic spaces of popular science and it is possible that Berry saw the exhibition of the invention as a good means by which to advertise for licensees or the sale of the patent; Cooper gained from the deal by charging 1s admission for his lectures.[5] For the sum of £200, Berry also granted the much better known licence to Claudet on 25th March 1840. This licence allowed Claudet to "use a limited portion of the apparatus" (three complete sets of equipment), but it did permit him to make and vend daguerreotypes. Claudet had wanted to purchase full patent rights from Berry, but he was blocked by George Houghton, his partner in the glass importing business, who "not understanding the future of photography, would not consent to our buying the whole patent for £800, which was the price asked by Daguerre. I was obliged to decline the offer" (Claudet, 1868). In the middle of 1841 Richard Beard purchased outright the daguerreotype patent from Berry. We will come back to Beard whose commercial operations are at the heart of daguerreotype production in the legally-specified territory.

5 On the galleries of practical science see: Altick, 1978; Morus, 1998; Morus 2007; Lightman, 2007; Weeden, 2008.

INTELLECTUAL PROPERTY AND AUTHORSHIP

A great deal has been written about copyright and authorship, largely because right in texts interests literary scholars (Feltes, 1986; Gaines, 1991; Rose, 1993; Feather, 1994 & Woodmansee, 1994). There is much less work on photography and intellectual property; virtually nothing on the daguerreotype patent. This said, Bernard Edelman's outstanding study of intellectual property bears directly on photography (Edelman, 1979). Whereas, most of the earlier Marxist theorists concerned with legal matters had addressed the class *content* of law, Edelman followed the Bolshevik juridical theorist Evgeny Pashukanis in considering the *form* of the law. In his extraordinary study of 1924, Pashukanis employed Marx's, then little known, 1857 "Introduction" to the *Grundrisse* and the distinction between "value" and the "form of value" to elaborate a commodity theory of the legal subject. Pashukanis located the "cell form" of bourgeois law in the relationship between subjects constituted on the right to possession as formally-equivalent individuals. In this sense, he presents the law as a homology for the mystified relations of commodity exchange (Pashukanis, 1989).[6] The imaginary production of legal subjects through the circuits of exchange allowed for the displacement of relations of exploitation in production in law. In this pioneering study, he insisted law was not a possession of the ruling class, but a field of struggle weighted towards the bourgeoisie by the misrecognitions inherent in commodity fetishism. In this way, Pashukanis developed a theory of legal fetishism.

Edelman combined the work of Pashukanis with the *dispositif* of ideology to produce one of the outstanding books of the Althusserian moment. He suggests that the instance of photography revealed a property-owning subject as the underpinning of French law: "all juridical production is the production of a subject whose essence is property and whose activity can only be that of private owner" (Edelman, 1979, p. 38).[7] Edelman, like Pashukanis, argues, the law casts (interpellates) legal subjects as self-possessive bourgeois subjects grounded in generalised commodity-exchange. This proprietorial subject binds together personality and the commodity form in a cultural form. Edelman maintains that the French law struggled to come to terms with the "over-appropriation of the real" (the appropriation of existing property as property) in photographs, because the French juridical tradition addressed this problem through a framework of natural right in which intellectual property in art entailed the alienation or externalisation of personality in a material artefact (property). However, the legal system could not work out how to locate authorship, predicated on a mental act of transformation, in a practice that appeared automatic. The subject that appeared in photography looked, to the law, like a worker and not an artist-possessor. At this

6 For those familiar with Marxist theory, it will be apparent that Pashukanis developed an early derivation theory of the type that was later articulated in the German capital-logic school. There is no scope to elaborate or pick up on the problems here.

7 The key reference for Althusser is obviously *Ideology and the Ideological State Apparatuses (Notes towards an Investigation)*, but the whole French debate on the *dispositif* of ideology is behind Edelman's thinking.

moment the ideology of the law came into plain sight and the subject of law was revealed as a bourgeois subject.

There has been much work on copyright since Edelman, but Molly Nesbit's essay "What was an Author?" is probably the outstanding contribution to come from within art history (Nesbit, 1987).[8] Beginning from nineteenth-century French copyright law and building on Edelman's insights, Nesbit insists that questions of quality have no place in legal judgements. The law ignores issues of good or bad writing, or the separation of masterpieces from hack pictures; the law simply defines some cultural practices as the products of authorship attached to special personalities and offers them protection, while categorising other activities as mindless labour and denies them its security (Nesbit, 1987, p. 233). There are two central points to Nesbit's argument: first, only certain specified media were covered by copyright and others (technical drawing, photography, or film were not protected); secondly, copyright was predicated on "the presence of a human intelligence, imagination, and labour that were legible in the work, meaning that such work was seen, a little more crudely, to contain the reflection of the author's personality" (Nesbit, 1987, p. 234). The logical corollary is that products not covered by copyright could not be considered as containers for subjectivity or personality. Thus, art was separated from manufacture and artists from labourers.

A contradiction arose due what Nesbit calls the appearance of "uninvited guests": those "new technologies and new materials for word, sound and image" (Nesbit, 1987, p. 235-236). Existing copyright law could not immediately accommodate the claim to restricted rights for these cultural forms, thus generating an imaginary separation between aristocratic or high culture and mass culture. It was photographers who, in petitioning for copyright, threw "the definition of the author permanently up in the air".[9] These technical forms of culture kept on expanding and presented a fundamental economic challenge to existing author's rights and, therefore, to the prevailing definition of art. The French state was caught between extending copyright to the point where it lost secure footing in the individual personality of the author or abandoning significant swathes of cultural property to free use. Unsurprisingly, it came down on the side of property and abdicated on coherence. The French law of copyright was changed in 1957 to recognise these cultural forms. At this point the "simple mediation it used to perform is a thing of the past" (Nesbit, 1987, p. 257). In the process, distinctions between high and low collapsed and the cultural field levelled out. From this point on, Nesbit suggests, copyright "has gone vague" (Nesbit, 1987, p. 229).

In the process of her argument, Nesbit suggests that the well-known accounts of authorship by Barthes and Michel Foucault failed to grasp the actual transformations under way (Barthes, 1977; Foucault, 1977). Barthes could only see the incorporation of authorship into industry and mass culture as a form of "death" (Nesbit, 1987, p. 243). This reveals the

8 See also the excellent work of Katie Scott: Scott, 2000; Scott, 1998; Scott 2010. For an attempt to deal with patent law, see Purbrick, 1997.

