

# Hogarth, Piracies and the Engravers' Act of 1735



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# Introduction

“China's lenient attitude towards copyright infringement continues to cause problems for artists worldwide. In the past week, separate cases involving apparent and actual copies of works by the UK sculptor Anish Kapoor and the US sculptor John Raimondi, have revealed that, despite signing the Berne Convention (an international agreement governing copyright), China still has a long way to go in actively protecting artists' rights.”<sup>1</sup>

Artists have throughout history always had problems with fakes and plagiarism, starting already in the 15<sup>th</sup> century with Albrecht Dürer being plagiarised in Italy by Marcantonio Raimondi to present day in China as seen in the quote above.<sup>2</sup> The call for active protection for the rights of artists has always been a major one within the field of art, and in certain parts of the world still is.

This thesis will focus upon the first statutory answer to that call, the Engravers' Act of 1735. This document is a hallmark in the protection of artists right worldwide, as it was the first statutory protection of intellectual property ever to be assigned to artists. The Engravers' Act is informally known as the Hogarth's Act, due to the major contribution of William Hogarth (1697-1764). William Hogarth was a London born engraver, who already early on in his career experienced the atrocities of lacking protection for artists right. It was these atrocities that led him to petition the English parliament in 1734 for protection against plagiarism and abuse. This petition resulted in the Engraver's Act of 1735.

To understand how this document came into being we have to look at two aspects; firstly what historical developments and circumstances contributed the possibility of the Act, secondly what role did Hogarth play in the passing of the Act and what motivated his actions? This results in the two central questions of my thesis whose answers will provide this understanding.

1. What historical developments and circumstances contributed to the passing of the Engraver's Act of 1735?
2. What motivated Hogarth's active role in the petitioning for the Act?

To answer the first question we need to look at the legal history and development surrounding copyright in England, as will be shown in chapter one these developments are essential for the passing of the Engravers' Act of 1735. In the second chapter the focus will be on Hogarth's motivation for the petitioning for the Act. Focussing on Hogarth as a political satirist whose message got distorted in counterfeits. The last chapter will combine these two questions in a close reading of the 'The Case of Designers, Engravers, Etchers etc.', the petition leading up to the Engravers' Act. In this close reading will be shown how the petition is both a product of its time, as well as a product of Hogarth's experiences.

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<sup>1</sup> <http://theartnewspaper.com/news/news/made-in-china-not-originally/>

<sup>2</sup>N. Charney, *Art of Forgery: The Minds, Motives and Methods of the Master Forgers* ( London: Pheidon Press, 2015), pp. 11-12.

# Chapter 1: A History of English Copyright

The Engravers' Act of 1735 – as said – is a pivotal moment in history for both art and law, as it is the first governmental legislation ever to be passed protecting the rights of the artist. It was the product of the relentless efforts of Hogarth and his fellow petitioners. Although it was their efforts that made the Act reality, it would never have come to pass without the developments in English law concerning copying. In this chapter will be argued that the Act and Hogarth's campaign were only possible as a result of the development of the right to copy to copyright within English law. It is this development, culminating in the Statute of Anne that enabled Hogarth to realise his important step in the protection of the rights of the artist.

## Introduction of the print in England and the right to copy

The first mention after Caxton (c.1422 – c. 1491) introduced the printing press in England of (book) prints as commodity is in the statute 'In what Sort Italian Merchants may sell Merchandises; Several Restraints of Aliens' passed in 1484 under the reign of Richard III (1452 – 1485).<sup>3</sup> This statute was aimed at protecting English trade, especially wool, against Italian and other foreign Merchants by restricting their trade options within London. Remarkably books, both written and printed, are exempted from these restrictions, as per article 12 of the statute:

Provided always that this Act, or any Part thereof, or any other Act made or to be made in this said Parliament, shall not extend or be in prejudice, disturbance, damage, or impediment to any artificer, or merchant stranger, of what nation or country he be or shall be of, for bringing into this realm, or selling by retail or otherwise, any book written or printed.<sup>4</sup>

The consequence of this article was that it not only exempted books, both selling and producing them, from this statute, but also prohibited any further restrictions on books to be made. Book printing was thus completely free at the time.

This freedom would last for about 50 years. It was first limited by the statute 'What Apprentices strange Artificers shall take, &c'<sup>5</sup> of 1523 and 'Touching Artificers Strangers, what they may do as concerning retaining Apprentices, Journeymen, &c'<sup>6</sup> of 1529, before being ultimately repealed in 1534 by the 'Act for Printers, and Binders of Books'.<sup>7</sup>

During this period the first right to copy was also established. The so called royal prerogative, which granted printing privileges of individual texts. The right to copy was a mere licence to copy a certain work or publication, although it did not give any form of copyright, it did provide protection for its holder, as the royal prerogative gave a monopoly on a text or a certain area – such as law – of texts. The holder of a royal prerogative could enforce this right before the Privy Council against any person that violated his privilege.<sup>8</sup> The

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<sup>3</sup> 1 Ric.III, c.9, 1484.

<sup>4</sup> Ric.III, c.9, 1484, article 12.

<sup>5</sup> 14 & 15 Hen.VIII, c.2

<sup>6</sup> 21 Hen.VIII, c.16

<sup>7</sup> 25 Hen.VIII, c.15

<sup>8</sup> R. Deazley 'Commentary on Henrician Proclamation 1538', in *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer, [www.copyrighthistory.org](http://www.copyrighthistory.org), p.3.

royal prerogative could thus not be seen as a form of copyright in the modern sense, but it did provide the first legal protection for printers in England. The prerogative would be indicated by the phrase *Cum Privilegio a Rege*. The earliest, still known, example hereof is *the Articles of Pope's Bulle* of 1518. The system of royal privilege had existed for quite some time already on the mainland of Europe, the earliest examples dating from the 1470ties in Germany and Italy.<sup>9</sup>

Henry III (1491- 1547) put this privilege system into legislature in his Proclamation 'Prohibiting Unlicensed Printing of Scripture, Exiling Anabaptists, Depriving Married Clergymen, Removing St. Thomas á Becket from Calander.'<sup>10</sup> In this Proclamation Henry states:

(...) Books imprinted in the English tongue, brought and transported from outwards parts, the King's most royal majesty straightly chargeth and commandeth that no person or persons, of what estate, degree or condition soever he be, shall henceforth (without his majesty's special license) transport or bring from outward parts into this realm of England, or any other his grace's dominions, any manner books printed in the English tongue, nor sell give, utter or publish any such books from henceforth to be brought into this realm(...)"<sup>11</sup> Furthermore "Item that no person or persons in this realm shall from henceforth print any book in the English tongue, unless upon examination made by some of his grace's Privy Council, or other such as his highness shall appoint, they shall have licenses so to do."<sup>12</sup>

This Proclamation thus ensured that no books were legally printed without royal consent. The aim of this proclamation was clearly to ensure that no religious text opposing the believes of the King were printed, as is clear from the rest of the text of the proclamation. Important for this research is the fact that the proclamation served as an example for royal licensing for the next 150 years.<sup>13</sup>

Printers who had received a royal license were obliged to put the text *Cum privilegio regali ad imprimendum solum* at the start of their publication. There has been a numerous discussions about the precise meaning of this sentence. The current view is that this was not a privilege, such as we have seen with the *Articles of Pope's Bulle*, but served merely as a license to print and/or import certain texts.<sup>14</sup> Although the proclamation may only have served as a license and it was not aimed at providing any protection of property, it still served as the first legislation regulating the printing-industry from an economic standpoint, as it created a system where only licensed printers were able to produce and sell.<sup>15</sup>

In these first 50 years of legislation concerning printing, we already see major developments, going from a largely unregulated market, to a highly regulated market of monopolies and licenses. But the largest and most important development was still to come.

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<sup>9</sup>Christopher L.C.E. Witcombe, *Copyright in the Renaissance: Prints and the Privilegio in Sixteenth Century Venice and Rome* (Leiden & Boston: Brill, 2004), p. 334.

<sup>10</sup> 30 Hen. VIII, c.30, 1538.

<sup>11</sup> Idem.

<sup>12</sup> Idem.

<sup>13</sup> L. Patterson, *Copyright in Historical Perspective* (Nashville: Vanderbilt University Press, 1968), p. 24.

<sup>14</sup>Betty Shapin, 'Ad Imprimendum Solum', in *The Modern Language Review* Vol. 35, No. 2 (April, 1940), p. 207.

<sup>15</sup> Patterson, p. 21.

## The age of the Stationers' Company and economic interest

The focal point of the history of copyright, as Patterson put it, is the Stationers' Company.<sup>16</sup> The Stationers were founded in 1403 after the Mayor and Aldermen of London granted their petition. It was to be the guild for writers of textletter, illuminators, bookbinders, and booksellers. After the introduction of the printing press, printers joined the guild.<sup>17</sup>

We know that already in 1554 the Stationers' Company was handing out licences for printing and enforcing these licenses by fining printers that published unlicensed work. For example Richard Tottle bought a patent for the publication of books of Law for the duration of seven years.<sup>18</sup> And John Harrison was fined four pence for printing a Ballet without license.<sup>19</sup> Although The Stationers' Company already gave licenses and patents before 1557, this year would become the year that the stationers gained power over printing, which they would hold for the next 150 years.

In 1557 Queen Mary (1516 – 1558) granted them a royal charter. The Stationers' Company petitioned Mary to grant them their charter to provide a suitable remedy against the diverse heretical treatises and doctrines - as they put it - thus offering themselves as an extra tool of censorship.<sup>20</sup> The most important clause of the charter gave the Stationers' Company a virtual monopoly on all book trade in England. The clause stated that:

no person within this our realm of England or the dominions of the same shall practice or exercise by himself or by his ministers, his servants or by any other person the art or mistery of printing any book or any thing for sale or traffic within this our realm of England or the dominions of the same, unless the same person at the time of his foresaid printing is or shall be one of the community of the foresaid mistery or art of Stationery of the foresaid City, or has therefore licence of us, or the heirs or successors of us the foresaid Queen by the letter of patent of us or the heirs or successors of the foresaid Queen.<sup>21</sup>

The clause, simply put, stated that books could only be printed and/or sold with either a license by the Queen or a license by the Stationers' Company. The powers the Stationers' Company received for enforcing the above right were quite extreme. They were granted the right to search premises for illegal prints and books, they were enabled to fine violations up to a hundred shillings and could even have a person imprisoned for three months.<sup>22</sup> A second force within the printing market had arrived after the passing of this charter. Now not only the sovereign had the power to regulate the market, but this pseudo-private entity was added as well. Much more than the royal prerogatives ever would, the Stationers' Company would influence the market in a larger manner, as the government was only concerned with censorship at the time and were indifferent toward the private ownership of copy. It was this private interest driven entity that would shape the development from the right to copy to copyright. The Stationers used their charter as a way to enforce the privileges and licences they gave out. Apart from Royal Printing Patents, the Stationers' Company and its members controlled the entire book trade.

