

Making a Case: Daguerreotypes

Author(s):

Steve Edwards

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The Arts, Environmental Justice, and the Ecological Crisis

Author(s):

Sria Chatterjee

URL:

<https://britishartstudies-18.netlify.app/arts-environmental-justice-ecological-crisis/>

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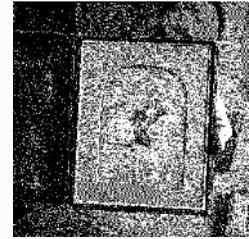
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Making a Case: Daguerreotypes

Article by Steve Edwards

WORD COUNT:8,222



Abstract

This article considers physical daguerreotype cases from the 1840s and 1850s alongside scholarly debate on case studies, or “thinking in cases”, and some recent physicalist claims about objects in cultural theory, particularly those associated with “new materialism”. Throughout the article, these three distinct strands are braided together to interrogate particular objects and broader questions of cultural history. It contributes to thinking about daguerreotypes and their cases, but it does so in order to interrogate thinking in cases and objecthood as a legal category. I argue that daguerreotypes have to be understood as image-thing amalgams, paying particular attention to the construction and distinguishing marks on the cases and frames that enclose these images. These cases, particularly those of the patent holder Richard Beard, are situated within legal debates on property and cannot be understood without attention to social relations of capital and class.

Object Cases

Art historians do not know what to do with daguerreotypes. Tens of thousands of these ordinary images were made in Britain between 1841, when the first studios were established in London by Richard Beard and Antoine Claudet, and the later 1850s, at which point the process largely went out of use. Ninety-five per cent of these items, perhaps more, were simple portraits of the middle class.¹ Relatively few of these objects have entered museum collections, which until recently have been preoccupied with collecting “fine photographs”, rather than this kind of commodity image. In this article, drawing on extensive examinations of objects, I attend to English daguerreotype cases with a degree of attention usually reserved for pictures or texts, relegating the images to the background. My article seeks to combine a perverse connoisseurship— involving a detailed comparative study of banal commodities— with a critical account of legal cases, situating a warped art-historical *ekphrasis* in the mesh of the law. This article provides a more detailed description of daguerreotypes and their cases than those previously attempted, but it is not limited to this task. The aim is simultaneously to deploy these object cases as a tool or lens for thinking about some current approaches to art and cultural history. In particular, I raise issues about property and law that complicate some recent ideas about non-human things and the

networks they elicit. The approach taken here involves switching focus at various points shifting from daguerreotype cases, to consider the intellectual assumptions underpinning case studies and an engagement with legal definitions of property. Hopefully, the weaving together of these seemingly distinct issues—daguerreotype cases, case study methods, and definitions of property—will prove illuminating and contribute to our understanding of cultural objects.

Of late, the study of photographs has moved beyond art history to encompass a range of disciplines and consideration of commercial images has come more to the fore.² Nevertheless, the history of the daguerreotype remains tangential to these concerns. Traditionally, writers on photography have treated daguerreotypes as pictures—cropping them in reproduction to the edge of the mat or even stripping the mat and presenting them as detached plates. In this virtual sleight of hand, cases are discarded from the visual field and sometimes actually discarded. Some of the newer histories of photography are not so dissimilar: whatever their theoretical differences from the older histories, they too treat daguerreotypes as pictures.³

In wider debates on photography, attitudes have changed considerably, with attention often falling on the seemingly marginal presentational forms of photography. The anthropologist Elizabeth Edwards, whose work has been central to this reorientation in photographic studies, observes that while photographs have been regarded as images and addressed through theories of representation, there has recently “been an increasing amount of work on photography and the multisensory image”.⁴ Edwards’ point is that a focus on representation and the semiotics of the image has largely ignored the ways that photographs are used and presented in albums, mounts, frames, or shoeboxes. In contrast, she advocates a multi-sensory approach that engages with photographs as a “tactile archive” and addresses their imbrication in other technologies of capture, storage, and retrieval. This perspective finds its place in object-orientated cultural studies and Edwards’ own work on photographic mounts and storage boxes is an outstanding example of such work.⁵

I have strong reservations about the so-called “new materialism”, which sits behind much of this newer work on photographic objecthood (both for its marginalisation of image studies and the grander theoretical claims, which sidestep the role of social power in human relations and collapse distinctions between people and nature).⁶ Some of my criticisms of this theoretical armature will emerge in the course of this article, but thinking about photographs as material objects that affect historical events and processes has been highly productive. My text is offered as a contribution to understanding the “tactile archive”, but it is predicated on a different understanding of materialism.⁷ In fact, no daguerreotype could ever possibly have existed as a picture: daguerreotypes are not images but things or object-image amalgams (fig. 1).⁸ This is true for all images, whether framed, printed, projected, or instantiated via a screen, but daguerreotypes offer a particularly illuminating case study, pointing to the way that the law enfolds all objects.



Figure 1

Selection of daguerreotypes in the author's collection, photographed in 2020. Digital image courtesy of Matthew Hollow.

The daguerreotype process is chemically very stable. Plates tarnish on exposure to air but, unlike the paper prints of the same period, they do not fade or fox; 170 years after they were made, they remain sharp and, turned in the hand, still reveal the “delicate-grey picture” that entranced Walter Benjamin.⁹ However, while the process is remarkably stable, the mercury crystals on the surface of the plate are incredibly fragile and physical contact will easily wipe away the image. As a consequence, daguerreotype plates always require protection from contact and they are usually presented under glass and contained in cases or, more rarely in Britain, in frames. The silvered plate is combined with a mat and a glass sheet to form a triple-layered “sandwich”, which is bound together with gummed paper or catgut (fig. 2). The gilt mat not only provides an image-frame but it also serves the practical purpose of preventing the image-surface of the plate from coming into contact with the protective covering. This sandwich is sometimes inserted into a pan, or tray, for extra protection, before being introduced to the case or frame. On rare occasions, the case is also lined with tin as an additional safeguard (fig. 3).¹⁰ During the 1850s, a decorative brass “preserver” was introduced, probably as an American innovation, which covers the front edge of the glass and wraps around the sandwich (a preserver is visible in fig. 38). Cases protect their images and allow for easy storage and transport—as with other fetish forms, this enables them to be held close to the body in a pocket, bag, or locket—but the traces and signs they bear are also integral to daguerreotypes.¹¹ These artefacts cannot be understood without attending to their cases, but the only available studies of these key components of the daguerreotype are books for collectors, or studies by historians of an antiquarian bent, presenting examples.¹² As we will see, while these case features serve the practical role of protecting pictures made from mercury crystals, they are also legal marks of property and this must shape our approach to these artefacts.



Figure 2
 Beard Patentee, *Elements of the "sandwich": plate, mat and glass*, ninth-plate, circa 1842, 2 × 2½ in.
 Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 3
Ninth-plate, flip-top case with tin lining, 2 × 2½ in.
 Collection of Steve Edwards. Digital image courtesy of Steve Edwards.

While examples by other makers will be discussed, focus here falls on the daguerreotypes produced in the studios of Richard Beard, who was the patent holder for the daguerreotype in the “territory of England, Wales and Berwick-upon-Tweed” (figs. 4 and 5). This is because, as I have argued elsewhere, under patent law, Beard was entitled to license others to operate in his name and he could, and did, specify the components that could be used and how these commodities appeared. Beard largely determined the form daguerreotypes took throughout his patent territory. This legal control produced a situation in which daguerreotypes produced by hundreds of studios throughout the territory were basically interchangeable and should be identified as the work of a collective producer called “Beard Patentee”; this was a form of dispersed authorship under a proper name.¹³



Figure 4

Beard Patentee, *Portrait of a Woman*, hand-coloured sixth plate, second half of the 1840s, 2¾ × 3¼ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.

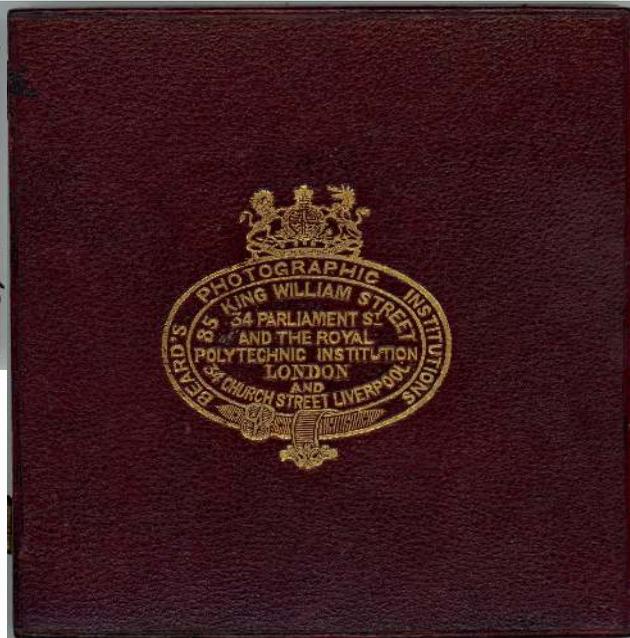


Figure 5

Sixth-plate case (back face) stamped with Beard's insignia, Collection of Steve Edwards. Digital image courtesy of Steve Edwards.

Daguerreotype Cases

Two types of case were common for housing daguerreotypes: the earliest are flip-top cases that contained ninth-plate daguerreotypes; slightly later, book-style cases were employed to contain various plate sizes (figs. 6, 7 and 8). Throughout much of Europe, daguerreotypes appeared in *passé-partout* frames, rather than cases (fig. 9).



Figure 6

Anon., *Graduation Portrait*, ninth plate in book type case, second half of 1840s. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 7

Beard Patentee, *Portrait of a Woman in Plain Dress (of the Jowett-Wilson Family of Manufacturers, Leeds)*, ninth plate, circa 1841–1843, 2 × 2½ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 8

Daguerreotype Cases, film, 2020. Digital film by Matthew Hollow.



Figure 9

Daguerreotype Frames, film, 2020. Digital film by Matthew Hollow.

Historians of photography have largely ignored these widely-produced images and we do not know nearly enough about the production of these integral-objects. Cases of this type long predated daguerreotypes and were used for housing miniature paintings and items of personal jewellery. In the first instance, daguerreotype cases were probably adopted and adapted from these pre-existing items, establishing continuity with the long tradition of English miniature art and association with precious objects. However, due to the thickness of the tripartite sandwich, a deeper case was ideally suited to housing them and, before long, these began to be produced specially for the task. One good account of case fabrication does exist; this is Edward Anthony's description of large-scale daguerreotype production in his New York manufactory (fig. 10). Anthony's New York establishment employed a complex division of labour, including the sexual division of labour, and labour-saving technologies combined with motive power; he claimed that, before completion, every case had been subject to at least twenty distinct labour tasks.¹⁴ I have been unable to find any equivalent account of case making in existence for Britain and it seems unlikely that these features of the American system of production were employed. In Britain, daguerreotype cases were probably made at the bench in small workshops, using simple hand tools. Beard maintained a London "manufactory" at Wharf Road, City Road, Islington to produce Wolcott reflecting cameras and supply his studio network with chemicals and other materials; and while it is possible that his cases were made there, it is more likely that he obtained them from the West Midlands manufacturers, who supplied him with other key components such as plates, mats, and pans.¹⁵ The most likely source was the manufacturer Thomas Wharton.¹⁶ During the 1850s, some case manufacturers advertised in the photographic press and we learn from these that prices ranged from 15s. per dozen for ninth-plate cases, while mats began at 2s. per dozen. *Passé-partout* frames started from 2s. each, rising to a pound per frame.¹⁷ These items were not cheap! All in all, little can be discovered from written sources and we need to turn to surviving cased images.



Figure 10

Edward Anthony, *Case Factory-Gilding Room*, engraving, 1854. Digital image courtesy of Bard Graduate Center (all rights reserved).

Prior to 1844, Beard employed the patent Wolcott camera, which had a reflecting mirror, rather than a lens.¹⁸ This device speeded up exposure times for portraits but, because of the limited zone of focus, it was only possible to produce ninth plates with the Wolcott apparatus. As such, Beard's early daguerreotypes were invariably ninth plates, housed in red-leather flip-top cases. In the latter part of 1841, or early in 1842, he began to employ a range of mats for use in his daguerreotype sandwiches. It would help greatly to have a full morphology for these components, but we are only now groping towards itemising those that were available. From the known Beard mats, it seems likely that each design was available with either an oval or rectangular aperture (figs. 11–14).



Figure 11

Beard Patentee, *Portrait of a Woman*, ninth plate, 1841–1843, 2 × 2½ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 12

Beard Patentee, *Portrait of a Man*, ninth plate, 1841–1843, 2 × 2½ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 13

Beard Patentee, *Portrait of a Woman*, ninth plate, circa 1841–1843, 2 × 2½ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 14

Beard Patentee, *Portrait of a Man*, ninth plate, 1844–1845, 2 × 2½ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 15

Daguerreotype Mats and Packs, film, 2020. Digital film by Matthew Hollow.