9 See also my account of the classification of photography in the International Exhibitions: Edwards, 2006.

extent to which his essay is a mournful account of the passing of a special kind of acquisitive person secured by the law. Barthes and Foucault were, Nesbit tells us, overly focussed on texts and intellectual history, thus disconnecting authorship "from the procedures of everyday life" (Nesbit, 1987, p. 240). Foucault's idea of an "author function" registered the effects of these changes, without entirely recognising their source in the new copyright legislation. In contrast, Nesbit hitches Foucault's "author-effect" to the legal protection of an author's name. But, she tells us, the "economy is Foucault's blind spot" (Nesbit, 1987, p.2 40). Nesbit's question: "What was an Author?" speaks to a particular phase of culture, which we could identify with the bourgeois individualism of the nineteenth century. The law of 1957 represents one decisive end to that phase of capitalism and the emergence of a new "cultural logic".

There is, though, a problem with this line of argument. What seemed like an incredibly productive avenue of investigation ran into trouble almost as soon as Edelman's book was translated into English. Paul Hirst – doyen of British post-Althusserianism – argued that there was no moral right in British law and that English copyright differed markedly from French author's right; Edelman's conception would not stand translation across the Channel (Hirst, 1979a; 1979b). Hirst insists that English law is not predicated on individual subjects, because it is not based on principle and no creative subject is presupposed, thus, it presented less trouble in recognising copyright in photographs. Assigning copyright to photographs was not as painless as he suggests (it was likewise the 1950s in the U.K. before this was definitively established), but the indifference to individual subjects needs reckoning with (Hirst, 1979a, p. 17).

The author in English intellectual-property law is something more like the owner of a material process or proponent of an act, and not a unique creative subject. The photographic theorist John Tagg reiterated Hirst's claim and the debate photography, intellectual property and authorship ended before it had begun (Tagg, 1988, p. 103-116). My reconstruction of the daguerreotype patent is meant to return to this discussion and address the kind of authorship that emerges when we do not presuppose a creative subject. It is worth noting that this does present a problem for Nesbit's account, because she moves seamlessly between French and U.S. law with their distinct juridical codes. This is a symptom of a substantive contradiction running through much of the debate on intellectual property, which conflates the subject at law and "natural right". This will take a little untangling before we can return to daguerreotypes and their "authors".

Much historical writing on copyright and intellectual property depends on a conception of "natural law" or "natural right", in which an individual subject claims, as inalienable property, the fruits of their genius and unique personality or the results of their transformation of nature through individual labour. In the *Second Treatise on Government* John Locke gives one classical statement of this view of possessive right, which was highly influential on some of the English and Scottish jurists who framed copyright law. Like Grotius and Puffendorf before him, Locke predicated proprietorship on possession of land, but he departs from their conception of simple "occupancy" and, instead, emphasises self-possession and transformative labour as the conditions of ownership: "every man has a property in his own

person: this nobody has any right to but himself. The labour of his body, and the work of his hands, we may say, are properly his" (Locke, 2003, p. 111).[10] Persons possessed themselves and, therefore, had rightful ownership of the products of their labour. In Locke's *Treatise* this claim to property holds good for the appropriating subject even when it is his "servant" who performs the work, or his horse that "bit the turfs". In transforming, or "improving", the land the subject appropriated it as his personal property. Locke's infamous justification for settler colonialism in New England is contained in this argument. The claim is that Native Americans could be subjected to "accumulation by dispossession", because they did not improve their environment; the commons were waste and belong to anyone who transforms them productively for the common good.

This account of natural right offered a powerful way of understanding incorporeal or immaterial property during the eighteenth century because it envisaged mental production – primarily writing and selling books – on the basis of capitalist improving agriculture. From Locke to William Blackstone, and Adam Smith to Joshua Reynolds, mental labour trumps manual work and property emerges from intellectual endeavour or personality. This conception would seem to explain the ideological constitution of patent in daguerreotypes, because it joins property and authorship.

The problem is that in response to the French revolution, British jurists beat a hasty, and none too orderly, retreat from the natural-right tradition. The idea of the inalienable Rights of Man came to be seen as a dangerous justification for the unwarranted liberties demanded by the rabble. In a Burkean manoeuvre, the English law replaced natural right with the idea of precedent and an ancient, invariable tradition (supposedly) inscribed in the common law. Natural right was ceded to radicals, who tried to ground their claims to political representation on inalienable rights, and to workers, who employed natural right as the basis for a demand to property in their own labour and, by extension, the franchise (Lobban, 1991; Rule, 1987; Hall, 1992; McClelland, 1989).[11]

Hirst fails to see this shift and the how the assumptions underpinning copyright during the eighteenth century had been congruent with the natural right tradition; part of the problem stems from his structuralist anti-historicism. Whereas many literary critics looking at the emergence of right in texts produce a continuity that treats modern authorship on the basis of an earlier configuration, Hirst generates an equally trans-historical account of commodity-logic, but in the other direction. Both perspectives miss the profound intellectual reaction underway at the end of the eighteenth century, which entailed subordinating the philosophy of natural right, in which rights were vested in persons *qua* persons, to the political economists conception of a society composed of "private interests" (civil society) and the

10 Of course, this did not apply to slaves or colonial peoples, for the exclusion clauses see: Losurdo, 2014; Macpherson, 1964; Wood, 1984.

11 Karren Orren is, I think, wrong in see the common law of the USA as a remnant of "belated feudalism", but the rearticulation of an existing legal code produced undoubted advantages for English capitalism. See: Orren, 1991.

Liberal self-limitation of executive power. There is a direct correlation here with John Barrell's account of English art theory and the drift that occurs in the *Discourses* of Sir Joshua Reynolds from Civic Humanism to a Burkean ideal of "tradition". The point about Civic Humanism is open to debate, but the transformation Barrell observed is an important symptom of wider patterns of intellectual change (Barrell, 1986; Hemingway, 1987). Throughout this period, the histories of law and aesthetics echo one another. So, natural right had been displaced or discarded by the time of the daguerreotype patent. Immaterial property ceased to be justified by appeal to mental labour or personality and was secured by appeal to the utility of invention. What is more, and this is not a small matter, while there had been a period in which natural right had been applied to copyright of manuscripts, engravings and even textile designs, it had never had any bearing on patent law. In English law, patents and copyright have distinct lineages and different conditions of possibility, which only begin to converge in the nineteenth century. In this regard, Hirst is right: there is no creative subject underpinning British intellectual property (after 1800) and we need another account of patent-authors.

