Images and
Human Rights

Images and Human Rights:

Local and Global Perspectives

Edited by

Nancy Lipkin Stein
and Alison Dundes Renteln

This collaboration is dedicated to our families, friends, colleagues, students, and to all who fight for human rights.

<div align="right">Alison Dundes Renteln
Nancy Lipkin Stein</div>

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CHAPTER ONE

IMAGES AND HUMAN RIGHTS:
LOCAL AND GLOBAL PERSPECTIVES

NANCY LIPKIN STEIN
AND ALISON DUNDES RENTELN

Introduction

Images, moving and still, are clearly powerful, and yet we really do not know exactly how they affect us and our world. Despite tremendous interest in the role of the visual in human rights advocacy, relatively little empirical research has documented its influence. This book offers reflections on the role of images as they circulate in both global fora and, in particular communities that contributors have examined carefully in context. The idea for this unusual collection was inspired by a panel Dr. Nancy Stein organized for the Royal Anthropological Society's conference, Anthropology and Photography, that was held at the British Museum in June 2014. Evident enthusiasm for the subject in London and elsewhere inspired others to join the project. This interdisciplinary volume, *Images and Human Rights,* includes research from healthcare advocates, human rights scholars and activists, photographers, and visual anthropologists who see a need for more careful contextual interpretation of images in global and local settings.

Although vast literature exists on the importance of images concerning global injustices in fields such as human rights, photography, and visual studies, few provide case studies of specific photographs in cultural context. This book affords insights into the role of the visual from various disciplines including anthropology, fine arts, folklore, human rights, healthcare, photography, politics, and law. The contributors offer detailed illustrations of images in various countries that have arguably influenced public perceptions of vulnerable groups as well as the members' own self-understandings. Chapters touch on representations of individuals who are

homeless and seek medical attention for their feet,[1] persons with disabilities, women who have experienced enslavement through trafficking, transgender individuals, and victims of genocide and torture. The individuals who are subjects in these chapters have survived some of the most serious violations of human rights, and a basic challenge for photographers and commentators is how to deal precisely and sensitively with this material. How, if at all, should we show the experience of those who have suffered the most excruciating transgression of their rights without causing further exploitation and trauma?

There is a striking divide in the literature about the status of images of suffering. For some, it is self-evident that they influence the course of history. Subscribing to this view are some journalists, activists, and historians. Books such as *Photos That Changed the World* appear to reflect this perspective (e.g., Stepan, 2013; see also Goldberg, 1991, p. 17). Another group comprised largely of social scientists contends that photographs do not have major effects because of compassion fatigue (Moeller, 1991) and mechanisms of denial (Cohen, 2001). One must concede that, at this time, there is an inadequate basis for deciding this matter one way or the other. Of course, it is likely that images sometimes are influential, depending on various factors. As there has been insufficient research on the impact of specific images in historical contexts, empirical evidence cannot answer the question as to the circumstances under which images can influence public perceptions or the behavior of masses and elites. While some have explored these situations, much more is needed (see Batchen et al 2012; Fehrenbach and Rodogna 2015; Hariman and Lucaites 2007; Zelizer 1998).

Some of the most impressive research in this area includes works by social scientists like Shani Orgad (2012) and Bruna Irene Seu (2013). Their nuanced studies of the dissemination of images by humanitarian organizations and the reactions by audiences are exemplars of research. One remaining challenge, though, is the need to differentiate among various stakeholders whose views are part of the data to avoid a presumption that images always elicit specific emotions like empathy; that is, that there is a universal reaction to pictures. Anthropologists recognize that enculturation shapes perceptions and influences behavior. For them, it is more probable that at least some images generate culturally specific

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[1] Central to human rights issues are feet, e.g., footbinding, a form of torture known as falaka, and health concerns like hookworm. Also the goal of advocacy is often expressed as the need to get people to put themselves in the shoes of others.

responses, and, therefore, it is unwise to accept a presumption of universality (Renteln, 2015).

Visual anthropologists offer other methodologies to understand how communities regard their representations. Jhala (2007), for example, an ethnographic filmmaker, has used "indigenous video innovation" as part of his work in India after the earthquake disaster in Gujarat, India in 2001 as a way to present the sufferings of the victims. His methodology highlights the ways visual anthropologists can also fill the role of activist or advocate for people in times of need. This approach considers the representation of the subjects and groups as well as their participation in the making of the representations. As a form of empowerment, this type of inclusive or collaborative project has its roots in the "shared anthropology" of Jean Rouch (1917-2004). In the chapter by Rina Sherman, a former student of Rouch, we see how this influence continues. Her reflections on working over the years as a photographer, a filmmaker, and an anthropologist reveal the ethical issues at hand when dealing with visual means of research and representation of others' lives. More recent case studies such as Pink's (2009) edited collection, *Visual Interventions*, showcase the effective work of visual methodologies in applied anthropology in numerous contexts.