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<sup>16</sup> Ibid., p. 28.

<sup>17</sup> Ibid., p. 29.

<sup>18</sup> Selected Extracts from the Stationers' Company's Registers, London, chapter 1, page 1.

<sup>19</sup> Selected Extracts from the Stationers' Company's Registers, London, chapter 1, page 2.

<sup>20</sup> E.Arber, A Transcript of the Registers of the Company of Stationers of London, 1557-1640, vol I. (London: n.p., 1875-94) p. xxviii.

<sup>21</sup> Ibid., p. xxx-xxxii.

<sup>22</sup> Ibid., p. xxxi.

After Elizabeth I (1533 – 1603) ascended to the throne she reaffirmed the Stationers Charter. Even so Elizabeth used the royal prerogative more actively than her predecessor, mostly to enrich the royal purse.<sup>23</sup> For printing specifically she did this by issuing the so called printing patents. There existed two kinds of royal printing patents. Firstly the general patent, which was a privilege to print a certain type of book, such as law books, almanacs, books of private prayer etc.<sup>24</sup> These privileges were granted on all books of that type on which no other license or privilege had been granted by the crown, this patent usually lasted for life. An example hereof is *Totell's Patent for Common law Books*, where Richard Totell in 1559 received a patent on all common law books that had not received a privilege or license yet. The patent forbids any and all printer to print a book on common law during the lifetime of Totell without his permission, on pain of forfeiture of goods and a fine of 12 shilling per book.<sup>25</sup> Secondly there was the particular patent, which was limited to printing of a specified work for a limited amount of time. An example hereof is *Calve's privilege for the 'Holsome and Catholick Doctrine* in which Philip and Mary granted Robert Calve the privilege ensuring him the sole right to print the *Holsome and Catholick Doctrine* for the next seven year, any book not printed by him would be confiscated.<sup>26</sup>

The Star Chamber Decree of 1586 further solidified the position of the Stationers' Company. The first and second ordinance of the Decree stated that any printing press should be registered with the stationers on pain of a year imprisonment and destruction of the press. Furthermore it limited the use of printing presses only to be located in London or the Universities of Oxford and Cambridge.<sup>27</sup> The most important clause of the Decree is ordinance four, which regulates the printing of Books without authority or against the authority. Here the ordonnances of the Stationers' Company, within their jurisdiction, are granted equal importance and protection as privileges and licences granted by the Queen, the Privy Counsel and other commissions under the seal of England.<sup>28</sup> The consequence of this new status of the Stationers' Company is that the licenses and privileges issued by the Stationers is from this point onward granted roughly the same status as a royal printing patent. This Resulted in the Stationers having the same enforcement methods and tools available as the crown had for royal printing patents. Although almost alike in status a royal patent can still supersede any stationer's ordonnance, as result of the phrasing of ordinance four. As it defines the protected ordonnances as 'any allowed ordonnance', thus not in conflict with the law or the crown.

Over the 16<sup>th</sup> century the right to copy had stabilised in two large bodies. The first being the governmental body of the Crown, the second being the semi-private body of the Stationers' Company. The regulations on printing had also shifted from being purely censorial to a both censorial and economic regulation of the market.

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<sup>23</sup> Patterson, p. 83.

<sup>24</sup> Ibid., p. 79.

<sup>25</sup> British National Archives: c.66/941.

<sup>26</sup> British National Archives: c.66/922.

<sup>27</sup> Arber, vol II, p. 808.

<sup>28</sup> Ibid., p. 810.

## The peak of the Stationers and the rise of the author

Another pivotal moment in the history of English book printing and on a larger scale copyright is the Star Chamber Decree of 1637. This decree once again confirmed most ordinances put forth in the 1586 Decree. It went further to empower the Stationers' Company, the second ordonnance stated that all printers should register the book they wanted to print with the Stationers.<sup>29</sup> An important addition was ordonnance seven, which stated that no books could be imported from abroad if someone possessed a patent, privilege or any allowance to solely print. This is an important development, as a patent or right to copy now not only protected against domestic prints, but also against imports.<sup>30</sup> The logical consequence is that a patent had evolved from being a printer's protection towards being a seller's protection, as it now not only prevented against domestic unlicensed copies, but against any copy infringing the patent, even copies that were legitimately produced abroad. Interesting in the fight against unlicensed prints is ordonnance nine, which prohibited the forgery, counterfeit or without permission use of the name, title or the name of the Stationers' Company upon pain of a fine or imprisonment.<sup>31</sup> The status of the stationers had thus grown so important that their seals and marks were protected by law. This could interestingly enough be seen as one of the earliest form of brand protection, as they were not a government institution. But the most important ordonnance of the 1637 Decree is ordonnance eight which mandated for every print that not only the name of its printer but also its author or maker had to be put in the print. This is the first instance of so called authorial responsibility in English history.<sup>32</sup> Furthermore it is the first mention of the author or maker of a print in official documents. Prior all legislation and rules were aimed at the printer and/or publisher of the print, now for the first time the producer of the actual content is mentioned. This will prove significant for the development of copyright over the next century in England. The shift from a publisher's right to an author's right is instigated by this Decree. And although it has only been in force for a few years, being withdrawn in July 1641 after the Long Parliament abolished the Star Chamber, it has played a major role in the development of legislation concerning printing.

After the abolishment of the Star Chamber there were two years without any regulation on the printing market, as the protection of the stationers - which was largely founded in the Star Chamber Decrees - was void and there were no royal prerogatives offered.<sup>33</sup> This prompted the stationers to petition parliament to reinforce regulations in April 1643. '*The Humble Remonstrance of the Company of Stationers to the High Court of Parliament*', as the petition was called, was largely based on two pillars, firstly the regulation of hereditist and scandalous publications, secondly and much more interestingly the protection of private interests.<sup>34</sup> The arguments for reinstating the Stationers' Company as

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<sup>29</sup>Arber, vol IV, p. 529.

<sup>30</sup> Ibid., p. 541.

<sup>31</sup> Ibid., p. 531.

<sup>32</sup> John Rushworth, 'The Star Chamber on printing, 1637', in *Historical Collections of Private Passages of State: Volume 3, 1639-40* (London, 1721), pp. 306-316.

<sup>33</sup> This is probably been the result of the political state of England of that time, mainly the long parliament crisis.

<sup>34</sup>Arber, vol I, pp. 584-538.



an institution of censorship are quite standard and not that interesting. The economic defence of the Stationers on the other hand is highly interesting. Beside the adversity to invest as a publisher or printer in prints, the Stationers argue that without protection of printed works authors would be most hesitant to write anything as their work would have no protection. Or as the stationers stated it: "Many mens studies carry no other profit or recompence with them, but the benefit of their Copies; and if this be taken away, many Pieces of great worth and excellence will be strangled in the womb, or never conceived at all for the future."<sup>35</sup> Here is another piece of evidence for the authors rise to importance when concerned with matters of protection. The benefits they receive of their copies can be compared to what we now would call royalties, which is a right inherent to copyright. But the truly revolutionary statement in this document is found in their fifth argument: "There is no reason apparent why the production of the Brain should not be as assignable, and their interest and possession (being of more rare, sublime, and publike use, demeriting the highest encouragement) held as tender in Law, as the right of any Goods or Chattels whatsoever".<sup>36</sup> This argument for products of the Brain as a category of commodity is the first mentioning of intellectual property in England. Before this the patent provided a right to print a certain text, but the actual text was in no way regarded as being a form of commodity. The Stationers are the first to refer to, what we know call intellectual property, in an official document. Upon receiving this petition parliament released 'An Ordonnance for the Regulation of Printing' in July 1643. The ordonnance practically restored the Star Chamber Decree of 1637, and although it did not use the intellectual property clause in their ordonnance, the notion of it had now reached the public realm.

After the reinstating of the monarchy in 1660 with the coronation of Charles II (1630 – 1685). The legislation passed during the interregnum was declared void, as it had had no king to confirm it. As concerned with copyright little changed, as the licensing act of 1662 replaced the ordonnance of 1643. The status of printing rights largely returned to the situation before 1640. With Stationers licensing and privileges on the one hand and royal privileges on the other. The act carried a few changes, such as section 20 which eased the import bans on printed works. Books that had not been prohibited or published within the last 10 years could freely be imported by a stationer.<sup>37</sup>

In the period of the interregnum we see the notion of products of the mind being a commodity rise. Although in practice little changes from the period before, it is important to note that the concept of intellectual property first arises in this period, as well as the recognition of the author as a part of the printing process.

## The fall of the Stationers and the creation of Authorial Copyright

The power of the Stationer's Company remained the status quo until May 1695, when the Licensing Act expired and was not renewed by the parliament of William III (1650 -1730). This not only was the end of pre-publication licensing in England, but also led to a vacuum in the control on printmaking for economic purposes, as the position of power of the Stationers' Company abruptly came to an end.<sup>38</sup> This vacuum would last until 1710 with the

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<sup>35</sup> Ibid., p. 586.

<sup>36</sup> Ibid., pp. 587-588.

<sup>37</sup> Patterson, p. 147.

<sup>38</sup> Deazley, R. (2008) 'Commentary on Defoe's Essay on the Regulation of the Press (1704), paragraph 3.

passing of the Statute of Anne.<sup>39</sup> The statute of Anne would become a revolutionary document as it was the first copyright legislation in history. Prior to 1710 only the right to copy and the protection of that right existed. The statute of Anne is the first legislation in the world that introduces statutory copyright. Although the idea of copyright had been covered extensively in writing, this statute, by codifying copyright, resulted in a major upset of the printing market.

The reason for the passing of the statute can be found in its first article which stated that:

Whereas printers, booksellers, and other persons have of late frequently taken the liberty of printing, reprinting, and publishing, or causing to be printed, reprinted, and published, books and other writings, without the consent of the authors or proprietors of such books and writings, to their very great detriment, and too often to the ruin of them and their families: for preventing therefore such practices for the future, and for the encouragement of learned men to compose and write useful books.