Beard also offered a range of decorative or fancy mats. These items served a decorative function but they also enlarged the surround of ninth-plate daguerreotypes filling out a larger case and giving the object a more substantial feel in the hand (fig. 15). Several variant mats appear in these “luxury packs” (figs. 16–20). Customers probably selected the mat they wanted by price from a list, adapting the portrait-commodity to their taste and their purse. In their influential account of “flexible production”, Charles Sabel and Jonathan Zeitlin argue that this kind of variability in components offered a viable alternative to mass production, particularly in trades subject to changing fashions.¹⁹ Flexible production allowed commodities to be adapted and repackaged without the expensive investment in fixed capital. In this way, small producers could modify and diversify their wares to suit fickle patterns of taste using simple, interchangeable components. At the same time that he was using stamped mats, Beard also enclosed his daguerreotype sandwiches in a pan marked with Thomas Wharton’s 1841 design registration. The Wharton pan was exclusive to Beard and any daguerreotype in such a pan must come from one of his studios (fig. 21).²⁰ In 1844, Beard ceased to use stamped mats and Wharton pans and other marks appear on his cases, including gilt stamps announcing his studios and, sometimes, a handwritten signature label inside the case, under the sandwich (figs. 22–26). Beard also sold daguerreotypes in frames. Briefly stated, such frames bear five distinguishing features, which appear in all permutations (figs. 27, 28, and 29).



Figure 16

Beard Patentee, *Portrait of a Man*, ninth plate in luxury pack, mat floral design with oval aperture, 1841–1843, 2 × 2½ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.

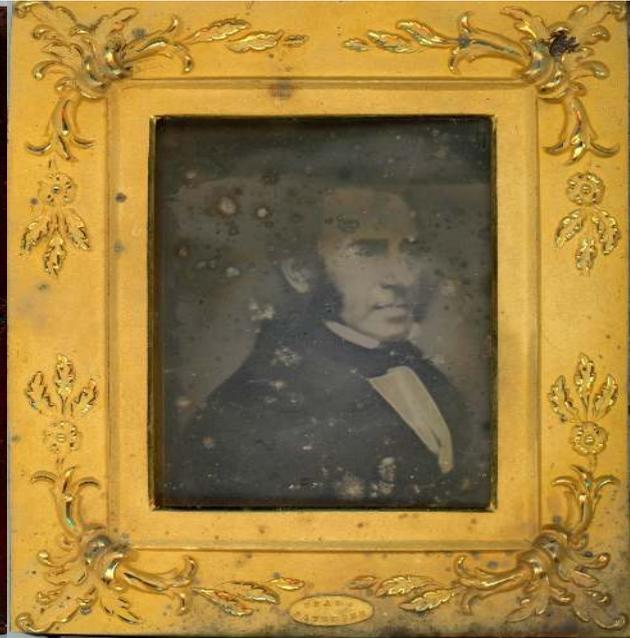


Figure 17

Beard Patentee, *Portrait of a Man*, ninth plate in luxury pack, mat floral design with rectangular aperture, 1841–1843 (a variant with a Beard Patentee embossed cartouche at bottom), 2 × 2½ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 18

Beard Patentee, *Portrait of a Man*, large ninth plate in luxury lined mat pack, 1841–1843, 2 × 2½ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 19

Beard Patentee, *The Montague Children*, large ninth plate in luxury pack, etched mat with four floral corner motifs, 1843, 2 × 2½ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 20
 Beard Patentee, *Portrait of a Man*, ninth plate, fancy vine scroll mat, 1841–1843, 2 × 2½ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 21
 Wharton Pan, *Design registration 791*, 1841, die-cast brass. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.

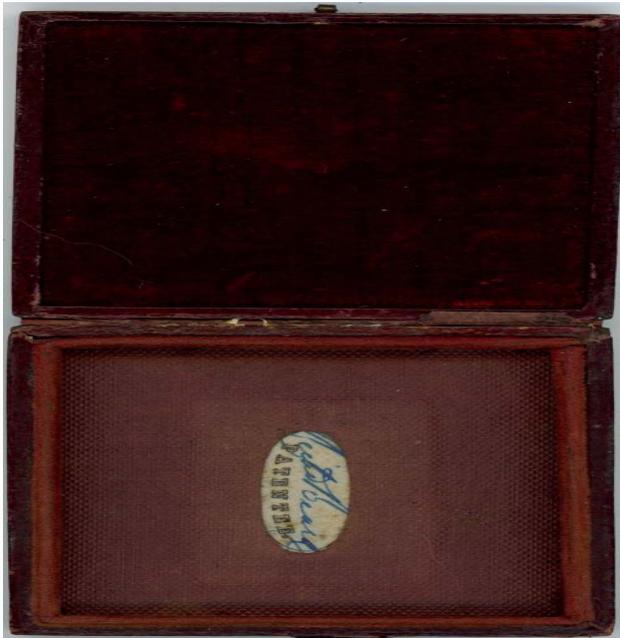


Figure 22
 Ninth plate case, with Beard Patentee signature on blue ink and printed label, after 1843, 2 × 2½ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 23
 Case Insignia, “Beard’s Photographic Institutions. 85 King William Street, 34 Parliament Street and the Royal Polytechnic Institution, London and 34 Church Street Liverpool”, second half of the 1840s. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.

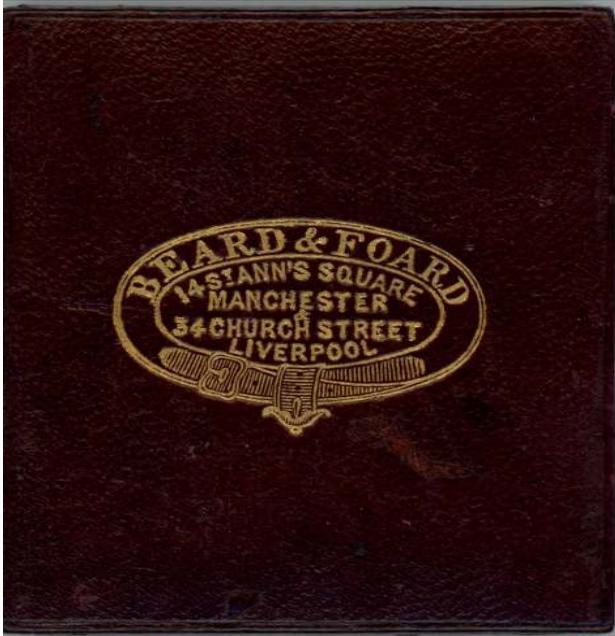


Figure 24

Case Insignia, "Beard & Foard's Photographic Institutions. 14 St Anne's Square, Manchester and 34 Church Street Liverpool. Also at 31 King William St; 34 Parliament Street and the Royal Polytechnic Institution, London", early 1850s. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 25

Beard Patentee, *Portrait of a Man (shown in case)*, hand-coloured ninth plate, later 1840s, 2 × 2½ in. with imported Christofle plate over-stamped "Beard". Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 26

Beard Patentee, *Portrait of a Man (detail of imported Christofle plate over-stamped "Beard")*, hand-coloured ninth plate, later 1840s, 2 × 2½ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.

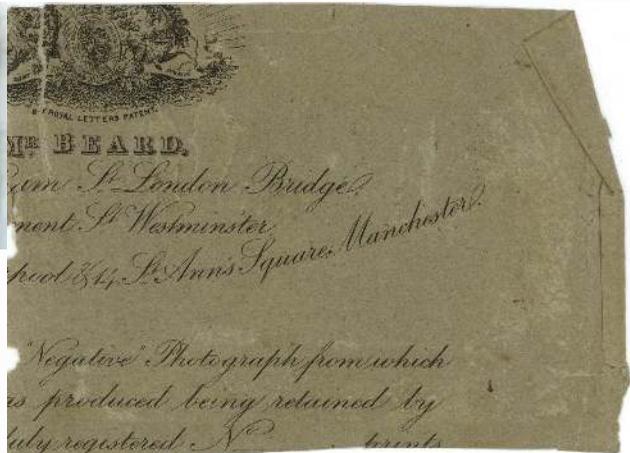


Figure 27

Detail of fragment of a Beard advertising label found under a hand-coloured sixth plate, made by a Beard Patentee, late 1840s or early 1850s, 2¾ × 3¼ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 28

Beard Patentee, *Portrait of a Woman*, ninth plate in a japanned frame with dolphin and pheasant ormolu design, 1842, 2 × 2½ in. Collection of Steve Edwards Digital image courtesy of Matthew Hollow



Figure 29

Distinguishing Features of Beard's Daguerreotype Frames, film, 2020. Digital film by Matthew Hollow.

Case Studies

So, what is a case? Case histories and case studies occupy a prominent role in approaches to culture and society: from Freud's "Dora", "Rat-Man", and "Little Hans", to *The Strange Case of Dr Jekyll & Mr Hyde* and *The Case-Book of Sherlock Holmes*, or Panofsky's *Studies in Iconology*, case studies appear as a structuring mode of knowledge (fig. 30).²¹ There are social science manuals on case methodology; and legal primers concerned with case law and medical case histories. Cases also abound in art history and monographs can be seen as a prime form of

the case study. An understanding of the forms of thought involved in thinking through case studies and the proximity of this mode to legal procedure will enable a better understanding the image-objects in question.



Figure 30

Sigmund Freud's Couch, Collection Freud Museum London. Digital image courtesy of Freud Museum, London (all rights reserved).

In recent years “historical epistemologists” have produced compelling studies of “objectivity”, “evidence”, “trust”, “documents”, “facts”, and other modes of knowing and presenting but less attention has been paid to what Fredric J. Schwartz calls “the culture of case”, or what John Forrester describes as the style of “thinking in cases”.²² While a host of important writers have thought in the case form, there are two key points of reference for considering the epistemology of case studies. The art and cultural historian, André Jolles included “case” as one of his nine simple words; those mental dispositions or “gestures” that he believed condensed or congealed into enduring forms.²³ As Jolles explains in his book *Simple Forms*, the “case” is always a matter of judgement or evaluation and therefore a question of “norms”; the case is the point where “a rule, a legal paragraph, changes into an event”.²⁴ We might also say that these norms or rules are transformed into, or embodied in, objects. It seems fruitful to follow this suggestion and cross or braid physical object cases with thinking in cases and legal cases so that they illuminate one another. Jolles knew that he had to turn to the law to pursue the matter and that the issue did not only apply to the judgement of individuals but also to the weighing up of norms against other norms, cases balanced against cases. In this sense, case studies are examples of what post-Althusserian philosophers call “singularities”, that is, concrete instances that condense broader patterns or “universals”.²⁵ This article pursues a similar approach.

Alongside Jolles, the best source for thinking about the “culture of the case” is the work of Michel Foucault. The idea of “examination” appears through much of Foucault’s work during the 1970s, but it is in *Discipline and Punish*, rather than the currently more fashionable late lectures, where he addresses “the technology of the case”.²⁶ Foucault’s account of the emergence of a new conception of criminality and of the homosexual subject during the nineteenth century is well known.²⁷ Briefly stated, he argues that a novel type of subject was defined, whose very identity, or being, is criminal or homosexual. Before this time, Foucault claims, there were no criminal subjects, merely people who committed illegal acts; just as there were no homosexuals, only persons who engaged in prohibited actions with others of the same sex. The deviant or aberrant

criminal, or homosexual, was produced as a psychological or biological type under the scrutiny of the disciplines of modern knowledge: anthropology, biology, physiognomy, psychology, and so forth. This account should be well known to historians of photography from the work of John Tagg, Allan Sekula, and others, who mobilised Foucault’s argument to explore the “instrumental images” of the later nineteenth century.²⁸ Tagg went as far as to suggest that the camera could substitute for the carceral complex.²⁹

What is not observed in the photographic literature is that, for Foucault, the writing of cases played a crucial role in defining the new regime of subjects. In *Discipline and Punish*, he writes: “‘The examination’, surrounded by all its documentary techniques, makes each individual a ‘case’: a case which at one and the same time constitutes an object for a branch of knowledge and a hold for a branch of power”.³⁰ Distinguishing the case from casuistry or jurisprudence, he continues, “it is the individual as he may be described, judged, measured, compared with others, in his very individuality”.³¹ Similarly, he wrote that what interested him about the confession at the heart of *I Pierre Rivière*, “was that it was a ‘dossier’, that is to say, a case, an affair, an event that provided the intersection of discourses”.³² According to Foucault, the technique of writing and constructing cases is central to the constitution of new subjectivities. The “case” represents a particular *dispositif* that renders criminals, or homosexuals, visible and knowable (fig. 31). The photograph may take its place as an element in a case file, but the camera is not a Panopticon.

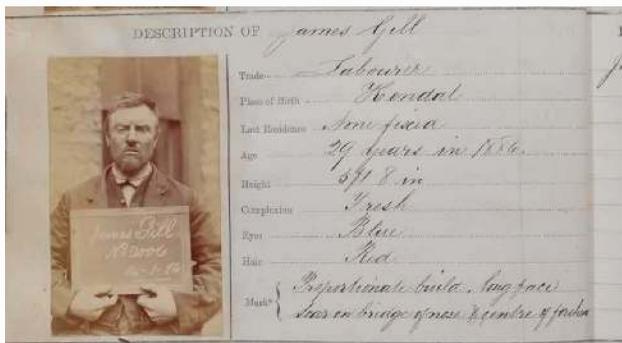


Figure 31

Portrait of James Gill, photograph from the Borough of Kendal, Prisoners’ Photograph Book, 1886. Collection of Kendal Archive. Digital image courtesy of Cumbria Archive Service (all rights reserved).