As part of the conversation about power relations, one initial move was to insist that individuals give consent to being photographed. While this is considered necessary, however, it is hardly sufficient. Greater care must be taken in the representation of the subjects so that they can embrace the images. We find a history of this in the filmmaking of Rouch and in the 1970s with Judith and David MacDougall developing the idea of participatory cinema. Indeed, as this shift has occurred, a growing consensus emerged that photographers should empower subjects by ensuring that they exercise control over the depictions as with "co-creative portraits" (Graham, 2016). This sometimes is expressed as the need to present individuals so as to emphasize their dignity and avoid reprehensible voyeurism. The trend toward stressing dignity corresponds to a movement in jurisprudence that likewise underscores the importance of this norm more generally in international human rights law (McCrudden, 2014; for the notion of "dignity cascade," see Simon, 2014).

In 2000, Jay Ruby collected his thoughts on how the visual plays a role in anthropologists' work, both as a research tool "to explore the human condition" and as a tool to communicate those findings. He makes clear the distinctions between an *emic* approach, one that communicates the culture from an insider's perspective, and an *etic* one, where the role of the anthropologist as the analyst remains distinct. The intentions of indigenous

filmic and photographic representations to take control of the image may work well on a political level, as we see in Gama's chapter on depicting Islam in Bangladesh by an Islamic Bangladeshi photographer, but it is Gama's analysis of the images that reveals the hidden and speaks of the human condition.

Human Rights Themes

The essays in this book deal with a wide range of specific human rights. Although it is not the intention of contributors to discuss jurisprudence associated with the subject of individual chapters, interested readers may wish to conduct research on the types of issues that arise in connection with representations of the groups. They might investigate the international instruments designed to guarantee the human rights of a specific community as well as norms of customary international law. Human rights first were established in the Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948 to clarify the meaning of obligations states had if they ratified the UN Charter.[2] Due to ideological differences reflecting the Cold War, the UN recognized that countries were unlikely to embrace all different kinds of human rights. Therefore, the rights in the UDHR were divided up into two separate covenants, although a few rights are found in both, e.g., the right to form labor unions. The two major human rights treaties are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), both of which entered into force in 1976. There are also important instruments focused on genocide, torture, race, migrant workers, and the disappeared.

For certain communities, a specialized treaty exists to protect members of the group. The Convention on the Rights of Persons with Disabilities (CRPD), for instance, was quickly ratified worldwide and adopted in 2006 as the first human rights treaty of the twenty-first century. Detailed information is available at the website, UN World Enable, and scholarship exists on its evolution (Sabatello and Schulze 2013).

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[2] While the UN Charter stipulates in Articles 1, 55, and 56 that member states promote and protect human rights, it provides no definition. The UDHR is thought to provide the authoritative interpretation of human rights obligations imposed by the Charter. As such, some contend the UDHR, despite being a declaration, which usually is not binding, has juridical force.

International human rights law also guarantees the right to housing and the right to the highest attainable standard of health, both of which are found in the ICESCR. These are relevant to the discussion in Chapter 9, where the contributors focus on the healthcare challenges of people who are experiencing homelessness. Every human rights treaty body has a committee of experts whose responsibility it is to ensure compliance with these rights. They consider complaints against states, provided they have also ratified an additional instrument known as an Optional Protocol.

Non-binding instruments have been adopted that provide aspirational principles to guide countries toward improving their domestic standards. For instance, the Yogyakarta Principles on Sexual Orientation and Gender Identity (2007) elaborate on general principles of non-discrimination and equality that are also incorporated in the two main human rights covenants.

Not only do treaty regimes safeguard human rights of various kinds, such as the Convention on the Prevention and Punishment of the Crime of Genocide and the Convention on the Elimination of All Forms of Racial Discrimination, but there are also other mechanisms. The United Nations appoints jurists as special rapporteurs to write reports about global compliance with the standards associated with each regime. Readers interested in the substantive treatment of particular human rights may wish to consult special rapporteur reports.

While it is beyond the scope of this work to provide a comprehensive overview of all the human rights institutions and policies, readers may want to familiarize themselves with the activities of the United Nations Human Rights Council as well as those of regional institutions, for instance, the European, Inter-American, African human rights systems. The International Criminal Court is also an extraordinarily important institution with the potential to hold perpetrators of gross violations of human rights responsibilities (for an overview, see Schabas 2011). At the national level, human rights commissions sometimes investigate wrongs, and some countries permit the use of domestic courts for enforcement. The United States has had hundreds of lawsuits filed under the Alien Torts Claims Act, a federal statute that permits aliens to sue aliens. Essentially, individuals from abroad can seek justice in U.S. federal court for a tort involving a violation of the law of nations, provided jurisdictional requirements can be met. In the future, it is our hope that visual anthropologists will examine how images influence the disposition of cases tried in these various institutions.