Here the first real change of the statute compared to prior legislation already shows. It serves as a protection for the authors of a work, or the people they had sold their rights to. Its main focus is thus the protection of the author and not the printer as was the case with the previous legislation. The proprietors that are referred to are printers / publishers who bought the rights from the author, a practice already in use from the mid-17<sup>th</sup> century, albeit here it was the actual manuscript and not the intellectual property that was bought.<sup>40</sup>

The second article offers the remedy to the problems posed in the first article. It grants authors, or the proprietors of the rights to a work, the sole right to print this work for 21 years from the day the Act came into force, if the work had already been published or registered. Authors of works that had not yet been registered or published would receive the same right and protection but for a period of 14 years. The requirement for the protection under the Act was that the author or in the case of already printed books the author or proprietor, would register with the Stationers' Company. To protect against unwilling clerks of the Stationers article three was added, to put a formal punishment on the refusal of registering a work. Although well intended the formulation of this article was so vague that it could be interpreted that in case of refusal the clerk would be granted the rights.<sup>41</sup>

Article four sets the repercussions of infringing a copyright. It enables the holder of the rights to seek damages before the court, as well as offering the possibility for the state to fine infringers an amount of 5 pound per work, a dazzling high fine for that time. The last article of the Statute again emphasises the importance of the author, as it states: "Provided always, That after the expiration of the said term of fourteen years, the sole right of printing or disposing of copies shall return to the authors thereof, if they are then living, for another term of fourteen years." Ensuring that after the initial expiration the author, if still alive, would again receive all rights to his own work. Although the statute of Anne had several faults which would lead to many court cases and disputes over the following century, it still remains a pivotal moment in the history of copyright, as it not only changed the emphasis

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<sup>39</sup> Statute of Anne, 1710, 8 Anne c.19.

<sup>40</sup> The first, still remaining, contract between an author and printer is the contract between Milton and Symons for *Paradise Lost* of 27 April 1667.

<sup>41</sup> R. Deazley, (2008) 'Commentary on the Statute of Anne 1710', in *Primary Sources on Copyright (1450-1900)*, eds L. Bently & M. Kretschmer, [www.copyrighthistory.org](http://www.copyrighthistory.org), paragraph 6.

from the printer/publisher to the author, but more importantly became the first statutory form of copyright in the world.

## From the Statute of Anne to the Engravers' Act

After the Statute of Anne came into force there was only one group involved with prints that did not receive any form of protection yet, the designers, engravers and etchers. As will be shown in the next chapters Hogarth and his colleagues were vulnerable to plagiarism, financial extortion and other malicious practices because their work had no protection of their own. To receive protecting they needed to work for a printer or publisher that could get protection for the work at the Stationers' Company. The consequence was that the rights on the works of these groups no longer lay with the artist, but with the printer/publisher. This prompted Hogarth along with a large number of prominent colleagues to petition parliament with 'The Case of Designers, Engravers, Etchers etc.' on 7 February 1735. This petition will be discussed in greater detail in the third chapter.

In reaction to this petition parliament introduced a Bill called 'a Bill for the Encouragement of the Arts of designing, engraving and etching, historical and other Prints, by vesting the Properties thereof in the Inventors and Engravers, during the Time therein to be mentioned'<sup>42</sup> This Bill would eventually be passed as the Engravers' Copyright Act on 25<sup>th</sup> of June 1735, its informal name Hogarths' Act.<sup>43</sup> This Act started by ascribing the same rights the Statute of Anne had ascribed to authors.

Every Person who shall invent and design, engrave, etch, or work in Mezzotinto or Chiaro Oscuro", with the "sole right and liberty of printing and reprinting" their work, "for the term of fourteen years to commence from the day of first publishing thereof"<sup>44</sup>

The remainder of the Act extended the same rights to the artist as the Statute of Anne had done to authors, with small differences such as the fine, which was 5 shillings per illegal copy.<sup>45</sup> The last important addition is in article three of the Act which stated that the owner of the original plates may use them without permission of the Artist.

## Conclusion

To understand to concept of copyright and how it came into being, we need to understand its history. The first regulations on printing were merely concerned with censorship and the banning of books. A side-effect of these regulations was that they could be used for economic purposes, creating monopolies on certain works. This further developed during the 16<sup>th</sup> century to a full-fledged economic system regulation the market. All this time the legislation was concerned with a right to copy, not with copyright. The notion of copyright, or products of the mind being a commodity did not rise before the inter-regnum were this concept was first introduced into possible legislature, although it didn't make the final cut. The major turning point from a right to copy to copyright was the Statute of Anne, which not

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<sup>42</sup> CJ 22:380-381 (1735).

<sup>43</sup> 8. Geo. 2, c. 13, 1735.

<sup>44</sup> 8. Geo. 2, c. 13, 1735. Preamble.

<sup>45</sup> Idem.

only acknowledged the concept of intellectual property in the form of copyright, but also shifted the power and protection from the printer / publisher to the author.

It was this concept of product of the brain being acknowledged in legislature that enabled the successful petition by Hogarth and his fellow petitioners. As the concept of copyright was already seen as a commodity, and thus deserving of legal protection, Hogarth only needed to prove that - like writing – designing, engraving and etching were also a products of the brain, and thus a commodity on which copyright would apply.

## Chapter 2: The devil is in the detail

In the previous chapter we looked at the historical development of copyright in England, providing part of the historical context that enabled the Engravers' Act of 1735. This chapter will focus on the motivation of Hogarth for the Act, as an artist as well as a political activist. Hogarth's prints were highly political and contained a large number of layers, where each little aspect of a print added to that layer. The story he tells is strongly dependent on these little details to give the exact meaning to the whole. It is therefore that the counterfeits must have greatly enraged him, as they often omitted minor but very important details. These are even the best case scenarios as there are also numerous examples of the even larger - obviously meaningful - aspects of his prints that are completely left out. To exemplify this a comparison will be made between several plates of the *Harlot's Progress* and its counterfeits. This will be done by firstly providing an iconological analysis of the original print by Hogarth, and then comparing it to counterfeits, focussing on the details that have been omitted and the change of meaning as a result.

### Hogarth as a political activist

Before we start the comparison it is important to understand Hogarth as a deeply politically motivated engraver. From his very first independent print – *The South Sea Bubble* (Fig. 1) – and almost any independent print afterwards. The best exemplification of Hogarth's political motivation might very well be the prints of *Beer Street* (Fig. 2) and *Gin Lane* (Fig. 3). These prints released in 1751 addressed the problems of the lower classes and their gin consumption. During the 18<sup>th</sup> century the lower class brewed their own gin, which was cheap and accessible. This gin was often of low quality, and if its toxic nature didn't lead to problems then the intoxicated state that followed of ten would.<sup>46</sup> Hogarth addressed the problems surrounding the gin consumption by showing the chaos and atrocities that were the result of this consumption in *Gin Lane*, the best example being the mother who's so drunk she drops her baby. In *Beer Street*, he shows the solution, which is getting the lower classes to drink beer, because – as he shows in the print – it leads to civilized and orderly citizens. *Beer Street* and *Gin Lane* are not only a good example of Hogarth as a political activist because of their clear message, in his advertisement for these two prints he specifically mentions his political agenda.

This Day are publish'd, Price 1 s. each. Two large Prints, design'd and etch'd by Mr. Hogarth called BEER-STREET and GIN-LANE. A Number will be printed in a better Manner for the Curious, at 1s. 6d. each. And on Thursday following will be publish'd four Prints on the Subject of Cruelty, Price and Size the same. N.B. As the Subjects of these Prints are calculated to reform some reigning Vices peculiar to the lower Class of People, in hopes to render them of more extensive use, the Author has published them in the cheapest Manner possible.

To be had at the Golden Head in Leicester-Fields, Where may be had all his other Works<sup>47</sup>.

In this advertisement he specifically states that he is also selling cheap versions of his prints so that everyone can consult them, the "reigning vices" as well as his proposed reforms.

It was with this same political motivation that Hogarth released *The Harlot's Progress*. As we will see in the analysis of several of the plates, Hogarth addresses the problematic

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<sup>46</sup> For a thorough description of the gin craze and its problems read: Patrick Dillon, *The Much-Lamented Death of Madam Geneva: The Eighteenth-Century Gin Craze* (London: Review, 2002).

<sup>47</sup> London Evening Post, 14-16 February 1751.

situation of prostitutes in England at that time. Throughout the *Progress* he refers to topical figures and events which he uses to convey the ambivalence of prostitution and prostitutes. During the entire *Progress* he uses these events and figures to show the discrepancies between the higher and lower classes, especially when concerning justice. He thus has a very clear and politically loaded message in *The Harlot's Progress*, one which gets lost in the counterfeits

## A Harlot's Progress

The three plates that will be discussed for the *Harlot's Progress* will be the first three plates. With the *Harlot's Progress* counterfeits, many are somewhat exact but still lacking in details, which has major consequences for the meaning. But then again there are also some truly horrendous piracies to be found, butchering every detail of the print.

### Plate 1: Molly Hackabout arrives in London at the Bell Inn

Plate one (Fig. 4) shows a young girl, just coming of the countryside with the cart in the background. She is being approached by a brothel keeper trying to enlist her into service. We see a clergyman on his horse thoroughly reading a document. On the background two men are standing in the doorway. The young country side girl can be identified as Moll Hackabout, as the chest with her clothes lists M.H.

The brothel keeper approaching her was identified by Vertue as being Elizabeth Needham, a famous procuress of young girls, who was connected to Colonel Charteris.<sup>48</sup> We see Colonel Charteris and his manservant "trusty jack", John Gourly in the back. Colonel Charteris was at that time also known by the name Rape Master General as a result of his reputation for taking in young country girls under the pretence that they become a servant, whilst in fact he would imprison them in his house and use them for his sexual pleasure. One of these girls was Anne Bond, who had fallen for his promises of a life as a servant. She went to the authorities after Charteris had tried to rape her. His trial for rape was a great media hype and he only escaped the noose - as rape was a capital punishment - because of a royal pardon, alongside a large amount of bribes. The two men in the background were thus instantly recognizable for the contemporary Londoner as Charteris and his servant. The decaying house they are standing in being a symbol of their corruption and moral decay.

The young girl, or the Harlot, is the central figure of the entire *Progress*. She is partially based of the figure of Anne Bond, who naively felt for the promises of a better live as a servant. The other figure she is based on is Kate Hackabout, as suggested by the initials on the chest. Kate Hackabout was a prostitute who got convicted by Justice Gonson to hard labour for keeping an unruly house. Hackabout's brother got hanged for highway robbery.<sup>49</sup> The implementation of the word hack into the surname was also a play on the then contemporary slang for whore, hackney carriage or hack, accessible for all.<sup>50</sup> The juxtaposition of Hackabout, a prostitute who get sentenced and her brother who got hanged, with Colonel Charteris who got pardoned for his capital punishment, already shows the discrepancies between the lower and the higher classes. Also the reference to Justice

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<sup>48</sup> Ronald Paulson, *Hogarth*, vol I (London: Rutgers University Press, 1991), p. 248

<sup>49</sup> *Ibid.*, p. 246.