Something like patent property was known in the Italian city states during the fifteenth century, where innovating craftsmen were given special privileges (Gerulaitis, 1978; Coulter, 1991). There is disagreement about the first English manufacturing patent, but the practice was common in sixteenth-century England as a way of encouraging foreign craftsmen – particularly Italian glassworkers – to settle in the kingdom (Coulter, 1991, p. 8-10). Manufacturing patents were only one form of royal patent or prerogative. As the lawyer Thomas Webster wrote in 1841: "The granting of exclusive privileges to particular individuals has from time immemorial been considered the undoubted prerogative of the sovereign power in these realms. The subject-matter of these grants has been various; as lands, honours, franchises, liberties and monopolies" (Webster, 1841, p. 1). From the middle-ages the English monarch ennobled individuals by awarding a patent of nobility. In contrast to *litteræ clausæ*, or closed letters, "letters patent" is derived from *litteræ patentes*, open letters: "having the great seal appended at the bottom, and directed or addressed by the sovereign to all the subjects at large, who may be interested in becoming acquainted with the contents" (Webster, 1841, p. 1; Coulter, 1991, p. 7). Patents, in their various forms, are special grants from the Sovereign power.[12]

From the early seventeenth century, English law assigned manufacturing patents for both domestic innovations in manufacture *and* new manufactures introduced into the kingdom. Artisans who were encouraged to settle in England were given privileges often amounting to release from guild restrictions and monopolies over production and sale for a term of years.[13]

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12 One issue here is that while manufacturing patents where ostensibly devised to encourage trade, all too frequently their sale was used by the monarchy to raise funds for the royal treasury. These state constituted monopolies were a significant contributing factor in the conflict between the Crown and the Commons, which developed into the English Civil War.

13 It is notable that the term of years granted was twice the length of apprenticeship and it was a condition of the grant that these skilled workers take on and train English apprentices.

Thus, from the outset the granting of a manufacturing patent was designed to encourage the development of trade and industry. As such, it was concerned with the importation of unknown foreign industries or skills (trade mysteries) rather than invention per se. To this effect, a monopoly over production and sale was a standard reward and dissemination (the apprenticeship clause) was built into the grant.

Miles Berry's initial control of the daguerreotype patent suggests some important pointers for understanding the way that intellectual property law impacted on the development of photography and shaped patterns of authorship. First, the patent vested property right in the "first and true inventor", but he (and as we will see, it was he) did not have to be the actual inventor. Some radicals tried to defend the rights of inventors by again appealing to natural rights, but the law regarded anyone who introduced a new manufacture into the kingdom as the inventor.[14] The patent holder could be the inventor of a new manufacture or a projector (speculative merchant or manufacturer) who purchased the rights to the discovery, or like Berry the importer of an invention from a foreign country, where it was previously unknown in the kingdom. The significant terms are "manufacture" and "new". The invention had to be previously unused in the territory and capable of being put into production. A legal contract created the patent property and the patent-author. The patentee then gained exclusive right over an invention for fourteen years. Secondly, the patent conferred exclusive right on its holder. No one was allowed to use the daguerreotype without Berry's express permission, and this applied to amateurs, men of science and other non-commercial users. Exclusive use meant just that; it excluded or annulled all other potential acts in relation to daguerreotypes. Thirdly, patents were created by the Crown and therefore tied to territory. In this case, the territory was "England, Wales and the Town of Berwick upon Tweed and all Crown Colonies and Plantations Abroad". Separate patents, and separate registration fees, were required for Scotland and for Ireland; Berry did not purchase these rights. The Channel Islands and the Isle of Man were also excluded from the patent. The state produces a people-market among whom the patentee can operate; it also constitutes significant spaces of exception. Finally, the patentee could legally licence others to operate the invention under strict contractual conditions, usually for a "financial consideration" or fee. This allowed others to practice the "art", but under strictly regulated conditions. Intellectual property – which after land and chattel was the third estate of property in British law – provided a scenario for subjectivisation and a stage for self-possession through ownership.

As Nicos Poulantzas argues, the legal apparatus of the state produces atomized "juridical-political persons who are the subjects of certain freedoms" (Poulantzas, 2000, p. 63).[15] Poulantzas calls this process "individualization", but "subjectivisation" would do just

14 For the history of patents see: Dutton, 1984; Coulter, 1991; MacLeod, 1988; Pettit, 2004. For good examples of current scholarship see: Sherman; Bently, 1999; Pottage; Sherman, 2010.

15 It is worth noting the significant differences in approach to Marxism and the law represented by the work of Pashukanis, Edelman and Hirst. Addressing the different emphases and approaches would require a much more systematic presentation than can be undertaken here.

as well. The point becomes plain in the case of women's involvement with the daguerreotype patent. Before the Married Women's Property Acts of 1870 and 1882, only men could hold patents (Holcombe, 1982; Poovey, 1989; Shanley, 1989; Stetson, 1993; Griffin, 2003). In law, married women did not exist (Kaye, 1855; Anon, 1858). The married woman was a *femme covert*, that is to say, a woman represented or "covered" (and the connotation is evident) by her husband. Such women could not enter legally binding agreements. Only unmarried woman or widows were able to contract at law; these women were designated *femmes sole*. We know of two women in the early daguerreotype trade, both were licensees: the title of Miss Jane Nina Wigley (Newcastle-upon-Tyne 1845-1847; London 1847-1855) suggests that she was unmarried or a *femme sole*; the year after the death of her husband in 1843, Mrs Ann Cooke took the license in Lincolnshire. At the end of 1844 she moved to Hull where she ran a studio until 1857. Mrs Ann Cooke as a widow was also a *femme sole*.[16] These examples demonstrate that authorship was rigorously circumscribed by the law; only some persons could emerge as authors on this terrain, they required money and a male gender (female exceptions were possible, but under strict conditions). Authorship emerges through the law and the law is not just another ideology or discourse, but an apparatus, or practice, intimately linked to relations of production and the Sovereign State.

The identity constituted through these legal acts and judgements is distinct from an ontological self. As one writer has put it: "In contrast with the person recognized by the continuity of his being, we may designate the character defined by the coherence of his acts as an 'identity'" (Rosenberg, 1999, p. 136). Theatre and performance provide models for thinking about the subject, not for the reason that the person is a fiction (character) or a locus of self-fashioning, but because drama is close to the workings of the law. As Hirst notes, "[r]ights are legally defined and sanctioned capacities to act in certain ways and enjoy certain conditions" (Hirst, 1979b, p. 156). Patent law is not predicated on possessive right, but on a series of acts defined by statute. The continuity or coherence of this authorship is a fiction held in place by a judgement and its apparatus. [17]

RICHARD BEARD, COAL MERCHANT

In the middle of 1841 Richard Beard purchased the full patent from Berry. This was not Beard's first patent, nor his last. Beard's father was in the grocery business in Devon, Richard Beard had been the manager of this concern before moving into the coal business. In 1833 the younger Beard transferred to London, becoming a partner in Pope, Beard and Co. Coal Merchants of Western Wharf, Regent's Park Basin. He went on to found R. Beard and Company, another coal distribution business and purchased a site at Purfleet Wharf,

16 It is also possible that Miss Luisa Louche was working in Southampton in the mid-1840s.

17 This is to write against "the little monograph" now prominent in art history and return to the classic debates of the 1980s. See: Pollock, 1980; Rifkin, 1983; Green, 1987; and Christie; Orton, 1988.