This is the kind of brilliant account we associate with Foucault. I do not intend to go over the well-trodden discussion of the strengths and weaknesses in his account of power, subjectification, and visibility.³³ Foucault is surely right to claim that cases or dossiers entail judgements, evidence, and individuation. Nonetheless, for the purpose of this analysis, we are confronted with an apparent problem because it is generally agreed that the term “case-law” dates from the early 1860s and “case-history” did not come into common parlance until the later 1870s, after the moment in the period of daguerreotype production in the 1840s and 1850s under consideration. However, criminal and medical cases were discussed in the press considerably earlier. At least from 1820, cases featured in *The Morning Chronicle*: “Lord Portsmouth’s Case” or “The Extraordinary Treatment of a Case of Hydrophobia at Guy’s Hospital”.³⁴ In “A Lark—Important Case”, we encounter a discussion of the “law of the case”.³⁵ John Forrester cites Bishop Berkeley speaking of a medical case in the 1720s.³⁶ It seems the technology of the case was in play earlier than Foucault assumed.

We have James Chandler to thank for tracing out in detail the emergence of thinking in cases during the period leading up to the daguerreotype patent.³⁷ Chandler's big, baggy book on "Romantic historicism" examines the relation between casuistry and cases, to which Foucault alludes. Both casuistry and case have their etymological origins in the Latin *casus*; Jolles noted this connection.³⁸ Briefly, casuistry entails a form of moral reasoning that extends established (religious) principles or rules to new instances. Chandler's book follows the development of the case out of casuistry, from seventeenth-century English Protestantism, through "weighing and pondering", to the appearance of the case in the nineteenth-century historicism. From Adam Smith's moral philosophy to the post-Waterloo writings of Bentham, Shelley, Coleridge, De Quincy and, particularly, Sir Walter Scott, he demonstrates that the language of the case emerges: "general tenor", "particular passages", "context", "application", "circumstances", "temporizing", "falling away", "case", "cause", "conscience", and "judgment".³⁹ Chandler argues convincingly that the novel of the period can be seen as a form of secularised case and the term itself is frequently invoked in Sir Walter Scott's *Redgauntlet*, *The Heart of Mid-Lothian*, and *Ivanhoe*.⁴⁰ From the second decade on the nineteenth century, cases were made, stated, weighed, or balanced.

One key difference between Jolles and Foucault is that the former believed cases are modelled on trials in which an advocate advances a claim, individuals are cross-examined, witnesses are called, evidence is taken, appeals made and a judgement proffered, whereas Foucault developed his account of power-knowledge, and hence the dossier or case, in opposition to the model of power as law or state form. Nevertheless, a hermeneutics of the case involves investigations of subjects under particular circumstances of disease or legal restraint and it seems helpful here to follow Jolles and view cases as a legal technology.⁴¹ Cases entail both accuser (plaintiff or prosecutor) and defendant. As the etymology of the term suggests, a case always involves a point of contingency in which an occurrence befalls an individual who is, thus, transformed into an example. The case involves the reduction of a norm to a particular instance, and Forrester argues it came into focus as an alternative to the statistical thinking that became a central way of viewing society and nature in the nineteenth century.⁴² With Foucault, we might say the case involves the regulated production of a singularity. Throughout this discussion, it is possible to observe a separation or distance, which produces a specialist judgement predicated on an ideology of neutrality or "objectivity".⁴³ The case contributed to the generating middle-class expertise across the disciplines.⁴⁴

If Foucault grasped the central role of the case in producing accounts of modern subjectivity, the difference between Roman law and the distinct English legal code throw up problems for transferring his argument directly to the context of daguerreotype production. Two issues will be highlighted and they will return us to daguerreotype object cases. First, his argument does not travel well: the English common law tradition is based on case histories but is indifferent to subjectivities. The common law tradition evaluates acts, not motives or psychologies. While the disciplines had plenty to say about criminality or homosexuality, what they said had little bearing on legal cases, which attended to acts, not forms of being or subjectivity. From Foucault's point of view, the English law is a strangely pre-modern episteme. Nonetheless, the UK is not an *ancien régime*. While this legal tradition may have been wrapped in Latin and the trappings of feudal landholding, it nevertheless proved remarkably flexible and accommodating to what political economists and Law Lords alike called "commercial society".

Second, Foucault's account passes over "social property relations"; as Molly Nesbit put it, the "economy is Foucault's blind spot".⁴⁵ In English case law, this is not tenable. Subjects, insofar as

they exist, are defined via property claims. My argument is that daguerreotype object cases are also embedded in legal cases, so this point needs briefly developing. There are three categories, or estates, of property in English legal thinking: first, and most important, is fixed or immovable property.⁴⁶ Fundamentally, fixed property involves possession of land or tenement and reflects the predominance of aristocratic property in legal categories. As Sir William Blackstone, one of the most influential English Law Lords, put it: “Land comprehends all things of a permanent, substantial nature”.⁴⁷ This is the reason that most forms of illegal appropriation (theft) are regarded in UK law as forms of trespass on another’s estate. The possession of land was, until the end of the nineteenth century, taken to be the guarantee of independence, a stake in the polity and, therefore, the condition of the franchise. (When middle-class women over thirty were enfranchised in 1918, it was on the basis of either a stake in fixed property or higher education.) The second category is chattel property, which refers to movable property that can be alienated and covers everything from personal possessions to vendible commodities. It is worth recalling that, under certain conditions, people can be chattel property, or enslaved persons, and that self-possession is a particular form of property right assigned by the law and state.⁴⁸ *Pace* Liberal political philosophy, self-determination is not an automatic attribute of the subject. It matters who is counted as a political subject, or citizen, and property has usually been central to that definition. The third estate of property is immaterial property, which covers everything from intellectual property to income on investments, interest on mortgages, or right to tithe payments. Immaterial Property is a right to intangible or incorporeal property.⁴⁹ The idea of immaterial possession is rooted in Locke’s empirical philosophy of mind and is elaborated in Blackstone’s *Commentaries on the Laws of England*. Blackstone again:

*Corporeal [property] consist[s] of such as affect the senses; such as may be seen and handled by the body; incorporeal [things] are not the object of sensation, can neither be seen nor handled, are creatures of mind, and only exist in contemplation.*⁵⁰

We can take as an example patent medicine or patent leather, instances where legal protection is offered not to the physical pills or shoes (which are chattels), but to the “recipe” or idea. Similarly, individual daguerreotypes were the chattel property of their purchasers and could be trespassed against or stolen, but the right to make them, the incorporeal property in the daguerreotype process, belonged to Beard and could not be taken from him. It would be a grave error to treat the objecthood of daguerreotypes, or any other “thing”, abstracted from property relations. In capitalist societies, things do not exist on a neutral ontological plane but in and through the mesh of property law, and this applies whether they are commodities or uncommodified objects. Before they contribute to establishing networks, objects are already embedded in social relations.

Beard’s Legal Cases

In the opening paragraph of his “Little History of Photography”, Benjamin pointed to the central role of patent law in the emergence of photography.⁵¹ Benjamin’s account is factually inaccurate but he was on the case before others had begun thinking. During the 1840s, Beard conducted six legal cases in his campaign to secure his daguerreotype property rights for the territory of “England, Wales and the town of Berwick-upon-Tweed”.⁵² Just as importantly, he stopped others using his property. With the partial exception of his prosecution of Antoine Claudet (fig. 32), which he lost on a technicality, he won all cases and prevented others working.⁵³ Two cases were carried out against men he had licensed to use the process—Alfred Barber of Nottingham and Edward Holland of York—but who could not meet their scheduled payments (figs [33–36])

(#sedwards-fig33).⁵⁴ Beard entered into three other lawsuits against persons practising the daguerreotype invention without “written or verbal leave, license or authority”.⁵⁵ In 1842, he pursued a Chancery suit against Edward Josephs of London (aka Edward Joseph Edwards), for illegal infringement of his patent; in the following year, he conducted an action in Chancery against Robert Rankine Bake and William George Chapple of Truro, Cornwall for “using the apparatus and process described in the said specification” to take “portraits miniatures likenesses and representations” and thereby accruing “considerable gains and profits”.⁵⁶ Finally, between 1845 and 1849, Beard sought a ruling against the photographic dealers John Wharry Egerton, Jeremiah Egerton, and Charles Bates. During the proceedings, Jeremiah Egerton claimed sole responsibility and conducted a vigorous defence. *Beard v Egerton* is especially interesting and involved a protracted legal case.⁵⁷ It is doubtful whether Egerton or his people sold daguerreotypes; he gave lessons and supplied materials, but Beard believed that this too was illegal. There is a nice legal point here about whether Egerton was entitled to sell cotton pads, distilled water, iodine, mercury salts, and silver plates and at what point such everyday items as these shifted from quantity to quality and became a daguerreotype apparatus. Beard also tried to prevent the publication of Egerton’s translation of Lerebours’ instruction manual to the daguerreotype process, believing this too infringed his property rights.⁵⁸



Figure 32

Antoine Claudet, *Portrait of a Man*, sixth plate in Adelaide Gallery case, in 1842–1846, $2\frac{3}{4} \times 3\frac{1}{4}$ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 33

Alfred Barber, *Portrait of a Man (shown in case)*, ninth plate in luxury pack, 1841–1843, $2 \times 2\frac{1}{2}$ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 34

Alfred Barber, *Portrait of a Man (shown out of case)*, ninth plate in luxury pack, 1841–1843, $2 \times 2\frac{1}{2}$ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 35

Edward Holland(?), *Portrait of Mathew Todd and his Daughter Emily (Matthew Todd was an Inn Keeper in York)*, ninth plate, 1843 or 1844, $2 \times 2\frac{1}{2}$ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.

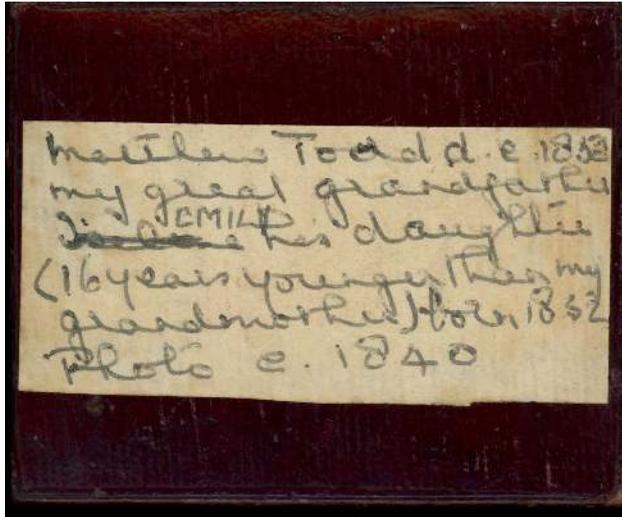


Figure 36

Edward Holland(?), *Portrait of Mathew Todd and his Daughter Emily* (Matthew Todd was an Inn Keeper in York) showing label on case, ninth plate, 1843 or 1844, 2 × 2½ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.

Beard's legal cases reveal the limits of seeing photographs, or photographic cases, as material things, independent of social relations or structures of power. This focus on objects in law seems a fruitful way of considering the production of subjects in case histories, particularly those subjects known as authors, artists, or photographers. I have in mind the particular form of case history known as the history of photography, but the implications are much wider than this. For instance, unlike much recent work on performativity, self-making, or self-fashioning, attention to this legal history shines a light on the “unfashioning” of the self. This is not only an account of success stories, we should equally attend to those persons who were denied biographies—blocked from working with photography and lost from history. Cultural historians need to attend to barred or obstructed performances. Property law prohibits performance as much as it produces it.

Some historians have argued that self-possession entailed a subject modelled on property claims, but this is not quite right for the period of the daguerreotype under consideration here because, at the time, self-possession required actual property ownership.⁵⁹ Freedom and independence, respectability and authority, class and gender were entwined in this conception of representation through property. Beard frightened away or prohibited unauthorised users and women were excluded from making daguerreotypes under the laws of *coverture*. To take just this last point, prior to the Married Women's Property Acts of 1870 (amended 1874 and 1882), married women were not considered as distinct legal entities.⁶⁰ In the words of Blackstone: “By Marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during marriage, or at least is incorporated and consolidated into that of the husband”.⁶¹ Married women were deemed to be “represented” or “covered” by their husband and they were not at liberty to enter into legal contracts. As such, the *femme couverte*, as the married woman was known, could not make licence agreements with Beard. Feminist historians have examined the scope for action available to women under such restricted legal

circumstances, showing that some room for manoeuvre was actually possible; what they do not refute is the exclusive character of legal contracts.⁶² We know of two prominent female Beard licensees, both were *femme sole*, or “uncovered” women: Miss Jane Nina Wigley and Mrs Anne Cooke, who was a widow. It is said that Beard sorely regretted licensing Wigley, when she began advertising as the maker of the best large, coloured daguerreotypes.⁶³ In the last years of the patent other women were operating studios: more research is needed to establish the conditions under which they worked the invention.⁶⁴ One issue is that the work of Wigley and Cooke remains largely invisible today because the cases housing their daguerreotypes were unmarked or carry the features of Beard Patentee, so even the works of the uncovered women are subsumed in his collective authorship.