<sup>50</sup> Jenny Uglow, *Hogarth: a life and a world*, (London: Faber and Faber, 1997), p. 196.

Gonson later in the series further strengthens this image, as Gonson was known for using the law to root out immorality in London. This critique on the double standards continues in the figure of the clergyman. He is so busy reading an address by the Bishop of London, Edmund Gibson, that he lets Moll in the hands of the brothel keeper. Edmund Gibson was at that time actively pursuing the elimination of immorality. But again not targeting the higher classes, who get away with rape, but the lower class of the harlots. But the clergyman is not only a critique on Edmund Gibson, but on the clergy as a whole. The Clergyman is so busy trying to advance his own career that he forgets about his pastoral duties - protecting Moll - all together. Symbolizing the self-absorption and greed of the clergy. This image is further strengthened by the horse, which is so busy filling his stomach that he doesn't care about the consequences, the knocking over of the pans.

The pans form another metaphor, it is one of the many smaller allusions in the *Progress*. The falling pans are a pre-figuration of the fall of Moll during the Progress. Another subtle allusion is the goose, with the card "My lofing cosen in Tems Stret in London", which refers to the cousin that was supposed to pick Moly up. Two things are happening here, the first being a wordplay on the word cousin, by spelling it cosen, it actually means to deceive or persuade.<sup>51</sup> Suggesting the cousin had deceived Moll by not showing up, or simply referring to the brothel keeper who is currently cozing her. The second being the goose itself, which is a verbalisation of either silly goose, a naïve simpleton, or green/Winchester goose, 18<sup>th</sup> century slang for a prostitute.<sup>52</sup> This verbalisation of objects and plays on words, are also particularly well shown in the sign of the Bell above the brothel keeper's head, being a wordplay on the word Belle, or pretty young girl. Something the brothel keeper is pretending to be, as her clothing shows, but which she is certainly not, as seen in her face. But maybe the most subtle allusion is the pair of closed scissors hanging on her side. Hogarth used closed scissors as a symbol of impeding sexual promiscuity, the open scissors becoming a symbol of promiscuity that had already happened.<sup>53</sup> A last important detail is that at that time the initial M. stood in the prayer book catechism for the first name, by using this initial Hogarth implies that the girl which we identify as Moll could be any girl.<sup>54</sup>

If we then take a look at the counterfeit printed by John Bowles (Fig. 5). It looks to be actually quite decent keeping the entirety of the print intact. But where it not for two major mistakes. The first and the most obvious being that the print is mirrored, probably as a result of the copying. This might seem like a small mistake but the consequences are in fact quite big. If we look at Hogarth's print we can read it from left to right. The left with the cart being her countryside past, the middle being the present where she is tricked by the brothel keeper and the right being the future where she will be the victim of Charteris and the likes of his. This pattern continues throughout the *Progress* connecting each of the plates. By mirroring the image this reading pattern is lost.

The second mistake are the scissors, which are opened and not closed. As stated above the closed scissors are a symbol of impeding sexual promiscuity, but the promiscuity has not yet happened, or they would be opened. What this does is again prefiguring Moll's future as a Harlot, as she is in plate one still innocent, but that innocence is soon to be lost.

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<sup>51</sup> <http://www.oxforddictionaries.com/definition/english/cozen>

<sup>52</sup> Paulson, Vol I, p. 262.

<sup>53</sup> Aaron Santesso, 'William Hogarth and the Tradition of Sexual Scissors' in *Studies in English Literature, 1500-1900*, Vol. 39, No. 3(Summer, 1999), p. 502.

<sup>54</sup> Uglow, p.190.

By opening the scissors the copyist has clearly missed the point of the scissor or he would have given them more attention. This shows that the tiniest of mistakes can still have a major impact on the meaning, greatly changing it.

## Plate 2: Moll is now the mistress of a wealthy merchant

In plate 2(Fig. 6) Moll has become the mistress of a wealthy Jewish merchant. We see her sitting in the front with the merchant, the china falling from the table. In the background we see a young gentleman being ushered out by the maid. On the wall are two old master paintings.

In this scene Moll has gone from a poor innocent girl to a mistress. Her breach of sexual innocence is represented by the falling and breaking of the china. In the time of Hogarth broken China was a symbol of a woman losing her virtue, women, like china, were not worth anything when broken.<sup>55</sup> The theme of this plate as in general the rest of the *Progress* is her trying to mimic the upper class. This is symbolized by the monkey and the mask, which together symbolize imitation, as one can see in Ripa's *Iconlogia* (Fig. 7). The link between the Monkey and Moll is made by the hat that it is wearing, matching Moll's hat. Her imitation continues in the fact that she has taken a lover behind the back of her keeper.<sup>56</sup> Her betrayal of her keeper is visualized by the cane of the young lover seemingly stabbing the Jew in the back. This visualization is further strengthened by the stabbing of Uzzah in the painting behind them. The right painting shows the story of Uzzah, who touched the Ark of the Covenant and got punished by god as he touched something he wasn't supposed to.<sup>57</sup> This is a direct parallel to both the Harlot as her Jewish merchant. She is touching a lover behind her keeper's back, he is touching a Christian woman. The painting beside it shows Jonah being scourged by the sun, as God had made the gourd protecting him had withered. Jonah learns a lesson of compassion in this Bible passage, but in the scene depicted he is still angry and seeks vengeance, not compassion.<sup>58</sup> The connection to the Harlot is again clear, she was under the protection of the merchant, as Jonah was by the Gourd, but she took the protection for granted and therefore she lost it. It equally applies to the Jew who, like Jonah seeks vengeance instead of mercy. Read from left to right the paintings symbolize the story of the Harlot, she had protection, but by touching the forbidden she loses this protection, as we will see in Plate 3. Underneath both biblical scenes the portrait of Thomas Woolston, a Deist the got sentenced for his ideas about scripture. Woolston argued that the Bible had to be read allegorical.<sup>59</sup> By placing him underneath the two paintings, Hogarth suggests that the two Biblical scenes have to be read allegorical as well.

If we then take a look at the plagiary by Kirkhall (Fig. 8), it again seems to be a fairly accurate copy, were it not for the fact that it was mirrored, which again negates the reading of the paintings, now showing the consequence and then the cause. Once more showing that mirroring, a seemingly small mistake, has major consequences for the reading of the plate.

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<sup>55</sup> Paulson, Vol I, p. 263.

<sup>56</sup> Ibid., p. 251.

<sup>57</sup> Samuel 7:1.

<sup>58</sup> Jonah 4:4.

<sup>59</sup> Paulson, vol I, p. 290.



But Kirkhall's copy is only a minor offender compared to the one of Fourdrinier (Fig. 9), who replaced the paintings on the wall, with two meaningless pastoral portraits. Resulting in the important messages and deeper layering of meaning that the paintings provide are absolutely obliterated. Also we see here that the portrait of Woolston has become unrecognizable, leading to the fact that the relation between real figures and the characters is lost. These two plagiaries show both sides of the spectrum, some of the copies were quite accurate, but still faulty in small details, others were changing the entire meaning of the plate, by leaving crucial details out. Either way, they both don't represent the meaning Hogarth had in mind will making his prints, logically leading to frustration.

### Plate 3: Moll has become a common prostitute

In Plate 3 (Fig. 10) we see Moll has become a common prostitute. She is sitting on her bed, a watch in her hand, accompanied by her maid, who has become an old syphilitic lady. In the background we see Gonson arrive along with three bailiffs, he is looking at the hat and birch which are hanging on the wall. The fact that he is looking at the birch and hat is an important detail, as they are both symbols of the devil. Gonson saw prostitution as the root of all immorality and the work of the devil. By linking these objects with Gonson Hogarth makes a visual tie between Gonson's beliefs and the scene we see. Her devilry is juxtaposed with the word of God in front of her, in the form of the pastoral letter of Bishop Gibson lying on the table. This letter, and thus the word of God, is being used to wrap her food. It is also a play on the joke that all great literature ends up wrapping food or in linen trunks.<sup>60</sup> Above her bed is the suitcase of James Dalton, a famous and popular highway robber, being rumoured for trying to rob the Queen, to find out he got the wrong coach.<sup>61</sup> He was hanged in 1730. By placing his box of possession above Moll's bed, Hogarth suggests that the lover we saw in plate two was in fact Dalton.

On the wall we see two portraits, one of Macheath, the lead figure in the *Beggar's Opera* who managed to escape his sentence. As Moll is hoping to escape her sentence. The other portrait is of Henry Sacheverell, a clergyman who in 1709 had induced riots in the streets of London and was immensely popular with the people, as a result of his attacks on the clergy and their practices. He was arrested, but again got away with a minor punishment. His portrait probably serves as an attack on the clergy and their practices, maybe as a direct attack on Gonson and Gibson who are referred to in this plate. But it also again is an example of someone who escaped punishment. Above these two portraits is the portrait of Abraham sacrificing Isaac. In this story God asks Abraham to sacrifice his own son for him, Abraham obliges but God intervenes in the very last moment and stops the sacrifice.<sup>62</sup> Here we again see someone narrowly escaping death. It can also be read in such a way that Gonson and Gibson believe that they are following God's orders, but they - in doing so - are actually committing a horrifying act.

On the floor we see a cat that again can be given two meanings. Firstly the cat was a symbol of lust, referring to Moll's life as a prostitute. But the cat that Hogarth depicted can be seen as a kitten that is young, innocent and naïve.<sup>63</sup> The cat, like the monkey in the plate

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<sup>60</sup> Uglow, p. 186.

<sup>61</sup> *Ibid.*, 195.

<sup>62</sup> Genesis 22:1-12.

<sup>63</sup> Paulson, vol I, p. 262.

before is again a reflection of Moll. The curtain behind her is another example of the ambivalence in his plates, on the one hand looks like a face screaming at Moll, warning her about her lifestyle. On the other hand it symbolises Moll self-consuming folly, being drawn ever more inward.<sup>64</sup> The last important detail is the watch Moll is holding, which was stolen and therefore one of the reasons she got arrested. If we look at the time, it is a quarter to twelve, symbolising that Moll is getting ever closer to the hour of reckoning.<sup>65</sup>

If we then look at the piracy of Figure 11 it has lost all meaning. Gonson is hardly recognizable and the connection through his gaze with the birch and hat is lost. The portraits on the wall are unrecognizable, the pastoral letter on the table has been replaced by a mere piece of paper, resulting in the fact that all religious aspects of the plate have vanished. But it continues, as the box above Moll no longer has Dalton's name on it, again erasing a connotation with the previous plate and with Dalton himself. Furthermore the knot in the curtain nowhere resembles the screaming mouth. And to top it all off, the clock now doesn't read a quarter to but a quarter past twelve, implying that the hour of reckoning has already passed. In this plagiary virtually every layer of meaning has been stripped from the plate, from great details such as the chest and the portraits, to smaller ones such as the clock.