Earl Street, Blackfriars. The coal trade in the metropolis was highly competitive and there is clear evidence that Beard was looking to diversify; he was seeking alternative outlets for his capital: on 17th June 1839, he filed a patent for the colour printing of calicoes (Heathcote; Heathcote, 1979, p. 313). No doubt, Beard had capital available, his father's will dated 27th April 1840 left him property and land and almost immediately afterwards, he invested in the daguerreotype process and took out a patent (Heathcote; Heathcote, 1979, p. 314). On 23rd June 1841 Berry assigned the patent to Beard for a consideration of £1,050 (Richard Beard Affidavit 13th July 1841)[18] and on 16th July 1841 Beard signed an indenture with Daguerre and Niepce giving him control of the patent for the daguerreotype in England, Wales and the Town of Berwick upon Tweed. It was not until two years into his photographic career, that Beard sold his interest in R. Beard and Company. That is to say, until July 1843 he was a coal merchant and the patent holder for the daguerreotype process, owning and controlling three London studios and having an interest in numerous other photographic concerns.

Around the period 1846 to 1848 he also ran a business with his son as a trader in ultramarine, while still engaged in his photographic enterprise (Heathcote; Heathcote, 1979, fn. 56, p. 328). As late as 1867 he was still looking for opportunities when he filed a patent for medical galvanism – the connection between photography and electricity has still not been sufficiently explored (Heathcote; Heathcote, 1979, p. 327). Photography took its place among Beard's commercial endeavours and he had been economically active in the capital for seven or eight years prior to involvement with the daguerreotype. His capital might flow from one sphere to the other, but there is no reason to presume coherence across these concerns in the person of Beard the photographic author-proprietor. I am going to try to reconstruct this authorship through a combination of what Franco Moretti calls "distant reading", or attention to mass patterns of cultural production, and close attention to the marks of authorship on daguerreotypes (Morretti, 2013).

From June/July 1841, as assignee of the patent, Beard could sue at law anyone who infringed his property right. In less than three months of operating he claimed to have taken £3,000 at the Polytechnic Institution (Beard v. Barber, 1842). Jabez Hogg, who had worked for him, suggested that Beard had made £25,000 his first two years of operation from portrait work and the sale of licences (Hogg, 1845, p. ix). Beard clearly saw the opportunity of becoming very wealthy. He had already absorbed Cooper's interest and possibly his own earlier agreement with

18 £1,050 is an odd sum and it is possible that Beard paid Berry £800 (the amount he had asked of Claudet) and a further £250 to Daguerre (and Niepce). In a letter of 15th May, Berry and Newton informed Beard's agents that the lowest they could accept for the patent rights was £900 (reproduced in Newton Affidavit 10th July 1842). It is difficult to see how the price could have subsequently risen from this. Alternatively, the £1,050 may have comprised a sum of £850 for the Patent and a further £200 intended for the repurchase of Claudet's licence. In 1868 Claudet claimed he had purchased his licence direct from Daguerre at the end of 1839. Historians have scorned this idea and put it down to his failing memory, but it is not out of the question (Claudet, 1868). For the historians response see: Heatchcote; Heatchcote, 1979, p. 6; and Wood, 1980. Despite Berry's role as the British patentee, Beard performed a second indenture with Daguerre and Niepce: this suggests that the Frenchmen retained some unspecified involvement with granting rights to their invention. Therefore, it is not impossible that Claudet entered into an agreement with the French inventors prior to agreeing the licence with Berry.

John Johnson, thereby obtaining for himself absolute monopoly within the specified territory. However, Claudet refused to surrender his license and Beard entered his initial Bill of Complaint on 6th July 1841 (before the indenture with Daguerre and Niepce). This resulted in a law suit in Chancery Court (also at the Queen's Bench) that ran between 1841 and 1843. Ultimately, Beard failed in this suit and he was compelled to accept Claudet's right to operate the daguerreotype apparatus within the strict terms of his licence. With this exception he had complete control of the daguerreotype process in England, Wales and the town of Berwick-on-Tweed.

FETISHISM AND SUBSUMPTION: BEARD'S OPERATORS AND LICENSEES

This gave Beard three studios, which were run by a series of "operators"; those usually listed are: Francis Beattie, George Brown, J. T. Cooper, Jabez Hogg, John Johnson and T. R. Williams. However, in the affidavits sworn in the course of Beard's various prosecutions, other operators or assistants are named: Alfred Wilkinson and Walter Samuel Scott at the Polytechnic Institution (Wilkinson, 1845); William Henry Williams had been assistant to Beard (Williams, 1843); Cornelius Sharp was assistant to Beard at 34 Parliament Street (Sharp, 1842); Walter Rowse Plimsoll was assistant at 85 King William Street (Plimsoll, 1842). Alfred Barber also advertised as "late of the Polytechnic Institution". Scott took over the studio at the Polytechnic Institution in 1855, after it had been vacated by Beard (Heathcote; Heathcote, 1979, p. 326). In the affidavits other men are listed as clerk to Beard (including John Plimsoll), while Hogg appears as "assistant to Richard Beard at the Photographic establishment, 34 Parliament Street" (Hogg, 1842). These men provided evidence of infringement in Beard's prosecutions and they all testified that they were familiar with the process. This suggests that, in addition to those usually mentioned by historians as daguerreotype "pioneers", Wilkinson, Scott, Williams, Sharp and Walter Rowse Plimsoll worked as operators. Still others appear in regional newspaper advertisements as having worked in Beard's London studios, such as Mr Stephen, Mr Stoddard and WT Pitcher. This takes the count to fifteen, but I expect there were more.

The paradox of Beard's authorship frames the crude woodcut of his Polytechnic studio, which appeared in *George Cruikshank's Omnibus* of 1842. This is now a familiar image, appearing as a synecdoche for the early studios in many histories of photography (Blanchard, 1842, p. 29). The "patient", who is having his portrait taken, sits on a chair mounted on some form of raised dais. This platform is equipped with an over-head shade or reflector and a plain backdrop. The "patient" is held in position by a head rest. The "operator" is also raised on a set of steps. In his left hand he holds a watch to time the exposure (we will have to set aside the impossible object in his right hand). It is a representation of Jabez Hogg. Above him are two Wolcott mirror-cameras positioned on a track, only one of which is open; there appears to be a glass ceiling. Behind the operator are two figures: a seated woman and a standing man, hat in hand. They are attentive to the operator's work, but it is not clear whether they are accompanying the "patient" or are awaiting their turn; in any case, they fade into the background of the scene like phantoms – as insubstantial as the door that opens on to a process room. The man and woman in the left foreground hold small black objects – presumably cased daguerreotypes – and both peer intensively at these image-

PHOTOGRAPHIC PHENOMENA, OR THE NEW SCHOOL OF PORTRAIT-PAINTING.