To escape Beard’s territorial monopoly, some would-be photographers immigrated to places as near as Scotland or the Channel Islands and as far as the USA and Brazil. At least two daguerreotypists took to crime to find a space for themselves: John Henry Greatrex forged £1,300 in banknotes and fled to New York.⁶⁵ Unfortunately for him, he was returned by the American authorities and received a sentence of hard labour, dying in custody. Richard Lowe, who ran a high-end daguerreotype establishment in Cheltenham, employed his credit worthiness to obtain expensive items of plate and other valuables (figs. 37 and 38). He then boarded a Liverpool steamer and sailed away, never to be seen again on UK shores.⁶⁶ Taking another route, Jabez Hogg—an operator and legal witness for Beard, who subsequently emerged as a strong opponent of the patent restriction—became an eminent ophthalmologist and writer on eye diseases. J.F. Goddard, Beard’s chief chemist and legal witness, ended his days as a pauper living in an almshouse.⁶⁷ Are these people’s stories less important than the acclaimed daguerreotypists known from the history books?

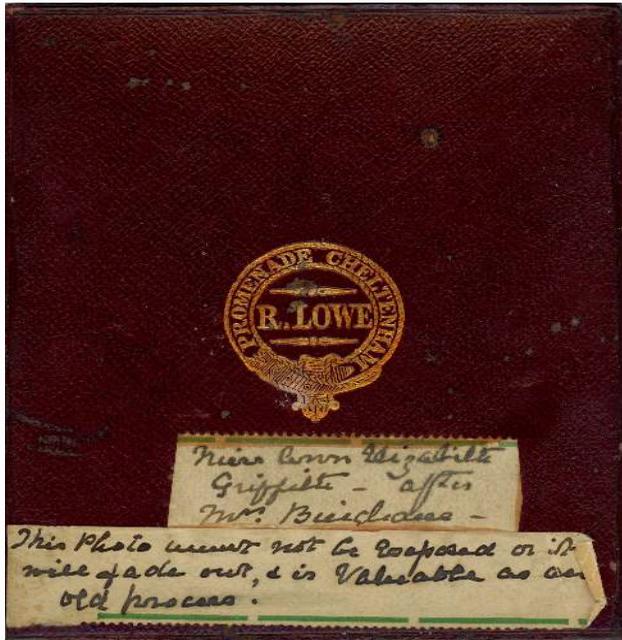


Figure 37

Richard Lowe, *Portrait of Ann Elizabeth Griffith* (showing case), hand-coloured quarter plate in Promenade, Cheltenham case, 1855, $3\frac{1}{4} \times 4\frac{1}{4}$ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 38

Richard Lowe, *Portrait of Ann Elizabeth Griffith* (showing photograph in case), hand-coloured quarter plate in Promenade, Cheltenham case, 1855, $3\frac{1}{4} \times 4\frac{1}{4}$ in. Collection of Steve Edwards. Digital image courtesy of Steve Edward.

This consideration of the legal ramifications of objects and authorship brings a different slant to recent ideas concerning objecthood. Materialism is again receiving a great deal of attention, largely as a reaction against the “linguistic turn” that dominated cultural theory during the long 1980s and, in some fields, still does so. In the work of the “new materialists” and object-oriented thinkers, attention falls on things or human/non-human hybrids and the networks they shape. At its best, work of this type encourages scrutiny of objects that have escaped attention. This can involve considering the mediating role of objects, which may or may not be commodities, in cementing social networks (the anthropologists’ approach) or demonstrating how simple forms—paper, folders, and labels—or more complex instruments—whether microscopes or cloud chambers—constitute “artefacts of knowledge”. Fine-grained descriptions of objects, how they are made and used, or the connections they enable, are clearly of importance to art historians.⁶⁸ The problems arise from the meta-theoretical claims posited by the new materialists: the argument against “critique”; the idea of the “agentic object”; or the advocacy of a “flat ontology”. All these propositions are theoretically unconvincing and politically disabling.⁶⁹ What is more, the approach erases crucial dimensions of objects and their role in human affairs. Taking daguerreotype object-image amalgams as the specimens in question, here I focus on the way that historians of culture, science, and technology working on patents, and often drawing on the work of Bruno Latour and Actor Network Theory, have claimed that intellectual property is not a species of property but a grant or conventional gift.⁷⁰ This move is made to secure a particular understanding of objects. This is a “physicalist” conception of materialism, which involves attention to matter or objects independent from social relations.⁷¹ For the historians of patents influenced by the new materialism, property must be a physical possession and

immaterial artefacts, created by the law, cannot be deemed property; only immovables or chattels seem to count. However, the distinction between property and a grant or gift does not hold because property is always a legal category and all property—real, chattel, and immaterial—is edged around with “rights” or legal conditions. In a sense, all possession is a grant or an artificial “right”, sanctioned by law and ultimately guaranteed by state force. Land ownership was subject to primogenitor, entail, dower, or thirds; it could be confiscated in cases of treason and, if an owner died intestate, it returned to the crown. Immaterial property is granted for a specific duration, but so are leasehold properties. In English law, an apartment is subject to a leasehold agreement limited to portions of time. Is an apartment not property? A clerical living was also immaterial and fixed for a number of years, so was an assignment of lands, or, in the case of office holders, the right to take fees or emoluments. You are restrained from doing just what you like even with some forms of chattel property, be they heirlooms, enslaved people, or livestock. Married women could not possess any of these things, with the exception of personal heirlooms. As C.B. MacPherson helpfully put it, all forms of property exist “as a right, not a thing: a right in the sense of an enforceable claim to use or benefit of something”.⁷²

I opened by claiming that daguerreotypes were things: image-object amalgams, but this definition now has to be further qualified.⁷³ Daguerreotypes are immaterial things or, perhaps, better put, their objecthood is intrinsically embedded in the law of immaterial property. Stated the other way around, daguerreotypes are forms of immaterial property embodied in physical objects, just like patent pills. Beard’s cases are simultaneously physical and immaterial things; they are objects encrusted with social relations. The features of the daguerreotype with which I began: embossed mats, stamped cases, marked ormolu frames and rings, cast and pressed pans, paper signatures, labels, and marked plates were introduced when Beard’s patent was a matter of legal contention. The author “Beard Patentee” migrated from one surface to another. These features are integral to daguerreotype objects as authorial trappings and claims to property. They mark ownership and authority under specified territorial borders, enforced by the institutions of the state. They assert Beard’s control, his property, and his authorship and, just as significantly, they represent closures of possibility for others. A flat ontology cannot account for this “tactile archive” and any account of networks of actors that sidesteps hierarchies of property and capital—racialised and gendered capitalism, or the nation state—is analytically purblind and descriptively weak. All physical things exist in and through the structures of nation states, or inter-state arrangements and their laws. It is not possible to separate physical objects such as cases from social relations, or property claims embodied in legal cases. Some of the photographers whom Beard prosecuted found ways around the restrictions—Egerton, Barber, Mayall—but most did not. Holland, Chapple, and Rankine Bake were shut down and denied the opportunity to fashion themselves and we have no idea how many others were put off by instructions from Beard’s legal representatives. These men were not allowed biographies. Those who continued to work in the daguerreotype trade were heavily constrained in what they could do and their cases provide constant reminders of Beard’s control and his property. His cases are legal objects that proclaim his property right. Treating daguerreotypes as pictures misses this important dimension of their history, but an account of these things as objects that does not attend to property relations involves a different kind of clouded vision.

Object Cases as Legal Objects

In conclusion, let us return to object cases, with the understanding derived from André Jolles and tracked through the law courts of the 1840s, that these items are legal judgements or norms taken

on physical form. After 1846, daguerreotype studios emerged proclaiming the names of makers on cases and mats. While this was possible in the territories of Britain outside Beard's control—Scotland, Ireland, and the Channel Islands—before this date, this was unusual in the area covered by his patent, but there are at least two instances in which licensees stamped cases with the studio name or address; these are the “Photographic Studio—Salop” and the Manchester studio at Ducie Place, subsequently the Royal Exchange, run by Mr Watson, John Johnston, and then the brothers William and John Akers (figs. 39 and 40). The status of these establishments is uncertain, but almost certainly they existed as part of Beard's business network. The situation changed in around 1846, when cases and mats were more regularly marked with maker's details. This case-event might be characterised as the rise of the “names” known to photographic history. Not much is understood about the legal arrangement by which they operated. However, the lack of secure information has not prevented some loose speculation, suggesting that Beard's legal hold on his territory was failing. Historians of photography have insinuated that he over-reached himself with expensive prosecutions, bringing on his bankruptcy of 1849. It is sometimes claimed that he ceased to pursue infringements of his property in the later 1840s, finally leaving the field open to natural talent. Freed from constraint, it is said, photography was finally able to begin its inevitable ascent, as if it were there all the time pupating.⁷⁴ This story of Beard's bankruptcy makes for a nice Whig-Liberal morality tale binding taste and personal liberty to laissez-faire economics. In this romance, Beard receives his just punishment for restraining the rise of photography and sullying “Art” with commerce. Unfortunately, for the advocates of this ideological story, none of it is true.

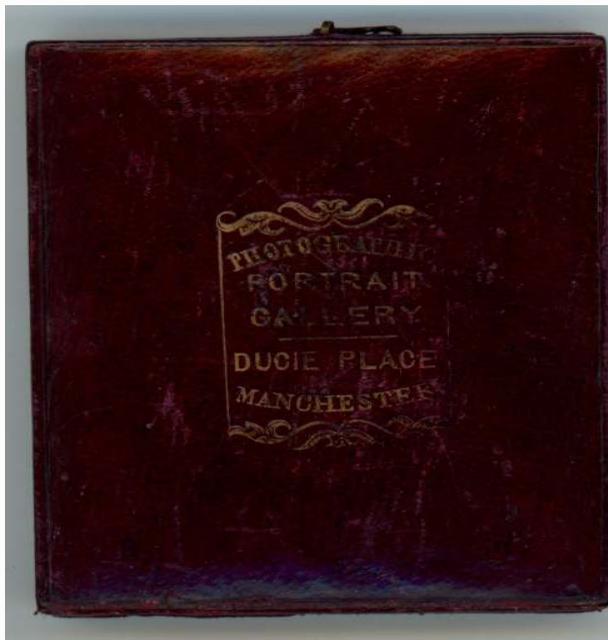


Figure 39
John Johnson(?), *Portrait of a Woman* (showing case), hand-coloured ninth plate in “Ducie Place, Manchester” case, 1842–1844, 2 × 2½ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 40
John Johnson(?), *Portrait of a Woman* (showing photograph in case), hand-coloured ninth plate in “Ducie Place, Manchester” case, 1842–1844, 2 × 2½ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.

The details of Beard's bankruptcy case reveal something very different. In October 1849, Beard received a bankruptcy ruling but, in June 1850, he was issued a second-class certificate.⁷⁵ This means that, while the court ruled he was partially to blame for his debts, he had settled with his creditors. Throughout the middle of the century, small businesses were notoriously under-capitalised and volatile; typically, a proprietor might expect to trade for two or three years.⁷⁶ Bankruptcy was very common during the time, but Beard's period of insolvency lasted for, at most, seven months. He probably needed to realise some assets to settle his debts and we need to know more about his creditors, but it is also possible that Beard's bankruptcy was a financial ruse; it certainly needs looking into with a critical attitude. Interestingly, he was listed in all of the bankruptcy dealings not as photographer but as "metallic plate and picture frame manufacturer", giving his address as Milman Mews and 34 Parliament Street.⁷⁷ This may indicate that he had transferred the studios to his son Richard Beard Junior. In the month that Beard filed for bankruptcy, Beard Jr. reopened the studio in Cheltenham, which had been vacant since 1844; subsequently, the license was resold to Lowe.⁷⁸ In 1848, Beard Jr. "repurchased the Licence" for Liverpool and, in the following year, opened the studio at 34 Church Street in that city.⁷⁹ Whether or not the Beards employed this legal ruse, in the 1851 census, Richard Beard senior was again listed as "photographic artist" and he continued to live on the fashionable Mecklenburgh Square until 1852.⁸⁰ During the mid-1850s, Beard was in partnership with Foard in Liverpool and Manchester (fig. 41). Parkinson, Beard & Co artists worked in Manchester and Ashton-Under-Lyne in 1854 (this may have been Beard Jr.).⁸¹ There is no indication that he surrendered the daguerreotype patent and Beard's certificate of death lists him as "gentleman", a period term designating a person who did not work, but who received an income from investments.⁸² It is likely that he followed the standard economic pattern for middle-class men at the time, moving from high yield but high-risk manufacturing or trade to a *rentier* existence as soon as investments were sufficient to yield 5 per cent.⁸³ Having accrued enough capital, middle-class men tended to retire from active business life and invest their energy and time in charitable works, religious associations, or civic politics. I doubt Beard was any different, but locating photography in the story of "Art" makes it difficult to account for the choices he and others made.



Figure 41

Beard & Foard, *Portrait of a Man*, hand-coloured ninth plate in case, 1854–1855, 2 × 2½ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.