But even in the better piracies such as Figure 12 the importance of the clock is lost on the copyist, as it reads twelve o'clock, which gives the plate an entire new meaning, suggesting that this is the hour of reckoning and not the approach of the hour.

## Conclusion

Hogarth was a politically motivated engraver, addressing topical problems in his prints. He often criticizes the higher classes, whilst defending the lower, focusing in particular on the discrepancies between the classes when concerning justice. As shown above he does this by referring to real people and events criticizing their actions or using them as examples. He creates the connection between the characters in his prints and the real people by using their portraits for his figures. As we have seen in Figure 11 the pirates often didn't succeed in creating this likeness between the characters and the persons, resulting in the loss of connection between the two groups. Furthermore the counterfeits strip the prints of meaning by missing details, both small and large. It must have been this loss of meaning that aggravated Hogarth most, as he was clearly personally connected to the issues he was addressing. The argument Hogarth tried to bring forth in his prints were often overlooked or ignored by the copyists, resulting in the argument being lost all together. The counterfeits were thus not only an offense against his artistic merit, but more importantly undermined his ideological and political agenda.

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<sup>64</sup> Idem.

<sup>65</sup> Uglow, p. 201.

## Chapter 3: Hogarth and The Case of Designers, Engravers, Etchers etc.

In the previous chapters we have looked at the historical circumstances that enabled Hogarth and his fellow petitioners to petition parliament, as well as the motivation Hogarth had for protecting his work. In this chapter these two aspects will be combined, the historical context, as well as Hogarth's motivation, to which a third category will be added, the monetary motivation. This combination will be done by a close reading of the petition in relation to these two aspects. The link between these events and the petition will be made by linking a specific passage of the petition with known biographical facts of Hogarth's life.

### His fellow petitioners

Before looking at the petition and zooming in on the role he played, it is important to note that he was not the sole contributor to the petition. Parliament was petitioned in 'The Case of Designers, Engravers, Etchers etc.' It was submitted by George Vertue (1684-1756), George Lambert (1699/1700-1765), Isaac Ware (1704, 1766), John Pine (1690-1756), Gerrard Vandergucht (1696/7-1776) and Joseph Goupy (1674-1747) and of course Hogarth.

To have a better understanding of the petition we have to look at these fellow contributors more in-depth, their lives, as well as their link to Hogarth. Because as much as it was a group effort, Hogarth remains the central figure - not only for this research - as showed by the informal name of the Engravers' Act of 1735, the Hogarth's Act.

The first and maybe most famous of his fellow petitioners was George Vertue, an engraver and antiquarian. His research and recording of British history of art, which he started in 1712, is still one of the major sources on British artists.<sup>66</sup> But also as an artist in his own right Vertue was a considerable force, he was appointed the official engraver for Oxford University, as well as the London society of antiquities and was commissioned by high ranking noblemen such as the Prince of Wales and the Duke of Norfolk. Most importantly he - like Hogarth - established himself as an independent engraver in 1726, with the announcement of '*The Effigies of Twelve of the Most Celebrated English Poets*', sold on subscription.<sup>67</sup> It was probably his interests as an independent engraver he sought to protect when cooperating with the petition. Vertue was also one of the first subscribers to the (first) St. Martin's Lane Academy - founded by Vanderbank - which Hogarth also joined in 1720.<sup>68</sup> Furthermore both Hogarth and Vertue were members of artistic clubs. The most prominent being Old Slaughter's Coffee House, also located at St. Martin's Lane. It was this club - with the same name as the coffeehouse - of which most of the petitioning artists were a member, it was at this club that the second St. Martin's Lane Academy was founded.<sup>69</sup>

Another club which connects Vertue and Hogarth is the Rose and Crown club of which Vertue became the secretary in 1724.<sup>70</sup> The last connection of note between the two is Giles

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<sup>66</sup> Martin Myrone, 'Vertue, George (1684-1756)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004; online edn, Jan 2008 [<http://www.oxforddnb.com/view/article/28252>, accessed 19 May 2016]

<sup>67</sup> Idem.

<sup>68</sup> George Vertue, 'Notebooks', in *The Volume of the Walpole Society* (1911-1952), Vol VI, p. 170.

<sup>69</sup> Uglow, p. 260.

<sup>70</sup> Myrone, 'Vertue, George (1684-1756)'.

King, who is the only assistant known to have ever worked for Vertue.<sup>71</sup> He was also the principal authorized copyist for Hogarth's *Harlot's* and *Rake's Progress*.

The second fellow petitioner is George Lambert, who was a famous British landscape painter. Lambert had just released a series of engravings depicting East-India scenes, and it was probably those series which prompted him, being primarily a painter, to put his name to the petition.<sup>72</sup> Lambert and Hogarth were known to be good friends, having been on an infamous vacation together. They knew each other through the Old Slaughter's Coffee House and the St. Martin's Lane academy. They also joined the Fountains Lodge Freemasonry at roughly the same time.<sup>73</sup> It is said that figures in Lambert's landscapes were sometimes painted by Hogarth.<sup>74</sup>

John Pine was after Hogarth maybe the most prominent engraver of his time, being trained in Amsterdam by Bernard Picart, through his stay there he got to know the protection and situation of engravers on the continent.<sup>75</sup> He was also well connected with French engravers and artists, which furthers this assumption. This connection might very well have been the reason that the petition refers to the situation of artists in France, were Louis XIV provided them with ample opportunities and protection. Pine like the others was a prominent member of the Old Slaughter's Coffee House. That Pine and Hogarth were close also shows by the portrait that Hogarth painted of Pine in 1755 (Fig. 13).

Isaac Ware was an architect, although he is better known for his treatises and translations than his actual buildings. Ware published several books on architecture, such as *Designs of Inigo Jones and Others* in 1731 and his translation of Palladio's *Quattro libri dell'architettura* in 1738. Ware must have experienced the strange situation of his books being partially protected and partially not. His writing on architecture were protected by the Statute of Anne, providing him with authorial copyright. His illustrations on the other hand did not enjoy this same protection. It might have been this discrepancy that led him to corporate on the petition. Ware is again connected to the rest of the group through the Old Slaughter's Coffee House.

Gerrard Vandergucht was the son of Michael Vandergucht (1660-1725) a famous Flemish engraver that had moved to England. Michael was also the master that taught Vertue. Gerrard Vandergucht's first major project was the engraving of the design for the cupola of Saint Paul's Cathedral after Thornhill, who commissioned him to do so.<sup>76</sup> It was through this commission Vandergucht would come in contact with Hogarth, who he worked for as the engraver of Hogarth's inventions as can be seen from this advertisement in the London Evening Post: "Designed from the Life by Mr. Hogarth, and engrav'd by MR. Vandergucht".<sup>77</sup> Hogarth and Vandergucht would go on cooperating together in their art but also for the petition.

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<sup>71</sup> Idem.

<sup>72</sup> Uglow, p. 269.

<sup>73</sup> Elizabeth Einberg, 'Lambert, George (1699/1700–1765)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004; online edn, May 2011 [<http://www.oxforddnb.com/view/article/15933>, accessed 19 May 2016]

<sup>74</sup> Idem.

<sup>75</sup> Susan Sloman, 'Pine, John (1690–1756)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004; online edn, Jan 2008 [<http://www.oxforddnb.com/view/article/22293>, accessed 19 May 2016]

<sup>76</sup> Timothy Clayton, 'Vandergucht, Gerard (1696/7–1776)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [<http://www.oxforddnb.com/view/article/28072>, accessed 19 May 2016]

<sup>77</sup> London Evening Post, 11 April 1730.

The last petitioner was Joseph Goupy, a painter and an etcher. He travelled to Italy and Malta in 1711. Once returned he got major commissions by high ranking noblemen such as the Baron of Kielmansegg, who commissioned him to copy the Raphael Cartoon tapestries hung in Hampton Court. Goupy claimed that he was making a sum of 600 pounds a year at that time.<sup>78</sup> He would rise even further, becoming the drawing teacher of Prince Frederick of Wales, also receiving further commissions by the prince. But beside his role of painter, he also published large number of etches depicting landscapes and classical scenes.<sup>79</sup> Goupy and Hogarth knew each other through the St. Martin's Lane Academy, as they joined at the same time.<sup>80</sup> Unsurprisingly Goupy was also a member of Old Slaughter's Coffee House.

This group consisting of a large number of designers, engravers and etchers from different background had largely two things in common. Firstly they were all connected through Old Slaughter's Coffeehouse, secondly they were all - to some degree - dependent for their income on the profits made by their prints, and thus all suffered from the lawlessness of their field. A last person that deserves mentioning is William Huggins (1696-1761), a English lawyer and friend of Hogarth's, who is said to have tried legalizing the petition, which he did not succeed entirely in.<sup>81</sup> It was their knowledge and joint experience that led to the petition, although it is not clear who contributed what, it is generally accepted that Hogarth was the major force.

## The Artist and Fruits of Labour

The petition itself seeks remedy against two major grievances, the first being the oppression by the printer of the artist, the second the stealing of the fruits of labour of the artist by the copyist. There are two important terms that keep on recurring throughout the document The first being 'Artists' as a term for the designers, engravers and etchers, the second being 'Fruits of Labour'. These two seemingly uninteresting terms, actually have major significance in each their own way. To understand the petition one needs to understand their history.

Starting with the term artists, the fact that designers, engravers and etchers are referred to as artists in England was unthinkable before 1728. These groups were seen as craftsmen and not as artists, as they were considered to be reproductive and not creative by nature. This was changed in 1728 by Hogarth when he sued Joshua Morris, establishing himself - and thus his craft - as being an artist.

On 20 December 1727 Hogarth was commissioned by Joshua Morris, a tapestry maker, to paint a cartoon of the elements of earth, which would serve as the example for tapestry.<sup>82</sup> They agreed that Hogarth would make the cartoon in a workmanlike manner and if he did Morris would pay him twenty guineas. After this agreement was made Morris found out that Hogarth was in fact an engraver and not a painter, upon which he sent a servant to enquire. Hogarth replied that he indeed had never done anything like it before, but that if Morris didn't like the painting he should not pay for it.<sup>83</sup> Hogarth was very slow in finishing

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<sup>78</sup> Sheila O'Connell, 'Goupy, Joseph (1689–1769)', *Oxford Dictionary of National Biography*, Oxford University Press, 2004; online edn, May 2008 [<http://www.oxforddnb.com/view/article/11159>, accessed 19 May 2016].