"Sit, cousin Percy; sit, good cousin Hotspur!"—HENRY IV.
"My lords, be seated."—*Speech from the Throne.*

I.—INVITATION TO SIT.

Now sit, if ye have courage, cousins all!
Sit, all ye grandmamas, wives, aunts, and mothers;
Daughters and sisters, widows, brides, and nieces;
In bonnets, braids, caps, tippets, or pelisses,
The muff, mantilla, boa, scarf, or shawl!
Sit all ye uncles, godpapas, and brothers,
Fathers and nephews, sons, and next of kin,
Husbands, half-brother's cousin's sires, and others;
Be you as Science young, or old as Sin:
Turn, Persian-like, your faces to the sun!
And have each one
His portrait done,
Finish'd, one may say, before it's begun.

Nor you alone,
Oh! slight acquaintances! or blood relations!
But sit, oh! public Benefactors,

Figure 2 - Richard Beard's Polytechnic Studio. Public Domain. Originaly published in CRUIKSHANK, George. Omnibus, Laman Blanchard (ed.). London: Tilt and Bogue, Fleet Street, 1842, p.29. Available at: <https://hdl.handle.net/2027/mdp.39015023511572>. Accessed: 22 Feb. 2019

things through small magnifying glasses. The obsession with microscopic detail was a powerful feature of the reception of the daguerreotype and we know from the account left by the Wadia cousins of Bombay – who visited Beard's Polytechnic studio in 1841 – that magnifying glasses were available for looking at the images (Nowrowjee; Merwanjee, 1841, p. 29).[19]

Despite the disaggregated figures and unconvincing spaces, it might seem that there is nothing remarkable or unexpected in this rough scene of commerce, work, and fascination. But something is missing. Predictably, it is hidden in plain sight. Richard Beard is supposed to be the author of the small pictures that the two figures are inspecting, but where is he? The history of photography has treated this problem with a sneer and moved on. Beard was just a coal merchant looking for a fast profit, we are told, and Hogg, Beattie and their like were the real artists. This will not do; we need to take the problem seriously. Beard the author is nowhere to be seen. Instead, we have two working figures, the operator Hogg on the steps and the other character (Wilkinson or Scott?) buffing the plate. Whereas the operator is a marginal presence in the account of Beard's studio that appeared in the *Spectator* in 1841 (20 March 1841, p. 283), in this scene, there is no occlusion of production; the cameras and the operation, preparation of the plate and the process room are all there plainly visible. So, in this instance, we know who made the pictures – the problem lies elsewhere.

It is the peculiar nature of labour-power as a commodity that it cannot simply transferred from seller to buyer; in the process of production labour power has two owners: the worker and the employer. The capitalist purchases labour power as a use value, but cannot have "full proprietary control over it" (Steinberg, 2010, p. 180). This is because it is labour power that has a price and not labour as such, otherwise we would be dealing with chattel slaves. To cut a long debate short, the law performs a double transformation to effect this shift. The labour contract forces the separation and transfers manufactured artefacts (commodities) created by the acts of labour power to the capitalist. That is the first part of this drama. In the second act, patent law also shaped immaterial property and authorship. The law turned the daguerreotypes made by the operators into Beard's exclusive property.[20] So, in this case, the fetish does not entail occluding production. It hides elsewhere; in the juridical relations which define the forms of capitalist-property right. This legal fetishism construes commodities and persons as independent and abstract categories that generate supposedly "free" exchange between formally "free" and "equal" actors (Marx, 1996).[21] Labour power and its products can thus become the property of another. The law infuses this scene and sets the operators to work and in the process it constitutes Beard's identity as an author.[22] Hence, the fetishistic paradox,

19 This is a nineteenth-century English transliteration. These men were Parsis and cousins: their names would now be written: Jehangir Naoroji Wadia and Hirjeebhoy Meherwanji Wadia. My thanks to Jairus Banaji for help here.

20 Steinberg has that argued master and servant law (in force until 1867) played a key role in this process of formal subsumption (or subordination) of skilled labour to capital and it is worth noting that in the most developed liberal economy of the period, by today's standards "free labour" was actually unfree.

21 For excellent recent study on the laws of contract see: Steinberg, 2010.

22 See for comparison: Edwards, 2001.

the daguerreotypes produced by the two men really were made by Beard; these fantastical connections "appear, not as direct social relations between individuals at work, but as what they really are, material relations between persons and social relations between things" (Marx, 1996, p. 84). Perhaps, we should speak of the subsumption of the author to capital.

Figure 3 - Beard patentee, Portrait of a Woman. Ninth-plate daguerreotype in dolphin and pheasant hanging frame, 1842. Collection of the author

What is more, Beard fully exploited the possibility allowed under English patent law to grant licences: it may well be that his primary interest in the daguerreotype lay with the opportunity it created for this trade in legal contracts; in the capitalist marketplace use values are vehicles for exchange values and photographs of bourgeois faces were quite possibly a condition for securing licence fees. On some occasions, Beard established a provincial studio, for which he subsequently sought a licensee – he seems to have done this in Manchester, which for the first twelve months he maintained through his manager W. Watson, before assigning the studio to John Johnson on 9th November 1842 – who became licensee for Lancashire, Cheshire and Derbyshire (Heathcote; Heathcote, 1979, p. 320). In other instances, the licensee established the studio, as Alfred Barber did in Nottingham. J. F. Goddard probably assisted in the technical set-up of (some) studios: he was present for the opening of the Plymouth studio; he was also there when studios were established in Cheltenham and Bath (Heathcote; Heathcote, 1979, p. 319).

Similarly, John Johnson stated that after spending much of his time in early 1841 setting up the Polytechnic studio, he was "despatched to other cities and towns to aid in opening other galleries" (Johnson, 1868, p. 405). This is not insignificant; had it been known publicly that Goddard or Johnson were present at the establishment of these licensed studios it could have led to the annulment of Beard's patent, because it broke the disclosure clause. According to the legal fiction involved, patents were granted in exchange for full disclosure and the specification document required was supposed to be self-contained, making the invention available to any competent person. Technical assistance or instruction was therefore a potential breach of the agreement with the Crown.