Whatever the truth of the “bankruptcy story”, the evidence suggests that Beard persisted with his existing business model of licensing studios, extending this approach to London, in the later 1840s. In the first instance, the proof comes from cases and frames. The Science and Media Museum collection contains several daguerreotypes, made in Sussex, probably during the 1850s, by the monumental sculptor and sometime daguerreotypist, Thomas Thurlow. What is striking about them is that they are presented in “Beard Patentee” frames. It would be possible to suggest that he was using old stock, but there are other examples. On the back of a striking portrait of a man, there is a large paper label announcing Cornelius Sharp’s studio at London Bridge, also dating from 1846 to 1848 (figs. 42 and 43). There are two things to observe on this frame: first, Sharp’s label proclaims that these are “Beard’s Patent Photographic Portraits” made “Under a License from the Patentee”; and second, there is also a paper disc printed with the word “Patentee” and signed “R Beard”. It is the only known example of this form of Beard’s signature.



Figure 42

Cornelius Sharp(e), *Portrait of a Man with Column and Landscape Background*, in japanned papier mâché hanging frame with arched mount and acorn hanging ring, quarter plate, 1846–1848, frame size: 7½ × 6 ⅝ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 43

Cornelius Sharp(e), *Portrait of a Man with Column and Landscape Background*, in japanned papier mâché hanging frame with arched mount and acorn hanging ring, quarter plate, 1846–1848, frame size: 7½ × 6 ⅝ in. showing reverse with a large label containing the details of Sharp’s studio and a circular handwritten “R Beard” signature, over printed “Patentee” (this is the only known example of the signature disc). Collection of Steve Edwards. Digital image courtesy of Steve Edwards.

One quarter-plate image by Barratt of Regent Street, made between 1846 and 1848, is suggestive of high-end work and is stamped on the case with Barratt’s insignia (figs. 44–46). During this period, Barratt exclusively employed the acclaimed miniature painter Monsieur Mansion for colouring his daguerreotypes. Only four other studios in England were capable of coloured work of this standard: J.J.E. Mayall, William Kilburn, and Antoine Claudet, all working on Regent Street or the Strand, and John Akers in Manchester. Arguably, Barratt’s specimen is superior to

many daguerreotypes by Kilburn. On this basis, Barratt should occupy a prominent place among the names. Open up this daguerreotype, remove the plate sandwich, and what do we find—a “Richard Beard Patentee” signature! Another known Barratt daguerreotype in the St Albans Museum bears the same studio insignia on the case and, under the plate, there is another Beard signature label. These portraits by Barratt and Sharp pre-date the bankruptcy proceedings of 1849, but they are important examples of the emergence of named studios given as evidence for Beard’s slackening grip. Yet, case and frame proclaim Beard’s control.

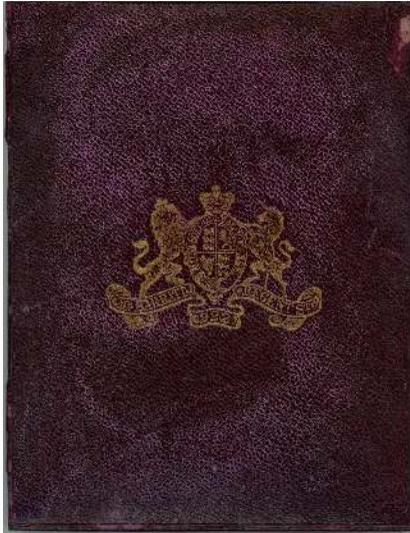


Figure 44

Barratt, *Portrait of a Girl with Flowers (showing case)*, hand-coloured quarter plate in 22 Regent Street case, 1846–1848, 3¼ × 4¼ in., with a Beard Patentee signature under the plate. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 45

Barratt, *Portrait of a Girl with Flowers (showing photograph in case)*, hand-coloured quarter plate in 22 Regent Street case, 1846–1848, 3¼ × 4¼ in., with a Beard Patentee signature under the plate. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 46

Barratt, *Portrait of a Girl with Flowers (showing Beard Patentee signature under the plate)*, hand-coloured quarter plate in 22 Regent Street case, 1846–1848, 3¼ × 4¼ in., with a Beard Patentee signature under the plate. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.

Further evidence for this pattern of Beard’s continuing use of the patent and strategy licensing of studios can be found in the regional press. To cite only examples after Beard’s “bankruptcy”: as noted, in 1849 Beard repurchased the licence for the Cheltenham studio, which he sold to Richard Lowe, who traded there from 1850–1856, when he absconded.⁸⁴ Arthur Hall, was “Licensed by the Patentee”, to work in Gloucester, 1849–1850.⁸⁵ George Brown, made “Beard’s Photographic Miniatures” in Newcastle from 1850–1855.⁸⁶ William Pumphrey was “Licensee” in York in 1850 (fig. 47).⁸⁷ J. and J. Blake ran a studio in Davenport from 1851 by “Queen’s Royal Letters Patent”.⁸⁸ Frederick Worcester worked in Coventry in 1852 “by arrangement with the Patentee”.⁸⁹ Thomas Chapman Browne operated his “Patent Photographic Portrait Establishment” at Market Place, Leicester from 1852–1855 (figs. 48 and 49). M. Theodore Brunell, “Royal Coat of Arms” advertised a “provincial tour” in 1853.⁹⁰ Of course, we know Nicolaas Henneman purchased a license from Beard to supplement his work with Talbot’s paper prints. From this evidence, we can see that Barratt and Sharp—and almost certainly Thurlow—and these other men were still working by Beard’s agreement. Despite the appearance of names on these daguerreotypes, and in the history books, it seems that Beard retained tight control.

These “names” were licensees and it is likely that the commodity-image-things they made were “Beard” daguerreotypes. It is a scandalous proposition, but this may even be true for such celebrated photographers as J.J.E. Mayall and Edward Kilburn (figs. 50 and 51).



Figure 47
William Pumphrey, *Portrait of a Man*, ninth plate, circa 1850, 2 × 2½ in. (the maker's mark is embossed on the mat). Collection of Steve Edwards. Digital image courtesy of Steve Edwards.

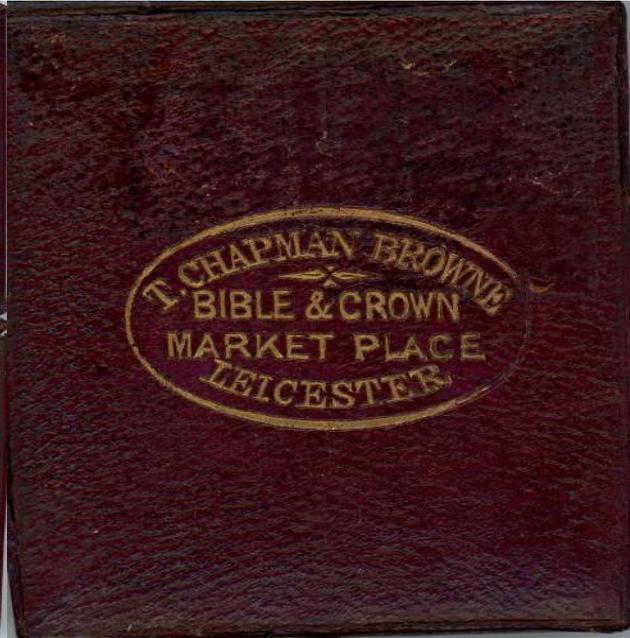


Figure 48
T. Chapman Brown, *Portrait of a Man (showing case)*, hand-coloured ninth plate, later 1840s, 2 × 2½ in. Red-leather flip-top case stamped: "T Chapman Browne, Bible & Crown, Market Place, Leicester". Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 49

T. Chapman Brown, *Portrait of a Man (showing photograph in case)*, hand-coloured ninth plate, later 1840s, 2 × 2½ in. Red-leather flip-top case stamped: “T Chapman Browne, Bible & Crown, Market Place, Leicester”. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 50

J.J.E. Mayall, *Portrait of a Woman with Flowers (showing case)*, hand-coloured sixth plate, circa 1854, 2¼ × 3¼ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 51

J.J.E. Mayall, *Portrait of a Woman with Flowers (showing photograph in case)*, hand-coloured sixth plate, circa 1854, 2¼ × 3¼ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.

Coda: The Case of Antoine Claudet

Now the final case or, to be precise, four of them (figs. 52–59). This is a set of four portraits by Antoine Claudet—they are versions of the same man and woman and may have been betrothal portraits (no wedding ring is visible). The date “1843” is scratched on the back of one plate and that seems right. There is much to say about the images, but I am interested in the cases. Claudet was Beard’s main rival in the capital, but he was compelled by law to pursue a distinct approach

to business. His cases differ markedly from those of Beard Patentee and indicate the extent to which these object-image amalgams are legal constructions, as much as they are physical things. The case interiors for these four portraits are all the same: a bluish-red velvet pad and an etched matt. The cases are well made with hinges and superior leather coverings, showing little sign of warping or splitting. Each case is also unique. They vary in colour and surface decoration and the Adelaide Gallery insignia is present on three but absent from the fourth. One portrait of the man comes in a burgundy leather case with no decoration except the gilt stamp: "Claudet's 'Daguerreotype Process'. Adelaide Gallery Strand". The form of this stamp is a band, or probably a brooch, topped by the British crown indicating royal patronage. The second male portrait appears in a calf-brown case—perhaps it is a little redder than this suggests—with three embossed bands at the border. The central panel again bears the gilt studio stamp. Whereas the other three cases are equipped with double hook-and-eye fasteners, this has only one positioned centrally. One picture of the young woman is presented in an extraordinarily unusual green case. The leather is mottled and it has the same bands at the edge. The central panel contains an embossed cartouche design, which frames the Adelaide Gallery stamp. The final case, also containing a portrait of the woman, is in a dark-plum coloured mottled leather; again, there is the familiar bordering edge with a distinct cartouche pattern, but significantly, it is not stamped with Claudet's studio insignia.

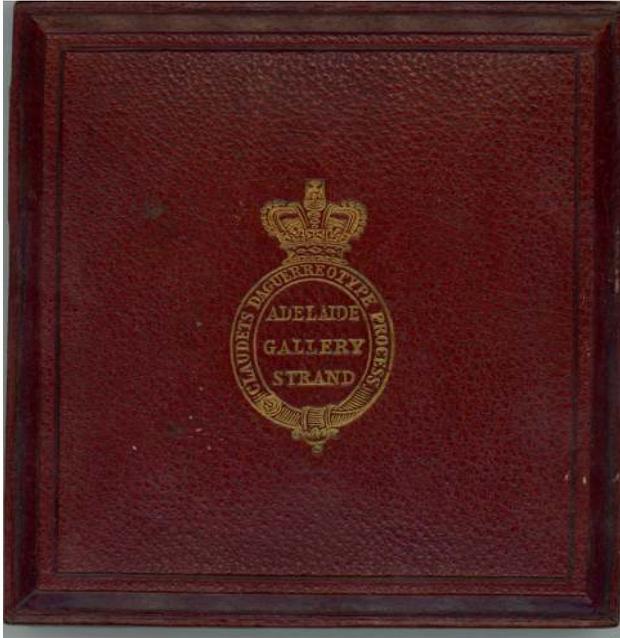


Figure 52

Antoine Claudet, *Portrait of a Man, with Elaborate Painted Background (showing case)*, in red-domed case with embossed border and Adelaide Gallery stamp, 1843, 2½ × 3¼ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 53

Antoine Claudet, *Portrait of a Man, with Elaborate Painted Background (showing photograph in case)*, in red-domed case with embossed border and Adelaide Gallery stamp, 1843, 2½ × 3¼ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.

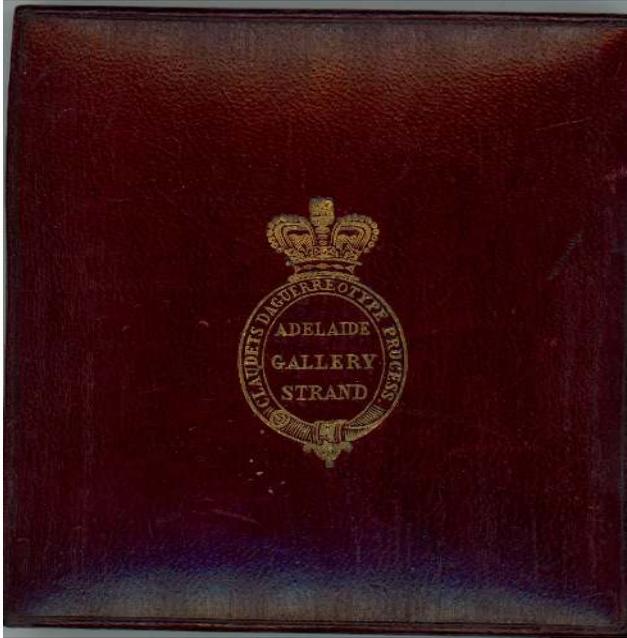


Figure 54

Antoine Claudet, *Portrait a Man, with Elaborate Painted Background (showing case)*, in red-brown case with embossed border and Adelaide Gallery stamp, marked on the reverse "1843", 2½ × 3¼ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 55

Antoine Claudet, *Portrait of a Man, with Elaborate Painted Background (showing photograph in case)*, in red-brown case with embossed border and Adelaide Gallery stamp, marked on the reverse "1843", 2½ × 3¼ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 56

Antoine Claudet, *Portrait of a Woman, with Elaborate Painted Background (showing case)*, in unusual green-leather case with decorative scroll design and Adelaide Gallery stamp, 1843, 2½ × 3¼ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 57

Antoine Claudet, *Portrait of a Woman, with Elaborate Painted Background (showing photograph in case)*, in unusual green-leather case with decorative scroll design and Adelaide Gallery stamp, 1843, 2½ × 3¼ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.