<sup>79</sup> Idem.

<sup>80</sup> Paulson, vol II, p. 39.

<sup>81</sup> Uglow, p. 269.

<sup>82</sup> Idem.

<sup>83</sup> *Ibid.*, p. 156.

the painting, and when he did, he delivered the painting to Morris's shop and not to his house as the agreement stated. When Morris received the painting he consulted with his workmen and agreed that no tapestry could be made by it and it was not made in a workmanlike manner.<sup>84</sup> He then returned the painting to Hogarth who promised to provide a new version within a month to finish the painting in a more desirable way. After three months Hogarth delivered the new version, but it was again rejected and Morris refused to pay.<sup>85</sup> Upon hearing this refusal Hogarth decided to go to court and demanded 30 pounds for his fee plus the materials he had used. Morris agreed to pay for the materials, but still refused to pay the fee. The Case of Hogarth vs Morris was tried before Lord Chief Justice Eyre at Westminster Hall on 28 May 1728. Morris stated in his deposition that Hogarth had not kept his part of the bargain and that he did not deliver the painting to his house, because he was ashamed of the result. He further provided witnesses in the form of fellow craftsmen to testify the impossibility of making tapestry from the painting Hogarth had delivered. Hogarth produced witnesses such as Thomas King, Vanderbank and Thornhill testifying that the painting was a competent piece of work.<sup>86</sup>

The case ultimately boiled down to two questions, one could Hogarth be considered an artist and two what did competence imply. The first issue was quickly resolved, as the judge agreed upon that Hogarth could be considered an artist. The second question the judge also ruled in Hogarth's favour, stating that competence referred to the painting and not the ability to make tapestry from that painting.

Although the significance of this verdict might not be immediately clear it had great consequences, as per 28 of May 1728 engravers were no longer considered craftsmen but artists before the law. It is this change - due to the precedent set in Hogarth vs Morris - that enabled the petitioners to refer to designers, engravers and etchers as artists.

The second important term is 'Fruits of Labour', the consequent use of this word again has a very strict legal meaning, as it is the definition of acquiring property under the Labour Theory of Property as set forth by John Locke (1632-1704). In his *Two Treatises of Government* John Locke sets out his discussion on property with the following sentence: "So the individual goes ahead and takes what he needs. He 'mixes his labour' with the object he needs, and by doing so he fulfils his fundamental duty of self-preservation, while also increasing the value of the resources he works on for the indirect benefit of others."<sup>87</sup>

This sentence has been interpreted - and is seen - as the basis of the Labour Theory of Property.<sup>88</sup> Locke argues that civil society has been created for the protection of private property. What private property is he then defines as being that which God has given man unalienable right to, namely himself. It is through this fundamental basic principle he then continues to expand the definition of property to that which you put labour into. As he stated when putting labour into an object, one puts a part of oneself into that object, making it part of you and therefore your property.<sup>89</sup> With this in mind the following sentence of the petition becomes much clearer: "to imagine that there is such a Scene of Slavery in a

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<sup>84</sup> A Workmanlike manner was the term used, to describe paintings which lent themselves to making tapestry of.

<sup>85</sup> Ibid., pp. 156-157.

<sup>86</sup> Ibid., p. 157.

<sup>87</sup> John Locke, *Two Treatises of Government*, 1689, paragraph 86.

<sup>88</sup> Waldron, Jeremy, "Property and Ownership", *The Stanford Encyclopedia of Philosophy* (Spring 2012 Edition), Edward N. Zalta (ed.), URL = <<http://plato.stanford.edu/archives/spr2012/entries/property/>>.

<sup>89</sup> Idem.

Country that boasts of the Liberty of every the meanest of its Inhabitants; it is not Fiction, nor ill grounded Predjudice against any particular Set of Men, but Matter of Fact.”<sup>90</sup> By making a direct link between property and a person, one makes attacking property an attack on the liberty of that person, as their property is a part of themselves. Liberty in Lockean terms means the right to protect one’s property, when this right is shun, it is a direct attack on liberty.

It is on the basis of this theory that Hogarth and his fellow petitioners argue in the petition. They state that it is through the fruit of their labour that their prints get value. They argue that the fruit of their labour is in the design of their prints, and that therefore the design is their property. By taking this approach the argument is that their designs are part of them and therefore are to be considered property. Or as they they put it:

“Whatever Right an Artist has to the Sale of his own Print arises from this: He has, by his own Industry and Skill given his Print whatever Value it has above another common Piece of Paper; and therefore has a Right to all the Advantages arising from the superior Value, as a proper and adequate Return for his Industry and Skill”<sup>91</sup>

The terms fruit of labour and artists might seem insignificant to the modern day reader of the petition, but at the time these were highly significant terms. By choosing these terms the petitioners built their arguments on a very particular legal basis.

## Oppression by the Printers

“I beg leave, therefore to lay before you the Case of the abovementioned Artists, who might be an Hounour, as well as of no inconsiderable Service to their Country, if they were not oppress'd by the Tyranny of the Rich; not the Rich, who are above them; not the Rich of their own Profession; but the Rich of that very Trade which cou'd not subsist without them.”<sup>92</sup>

The oppressing rich which are referred to in the passage above are the printsellers. Throughout the entire document they are being marked the principal cause of the grievances suffered by the artists and the reason English art is held back. The petitioners state that in London and Westminster there are twelve principal printsellers which control the entire trade and oppress the artists. These twelve are then again led by a very rich few. Who these twelve are is not mentioned, but one can imagine that the brothers Overton and John Bowles are part of these twelve, as we will see later on. The allegations against the printsellers are threefold. Firstly they take an unreasonable part of the profits, secondly they steal the work of the artists by having copies made of their work and selling those, and thirdly they abuse artists to create these malicious copies.<sup>93</sup> In relation to Hogarth the first two allegations are the most significant.

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<sup>90</sup> The Case of Designers, Engravers, Etchers etc., 7 February 1735, p. 1.

<sup>91</sup> Ibid., p. 4.

<sup>92</sup> Ibid., p. 1.

<sup>93</sup> Ibid., p. 2.

## The defrauding of profits

“If then it shall be found, that in their present Circumstances they (red: the Artists) never are allow'd near a proportional Part of the Profits of the Sale of their Prints, and that their Reputations suffer by the same Arts, by which they are defrauded of their Profits; it will, I hope, be allowed by every impartial Person to be highly reasonable, that they should be relieved from such Grievances, as soon as possible. (...)The first Step they take, is to insist upon a most unreasonable Share of the Profits for selling the Prints”<sup>94</sup>

The above cited passage contains parts of the allegations that printsellers hold too much of the shares of the profits. The sentence that they are defrauded out of their profits has a strong direct connection with Hogarth's situation.

Hogarth at the start of his career manifested himself as an independent Engraver on 23 April 1720, the date on his shopcard (Fig. 14). He had his shop at his mother's house in Long Lane. Hogarth was completely independent without any ties to a Guild. It was a hard market he had positioned himself in, as a large part of the prints at the time were imported from France and the Republic. He therefore as an independent engraver must have had a hard time finding sufficient work.<sup>95</sup> His first major commission was providing book illustrations for Aubrey de La Motraye's *'Travel through Europe, Asia and Parts of Africa'*, first advertised on the second of April 1721 in the Daily Courant. He worked alongside a number of engravers for this commission. Where the other engravers stuck to copying figures from smaller prints, Hogarth only used the costumes and created new compositions and figures.<sup>96</sup> The volumes appeared in 1723/1724 and were again republished in a French edition. Hogarth did not receive any further pay for his these republished works. Here we have documented proof of Hogarth being defrauded out of his profits from the very start of his career. But this was only the very start of the abuse by the printsellers of Hogarth.

In 1720-1721 the so called South Sea bubble collapsed, this bubble was the result from the inflation of stocks of the South Sea Company which then plummeted, leaving England in financial ruins. It was this and the following events that led to Hogarth's first political satire. In 1721 he released his print the *South Sea Scheme* (Fig. 1), a critique on the people and practices that had led to the South Sea Bubble. What made his print unique was that it not only was the one original print referring to the Bubble from an English artist, but it is also seen as the start of English graphical satire.<sup>97</sup> We don't know if Hogarth tried to sell his *South Sea Scheme* print himself out of his shop. What we do know is that he sold it in 1724 to the printsellers Mrs Chilcott and R. Caldwell. The *South Sea Scheme* was sold alongside a later print called *The Lottery* (Fig. 15), a print criticizing the government and drawing parallels between the shares of the South Sea Bubble and the lottery. The two printsellers published both prints with their names on them.<sup>98</sup> Here Hogarth might have made a first (failed) attempt to get away from the oppression of the printsellers, but the result was maybe even more grievous than with his first commission. Here Hogarth had invented his own satire, containing his characteristic layered political message, which he then y not got to profit from, as again the larger part of the profit went to the printseller. But maybe even worse the printsellers published them under their own name, not only taking

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<sup>94</sup> Idem.

<sup>95</sup> Ibid., p. 57.

<sup>96</sup> Ibid., pp. 61-62.

<sup>97</sup> Paulson, vol I, p. 70.

<sup>98</sup> Ibid., p. 72.



his profit away, but also his recognition. Keeping the Labour Theory of Property in mind this was theft and direct assault of Hogarth's liberty, a worse example of oppression can hardly be thought of.

The last major example of Hogarth's struggle for profit were his *Hudibras* illustrations. At the start of 1725 Hogarth was hired to make the illustrations for Samuel Butler's '*Hudibras*' by the printseller Philip Overton. The illustrations were first advertised on 5 October 1725, when subscription to the *Hudibras* series was opened and promised to be finished at Christmas. The first seven plates could already be seen at the print shop of Overton and Copper.<sup>99</sup> It is remarkable that Hogarth's name was never mentioned in the advertisements until the plates were finished on the 24<sup>th</sup> of February 1726.<sup>100</sup> Hogarth must have insisted that his name was to be added to the advertisements. But in the next series of advertisements starting from 30 April 1726, his name was again struck from the advertisements, most likely the result of a quarrel over the ownership of the plates.<sup>101</sup> Here once again Hogarth's work became a major success, but the profits still reverted to the printsellers, continuing the pattern of abuse by the printsellers. This is also the point on which we see change occur, when on the third of May 1726 an octave edition of *Hudibras* was released, illustrated by Hogarth, his name was prominently mentioned on the title page and in the advertisement, probably as result of the major success of the larger plates.<sup>102</sup> It was at this point Hogarth begun to receive major attention of the public and became a well-known name. Although he was not yet able to get rid of the printsellers, he began to receive some leverage with them, as shown by the fact that he managed to force them to mention his name in the advertisements.