During the period of Beard's patent between 1841 and 1855, he licensed hundreds of studios. The first licensed provincial studio was opened in Plymouth in July 1841 by William Bishop. By the end of the year there were licensed studios in: Bristol (Harry Vines), Cheltenham (John Palmer), there appear to have been two studios in Liverpool at this time (John Relph, manager; James Foard), Nottingham (Alfred Barber), Brighton (William Constable), Bath (Mr Sharp), Manchester (Beard with Watson as agent) and Norwich (Harry Milligan) and possibly another in Southampton (Mr Smith?/John Reid?). In 1842 Edward Holland was allocated the licence for the Counties of York and Derby (excluding Leeds); other licences were granted the same year for Exeter, Oxford, Birmingham (Joseph Whitelock), Leeds, Scarborough, St Helier and St Peter Port; in 1843 licences were received for Bradford, York, Sheffield, Leamington Spa and Hull (Mrs A. Cook, who had previously been in Lincolnshire); in 1844 there was a licensee for Leicester; in 1845 one in Newcastle-upon-Tyne (Miss Jane Nina Wigley, who subsequently moved to London); in 1846 in London (Mr Bright) (Fisher, 1992, p. 73-95). There were also studios listed in Barnstable, Shrewsbury and Taunton. Ireland and Scotland lay outside Beard's control, but they were subject to his 1840 patent for the Wolcott camera and Goddard's work and studios were established in Belfast, Dublin, Edinburgh and Glasgow; itinerants visited Aberdeen and Inverness.[23]

Many of these studios had just a fleeting life and it is difficult to keep track of openings and closures. In the list above there appear to be two licence holders for the territory of Derbyshire and two for Liverpool! We know of many of these operations not through formal documents and binding legal contracts, but advertisements in local newspapers and names on extant daguerreotypes: for instance, Arthur T. Gill published details of one Beard patentee daguerreotype, which according to an affixed label was made by Mrs A. Cook of Hull. This suggests that she was the Beard licensee for Hull, but we have no further information (Gill, 1979, p. 94-98). Where details come from press advertisements it can be difficult to know if the studio in question actually opened and operated: these may have been announcements made during negotiations with Beard, intended to ascertain the degree of local interest. In some instances, the licensee of these studios is known; in others we have no information.

23 Information on licensees is distilled from Fisher, 1992; "The Beard Richard Beard: an Ingenious and Photographic Franchise in England", p. 94-95; Heathcote; Heathcote, 1979; and Heathcote; Heathcote, 2002.

I have only given the date at which studios opened, because this was the point of their licensing agreement. While some – Constable, Cooke, Wigley – remained in business for ten years or more, many of these studios had no more than a fleeting life and it is difficult to keep track of openings and closures; of proprietors coming and going; of itinerants announcing a short stay and a little tour.

From 1846 Beard began to open up the London market: first licensing Mr Bright as an independent; then John Mayall, A. L. Cocke and W. E. Kilburn. By 1853 there were at least seven daguerreotypists other than Beard working the capital (Heathcote; Heathcote, 2002, p. 233). During the 1850s multiple studios appeared in some towns, occasionally resulting in a small commercial war. Throughout the period of the patent, many other names appear in advertisements carried by the regional press: some may have been pirates; others were probably operators working for a licensee in the outlying towns allowed by the agreement with Beard; yet others may have been unannounced license holders.

We know of many of these business concerns not through formal documents and binding legal contracts, but names fixed to extant daguerreotypes and advertisements in local newspapers. We are only aware that William Armitage ran a daguerreotype studio in Louth because of the announcement of his death in the *Lincoln, Rutland & Stamford Mercury* (November 23rd 1849, p. 3). In fact, his presence is visible to us because his death involved a spectacular accident and was deemed worthy of a few lines: Armitage was a chemist and was killed, along with five other people, when the railway detonating alarms that he was drying exploded. In some instances, the licensee of these studios is known; in others we have no information; some licensees were investors and the studio was run by another, often unknown, operator; some were involved in mixed trading as chemists, book sellers, printers, cabinet makers and even a boot and shoe maker.

Despite the complexities and incomplete record, it is clear during the early 1840s Beard was actively soliciting for prospective licensees. The law allowed him to act in this fashion. On occasion, he hired venues in provincial towns to exhibit specimens. In order to display his wares, he rented a room in the Swan Hotel, Stafford on 5th and 6th December 1843 and he did the same in Leicester during the following week (Heathcote; Heathcote, 1979, p. 320-321).[24] He was also marketing licenses through the regional press. In 1842 Beard advertised in the *Cardiff and Merthyr Guardian* for prospective "capitalists" interested in becoming his licensees:

> Mr. Beard (the sole Patentee) begs to offer for Sale the Entire and Exclusive Right of Exercising his Patent for the County of Glamorgan, except Swansea, upon the following Terms: That is to say, £250, to be paid down; Monmouthshire (not to include Cardiff) £400, to be paid down; or £250 and 15 per Cent. On Gross Receipts; £200 and 20 per Cent. On Gross Receipts (*Cardiff and Merthyr Guardian*, 16th July 1842).

24 This has the feel of a midlands tour and we need further research to establish if other towns were visited in this way.

In this advertisement, he claimed that establishing the daguerreotype in London had cost him nearly £20,000 and suggested it could be "made a source of immense profits" and "a large Annual Income". The apparatus he said "may be perambulated and used in small towns and villages", which proved "a palpable advantage in sub-letting Houses" (*Cardiff and Merthyr Guardian*, 16th July 1842). In 1842 he was selling licences for Devonshire, for Oxford, for Reading and also for Hull. In 1843 towns in Lancashire, Derbyshire or Cheshire could be sublet from Johnson in Manchester; also in 1843 he advertised the license for Staffordshire (excluding Birmingham) and that for "the whole or any part of the County of Leicester including Birmingham". He was seeking a licensee for Newcastle in 1843 and again the following year. He advertised in 1844 for the right to operate in the Counties of Lincoln, Cambridgeshire or Huntingdonshire, and, in a separate, advertisement for Halifax. Having put Edward Holland out of business, he advertised in 1844 for York or the Counties of Northumberland or Durham.

The case of Nottingham is particularly enlightening. In 1841 Beard sold the licence for Nottingham to Alfred Barber. The following year Beard inserted an advertisement in the *Nottingham Journal*, which he addressed to "small and enterprising capitalists" and "gentlemen of a business-like turn". In this instance, Beard began by puffing "this wonderful and admired invention" which "by a simple and nearly momentary process" produced "a perfect miniature reflection of face, figure and dress, with all the beauty of a mezzotint engraving". The purpose was to announce that, as sole patentee, he was "desirous of selling the right of the patent for the entire County of Nottinghamshire (the town of Nottingham excepted)". From "the power of subletting" alone, he suggested, "an immense profit may be made".[25] This is instructive. It suggests that Beard envisaged a vast network of licensed studios covering the country with lucrative city markets surrounded by larger county territories, which might contain rights to yet smaller areas. As we have observed, when selling the licence for the Counties of York and Derby he excludes Leeds; Glamorgan omits Swansea; Monmouthshire sets aside Cardiff; and the Staffordshire advertisement excludes Birmingham. Had he succeeded in finding a licensee for the County of Nottingham he would have further undermined custom for Barber's already hard-pressed Nottingham business.