A part of our collection sheds light on censorship, which violates the fundamental right to freedom of expression guaranteed in Article 19 of the

ICCPR. Here, the visual is crucial as it gives individuals a way to protest against injustices. Examples range from the imaginative folk use of the Mud Grass horse to circumvent filters in China as Tok Thompson shows, through artistic renditions of women clad in Islamic dress wearing modern cosmetics in Bangladesh in Fabienne Gama's chapter, through arresting images of protest as Martinez and Renteln discuss, or through startling filmic portrayals of persons with disabilities as in Klupchak's contribution. Governments are concerned about the dissemination of particular images because they recognize their power to inspire individuals to act. This is particularly true in the twenty-first century when the Internet allows these images to go viral. Acknowledging the power associated with images in the digital age, there is a call to recognize a human right to the Internet (Rothkopf 2015).

These examples show that the public is clever and finds ways to circumnavigate policies designed to prevent the use of visual representations as a means of protest. In these circumstances, our instinct is to challenge government attempts to criminalize photography. This issue is discussed by Martinez and Renteln in Chapter 2. Yet there are risks with images, to be sure.

Risks Associated with Images

When images reinforce negative stereotypes about groups, there is cause for concern. Generally, images that have wide circulation may tend to resonate because they correspond to pre-conceived notions about how groups appear. Small wonder that visual anthropologists and image-makers express reservations about photographing communities and worry about how to carry out their work in a culturally sensitive and ethical manner. Some of our contributors address these issues in detail. Gama's work in Bangladesh examines indigenous photographic representations standing up to the stereotypical images pushed through the commercial representations by the foreigners' lenses. This type of project underscores the power relations at work when conflicting views of reality are in circulation. Stein's chapter also considers how images can reinforce stereotypes, while some reveal these conflicting views of reality through examples of images of people who are transgender. Her chapter ends on a hopeful note regarding a campaign launched by the Australian Education Ministry promoting a school curriculum that uses imagery to promote respect and to educate students about human diversity. Klupchak's examination of filmic representations of people with disabilities addresses the ethical concerns associated with observed and observer. If self-

representation is the favored method for this century, then student access to studies such as photography, film, and visual anthropology should help develop this critical awareness and reflexive approach on a global and local perspective. They need to know their rights as image-makers, understand the potential effects of their image-making, and recognize the importance of contextual meanings for symbolic representations (Kurasawa 2009).

The Wahlberg and the Dyess, Opalinski, and Stein chapters consider the risks involved when representing one culture to another. Wahlberg's chapter examines the formal, textual, and aesthetic strategies through which an understanding of human trafficking is constructed in contemporary films. As a part of the broader humanitarian imaginary, images of human trafficking in both documentary and narrative feature films transform audiences into witnessing publics who construct a vision of the world and those within it who face exploitation. There is a crucial connection between media representation through images and public action and the social construction of the "victim" of human trafficking. Images of others in distant locales are imbued with a moral power that are deployed to criticize human action within "the system" as a whole and within this cognitively structured view of the world; solidarity with victims is created through images and socially constructed scenarios.

The study of the human condition is, of course, well suited to anthropologists and nurses, but what is unique about the chapter by Dyess, Opalinski, and Stein is their emphasis on the interdisciplinary and collaborative nature of their methodology as part of a human rights project. They have documented their process in establishing a model that takes on the roles of academics, researchers, and community advocates and activists simultaneously. Here, their contribution may stand alone in this collection as an example of images as part of a methodology, even though anthropologists have a history of working in collaboration with healthcare projects (e.g., Chalfen and Rich 2009). Their chapter follows the "evolutionary process," which is participatory in the ways persons experiencing homelessness become involved, while at the same time demonstrating a collaborative way to engage multiple communities.

Toward Solutions

We are left with many questions about how images educate, communicate, and relate to the issues of human rights. As these essays show, we can become aware of the ways images identify and challenge our assumptions. Perhaps more innovative programs where universities with resources share

with institutions abroad can address these questions. The School of Cinematic Arts at the University of Southern California has, for example, worked with the government of Jordan to establish a film school. Jordan also provides cameras to young filmmakers through the national film commission. Programs of this kind could serve to ensure that a wider range of cultural representations are part of our world. When global ideas of human rights become part of a localized context through familiar images, they become more accessible.

Visual anthropologists have a role to play training future human rights activists. They can partner with organizations such as Videre (Smith 2013), Witness (Gregory 2006), and the International Criminal Court to document violations in ways that are useful to tribunals and that ensure respect for the dignity of the communities and individuals photographed. We see a great need for more collaboration between human rights advocates and visual anthropologists; we have much to learn from one another.

