

ON LAW, AESTHETICS AND THE CAMERA

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[A] THE OMNIPRESENT

The camera, as a tool for making photographs and motion pictures, has played a central role historically, and its relevance has increased to the extent that it is deeply embedded in our everyday lives. It has not only been seen as a mode for artistic expression but also as a journalistic device chronicling personal and socio-political memories, and as a medium through which evidence is adduced in courts. While its uses are manifold (Sontag 1977; Berger 2013), I particularly wish to focus on the camera's socio-legal role.

Like the camera, the law manifests in many parts of our lives. This quality of the camera and the law of being *omnipresent* is what I wish to explore in this visual essay (see Figure 1). I will specifically focus on broad intersections between law and the camera through the various segments of this essay.

I will situate my research in this area under the larger realm of aesthetics. I will use and analyse visuals created by the camera, as well as paintings and sketches made by me. By doing this, I will note how the law interacts with the visuals captured by the camera in a plethora of unique ways. From the law's role and response towards memories created by the camera to the impact of the camera in the criminal justice system or on subjects being photographed and their privacy, the intersection is profound and complex. The state, through the law, not only operates to prohibit and restrict the visuals (and their dissemination) created by the camera but also employs the law as a means to use the camera to regulate society for security and other reasons. While the law is omnipresent, it is also absent (and sometimes conspicuously silent) in emerging technological developments, where keeping pace with the widespread use of dynamic visuals is often challenging.



Figure 1: “The Omnipresent” by Hamsini Marada.

Against this backdrop, my work can be viewed through the underlying lens of:

- a) the *photographer* as the artist, activist and journalist;
- b) the *viewer* of the camera visuals;
- c) the *law* that regulates the visuals, as well as the creator and viewer of these visuals.

In Figure 1, I explore the idea of *responsibility* and *ethics* that the photographer, viewer and the law must employ towards the subjects the camera captures and the overall photographic or cinematic representation. While many connections can be drawn between law, aesthetics and the camera through diverse perspectives, in

this visual essay, I am exploring select aspects of my research and teaching in my elective module Law, Art and the Camera.

[B] THE MEMORY KEEPER

A photograph is a memory keeper. From its early stages of invention, the camera has been used to preserve personal moments and document journalistic events (Berger 2013: 49). I am interested in looking at the camera as a mnemonic device that helps in building collective memories of communities and the nation. Collective memory is often used as a broad term to understand how people recollect and remember events of the past as

groups, communities and even as a nation (Kekki 2024). This social construction of memory might produce different socio-cultural realities in different identities (Halbwachs 1992). Therefore, it is important to assess *what*, *why*, and *how* people *remember* the moments, especially through photographs and cinema, as well as the legal implications that can ensue from them.

Often, reality has been evidenced through the reports given by images (Sontag 1977: 153). As Susan Sontag says, “Something we hear about, but doubt, seems proven when we are shown a photograph of it” (Sontag 1977: 5). Since photographs are seen as the embodiment of truth, events captured by images gain authenticity, legitimacy and become a passage to building a narrative around that image. When the Argentine Marxist revolutionary Che Guevara died in 1967, the photograph that was transmitted to the world of his corpse was seen as definite proof of his death, and the purpose of this photograph was to put an end to the long speculation of his whereabouts (Berger 2013: 4). However, the photograph of Guevara that was taken by Korda in 1960 is perhaps one of the most reproduced images in this world and has become a symbol of resistance (Lazo 2016). It is photos like these that become a part of the collective memory of future generations.

Like photographs, cinema contributes to cultural and popular memory (Kuhn 2002). Oishik Sircar meticulously analyses and discusses how a legal and cinematic representation of the grave atrocities committed during a pogrom would continue debates on justice and minority rights and further help in building collective memory and producing ways of remembering (Sircar 2024: 3). Additionally, law, as a regulatory tool, plays an important role in overtly protecting photographs and films, by not censoring or imposing unreasonable restrictions on them, especially when they are voicing dissent against a particular institution or regime (Marada 2022). Therefore, the law also aids in preserving collective memory.