## Copies part one

"This, I say, is the first Step, before they know whether the Print will take or no. If by the Demand for it, they find it likely to sell, Copies of it are immediately procured, and imposed upon the Incurious for the Originals, or at least are industriously dispatched to all Parts of the Country, where the Original is never suffered to appear. When the Artist return to make Enquiry into the Number of his Prints that are sold, and expects a Return suitable to his Labour and Expence; he is told, with an insolent and careless Air, "His Prints have been copied - "The Copies fell as well as the Originals - Very few of his have gone off "and is presented with a large Remainder, which he is forced to take home with him. Thus has he, for all his Pains, Invention and Expence, both of Time and Money, Number of the Originals returned upon his Hands ; whilst the Copies are dispersed everywhere in his Name, but to the Advantage of another."<sup>103</sup>

The description of the practices of the printsellers in the above cited passage could be a direct description of the events that passed around the publication of the print called *The Bad Taste of The Town or Masquerades and Operas* (Fig. 16), published on 18 February 1723/1724.<sup>104</sup> This print was a critique on the foreign arts being paraded and celebrated by the higher classes, while the English population was suffering from the ramifications of the South Sea Bubble. It was with this print that Hogarth had his first unpleasant encounter with piracy and counterfeits. In less than a week after its release, the first copies were already

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<sup>99</sup> The Evening Post, 5 October 1725.

<sup>100</sup> Paulson, vol I, p. 149.

<sup>101</sup> The Evening Post, 30 April 1730.

<sup>102</sup> Paulson, vol I, p. 150.

<sup>103</sup> The Case of Designers, Engravers, Etchers etc., p. 2.

<sup>104</sup> Pasquin, 18 February 1723/1724.

published.<sup>105</sup> This prompted Hogarth to react to the counterfeits in an advertisement in the Daily Journal on 24 February 1723/1724:

“N.B. The Original Prints representing the Bad Taste of the Town, are sold at the principal Print-Shops, viz. Mr. Hennekin’s, The Corner of Hemming’s Row; Mr. Regnier’s, in great Newport-street; Mr. Bowles, in St. Paul’s Church-yard; Mr. Gautier’s, in the Piazza in Covent-Garden; MR. Overton’s, at the Market; at the Corner of Pall-Mall; at Wm. Hogarth’s, the Engraver thereof, at the Golden Ball in Little Newport-street, and no where else. Price 1s. Copies as well done as the present Copies sold at other petty Print-Shops, will be sold for a penny a piece in three Day’s Time.”

On The 27<sup>th</sup> another add was posted in the Daily Journal:

*“On Monday last it advertised that the Original Prints, called the Bad Taste of The Town, to be sold at a Shilling a Piece; This is to confirm it, and to certify it will never be sold for less; and to prevent the Publick’s having the Copy impos’d on them at certain Print Shops, by means of a sham Advertisement on Tuesday alst. Note, Wm. Hogarth, Inv. et Sculp. Is engraved at the Bottom of the Original”*

His referral to the word original and his prints, demonstrate the importance of the public being aware of the importance of buying his original work. The “certain Print Shops” probably referred to the shop of Thomas Bowles and his brother John who advertised pirated copies for 6d, although Hogarth had consigned his print to them for sale.<sup>106</sup> This is a perfect example of the grievances listed, Hogarth’s consigned prints got copied and sold for way less - almost immediately - by one of the printsellers and there was nothing he could do about it. In this case he did not only get robbed of his profits due to the large share the printsellers took, but even worse got cut out altogether from profiting due to the counterfeits made. This also had ramifications on another front, which was that Hogarth no longer had control over the quality of the prints ascribed to his name, resulting in a decrease in quality. A problem which was addressed in chapter 2.

## Copies part two

“it will easily appear that these Copyers are no better than the Lowest of Robbers.(...) in taking a direct Copy of Design, there is absolutely no Skill in Designing requir’d It is to be done mechanically, by one who knows nothing of the Busines.(...) Is it not reasonable that these Men should be debarr’d from the Profits arising from such a Plate, when it is consiider’d, that with no Skill at all, with little or no Pains, in one Days Time at most, he defrauds an industrious and skilful Artist of the Fruits of some Month Labour and Invention? Does not he as much injure the other, as if he counterfeited a Note of his Hand? He does not indeed steal the very Paper (which if he did, though it is not of near so great a Value, he know he should suffer for it) but he steals from him every Thing that made that Paper valuable and reaps an Advantage which he has not more Right to, than He, who counterfeits a Note of Hand, has to the Money he receives by it. (...)When this Piece of Roguery is understood, and it is farther considered, that those, who are guilty of it, are encourag’d and made the Tools of a Set of Men, by which they oppress the industrious and skilful Artist; It is humbly hoped it will be thought proper to make it punishable by Act of Parliament for any one to copy the Designs of Another.”<sup>107</sup>

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<sup>105</sup> Paulson, vol I, p. 74.

<sup>106</sup> Ibid., p. 90.

<sup>107</sup> The Case of Designers, Engravers, Etchers etc., pp 4-5.

In the above cited passage the petitioners redirect their attack from being directly at the printsellers, to target those who plagiarise and copy their works. They again lay focus on the labour put into the work and that therefore the pirates were to be considered robbing and thieving scum, as their Caribbean namesakes. An interesting line of argument which the petitioners use in this passage is the comparison with a 'Note of Hand'. This was a piece of document stating an amount of money, which could be used to gather said amount of a banker. By counterfeiting what was in fact a mere piece of paper, one inflicted real loss upon the victim. In this way we can also consider counterfeiting a print, which was not just the copying of a mere piece of paper, but the theft of someone's property.

Once cannot help but feel that the structure of the petition reflects the order of events of Hogarth's struggle with printsellers and pirates. The first part of his career he struggled with the terms of the printsellers. He then, aided by the fame he had gotten through his prints and his career as a painter, did something remarkable. When Hogarth released the prints of the *Harlot's Progress* on 10 April 1732, he cut the middle-man, the printsellers. He was both inventing, engraving, printing and selling his *Progress*.<sup>108</sup> This way he could keep all the profits to himself and be freed of the oppression of the printseller. Or so he thought, because within a week there were counterfeits being sold of his prints, even before the authorized copies by Giles King could be released. The immediate popularity of the prints and the limited supply led to a blossoming trade in counterfeits, which were cheap and in large numbers.<sup>109</sup> This led Hogarth to address the piracies and the low quality of them in his advertisement for the cheap Giles King reproductions:

"Speedily will be publish'd, the Six Prints of A HARLOT'S PROGRESS: Copied from the originals of MR. Hogarth. By Permission. With Ornaments and Explanation to each Print. Specimens to be seen at the Engraver's, at the Golden Head in Brownlow-street, Drury-Lane. N.B These being nigh completed, if any other Copies are publishe'd or offer'd by the Hawker or their Accomplices before the publication of these, they will be Impositions and bad Copies, there not having been Time enough to finish them neatly "<sup>110</sup>

The counterfeits were so numerous that Hogarth had to react once again to them. The brothers Overton - who used to be Hogarth's printsellers - were advertising their own copies on the 15<sup>th</sup> of May.<sup>111</sup> But the biggest pirate of the *Harlot's Progress* was Elisha Kirkall, who alongside several booksellers published the full series in green mezzotint. Their counterfeits became so popular that it had several editions.<sup>112</sup> The most curious counterfeit might be that in the *Lure of Venus*, a small pamphlet by J. Gay from 1733. In its preface it condemned counterfeiting in both art and literature, by stating "Whenever a curious painting is finished, we are sure of a number of paltry copies."<sup>113</sup> This makes it extra wry that it contained small copies of the *Harlot's Progress* that weren't authorized.

Hogarth was as aggressive in his fight against counterfeits not only because of the monetary loss, but maybe even more importantly because of the low quality of the plagiaries and the resulting loss of the message he tried to bring forth. Hogarth - as we have seen - was a

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<sup>108</sup> David Kunzle, 'Plagiaries-by-Memory of the Rake's Progress and the Genesis of Hogarth's Second Picture Story' in *Journal of the Warburg and Courtauld Institutes*, Vol. 29 (1966), p. 312.

<sup>109</sup> Faramerz Dabhoiwala, 'The Appropriation of Hogarth's Progresses' in *Huntington Library Quarterly*, Vol. 75, Nr. 4 (2012), p. 581.

<sup>110</sup> Evening Journal 18 April 1732.

<sup>111</sup> Daily Journal, 15 May 1732.

<sup>112</sup> Kunzle, p. 312.

<sup>113</sup> Idem.

political activist from the very start of his engraving career with the *South Sea Scheme*. Therefore the loss of his message most have enraged him. So his first publication free of the printsellers, he was immediately met by the same printsellers with addition of other pirates.

In his next major print after one of his paintings *A Midnight Modern Conversation* (Fig. 17) he already warned against piracies and the malign printsellers in his advertisement of 18 December 1732 in the *Daily Advertiser*:

“Mr. Hogarth having engrav’d a large Copper Plate from a Picture of his own painting, representing a Midnight Modern Conversation, consisting of ten different Characters; in order to preserve his Property therein, and prevent the Printsellers from graving base Copies to his Prejudice, proposes it by Subscription on the Terms following. The Price Five Shillings for each Print, to be paid at the Time of subscribing; for which the Author will give an etch’d Plate, with a receipt to deliver the Print on the first of March next. But if the Number already printed be sooner subscrib’d for then the Prints shall be sooner deliver’d, and Notice thereof given in the Papers. The Picture and Print to be seen next door to the New Play-house in Covent-Garden Piazza.”