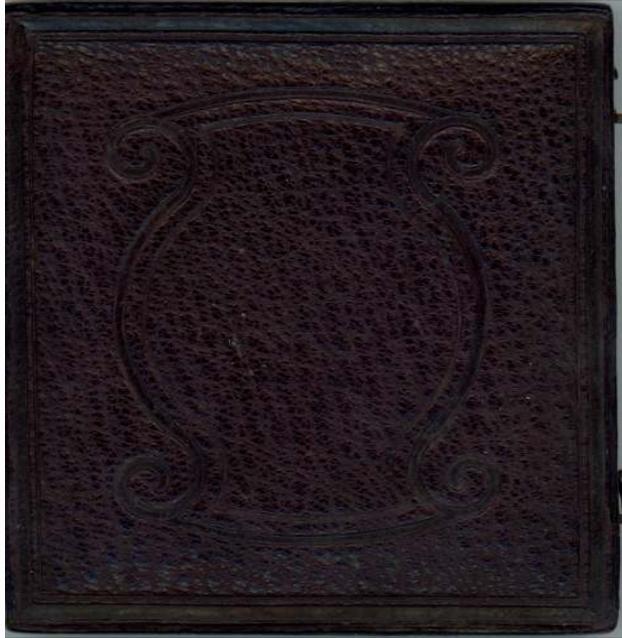


Figure 58

Antoine Claudet, *Portrait of a Woman, with Elaborate Painted Background (showing case)*, in brown-leather case with decorative scroll (no stamp), 1843, 2½ × 3¼ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.



Figure 59

Antoine Claudet, *Portrait of a Woman, with Elaborate Painted Background (showing photograph in case)*, in brown-leather case with decorative scroll (no stamp), 1843, 2½ × 3¼ in. Collection of Steve Edwards. Digital image courtesy of Steve Edwards.

A great deal of attention has gone into the pose of the figures, the lighting, and selection of the background and the cases are well crafted, but Claudet evidently did not set much stock by the regular presentation of his portrait-commodities. This is important and it suggests a distinct business pattern. As we have seen, the marks of authorship are fixed for the products of “Beard Patentee”. The legal loophole that allowed Claudet to evade the patent came with a particular qualification, restricting him to the use of “three complete sets of apparatus”.⁹¹ Unlike Beard, Claudet could not expand and conduct multiple business outlets; in fact, he only ever ran two photographic studios at any one time. Standardisation—even flexible production—was irrelevant to his mode of operation. In this set of pictures, Claudet’s presentation varies to the extent that one case does not even carry the studio’s insignia. For him, taste and distinction mattered much more than consistency in case design. The absence of noteworthy case features, or their irregular variation, should also be understood as legally regulated characteristics of property. Claudet’s particular approach to self-making meant that regularity and standardisation were not central to his operation. He was able to fashion a glittering career for himself, creating refined images and serving elite customers; ultimately, he was made F.R.S. and received the Legion of Honour. This, though, was not simply a matter of a superior artistic vision; it was the strategy of an exception that emerged from a loophole in the law. Historians of photography have perpetuated a simple misrecognition, treating contrasting business strategies and legal opportunities (resources) as if they were matters of “Art” or sensibility.⁹² In part, they have done so because they have not attended to cases, which, like all objects, are at once physical and legal things.

Acknowledgements

I would like to acknowledge the audiences who have responded to versions of this paper, particularly those who participated in the Photographic History Research Centre conference at De Montfort in 2013 and at *Institut national d'histoire de l'art*, Paris in 2018. My sincere thanks also go to Mark Crinson, Alberto Toscano, and Jason Wright; the anonymous reviewers for this journal; as well as Baillie Card and Maisoon Rehani for all their editorial help.

About the author

Steve Edwards is Professor of History and Theory of Photography at Birkbeck, University of London. His publications include: *The Making of English Photography, Allegories* (2006); *Photography: A Very Short Introduction* (2006); and *Martha Rosler the Bowery in Two Inadequate Descriptive Systems* (2012). He is a member of the editorial boards for *Oxford Art Journal* and the *Historical Materialism* book series as well as a convenor for the long-running University of London research seminar Marxism in Culture.

Footnotes

1. Throughout this article, I will be referring to various plate sizes, so it is worth bearing in mind that a full plate, based on the size of a Victorian standard glass sheet is 6 x 8.5 inches. A full plate could be subdivided to create smaller plates. Sizes are: half plates (4.25 x 5.5 inches); quarter plates (3.25 x 4.25 inches); sixth plates (2.75 x 3.25 inches); ninth plates (2 x 2.5 inches). Rarely, sixteenth plates are encountered (1.375 x 1.625 inches).
2. For position statements, see Elizabeth Edwards, "Photography's Default History is Told as Art — It Shouldn't Be", *The Conversation*, 23 February 2015, 3–4, (<http://theconversation.com/photographys-default-history-is-told-as-art-it-shouldnt-be-37734>) [<http://theconversation.com/photographys-default-history-is-told-as-art-it-shouldnt-be-37734>], accessed 24 October 2019. See also Geoffrey Batchen, "Vernacular Photographies", *History of Photography* 24, no. 3 (2000): 262–271. Walter Benjamin had grasped the problem in 1931; he wrote: "...it was this fetishistic and fundamentally anti-technological concept of art with which theoreticians of photography sought to grapple for almost a hundred years, naturally without the smallest success. For they undertook nothing less than to legitimize the photographer before the very tribunal he was in the process of overturning". Walter Benjamin, "Little History of Photography", *Selected Writings, Vol. 2, 1927–1934* (Cambridge, MA: Belknap Press, 1999), 508.
3. Historians as different as Geoff Batchen and Stephen Pinson continue to treat daguerreotypes as images, ignoring cases, mounts, and frames. See Geoffrey Batchen, *Burning with Desire: The Conception of Photography* (Boston, MA: MIT, 1999); Geoffrey Batchen, *Apparitions: Photography and Dissemination* (Sydney: Power Institute, 2019); and Stephen C. Pinson, *Speculating Daguerre: Art and Enterprise in the Work of J.L.M. Daguerre* (Chicago, IL: University of Chicago Press, 2012). Batchen does touch on cases briefly in *Forget Me Not: Photography and Remembrance* (Boston, MA: Princeton Architectural Press, 2006).

4. Elizabeth Edwards, “Photographs, Mounts, and the Tactile Archive”, *19: Interdisciplinary Studies in the Long Nineteenth Century* 19 (2014), 1: DOI:10.16995/ntn.716, accessed 26 February 2018. See also Elizabeth Edwards and Janice Hart (eds), *Photographs Objects Histories: On the Materiality of the Image* (London: Routledge, 2004). I first presented this paper as a valedictory lecture on the retirement of Elizabeth from De Montfort University. It is meant as a serious engagement with, and critique, of her work, from which I continually learn. It probably does not need saying, but we are not related.
5. Elizabeth Edwards, *The Camera as Historian: Amateur Photographers and Historical Imagination, 1885–1918* (Durham, NC: Duke University Press, 2012), 109–121.
6. Bruno Latour is notoriously uninterested in power, inequality, or social hierarchy and his “flat ontology” makes thinking about such things difficult to imagine. Bruno Latour, *Reassembling the Social: An Introduction to Actor-Network-Theory* (Oxford: Oxford University Press, 2005) and *We Have Never Been Modern* (Boston, MA: Harvard University Press, 1993). The literature on new materialism is rapidly expanding but see Diana Coole and Samantha Frost (eds), *New Materialisms: Ontology, Agency, and Politics* (Durham, NC: Duke University Press, 2010); Jane Bennett, *Vibrant Matter: A Political Ecology of Things* (Durham: Duke University Press, 2010); Rosi Braidotti, *The Posthuman* (Cambridge: Polity Press, 2013); Richard Grusin (ed.), *The Nonhuman Turn* (Minneapolis, MN: University of Minnesota Press, 2015); Graham Harman, *The Quadruple Object* (London: Zero, 2011); and Graham Harman, *Object-Orientated Ontology: A New Theory of Everything* (London: Pelican, 2018). In the history of art and photography, the approach known as the “social biography of things” has probably been most influential, see Arjan Appaduri (ed.), *The Social Life of Things: Commodities in Cultural Perspective* (Cambridge: Cambridge University Press, 1988). See also, for example, Fiona Candlin and Raiford Guins (eds), *The Object Reader* (London: Routledge, 2009).
7. There is much recent work drawing on debates in anthropology and science and technology studies that is infused with these concerns. The studies included in Edwards and Hart’s *Photographs Objects Histories* provide central examples. Other works that directly address the issues include: Edwards, *The Camera as Historian*; Julia Breitbach, “The Photo-as-Thing”, *European Journal of English Studies* 15, no. 1 (2011): 31–43; Julia Peck, “Vibrant Photography: Photographs, Actants and Political Ecology”, *Photographies* 9, no. 1 (2016): 71–89; Sushma Griffin, “Territory of the Visual: Photographic Materialities and the Persistence of Indo-Muslim Architecture”, *Transformations: Journal of Media and Culture* 27 (2016): (http://www.transformationsjournal.org/wp-content/uploads/2019/11/Griffin_Transformations27_updated2019.pdf) [http://www.transformationsjournal.org/wp-content/uploads/2019/11/Griffin_Transformations27_updated2019.pdf]; and Owen Clayton and Jim Cheshire, “Editorial” to Special Issue on Photography and Networks, *History of Photography* 41, no. 4 (2017): 325–328.
8. For comparison, see Marcia Pointon, “‘Surrounded with Brilliants’: Miniature Portraits in Eighteenth-Century England”, *The Art Bulletin* 83, no. 1 (2001): 48–71.
9. Walter Benjamin, “Little History of Photography”, 507.
10. I have found two examples where a card fillet is inserted under the mat, resulting in the best-preserved plates I have seen.
11. William Pietz, “The Problem of the Fetish I”, *Res* 9 (1985): 5–17; William Pietz, “The Problem of the Fetish II: The Origin of the Fetish”, *Res* 13 (1987): 23–45; William Pietz,

- “The Problem of the Fetish: IIIa, Bosman’s Guinea and the Enlightenment Theory of Fetishism”, *Res* 16 (1988): 105–123; and Pointon, ““Surrounded with Brilliants””.
12. Other than popular works for collectors, cases have been ignored. While not without problems, the best of these is: John Hannavy, *Case Histories: The Presentation of the Victorian Photographic Portrait 1840–1875* (London: ACC Art Books, 1988). See also Arthur T. Gill, “Further Discoveries of Beard Daguerreotypes”, *History of Photography* 3, no. 2 (1979): 94–98; R. Derek Wood, “Daguerreotype Case Backs: Wharton’s Design of 1841”, *History of Photography* 4, no.3 (1980): 251–252; and Robert B. Fisher, “The Beard Photographic Franchise in England: An Overview of Beard’s Licensed Daguerreotype Portrait Galleries and Their Products in the 1840s”, in Peter E. Palmquist (ed.), *The Daguerreian Annual* (Eureka, CA: The Daguerreian Society, 1992), 73–96.
 13. Beard purchased the patent to the daguerreotype process for England, Wales, and Berwick-upon-Tweed in 1841. A separate patent was required for Scotland and for Ireland and he did not acquire these. Beard ran three London studios in the fashionable West End and licensed other persons to practise the daguerreotype process throughout his legal territory. For Beard’s patent, see my essay: “Beard Patentee: Daguerreotype Property and Authorship”, *Oxford Art Journal* 36, no. 3 (2013): 369–394.
 14. Edward Anthony, *A Comprehensive and Systematic Catalogue of Photographic Apparatus and Material, Manufactured by E. Anthony* (New York: H.H. Snelling, 1854).
 15. We know that Beard sourced his silvered plates from the Birmingham firm: G. H. & R. Elkington, who were patentees for the electroplate process. In a lecture at the Royal Institution, J.F. Goddard reported that Beard’s plates were manufactured in Birmingham under the direction of Johnson; see J.F. Goddard, “Application of the Daguerreotype to the Taking of Likenesses from the Life”, *The Polytechnic Journal* 4 (April 1841): 248–250; and in *The Chemist* 2 (May 1841): 142–143. Some writers have taken this to mean manufactured by Wharton, who was certainly engaged in electroplating during the 1840s. However, the previous week in a lecture at the same establishment, J.T. Cooper stated that Beard obtained his plates from G. H. & R. Elkington, who were the patentees for the process. Birmingham was the focal point for the metal plating trades, which may be a reason for the confusion. Beard almost certainly dealt with the patentee; see J.T. Cooper, *The Polytechnic Journal* 4 (April 1841): 251–253. However, the subcontracting process in Birmingham means we can’t be certain. For this, see Clive Behagg, *Politics and Production in the Early Nineteenth-Century* (London: Routledge, 1990).
 16. The trade *Directory of Birmingham for 1843* describes him as: “bronzist and manufacturer of ornaments in bronze and ormolu, japanned miniature frames, morocco cases &c”; Wood, “Daguerreotype Case Backs”, 251.
 17. Horne, Thornthwaite, and Wood, *Catalogue Estimates for Sets of Photographic Apparatus* (London, 1852), 18.
 18. John Johnson, “A Chapter in the Early History of Photography”, *The Photographic News*, 21 August 1868, 404–405; and Floyd Rinhart and Marion Rinhart, “Wolcott and Johnson; their Camera and their Photography”, *History of Photography* 1, no. 2 (1977): 129–134.
 19. Charles Sabel and Jonathan Zeitlin, “Historical Alternatives to Mass Production: Politics, Markets and Technology in Nineteenth-Century Industrialization”, *Past & Present* 108 (1985): 133–176.
 20. We know that in one instance Wharton wrote to Beard warning him of contact from the “pirate” Edward Josephs, who wanted to procure “samples of various patterns of cases ... at

the lowest price”. Beard cited this letter in his legal proceedings against Josephs for patent infringement. Chancery Proceedings, *Beard v Josephs*, C13/475/B94, Public Record Office, London.