Students often prefer to learn from visual representations of issues. The images, moving and still, bring human rights topics to life in a way that mere description and international texts cannot. For this reason, we hope this volume will inspire instructors to incorporate more visual material in their courses. This will enhance the experience of students and inspire them to seek greater involvement in humanitarian causes. If our goal is empowerment of younger generations, then paying closer attention to visual symbols of injustice will be critical. Although it is difficult to prove the precise effects of images, they can make a compelling case for social justice. We hope others will join this research program on images to find new ways to use visual messages to identify, examine, and promote human rights everywhere.

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CHAPTER TWO

THE HUMAN RIGHT TO PHOTOGRAPH

MICHEL ANGELA MARTINEZ
AND ALISON DUNDES RENTELN

Introduction

Images of suffering play a key role in global campaigns designed to raise awareness of human rights and humanitarian issues. Pictures are often considered crucial for the "mobilization of shame" (Keenan 2004), which is presumably critical for motivating individuals and governments to render assistance to those in distress near and far. Yet the importance of pictures, both moving and still, for consciousness-raising is sometimes taken for granted. A burgeoning interdisciplinary literature highlights the influence of the visual in illuminating gross violations of human rights (Richin 2013; Martinez 2015). A debate has emerged that considers the extent to which images actually help ameliorate situations where atrocities have occurred.[1]

There is no question that the power of the visual is remarkable. The adage that "a picture is worth a thousand words" captures this idea and has inspired the law to take notice.[2] Consequently, governments sometimes fear that dissemination of particular images will undermine their authority. Leaders, too, can be toppled by the publication of a photo revealing improper conduct. Images shape public perceptions of top government lead-

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[1] One seminal work is Stanley Cohen's (2001). *States of Denial: Knowing about Atrocities and Suffering*. Cambridge: Polity. Another pioneering essay is Susan Sontag's *On Photography* (1977), which sparked a lively set of exchanges over media ethics.

[2] Consider the new field of "sensational jurisprudence," which includes the visual. See, e.g., Richard Sherwin (2012). Visual Jurisprudence. *New York Law School Law Review* 57 (13), pp. 137-165.

ers, and elites pay a great deal of attention to their public personae. The fact that censorship of images occurs in virtually every type of political system shows recognition of their potential to influence the course of events. An informed citizenry requires the right of access to information on public affairs, which is crucial for protecting the right to know (Bishop 2009).

In this chapter, we consider the normative underpinnings of a human right to photograph, including both legal and philosophical arguments. We use the term "photograph" broadly to include both still and moving images. After assessing the main theoretical arguments, we discuss policies that interfere with the exercise of this right. Next, we examine some ethical obligations of image-makers to ensure that they handle this responsibility appropriately. Then, we present examples where images appear to have contributed to positive social change to some degree. Finally, while we acknowledge the need for more research that is nuanced, we conclude that this right can empower activists and scholars in their quest for greater justice.

The Right to Photograph:
Legal and Philosophical Arguments

When individuals are prevented from taking pictures, they usually invoke arguments based on freedom of expression. While these claims may at times be grounded in rights enshrined in domestic constitutions like the First Amendment, they are also based on international human rights law. Specifically, Article 19 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of expression, freedom of the press, and access to information. A general comment (#34), issued by the Human Rights Committee that enforces the ICCPR, construes the rights in Article 19 broadly and explicitly mentions that protection of visual representations extends to images, objects of art and symbols (see clause 11). As this treaty has been ratified by almost every country, this standard affords a measure of protection to those invoking a right to disseminate an image as part of political expression.