Although he changed the conditions later on, expanding the number of prints and also selling them to unsubscribed customers for a higher amount, this advertisement says a lot. He clearly tries to pro-actively battle the pirates and the printsellers. But despite his advertisements and efforts, *A Midnight Conversation* was almost immediately copied after it was released. The print was most likely delivered on 1 March 1733, the first counterfeit had already been advertised by the 12<sup>th</sup> of March.<sup>114</sup> But it was not only pirated in other prints, but it was put on almost every object imaginable. On the 24<sup>th</sup> of May a Mr. Chevenix advertised a fan mount with the print and a detailed description of the persons on the print for the entertainment of ladies.<sup>115</sup>

His next print of Sarah Malcom (Fig. 18), a condemned woman, who had committed murder and seemed, to everyone’s shock, unflustered, was advertised on 8 and 9 March.<sup>116</sup> Hogarth had then already sold the Copperplate to Mr Regier, who was selling the prints, probably anticipating the piracies that immediately followed and most likely didn’t care enough about the small print.<sup>117</sup>

In December 1733 Hogarth announced the painting and the print of *Southwark Fair* or *The Humours of the Fair* (Fig. 19) finished, alongside his next Progress, *the Rake’s Progress*.<sup>118</sup> The advertisement stated that he started to take subscriptions at his house. The first subscribers received a print of the *Southwark Fair*. The *Southwark Fair* was again, to no surprise, immediately counterfeited.<sup>119</sup> It is assumed that the paintings of the *Rake’s Progress* were also finished at this time, but Hogarth must have started putting his lobby together for the Engravers’ Act, therefore most likely postponed the printing of the *Rake’s Progress* until after the Act was passed.

As said we again see a direct parallel with Hogarth and the grievances brought forth in the petition. He finally managed to free himself of the printsellers, at whom the first part

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<sup>114</sup> Daily Post, 12 March 1733.

<sup>115</sup> Daily Journal, 24 March 1733.

<sup>116</sup> London Merchant, 8-9 March 1733.

<sup>117</sup> Paulson, vol II, p. 10.

<sup>118</sup> London Journal, 22 December 1733.

<sup>119</sup> Kunzle, p. 314.

of the grievance mentioned in the petition are directed, only to be faced by the second part of the grievances - the pirating of his work - often by those same printsellers.

## The solution and an unexpected turn

“For these Reasons, Sir, it is hoped that most effectual Method is proposed by the Act for removing these Grievances, without infringing the Liberties of any, and without any Probability of its being the Occasion of frivolous and vexatious Law-suits. (...)The securing to every one the Fruits of his own Labour, is the greatest and noblest Encouragement, that any Art can possibly receive, because it is the most Natural, Equal and Extensive.”<sup>120</sup>

The “Most effectual Method” of the passage above was the proposal that clear copies should be punished by law. Clear copies were easy distinguishable from original interpretations of the same subject, as the copies are almost identical in every aspect of the original which it refers to, the original interpretation was clearly distinguishable for not being identical in every aspect.<sup>121</sup> Parliament agreed with the viewpoints brought forth by the petitioners and they passed the Bill leading up to the Act. Finally that security of the fruits of one’s own labour became reality. Hogarth and the other artists must have been overjoyed with this news, and feel like they finally received the protection they deserved. Where it not for one unexpected turn of events still to come.

When it became clear that the Act would come into force on the 25<sup>th</sup> of June Hogarth advertised in the Daily Advertiser on the third of May that his Prints would be released on the 25<sup>th</sup> of June, as it would then enjoy the protection of the Act.<sup>122</sup> But before the Act could come into force, the most remarkable form of piracy occurred. The Printsellers Henry Overton, John King, and Thomas and John Bowles sent spies to Hogarth’s house where *the Rake’s Progress* (Fig. 20) was being exhibited, these spies then returned to the pirates and described what they saw from memory. As the spying was done by lay-men without proper training and all from memory, it resulted in a warped form of the originals being released before the actual *Rake’s Progress* came out (Figs. 21 – 22). The counterfeits having lost all meaning and layers that the originals have, which will be further addressed in the following Chapter. Hogarth having learned of these counterfeits posted the following advert:

“SEVERAL Printsellers who have of late made their chief Gain by unjustly pyrating the Inventions and Designs of ingenious Artists, whereby they have robb’d them of the Benefit of Labours, being now prohibited such scandalous Practices from the 24th Day of June next, by an Act of Parliament pass’d the last Session, intituled, An Act for the Encouragement of the Arts of Designing, Engraving, Etching &c. have resolv’d notwithstanding to continue their injurious Proceedings at least till Time, and have in a clandestine Manner, procured mean and necessitous Persons to come to Mr. William Hogarth’s house, under the pretence of seeing his RAKE’S PROGRESS in, order to pyrate the same, and publish base Prints thereof before the Act commences, and even before Mr. Hogarth himself can publish the true ones. This Behaviour, and men who are capable of a Practice so repugnant to Honesty, and destructive of Property, are humbly submitted to the Judgement of the Publick, on whose Justice the Person injured relies. N.B. The Prints of the RAKE’S PROGRESS, designed and engraved by Mr. William Hogarth

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<sup>120</sup> The Case of Designers, Engravers, Etchers etc., p. 7.

<sup>121</sup> Ibid., p. 6.

<sup>122</sup> Daily Advertiser, 3 May 1735.

will not be published till after the 24th day of June; and all Prints thereof published before will be an imposition on the Publick."<sup>123</sup>

As faith would have it on the same date the pirates were running an advertisement for their counterfeits:

Now printing, and in a few days will be publish'd, the Progress of a Rake, exemplified in the Adventures of Ramble Gripe, Esq.; Son and Heir of Sir Positive Gripe; curiously design'd and engrav'd by some of the best Artists.' This was printed for Henry Overton, John King, and Thomas and John Bowles.<sup>124</sup>

This battle of advertisements continued all the way up to the Act coming into force, Hogarth apparently feeling so pressured that he felt the need to authorize cheap copies himself and advertise those on 17-19 June.<sup>125</sup> After the Act came into force the problems for Hogarth greatly diminished, the number of counterfeits of his were strongly reduced and he was now able to maintain his practice of early subscription and then later more expensive unsubscribed prints.

## Conclusion

As we have seen in this chapter the link between Hogarth and the grievances mentioned in the petition are very close. The grievances listed in the petition form almost a summary of the grievances endured by Hogarth during his career. Even when he thought he was safe, the pirates managed to get one last hit in. The hand of Hogarth is clear to see in this document, especially in the constant use of the word artist(s). A term Hogarth had realised for his field before court. It was the precedent set by his court case that enabled the petitioners to refer to themselves as artist and not mere craftsmen, which would have made their position increasingly difficult. But the petition was not only guided by Hogarth, we see the hand of his fellow petitioners in several places, such as the referring to the situation on the continent, and of course it was very much a product of its time, relying heavily on the Theory of Property brought forth by Lock.

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<sup>123</sup> London Evening Post, 3 June 1735.

<sup>124</sup> Daily Advertiser, 3 June 1725.

<sup>125</sup> Daily Advertiser, 17 June 1725.

# Conclusion

Before I state my conclusion I quickly want to restate the two central questions of the thesis

1. What historical developments and circumstances contributed to the passing of the Engraver's Act of 1735?
2. What motivated Hogarth's active role in the petitioning for the Act?

The historical development and circumstances that contributed to the passing of the Act are mostly legal developments. Firstly there is the development from a right to copy to copyright. The Statute of Anne introduced statutory copyright for the first time in law. It was on the basis of the principles of this statute that the Engravers' Act was possible, seeing that it gives roughly the same rights to artists as the Statute of Anne gives authors. To be able to apply for copyright, Hogarth and his fellow petitioners had to show that their work was a product of the mind. The first enabler hereof was the case of Hogarth vs Morris in which designers, engravers and etchers got the label of artist instead of a craftsman. The second enabler was the Property Theory of Labour brought forth by Lock. As they were now considered artists the petitioners could argue that the labour - and therefore property - of their work lay in the design brought forth by the mind, not the actual paper. This made them eligible for copyright protection.

If we then turn the motivation for Hogarth to petition for the Act we see that they are roughly threefold, namely artistic, political and economic. As shown in chapter two Hogarth was a political engraver. His prints carried a political message he tried to convey through them. In the counterfeits this message got lost, as the copyist left out essential details. The same goes for his artistic motivations, as a result of the counterfeits and the power of the printsellers he had no control over the quality of the prints that were published under his name, resulting in low quality work being ascribed to him. The last motivator was purely economic, through first the oppression of the printseller and after the counterfeiting of his work, Hogarth lost money. It is these widely differing motives that led Hogarth to petitioning for protection.

In chapter three I showed that the petition was in fact a combination of the historical circumstances and the personal motivation and life of Hogarth and his fellow petitioners. The grievances strongly resembling the grievances suffered by Hogarth, as well as a constant referral to important legal terms and developments. Hogarth's Act was the work of a man enabled by his time and peers.

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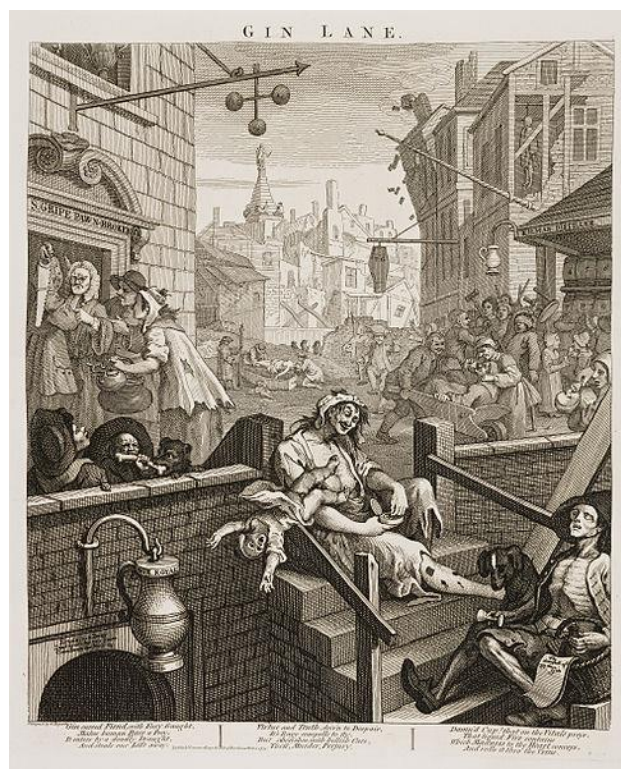


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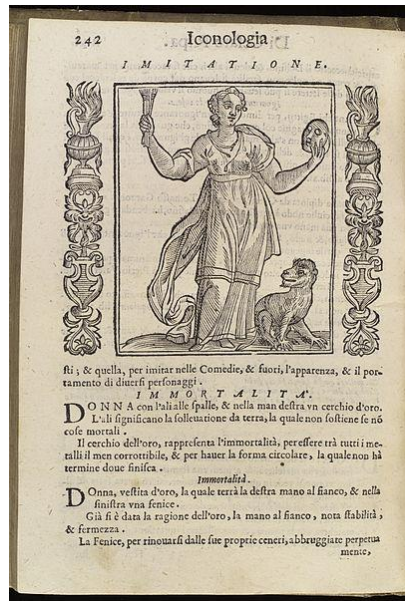


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