21. As is well known, Carlo Ginzburg cited Freud and Conan Doyle, along with the connoisseur Carlo Morelli, as examples of medical semiotics. In each instance, these men were medical practitioners and Ginzburg argues they built their evidence—“clues”—on the idea of the medical symptom. Medical diagnosis is evidently a type of the “case”; Carlo Ginzburg, “Clues: Roots of an Evidential Paradigm”, *Myths, Emblems, Clues* (London: Hutchinson Radius, 1990), 96–125.
22. For his work on the culture of the case, see Fredric J. Schwartz, “Architecture and Crime: Adolf Loos and the Culture of the ‘Case’”, *The Art Bulletin* 94, no. 3 (2012): 437–457; and John Forrester, “If p, Then What? Thinking in Cases”, *History of the Human Sciences* 9, no. 3 (1996): 1–25. Schwartz makes a good argument for seeing the case as offering a forum for the public sphere, in which critical intellectuals use the arena of the law and its reporting in the press to expose contradictions in prevailing ideologies. His example is Edward Fuchs who repeatedly highlighted the sexual hypocrisy of the Viennese bourgeoisie. A similar case could be made for Jacques Vergès who defended Klaus Barbie with the intention of spotlighting French crimes in Indochina and complicity with the Nazis. My thanks here go to Rob Knox. In 2006 and 2007, *Critical Inquiry* dedicated two special issues to “the case”: *Critical Inquiry* 33, no. 4 (2006); and *Critical Inquiry* 34, no. 1 (2007). Lauren Berlant’s Introduction was titled “On the Case”, and appeared in *Critical Inquiry* 33, no. 4 (2006): 663–672. There are some good papers in the issues of *Critical Inquiry* but nothing that really gets to grips with the question. My thanks to Fred Schwartz for sharing his thoughts on this literature.
23. André Jolles, *Simple Forms* (London: Verso, 2017). Jolles was one of the highly gifted generation of right-wing scholars in the 1930s. A colleague of Gadamer, he joined the NSDAP (National Socialist German Workers’ Party).
24. Jolles, *Simple Forms*, 139
25. For an overview, see Luca Basso, *Marx and Singularity: From the Early Writings to the Grundrisse* (Leiden: Brill, 2012).
26. For the emergence of “examination” and “inquiry”, see Michel Foucault, “Truth and Juridical Forms” (1973), in James D. Faubion (ed.), *Power: Essential Works of Foucault 1954–1984*, (London: Penguin, 2000), 1–89.
27. Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Harmondsworth: Penguin, 1979); and Michel Foucault, *The History of Sexuality*, Vol. 1 (Harmondsworth: Penguin, 1981).
28. John Tagg, *The Burden of Representation: Essays on Photographies and Histories* (London: Macmillan, 1988); Allan Sekula, “The Body and the Archive”, *October* 39 (1986): 3–64; Roberta McGrath, “Medical Police”, *Ten.8* 14 (1984): 13–18; David Green, “Classified Subjects: Photography & Anthropology”, *Ten.8* 14 (1984): 30–37; David Green, “A Map of Depravity”, *Ten.8* 18 (1985): 36–43; David Green, “On Foucault: Disciplinary Power and Photography”, *Camerawork* 32 (1985): 6–9; and David Green, “Veins of Resemblance: Photography & Eugenics”, in Patricia Holland et al. (eds), *Photography/Politics Two* (London: Comedia/Photography Workshop, 1986), 9–21.
29. See Allan Sekula’s response to Tagg’s claim that the camera supplanted the need for physical building, in “The Body and the Archive”, 3–64. Sekula did not adopt the total carceral vision

- and his work always included points of resistance to power. For a critical response from the time, see my essay “The Machine’s Dialogue”, *Oxford Art Journal* 13, no. 1 (1990): 63–76.
30. Foucault, *Discipline and Punish*, 191 (emphasis in original).
 31. Foucault, *Discipline and Punish*, 191.
 32. Michel Foucault (ed.), *I, Pierre Rivière having Slaughtered my Mother, my Sister and my Brother ...: A Case of Parricide in the 19th Century* (Harmondsworth: Penguin, 1978), x–xi. For “dossier-making ... as a supplement to Foucault’s research” and the difference between dossiers and case studies, see S.D. Chrostowska, “‘A Case, an Affair, an Event’ (The Dossier by Michel Foucault)”, *Clio: A Journal of Literature, History and the Philosophy of History* 35, no. 3 (2006): 329–349. Chrostowska suggests that whereas the case tends to “legibility”, the dossier differs as a “combinatory genre” whose “ostensive objectivity stems from its lack of unified perspective”; it is “an accrual of testimonials, witness accounts, examination results, and expert opinions”; Chrostowska, “‘A Case, an Affair, an Event’”, 333. This is helpful, but Beard’s legal cases consist of exactly these same materials. What makes the difference is the determining instant of authoritative judgement. In his “Foreword” to *I, Pierre Rivière*, Foucault is attentive to this moment, cf. 200. See also Michel Foucault, “About the Concept of the ‘Dangerous Individual’ in 19th-Century Legal Psychiatry”, *International Journal of Law and Psychiatry* 1 (1978): 1–18.
 33. For a recent Marxist engagement with Foucault, see Jacques Bidet, *Foucault With Marx* (London: Zed Books, 2016). Still, the best account is Nicos Poulantzas, *State, Power, Socialism* (London: Verso, 1980) and for an excellent discussion, see Bob Jessop, “Pouvoir et Stratégies chez Poulantzas et Foucault”, *Actuel Marx* 36 (2004): 89–107.
 34. “Lord Portsmouth’s Case”, *The Morning Chronicle*, Saturday 1 March 1823; or “The Extraordinary Treatment of a Case of Hydrophobia at Guy’s Hospital”, *The Morning Chronicle*, Monday 4 October 1824.
 35. “A Lark–Important Case”, *The Morning Chronicle*, Friday, 10 July 1829.
 36. Forrester, “If p, Then What?”, 14.
 37. James Chandler, *England in 1819: Politics of Literary Culture and the Case of Romantic Historicism* (Chicago, IL: University of Chicago Press, 1998). I would like to thank Luisa Calè for drawing my attention to Chandler’s work.
 38. Jolles, *Simple Forms*, 158. The term case derives from the Latin *casus*: falling, a fall; accident, event, occurrence; occasion, opportunity—all of which point to a moment of contingency. *Occasio* (juncture) is a derivative of *casus* and is the root of the Old English “occasion”. It seems right to acknowledge that case as container, derives from Old French *chasse* meaning case or reliquary; Modern French *chasse*. The Latin root is probably *capsa*, box or repository. Both share a sense of enclosing or encasing. My thanks to Alberto Toscano for suggesting the etymological connections and for pointing me to *Simple Forms*.
 39. Chandler, *England in 1819*, 215.
 40. Chandler, *England in 1819*, 218–225. See also G.A. Starr, *Defoe and Casuistry* (Princeton, NJ: Princeton University Press, 1971); and J. Paul Hunter, *Before Novels: The Cultural Contexts of Eighteenth-Century English Fiction* (New York: W.W. Norton, 1990).
 41. On cases in law and medicine, see Forrester, “If p, Then What?”; and Warwick Anderson, “The Case of the Archive”, in Joy Damousi, Birgit Lang, and Katie Sutton (eds), *Case Studies and the Dissemination of Knowledge* (London: Routledge, 2019), 15–30.
 42. Forrester, “If p, Then What?”; and Ian Hacking, *The Taming of Chance* (Cambridge: Cambridge University Press, 1990).

43. Lorraine Daston and Peter Galison, *Objectivity* (New York: Zone, 2007).
44. Mary Poovey, *Making a Social Body: British Cultural Formation, 1830–1864* (Chicago, IL: University of Chicago 1995); Robert Grey, *The Factory Question and Industrial England 1830–1860* (Cambridge: Cambridge University Press, 1996); and Steve Edwards, “Factory and Fantasy in Andrew Ure”, *Journal of Design History* 14, no. 1 (2001): 17–33.
45. See Molly Nesbit’s brilliant “What was an Author?”, *Yale French Studies* 17 (1987): 229–257. The comment on Foucault and the “economy” is to be found on 204. Cf. Alan Hunt and Gary Wickham, *Foucault and Law: Towards a Sociology of Law as Governance* (London: Pluto, 1994), 59–60. Hunt and Wickham offer a good account of Foucault’s distinction between negative law (which he associates, somewhat oddly, with the body of the King in the Absolutist State) and modern, positive capillary power. As such, the place of the law in modern power and governance occupies a marginal role in his work. The central examples are “Two Lectures” and, in the same volume, the long lecture “Truth and Juridical Forms”; Michel Foucault, “Two Lectures”, in Colin Gordon (ed.), *Power/Knowledge: Selected Interviews & Other Writings 1972–1977* (New York: Pantheon, 1980), 78–108. Foucault’s libertarian antipathy to the state has not been weighed enough; yet arguably, it is what generated his ambivalent attitude to neoliberalism and provided an opening for the *nouveaux philosophes*. On this, the pioneering criticisms are: Peter Sedgwick, *PsychoPolitics* (London: Pluto, 1982); and Peter Dews, “The *Nouvelle Philosophie* and Foucault”, *Economy and Society* 8, no. 2 (1979): 127–171.
46. William Blackstone, William Curry abridgment, *The Commentaries of Sir William Blackstone, Knt. On the Constitution of England* (London: W. Clarke, 1796); and Michael Lobban, *The Common Law & English Jurisprudence 1760–1850* (Oxford: Clarendon Press, 1991).
47. Blackstone, *The Commentaries of Sir William Blackstone*, 103.
48. Domenico Losurdo, *Liberalism: A Counter-History* (London: Verso, 2011). One issue with the “new materialism” is that some people really can be treated as objects: such as treating women as “sex objects” and enslaved people are legally treated as things. In this regard, a flat ontology seems deeply questionable in avoiding racialised and gendered violence.
49. Important studies of incorporeal property include: Bernard Edelman, *Le droit saisi par la photographie: éléments pour une théorie marxiste du droit* (1973); translated as *The Ownership of the Image: Elements for a Marxist Theory of Law* (London: Routledge & Kegan Paul, 1979); N.N. Feltes, *Modes of Production of Victorian Novels* (Chicago, IL: University of Chicago, 1986); Jane M. Gaines, *Contested Culture: The Image, The Voice, and the Law* (Durham, NC: Duke University Press, 1991); Mark Rose, *Authors and Owners: The Invention of Copyright* (Boston, MA: Harvard University Press, 1993); J. Feather, *Publishing, Piracy and Politics: An Historical Study of Copyright in Britain* (London: Mansell, 1994); Martha Woodmansee, *The Author, Art, and the Market: Rereading the History of Aesthetics* (New York: Columbia University Press, 1994) and Elena Cooper, *Art & Copyright: The Contested Image* (Cambridge: Cambridge University Press, 2018). From within art history, see Nesbit, “What was an Author?”; Katie Scott, “Art and Industry — A Contradictory Union: Authors, Rights and Copyrights during the Consulat”, *Journal of Design History* 13, no. 1 (2000): 1–21; Katie Scott, “Maps, Views and Ornaments: Visualising Property in Art and Law. The Case of Pre-Modern France”, in Ronan Deazley, Martin Kretschmer, and Lionel Bentley (eds), *Privilege and Property: Essays on the History of Copyright* (Cambridge: Cambridge University Press, 2010), 255–288; Katie Scott, “Authorship, the *Académie*, and the Market in