Another approach to protecting human rights involves a comparative analysis of domestic legal standards known as *ius gentium*. As the vast majority of legal systems guarantee political freedom, even if subject to limitations, this constitutes another basis for demonstrating that a consensus on this right exists.
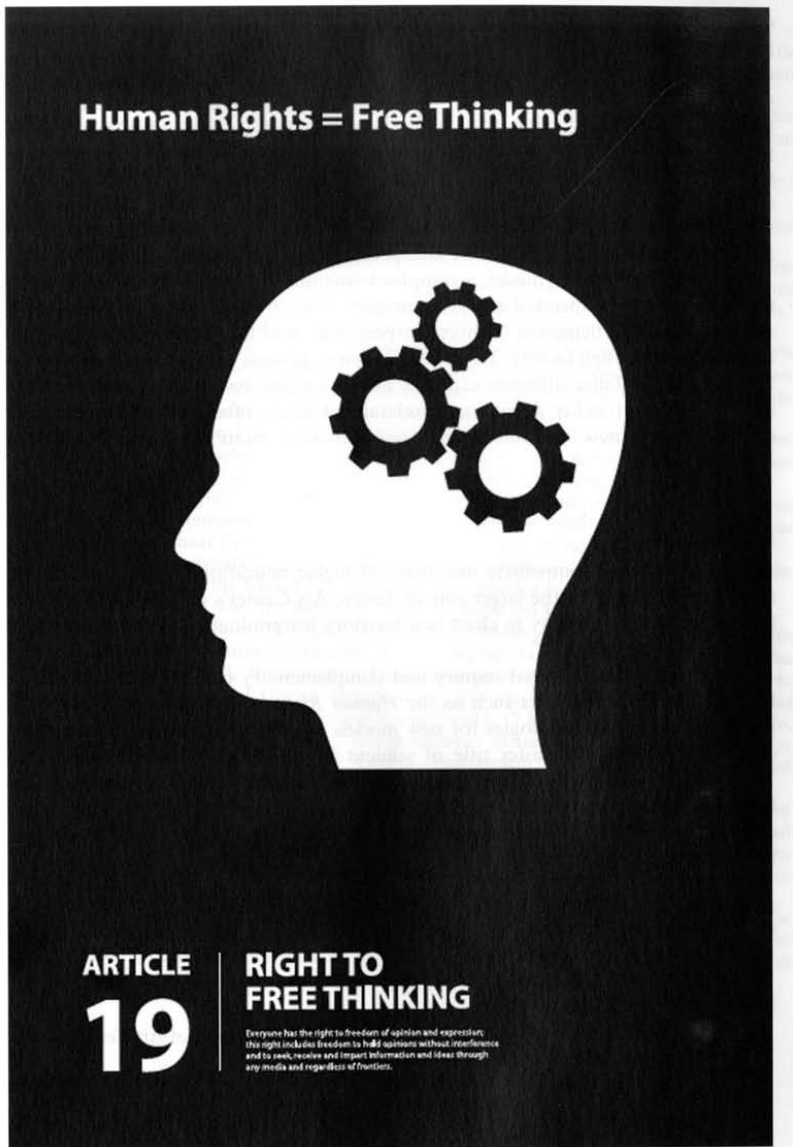
Figure 2.1. Free to Think, Article 19, credit to Benny Chung

   We wish to emphasize that even if no formal recognition of political freedom or right to record can be identified in national constitutions, one can nonetheless make the argument that implicit in any political system is a basic right to record. Inasmuch as governments are designed to serve the citizenry as part of a social contract, their activities must necessarily be subject to public scrutiny. A key dimension of this political compact is transparency, and taking pictures is, in our view, critical for this purpose. For this reason, the press has often been designated as the fourth branch of government in the United States. It is, at the very least, meant to be a watchdog. Although the press may not play this role because of corporate control of the media or because the state owns the press, citizen journalists can function as guardians of the public interest. Indeed, in the twenty-first century, not only do professional reporters bear this responsibility, but so also do citizen journalists (Gregory 2015, 2006).

   We contend that a human right to take pictures, moving and still, should be recognized in order to have the means by which to hold governmental officials accountable. The ability to document requires that the public, among other things, has the right to record and share images of the abuse of authority.[3] With the rise of new forms of technology, such as cell phones, this human right will likely assume even greater importance. Even though it has not been officially recognized, it is necessary to establish the right to photograph as a fundamental human right. This should be established as an independent right.

The Right to Record versus State Interest in Public Safety

In many instances, police have arrested individuals who are in the process of documenting public protests and government misconduct. While recording what they perceive as injustices, they are subjected to harassment and sometimes false accusations.[4] For example, police brutality in Fuller-

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[3] For an argument supporting our position, see Jonathan Turley (2011, November 8). Your Right to Record. *Los Angeles Times*, p. A15. For elaboration on this position, see Michel Angela Martinez (2015). *Photography in Movement: The Right to Photograph, Ethics in Imaging, and the Art of Making Social Change.*

[4] After citizen Ramon Orta filmed the fatal chokehold of Eric Garner's death, he was arrested and sentenced to four years in jail (Anon. 2016). When police shot and killed Alton Sterling in Baton Rouge, Chris LeDay circulated a "viral" video of this and says he was also targeted (Sammon 2016).

ton, California, was caught on a cell phone by a citizen, Veth Mam.[5] Officers harassed him and advised him to stop taking pictures or he would be arrested, which he was. After criminal charges against Mam were dismissed, he tried unsuccessfully to sue the police for violating his constitutional rights (Moxley 2013). When a *New York Times* photographer was taking pictures of police officers who were arresting a teenage girl, one told him to stop. When the photographer continued, another officer "…grabbed his camera and slammed it into his face" (Buettner 2013) and arrested him. The police officer was subsequently indicted for lying, claiming that the reporter had interfered with his law enforcement efforts by using a flash. In the U.K., a woman took photographs of two uniformed police officers while they searched her boyfriend. She used her cell phone to record the incident that occurred in the subway and was prosecuted under a new controversial amendment to the Terrorism Act that prohibited photographing a police officer "…if the images are considered 'likely to be useful' to a terrorist" (Lewis 2009). Although the law does authorize police to view digital images in cell phones, guidelines stated that "…the new offense relating to photographing officers does not apply in normal policing activities" (Lewis 2009).