Beard was determined to keep hold of his monopoly over the London daguerreotype business and the licence trade and he actively policed his territory. In addition to the case against Claudet, he entered into five further legal suits, winning them all.[26] In other instances, a letter from his lawyer – Charles Fiddey – threatening action may have been sufficient to see off pirates, or potential infringers, of the patent. We do not know how many of these there were. Two prosecutions dealt with photographers operating without a licence (Edward Josephs – aka Edward Joseph Edwards – and the partnership of Robert Rankine Bake and William George Chapple); one was conducted against Jeremiah Egerton, who was a trader

25 "Mr. Beard's Photographic or Daguerreotype Portraiture", *Nottingham Journal*, p. 1, July 15th 1842.

26 Though, Jeremiah Egerton managed to draw out the process and remain in business.

in equipment (reminding us that Beard's right also extended to the sale of cameras, manuals and chemicals); and two of the legal suits were conducted against licensees (Alfred Barber and Edward Holland) who had not "honoured" Bills of Exchange and/or the percentage of profits owed to Beard. Alfred Barber, the Beard licensee for the Town of Nottingham, defaulted on payments of £720. Action in the Court of Chancery from 1842 to 1843 resulted in a ruling for Beard and Barber's licence was revoked.[27] Edward Holland, Beard's licensee for the Counties of York and Derby (excluding Leeds), defaulted to the sum of £300. Ruling in Chancery Court again went for Beard and Holland's licence was also withdrawn. The cases against Barber and Holland are worthy of minor plots by Dickens or Wilkie Collins: gullible characters, enticed by the lure of riches, enter into contracts with the ruthless and grasping merchant and lose everything. In each case, his property was produced and secured through a series of legal acts. These acts are not just the condition of Beard's self-fashioning. It is important to recognise that they debarred others from performative acts of self-constitution. Acts and performances take place under material constraints. In the process, Beard's singularity was being secured.

THE LEGAL FORM OF PATENT PROPERTY

My interest in this history is not merely to establish details of the economic or business history of the daguerreotype – valuable as that task is – rather, I am interested in the kind of authorship established by this pattern of trade. The standard emplotment for early English photography views Beard as a man with dirty hands, as if scarred by coal dust. It is repeatedly said that he never touched a camera (this is far from certain), but are we to imagine that as a coal merchant he actually humped sacks of anthracite? This is not what merchants do and capitalist authorship does not actually require the making of portraits or operating a camera any more than Beard's business a coal merchant involved him in fetching and carrying. My intention is not to exonerate Beard, but to begin to think again about photography, property and authorship. The problem is that an account over-determined by the sign "Art" obscures this issue. This is partly because it assumes in advance a form of authorship that we believe we understand, locating a creative personality in a place where there are simply legally constituted acts. The category "Art" may block the kind of thinking we need to undertake in order to grasp the workings authorship and property in the capitalist mode of production.

Beard operated two, perhaps even three, models of business; in his London studios he engaged directly in commodity production, whereas the network of studios operated much more on the basis of merchant capitalism licensing production by others and supplying materials. Beard's business strategy was to retain control the London market, while permitting the right to operate in the provinces where he lacked local contacts and knowledge of market peculiarities. In the 1840s, artisan production and small firms were

27 Barber found his own way of continuing in business, moving to the Channel Islands, which were beyond Beard's control to the mainland. His involvement in the daguerreotype business was remarkably prolonged.

increasingly drawn under the control of larger enterprises by the control of credit by factors or merchants who marketed their products and often supplied raw materials (Behagg, 1990). If the role played by credit in the reconstruction of the labour process and the development of industrial capitalism has been understood, the importance of patent property has gone unnoticed. The patent and the law courts provided Beard with key resources to establish a national market over which he held sway as author-owner.[28] The fact that some of Beard's operators later emerged with "names" should not disguise the fact that the ownership of the patent was a force of proletarianisation and a concomitant accumulation strategy.

As I have suggested, Beard employed multiple operators in his three London studios, and we have no way of knowing who made a particular image.[29] Williams, Brown, Hogg, Plimsill and the rest were employees working (presumably) for a wage: in this sense, Edelman was right to describe photographers as the "proletarians of creation" (Edelman, 1979, p. 45). The daguerreotypes they made appear simply as the products of Beard's studios. This pattern of "collective authorship" is further complicated, because Beard supplied his studios and licensees with plates, chemicals, cases and other articles required for the trade. Beard maintained a "manufactory" at Wharf Road, off City Road for supplying his studios with articles required for the trade.[30] The Wharf Road manufactory was overseen by Wolcott and it seems that some articles, including Wolcott's camera, where made on the premises, but the manufactory also served as a merchant clearing house for copies of particularly popular portraits, such as that of Daniel O'Connell, and photographic materials or components produced elsewhere, such as Wharton pinchbeck cases and Elkington plates. Beard probably entered into an agreement with these Birmingham manufacturers for bulk purchase, but there is no evidence.

We know that Beard stipulated, in at least some instances, that his licensees obtain frames, mounts, plates and chemicals from him: he did this with Barber. This was an act made possible under his indenture. Beard's supply chain should remind us that daguerreotypes are not simply images; they are physical things modelled on miniature paintings and their casings and mounts are highly significant signifying elements.[31] No doubt, this holds for all images, but there is a specific point here. After August 1841, daguerreotypes throughout Beard's commercial empire appear in Wharton gilt brass (and sometimes copper) pinchbeck cases, or pans, stamped with an oval design "T. Wharton n. 791 August 24 1841" and the Royal Coat of Arms. The copper version does not bear the coat of arms and was for internal use as a pan in a larger entity. Often the Wharton unit, of which there were two sizes, was enclosed in a frame or a folding leather case.

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28 On the law as resource: Morus, 1998, p. 222.

29 Though some of Beard's operators scratched their names on the back of some plates.

30 Evidence shows that in 1842 he issued his licences from the Wharf Road address, but by 1849 the work of the manufactory had been transferred to Millman Mews, Millman Street, where plates continued to be manufactured until Beard gave up the premises in 1852.

31 Some of the most informative and productive work on daguerreotypes has been focussed on these features. See: Odgers, 1978; Gill, 1979; and Fisher, 1992.

Early daguerreotypes intended to be displayed on the wall are contained in black Japanned *papier maché* frames with an ormolu mask and hanging ring with decorative escutcheon, this decorative fastening often bore the embossed words "Beard Patentee".