- Early Modern France”, *Oxford Art Journal* 21, no. 1 (1998): 29–41; Katie Scott, *Becoming Property: Art, Theory and Law in Early Modern France* (New Haven, CT: Yale University Press, 2019); and Leo Koerner, *The Moment of Renaissance Self-Portraiture in German Renaissance Art* (Chicago, IL: University of Chicago Press, 1993), 203–223. For an attempt to deal with patent law, see Louise Purbrick, “Knowledge is Property: Looking at Exhibits and Patents in 1851”, *Oxford Art Journal* 20, no. 2 (1997): 53–60. In photography, work has been confined to copyright. In addition to Edelman and Nesbit, see Elizabeth Anne McCauley, “‘Merely Mechanical’: On the Origins of Photographic Copyright in France and Great Britain”, *Art History* 3, no. 1 (2008): 57–78.
50. Blackstone, *The Commentaries of Sir William Blackstone*, 103–104.
 51. Benjamin, “Little History of Photography”, 507. His claim is that the state stepped in with pensions, when the inventors encountered problems with the patent process.
 52. For a fuller account, see my “Beard Patentee: Daguerreotype Property and Authorship”. The history and issues are more fully developed in my forthcoming book: *Daguerreotypes: Patents, Persons and Portraits*.
 53. Chancery Proceedings, *Beard v Claudet*, 6 July 1841, C13/Bundle 435/B19, Public Record Office, London; “The Answer of Antoine Claudet Defendant”, Chancery Proceedings, *Beard v Claudet*, 7 September 1841, C13/Bundle 435/B19, Public Record Office, London; “Supplementary Bill”, Chancery Proceedings, *Beard v Claudet*, 7 March 1842, C13/Bundle 456/B5, Public Record Office, London; “The Answer of Antoine Claudet...”, Chancery Proceedings, *Beard v Claudet*, 20 July 1842, C13/Bundle 456/B5, Public Record Office, London.
 54. Chancery Court Proceedings, *Beard v Barber*, 20 December 1842, amended 8 April by Order dated 5 April 1843, C14/bundle 4/B41, Public Record Office, London; Chancery Court Proceedings, “The Answer of Alfred Barber”, *Beard v Barber*, Pleading, 20 December 1842, amended 8 April by Order dated 5 April 1843, C14/bundle 4/B41, Public Record Office, London; and Chancery Court Proceedings, *Beard v Holland*, 17 June 1843, C14/45/B115, Public Record Office, London.
 55. Richard Beard Affidavit sworn on 6 September 1842, *Beard v Edwards*, C31/635, Public Record Office, London.
 56. Chancery Proceedings, *Beard v Josephs*, C13/475/B94, Public Record Office, London. Richard Beard Affidavit sworn 11 August 1842, *Beard v Rankine Bake and Chapple*, C31/654, Public Record Office, London. The citation is from Richard Beard Affidavit sworn 11 August 1842, *Beard v Rankine Bake and Chapple*, C31/654, Public Record Office, London.
 57. Chancery Proceedings, 1845 *Beard v Egerton*, C14/337/B54, Public Record Office, London; *Beard v Egerton*, C31/685—Part 2, Public Record Office, London; Chancery Proceedings, 1845, “The Joint and Several Answer of John Whary Egerton”, C14/337/B52, Public Record Office, London; Chancery Proceedings, 1846, Beard’s “Supplementary Bill”, C14/337/B52, Public Record Office, London; and Chancery Proceedings, 1846, “The Answer of Jeremiah Egerton to the Supplemental Bill of Complaint”, C14/337/B52, Public Record Office, London.
 58. Noël-Marie-Paymal Lerebours, *A Treatise on Photography, containing the Latest Discoveries and Improvements Appertaining to the Daguerreotype*, translated by Jeremiah Egerton (London: Longman, Green, Brown & Longmans, 1843).

59. C.B. MacPherson, *The Theory of Possessive Individualism* (Oxford: Oxford University Press, 1962).
60. W.J. Kaye, “The ‘Non-Existence’ of Women”, *North British Review* 18 (August 1855): 536–562; Anon., “Property of Married Women”, *The English Women’s Journal* 1 (1858); Lee Holcombe, *Wives and Property: Reform of the Married Women’s Property Law in Nineteenth-Century England* (Toronto: University of Toronto, 1982); Mary Poovey, *Uneven Developments: The Ideological Work of Gender in Mid-Victorian England* (London: Virago, 1989); Mary Lyndon Shanley, *Feminism, Marriage, and Law in Victorian England, 1850–1895* (Princeton, NJ: Princeton University Press, 1989); Dorothy Stetson, *A Woman’s Issue: The Politics of Family Law Reform in England* (London: Praeger, 1993); and Ben Griffin, “Class Gender and Liberalism in Parliament, 1868–1882: The Case of the Married Women’s Property Acts” *The Historical Journal* 46, no. 1 (2003): 56–87.
61. Blackstone, *The Commentaries of Sir William Blackstone*, 77.
62. Margot Finn, “Women, Consumption and Coverture in England, c.1760–1860”, *The Historical Journal* 39, no. 3 (1996): 703–722. Maxine Berg and Susan Staves have also argued that in practice, women had more scope than the law dictated and that women left wills and established trusts for children, see Susan Staves, *Married Women’s Separate Property in England, 1660–1833* (Cambridge, MA: Harvard University Press, 1990); and Maxine Berg, “Women’s Property and the Industrial Revolution”, *The Journal of Interdisciplinary History* 24, no. 2 (1993): 233–250.
63. *The Times*, 14 June 1849, 1d; Correspondence from Thomas Malone to William Henry Fox Talbot, 15 February 1850, Document no. 6303, British Library Talbot Collection, LA50-12. Transcribed by *The Correspondence of William Henry Fox Talbot* Project: (<http://foxtalbot.dmu.ac.uk/letters/transcriptFreetext.php?keystring=wigley&keystring2=&keystring3=&year1=1800&year2=1877&pageNumber=0&pageTotal=1&reference=http://foxtalbot.dmu.ac.uk/letters/transcriptFreetext.php?keystring=wigley&keystring2=&keystring3=&year1=1800&year2=1877&pageNumber=0&pageTotal=1&reference=>) I would be delighted to vouch for her claim but as yet I have not found an example of her work.
64. The *London Post Office Directory* lists: Matilda Hamilton in 1848; Mrs Susannah Smith, 1853–1854 (she also appears to have worked in Norwich); Mrs Maria Clarke, 1854–1856; John Firth (with Mrs Firth in attendance for ladies), 1854–1855; Helen Joyce & Son, 307, High Holborn, 1854–1855—possibly daguerreotypes. Eliza Emma Wilson Burrows, the wife of surgeon and dentist Walter Burrows, worked in photography while she was married. She had a studio at 12 Somerset Place, Commercial Road, Whitechapel, 1853–1859 and is listed in the London Directories earlier in 1851. Walter Burrows was a parochial vaccinator; Miss Rosa A. Bourdon, 7 City Terrace, City Road, 1854–1856; Miss Miranda Cannon, 18 King William St (Claudet’s former studio) 1853–1854; and Miss Mina Peyton (traded as Mina’s), 3338A Oxford Street, 1854–1855. It is not certain that they all worked the daguerreotype process; see Michael Pritchard, *A Directory of London Photographers, 1841–1908* (Watford: PhotoResearch, 1994).
65. David Bruce, *Greatrex: Forger and Photographer* (Edinburgh: Renaissance Press, 2013).
66. *Gloucester Journal*, 3 January 1849, 2; 17 November 1849, 2; and 14 September 1850, 2.
67. 1851 Census, National Archives, Piece 1878, Folio 256, 18; Jabez Hughes, “The Discovery of the Use of Bromine in Photography: A Few Words and an Appeal”, *British Journal of Photography*, 15 December 1863, 487–488. See also Antoine Claudet, “Question of Priority

- Respecting the Discovery of the Accelerating Process of the Daguerreotype Operation”, *London, Edinburgh & Dublin Philosophical Magazine & Journal of Science* 32, no. 214 (March 1848): 215–216.
68. For a good example, see Tim Ingold, *Making: Anthropology, Archaeology, Art & Architecture* (London: Routledge, 2013). However, an art historian would want to point out that the discipline has its own exemplary version in Michael Baxandall’s *The Limewood Sculptors of Renaissance Germany* (New Haven, CT: Yale University Press, 1980).
69. For examples of such claims, see Bruno Latour, *We Have Never Been Modern* (Boston, MA: Harvard University Press, 1993); and Latour, “Why has Critique Run Out of Steam”. There are now a range of important critiques. For a trenchant engagement with Latour and the “New Materialism”, which applies the test of the impending environmental disaster of a “warming world”, see Andreas Malm, *The Progress of this Storm: Nature and Society in a Warming World* (London: Verso, 2018). Malm convincingly shows that environmental destruction cannot be addressed without a distinction between humans and non-humans. Hylton White, presents an excellent account of Latour’s failure to comprehend Marx on commodity exchange and fetishism in his essay “Materiality, Form and Context: Marx Contra Latour”, *Victorian Studies* 55, no. 4 (2013): 667–682. Other suggestive critiques include: David Bloor, “Anti-Latour”, *Studies in History and Philosophy of Science* 30, no. 1 (1999): 81–112; Noel Castree, “False Antitheses? Marxism, Nature and Actor-Networks”, *Antipode: A Radical Journal of Geography* 34, no. 1 (2002): 111–146; Benjamin Noys, *The Persistence of the Negative: A Critique of Contemporary Continental Theory* (Edinburgh: Edinburgh University Press, 2010); and Alberto Toscano, “Seeing it Whole: Staging Totality in Social Theory and Art”, *The Sociological Review* 60, no. 1 (2012): 64–83.
70. For example, Alain Pottage and Brad Sherman, *Figures of Invention: A History of Modern Patent Law* (Oxford: Oxford University Press, 2010); and Stathis Arapostahis and Graeme Gooday, *Patently Contestable: Electrical Technologies and Inventor Identities on Trial in Britain* (Cambridge, MA: MIT, 2013). Both are good studies that reveal the role of things in constituting legal definitions. Nevertheless, in my view the evasion of property relations leads to significant contradictions.
71. Etienne Balibar, *The Philosophy of Marx* (London: Verso, 2007). Balibar criticises this conflation between materialism and materials or property and things.
72. C.B. Macpherson (ed.), “The Meaning of Property”, *Property: Mainstream and Critical Positions* (Toronto: University of Toronto Press, 1978), 3.
73. I want to avoid the term “hybrid” here, due to both its racist origin and the current Latourian resonances. Amalgam comes from metallurgy and is less biological.
74. This is not unlike the account of the rise of capitalism that omits the violence of the “so-called primitive accumulation” and imagines that, once the guilds and other feudal restrictions were removed, the market could simply spread its resplendent wings.
75. Her Majesty’s Commissioners authorised a fiat of bankruptcy against Beard on 8th day of October 1849; see *The London Gazette*, 28 December 1849, 3970. He was awarded the second-class certificate on 9 March 1850; see *The London Gazette*, 7 June 1850, 1632.
76. Geoffrey Crossick and Heinz-Gerhard Haupt (eds), *Shopkeepers and Master Artisans in Nineteenth-Century Europe* (London: Routledge, 1984). Stana Nenadic’s work on small firms in Edinburgh indicates that between 1861 and 1891, 59 per cent of female firms and 55 per cent of male-run enterprises traded for less than three years. In the book and paper trades, 62

- per cent went out of business within three years; see Stana Nenadic, "The Small Firm in Victorian Britain", *Business History* 35, no. 4 (1993), 90.
77. *The London Gazette*, 28 December 1849, 3970.
 78. *Cheltenham Looker-On*, 19 October 1849, cited in Bernard V. Heathcote and Pauline F. Heathcote, "Richard Beard: An Ingenious and Enterprising Patentee", *History of Photography* 3, no. 4 (1979), 325.
 79. *Liverpool Mercury*, 13 April 1849. From 1853 on, Richard Beard Jr. appears as the occupant of the King William Street Studio.
 80. London Metropolitan Archive, Class H0107, Piece 1495, Folio 384, 50; GSU Roll: 87826–87827.
 81. This is listed as an American photographic process and may not have been the daguerreotype process, but the reference to Beard is significant. *Hobson's Advertiser*, August 1854, 1.
 82. Heathcote and Heathcote, "Richard Beard", 327.
 83. R.J. Morris, *Men, Women and Property in England, 1780–1870* (Cambridge: Cambridge University Press, 2005). For the role of the middle class in associations, see R.J. Morris, *Class, Sect and Party: The Making of the British Middle Class: Leeds, 1820–50* (Manchester: Manchester University Press, 1990).
 84. *Cheltenham Looker-On*, 27 April 1850, 1. He was in Belfast in 1842. *The Banner of Ulster*, 9 October 1842, 1. Lowe disappeared in 1856 with a quantity of valuable goods purchased on credit: a gold watch worth £35, plate at £40, and drapery at £22. He sailed from Liverpool and was not heard of again. *Cheltenham Free Press*, 1 November 1856, 4.
 85. *Gloucester Journal*, 3 January 1849, 2; 17 November 1849, 2; 14 September 1850, 2.
 86. *Newcastle Journal*, 25 May 1850, 4. He advertised until October 1855, when he closed for the season.
 87. *York Herald*, 30 March 1850, 4. He purchased the license from Samuel Walker.
 88. *Plymouth Times*, 22 March 1851, 2.
 89. *Coventry Herald*, 28 May 1852, 1. He was there through to June 1852.
 90. He first appears in Windsor in 1851: *Windsor and Eaton Express*, 13 December 1851, 1. He continued to advertise at various addresses until 1854. He was probably a seasonal visitor. He was worked in Poole and Weymouth, and probably elsewhere. *Poole & South Western Herald*, 14 April 1853, 1. He was still there in June 1853; see *Southern Times*, 14 May 1853, 1. He continued to advertise in Weymouth until June 1854.
 91. Chancery Proceedings, *Beard v Claudet*, 6 July 1841, C13/Bundle 435/B19, Public Record Office, London.
 92. Several dozen daguerreotypes were submitted as evidence in the five daguerreotype legal cases. They include portraits of some of the earliest workers in photography; Beard's technical employees procured them as evidence for his prosecutions. None have survived. In English law, documents are preserved, but physical evidence is destroyed at the end of a trial. The law knew that daguerreotypes were things, but again this was a legal category.

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