Those photographing police conduct directed against protest movements experience harassment and assault. One activist wrote extensively about police misuse of force when he took part in the Occupy Wall Street movement, used his camera and declined to relinquish it to officers (Rogouski 2011). There is also evidence of harsh treatment of videographers, e.g., at Reoccupy Minneapolis (HongPong 2012). Particularly cruel was police use of pepper spray against the young and the elderly, and one student's photo of an officer became iconic because it was central to an Internet meme (O'Brien 2011).[6] Targeting of journalists was also common with the Arab Spring movement and contemporaneous demonstrations over austerity policies in Europe, particularly in Greece and Turkey (International Network of Civil Liberties Organizations 2013; Smith 2013; Tagaris 2013).

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[5] Police in this same community later also received widespread media coverage for killing an innocent homeless man, Kelly Thomas, who had mental disabilities.

[6] See examples on YouTube. Lt. John Pike, "The Casual Cop," meme, Montage: Pepper Spray the World - The UC Davis Casual Cop Meme Montage https://www.youtube.com/watch?v=3UgIEi86x2Q

Figure 2.2. Occupy U.C. Davis, police attack peaceful student demonstrators with pepper spray, credit to Louise Macabitas November 18, 2011
See centerfold for this image in colour.

Although those taking pictures wish to document the misuse of force or other violations of the law, the supposed justification for taking photographers into custody is that the images they have captured will jeopardize public safety.[7] Most of the time, however, charges against photographers are dropped, suggesting the falsity of these claims, but the result is that they were effectively prevented from taking pictures that could prove the misconduct. Thus, even if they prevail in the litigation, they fail to obtain the desired images.

In the *Case of Gillan and Quinton v. the United Kingdom* (2010), the European Court of Human Rights considered a situation where a journalist wanted to film a protest and was stopped by police, although they did not have reasonable suspicion. After assessing all the arguments, the Court

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[7] Examples of police misuse of force in the U.S. are abundant. See, e.g., Michael Schmidt and Matt Apuzzo (2015, April 8). Officer Is Charged with Murder of a Black Man Shot in the Back. *New York Times*, pp. A1, 14; Matt Apuzzo and Timothy Williams (2015, April 9). Citizens' Videos Raise Questions on Police Claims; Rising Use of Cameras. *New York Times*.

held that the provisions in the Terrorist Act violated the right to privacy guaranteed in Article 8 of the European Convention of Human Rights. The ruling recognized that the domestic law in question enacted to protect public safety was excessively broad in scope. Although the Court declined to rule directly on arguments concerning freedom of expression under Article 10 or freedom of assembly under Article 11, this ruling conveys a clear message that government may not limit those engaged in image capture without adequate justification.

Emerging jurisprudence in U.S. constitutional law related to the First Amendment supports the notion that the right to record enjoys recognition.[8] The landmark case that is regarded as establishing this right is *ACLU v. Alvarez* (2012). Although the U.S. Supreme Court denied certiorari, the appellate court held that the First Amendment should be construed to guarantee the right to record. A fairly substantial line of cases also vindicates this right.[9]

Not only are events that involve protest or government criticism treated as though they are not subject to image capture, many public places are deemed entirely off limits. For instance, individuals may not take pictures in parts of airports, many government buildings (even those under constant surveillance), and other public spaces. One photographer, Carlos Miller, encountered such tremendous opposition to taking pictures on the Metrorail platform in Dade-Florida that he pursued litigation and established a blog, "Photography Is Not a Crime" (Efrink 2013). To our surprise, even the main reading room of the Library of Congress displayed a "No Photography" sign prominently at the entrance when we visited to conduct research on this topic! Corporations with powerful lobbies try to criminalize the taking of pictures on their premises, sometimes misusing arguments

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[8] Seth F. Kreimer 2011. Pervasive Image Capture and the First Amendment: Memory, Discourse, and the Right to Record. *University of Pennsylvania Law Review* 159, pp. 335-409.