Figure 4 - "T. Wharton n. 791 August 24 1841" and the Royal Coat of Arms.
Collection of the author

In their most common form, the daguerreotype unit was contained in a small leather case. These cases were not specific to Beard and were usually pre-existing, or independently fabricated, jewellery cases. The earliest bevelled "flip top" leather cases, used by Beard, did not contain Wharton units and were sealed with paper.[32] The initial Beard images do not appear to have the mount embossed with "Beard Patentee"; this was probably only introduced when the patent came into dispute. To some extent, it is possible to identify the very first images from Beard's London studio, because they are not gold-toned and have a duller appearance (Fisher, 1992, p. 78).[33] The Morocco book-format cases, again with the "Beard Patentee" brass mount, were a latter innovation; these are often embossed were a gilt Beard stamp listing his studios and the Royal Coat of Arms.

32 Robert Fisher suggests that once Beard introduced Wharton cases he continued to employ them at least until March 1842, but this would seem to underestimate the sheer volume of these pans. See: Fisher, 1992, p. 85.

33 Gold-toning was introduced by Hippolyte Fizeau in 1840 and improved for Beard by Johnson who employed a patent electrolysis method.

Most early Beard daguerreotypes are ninth-plate images, because the area of focus was limited with the Wolcott camera; early in 1843 Beard abandoned this apparatus for a camera with a Pretzval lens that had a larger zone of focus, but it should be remembered that he continued to sell ninth-plate images after this date and that some early small images were subsequently enlarged. Hand colouring was introduced from 1842. While the studios in Beard's licensing network employed these standard formats and many images produced by his provincial licensees are identical to those issuing from his London studios in style and format. We know that the daguerreotype portraits made by Thomas Thurlow in Suffolk during the 1850s were still presented in the Japanned *papier maché* framed format, often with the "Beard Patentee" inscription. Very occasionally, we may find a handwritten note underneath the image, on the case, or on the back of the framed images, which allows us to see in which studio the portrait was made; on rare occasions it even gives the photographer's name. More often the sitter might be identified and located in a town or city, which can be a guide to the studio. However, this is not entirely trustworthy information: frequently the written matter was added by the subsequent generations identifying dead relatives and we can't know if the picture was locally produced by a Beard licensee, a pirate passing through, or even made in another city.

A label affixed to one daguerreotype portrait identifies the sitters as Mathew Todd and his daughter Emily and gives the locality as York. Todd was innkeeper resident at the White Hart, 26 Stonegate, York. This is an early daguerreotype in a "fliptop" case with a paper seal,

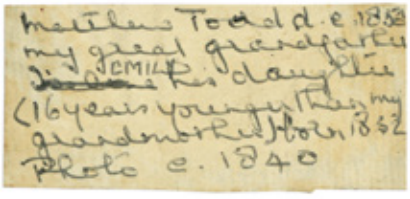

Figure 5 - Edward Holland? Portrait of Mathew Todd and his daughter Emily, with detail of the notes on the daguerreotype's case. Cropped. Ninth-plate daguerreotype, 1842-1843.
Collection of the author

it does not have the "Beard Patentee" stamp on the mount, but it is reasonable to assume it was made in the studio of Edward Holland, who held the Beard licence for the counties of York and Derby (excluding Leeds). While it is plausible to assume that it was made in York, and not in one of Beard's London studios (it doesn't have the bevelled case format), we simply cannot know. All that we can say is that these are collectively authored commodity-images. Men like Beattie and Hogg made the pictures in the three London studios, but they made "Beard" daguerreotypes. Men and women, such as Holland or Barber or Wigley, making daguerreotypes throughout Britain under licence, were also producing pictures by "Beard". We might view Beard's operation as a brand or franchise, but these are rather anachronistic terms. The best way to characterise these pictures is as the products of "Beard Patentee".

What I am suggesting is that – whether we can identify the individual portraitist or not – the patent created a particular form of authorship and identity, specific to capital. In modern English law the patent signifies an empty space of ownership requiring no unique characteristics. This does not mean, as Hirst suggests, that no subject was involved; it was just that this subject did not require a personality. Subjectivity, or sensibility, was a business best left to foreigners – particularly, the French.[34] In English law "identity" was just a series of acts culminating in a fact. Hence, the perpetual game of judging the relative aesthetic merits of Beard against Claudet makes no sense; Claudet was a collective author; he employed operators too: Edward J. Pickering claimed to have made some of the most prominent "Claudet" images. Other men indicated in regional newspaper advertisements that they worked at the Adelaide Gallery, these include: Chubb, Counsell, Edwards and Mills (Heathcote; Heathcote, 2002).

Even more than Claudet, "Beard Patentee" is a zone of possession that subsumed dozens of makers; in most instances we will never know who they were.[35] How do we assess the void of ownership as a form of aesthetic distinction? What can art historians do with authors who have no personality or subjectivity? How can one attribute a "style" or an "eye" to this form of massified singularity? The standard defence of patent property claimed that because the property created was new it did not deprive anyone of anything. In this argument patent law is a negative right, in which authorship is merely a space of capital, a simple field of ownership, joining property rights to a proper name. The proletariat may not be the fully identical subject-object of history, as Georg Lukács (1971) believed, but in intellectual-property law capital behaves suspiciously like an author. If there is an author at work here it is capital itself – a Capital-Subject.

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34 Paradoxically, this suggests that England was a thorough-going capitalist state and not some backward remnant awaiting a belated bourgeois revolution. For a sample of the debate see: Anderson, 1992; Thompson, 1978; Wood, 1991; Davidson, 2012.

35 The game has gone on at least since 1841 when a reviewer in *The Spectator* deemed Beard's pictures superior to those made in Claudet's Adelaide Gallery. Beard's images were said to be better "in fidelity of resemblance, delicacy of marking, and clearness of effect: in a word they are more artistical". In contrast Claudet's Daguerreotypes are said to be "black and heavy" and "grave and formal". "Photographic Miniatures", *The Spectator*, p. 860-861, 4th September 1841. See also Claudet, 1841. Roy Flukinger recognises that we are dealing with "a series of studios" and "owner, operator or assistant", but nonetheless proceeds to the bar of the judgement of taste (Flukinger, 1989).

The modern conundrums of artist-authorship; the evaporation of distinctions between high and low culture; the theological capers of the art-commodity were already visible in the 1840s. They were inscribed in a form of law that openly constitutes bourgeois property as an imaginary relation. This is not to say that our current field of problems – caught between copies and property claims – has simply unfolded from acts performed during the 1840s, but it is to argue that our performances of authorship and our ways of acting out the self were possibilities already contained in legally ratified forms of commodity production.

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