[9] The list of cases regarding the right to photograph, specifically, and the right to record, generally, is quite long—dozens in each state. The Supreme Court has taken only a few of them, and except for in the one instance from 1972, has always affirmed the constitutional right to record (*ACLU v. Alvarez*, 679 F.3d 583 (7th Cir., May 8, 2012), *Fordyce v. City of Seattle*, 55 F.3d 436 (9th Cir., May 16, 1995), *Glik v. Cunniffe*, 655 F.3d 78 (No. 10-1764) (1st Cir., Aug. 26, 2001), cert. denied, 133 S. Ct. 651 (U.S. 2012), *Iacobucci v. Boulter*, 193 F.3d 14 (1st Cir., Oct. 4, 1999), *Kelly v. Borough of Carlisle*, 622 F. 3d 248, 2010, *Smith v. City of Cumming,* 212 F.3d 1332 (11th Cir., May 31, 2000), cert. denied, 531 U.S. 978 (Nov. 6, 2000).

about trade secrets, e.g., Ag-Gag laws that apply to animal farms and slaughter houses.[10] In some jurisdictions, citizens may not take pictures of police officers and other government personnel.[11]

Obviously, individuals do not have the right to take pictures at any time and in any place. This right must be balanced against other important rights like privacy. If the visual can actually identify threats to democracy posed by the improper allocation of funds, threats to public health in factories that fail to comply with food safety laws, or corporate misconduct that threatens the financial health of many people, then image capture can prove to be extremely important.[12] Holding large institutions accountable, whether they are political, corporate, academic, or other, is a necessary aspect of a democratic order. So, while we acknowledge that the right to photograph is not unlimited, it should be broadly construed to permit image capture in the public interest.

The notion that individuals may take pictures in the public interest begs the question as to what constitutes the public interest. In our view, holding government officials accountable for misconduct, identifying business practices that endanger the health and well-being of workers and consumers, and misuse of military resources that violate international law would all fall into the category of serving the public interest. We realize that the right to photograph will have to be subject to balancing against other competing interests.

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[10] **Utah**: Utah Criminal Code, Offenses Against Property, Property Destruction, Agricultural operation interference—Penalties. Title 76 Chapter 6 Part 1 Section 112. https://le.utah.gov/xcode/Title76/Chapter6/76-6-S112.html

Missouri: MO CCS/HCS/SCS/SB 631, Sections 578.005 & 578.013 (2012, August 28)—Duty to Report Animal Abuse,

http://www.senate.mo.gov/12info/BTS_Web/Bill.aspx?SessionType=R&BillID=92863

Wyoming: Senate File No. SF0012 (2015): Trespassing to collect data,
http://legisweb.state.wy.us/2015/Introduced/SF0012.pdf

[11] *Jacobson and Ragan v. U.S. Department of Homeland Security, et al.* 2015. No. CV-14-02485-TUC-BGM.

https://globalfreedomofexpression.columbia.edu/cases/jacobson-ragan-v-u-s-department-homeland-security-et-al/

[12] For commentary on sanctions against photography in airports, see
http://www.welovedc.com/2010/09/09/tsa-warns-public-against-photographing-planes-yegad-no/   See also *NYT* article.

Figure 2.3. TSA poster image (2010)
See centerfold for this image in colour.

Philosophical Arguments for Image Capture

Democracies guarantee that citizens and others who reside within the borders of states have access to information about the behavior of government officials. The ability of journalists to document their conduct and misconduct enables the public to judge the legitimacy of the regime and its actions. Blocking access to and the dissemination of information about decision-making, policy implementation, and other actions is fundamentally

undemocratic. Policies of state secrecy that are misapplied to prevent individuals from taking pictures should be regarded as presumptively invalid.

The basic argument here is that the visual can help ensure limited government. Visual democracy takes as its premise the notion that the public can make better informed decisions if they can observe political processes and the results of government decisions. Some believe, for example, that public viewing of prison conditions and also of executions might erode support for current criminal justice policies. Allowing cameras in the courtroom might lead to allocation of resources to ensure more consistent compliance with due process standards.

Having argued that normative principles support a right to take pictures in the public interest, we turn now to issues associated with the proper exercise of this right. Those who capture images must shoot responsibly.

Ethical Aspects of Image Capture

One of the most basic ethical concerns is consent: Subjects should give consent before having their picture taken or used. Numerous incidents have occurred when individuals had their photos used without their authorization or taken under false pretenses.[13] Although doctrines such as fair use enable photojournalists to publish some images in mass media, distribution of images for commercial gain is not protected by rules like this.

Another problem with the use of images is the media hoax. Occasionally, a story released to garner sympathy turns out to be entirely fraudulent. "The babies in the incubator story" is a classic example of an "invented story" (Regan 2012). A public relations firm was hired to generate Ameri-

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[13] A famous example of misleading a subject is Dorothea Lange's picture of Florence Owens Henderson, known as the "Migrant Mother". Lange promised that her photograph would not be published and described it in ways she later said were inaccurate. Henderson felt ashamed being an icon of the Depression. This deception is discussed in more detail in Martinez (2015). D. Lange, Farm Security Administration, & LOC Staff. (1936/2004). Dorothea Lange's "Migrant Mother" Photographs in the Farm Security Administration Collection: An Overview [Library of Congress]. Retrieved January 30, 2009, from
http://www.loc.gov/rr/print/list/128_migm.html
The work of photographer Stephen McCurry has also raised questions about compliance with ethical standards. He took the famous *National Geographic* cover photo of Sharbat Gula, known as "Afghan Girl" when she was a young girl. See, e.g., Raymer 2016. On whether he digitally altered her eyes to enhance their appearance, see Nagar 2016.

can support for the first Persian Gulf War. A fabricated story was dissemi-
nated that Iraqi soldiers were stealing babies from incubators in Kuwait.
The unsubstantiated stories were not verified and circulated widely as part
of U.S. government propaganda to build public support for the war.
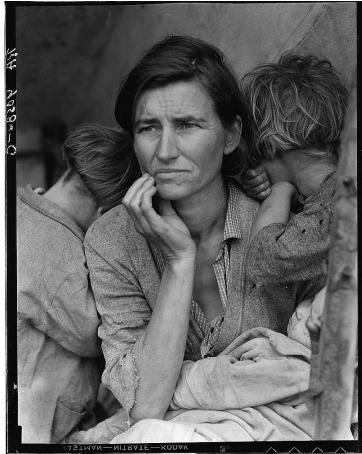

Figure 2.4. Florence Owens Henderson, "Migrant Mother" (1936), by Dorothea
Lange

Even if use of a photograph has been authorized by subjects, serious
questions may still arise about editing or altering pictures if that would
result in misrepresentation.[14] One striking example involves the UN High
Commissioner for Refugees releasing an image of a four-year-old child,
"Marwan," apparently crossing the desert from Syria to Jordan by him-
self.[15] With its initial caption, "Here 4 year old Marwan, who was tempo-
rarily separated from his family, is assisted by UNHCR staff to cross to

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[14] For example, in 2009 two female ministers in the Israeli cabinet were digitally
removed and placed by men because: "[p]ublishing pictures of women is viewed
by many ultra-orthodox Jews as a violation of female modesty." In 2002 the Har-
vard Crimson settled a lawsuit that involved a story about prisons entitled "The
Ceiling of America." The student publication had taken a photograph from the
files and had superimposed bars over the faces of two current undergraduate Afri-
can American students! The students sued the Crimson based on libel and invasion
of privacy. Anon. (1982).
[15] United Nations staff gave him this name to protect him.

cross the desert," the photograph did not generate a response. However, when Hala Gorani, a CNN news anchor, "retweeted" it with the caption "Crossing the desert alone after being separated from his family fleeing Syria," the image went viral and caused a sensation. Although Marwan was, in fact, in transit as a result of political violence in Syria, he was in the company of many other refugees, including his family. After the "heart-rending picture" was widely circulated, it led to a huge outcry over what was perceived as a misrepresentation of the situation.[16] The UNHCR representative "…clarified the circumstances surrounding the controversial picture of a Syrian boy seen crossing the Jordanian desert, saying that the boy was 'separated' and 'not alone'."[17] Of course, the tragic circumstances that forced families to flee from armed conflict in Syria seem to have been largely overlooked by those reacting to media coverage of child refugees in this context.

Other images that provoked controversy can be found in a book published by Jimmy Nelson, *Before They Pass Away* (2013). Emphasizing the risks of treating indigenous people as "exotic" and unchanged, Stephen Corry, director of Survival International, criticized the photographs in Nelson's book. Corry says the pictures are staged, resemble colonial portraits, and depict "tribal" people in a way that does not correspond to any social reality, past or present.

Sometimes, the image of a child is used for an appeal to provide financial assistance to needy communities. Donors contribute funds, assuming the support reaches the child whose photo inspired them to give. On occasion, there have been mistakes or fraud. For example, one donor decided to investigate the trail of funds, only to discover that while the child was in need and in the geographical location indicated, he and his family had never received any support.[18]

One of the most commonly cited examples of a self-aggrandizement through photographs is Kevin Carter's 1993 picture of a little girl in Sudan with a vulture perched nearby as part of reporting on famine conditions

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[16] Harriet Sherwood and Shiv Malik 2014, February 18. Image of Syrian boy in desert triggers sympathy—and then a backlash. *The Guardian*. Online.

[17] Anon. 2014, February 18. "UNHRC clarifies details of Syrian boy's desert crossing incident."
https://now.mmedia.me/lb/en/nowsyrialatestnews/535950-unhcr-clarifies-details-of-syrian-boys-desert-crossing-incident

[18] Diaa Hadid 2016, August 3. Tracking the Mystery of a Charity's Sponsored Child. *New York Times*, p. A7.