While the camera helps in the persistence of memory, it also has the potential to obfuscate the memory. In assessing the relationship between a photograph and truth, Sontag concludes by stating that “photographs are as much an interpretation of the world as paintings and drawings are”. She makes this assertion after explaining how photographers such as Dorothea Lange and Walker Evans take multiple shots until they get a photograph that meets their notion of how a certain social issue must be represented (Sontag 1977: 6). Therefore, the image can easily be curated to the satisfaction of the photographer by carefully



Figure 2: “Collective Memory” by Hamsini Marada.

editing, omitting and manipulating a given scenario. I will look at two case studies to substantiate this point.

First is the story of Ashok Mochi, dating back to the communal riots in Gujarat, India, in 2002. To protect himself from the Hindu right-wing rioters who were attacking Muslims, he grabbed a saffron cloth and tied it around his head in fear of being mistaken for a Muslim man. According to Ashok’s account of the events, Sebastian D’Souza, a photo-journalist, asked Ashok to pose for a photo. Ashok grabbed an iron rod nearby and posed with outstretched arms that looked like a war cry against Muslims. This image

was published in the newspaper. The next day, Ashok Mochi became the face of the Gujarat riots and was misconstrued to be a rioter. He eventually was also charged under sections 435 and 436 of the Indian Penal Code 1860 for crimes of arson and causing destruction by fire and was arrested and served 14 days in jail. After this, he was released on bail (Mander 2016).

The second is the movie *The Photographer of Mauthausen*, which I have screened in my class (Targarona 2018). It is based on real events that took place in a Nazi concentration camp where a Catalan prisoner used his office job to steal the photo negatives of the

atrocities committed there. These photos later played a crucial role in the prosecution of higher-rank Nazis during the Nuremberg trials. But the movie also depicts how an SS officer tries to manipulate some images by editing them through light and says: "This is art. Some pictures have to be touched up, some others, only the staging." The movie also depicts encounter killings that were staged as escapes and were documented with the camera for official records (Targarona 2018).

While the notion of the most truthful image affirms our faith in the camera as a mnemonic device, manipulations made to images make us question the veracity of the documentation process and the memory we are made to remember. With artificial intelligence, deepfakes and other technological advancements, the apprehension only worsens.

I would end this segment with a quote by Jacques Derrida from *Archive Fever*:

... an archive is not a question of the past, ...

[rather], It is a question of the future, the question of the future itself, the question of a response, a promise and of a responsibility for tomorrow. (1995: 36)

Therefore, photographs as sites of memory need to be made and preserved with a lot of care,

consideration and empathy towards the subject and the shared meaning and narrative that will be built for the future. Law and ethics, as independent and interrelated disciplines, play an important role in the preservation of memory.

[C] THE JUSTICE SYSTEM

The camera holds an interesting place in the justice system. On the one hand, photographic records are extensively used in sites of investigation and adducing evidence in the courts. On the other hand, severe apprehension exists regarding the use of cameras within courtrooms and on court premises. While the former can be justified, given the sensitivity of some cases, the latter seems to be an unfounded fear couched in the garb of security. This becomes particularly fascinating when mobile photography is not frowned upon, but carrying a camera can attract attention.

There is another dimension to photography, especially in the criminal justice system—namely, the emotions that the images of a person under trial or a convict evoke in the minds of the public. I wish to focus on the nature of these images and the ethics of viewing them.

For example, mugshots have become a part of popular culture through film and media. They



Figure 3: Aerial view of the mural pasting, Tehachapi, California—art and photo courtesy of JR-ART.net.

are obsessively romanticised to the extent that auctions and exhibitions are held for mugshots (Finn 2009: 1). Most importantly, mugshots are photographic records created to indicate criminality. This leads to the immediate “othering” of the subject in the mugshot by the viewer. The gaze towards the carceral system has always been of fear and exclusion.

Against this backdrop, it is interesting to see the case study of the mural artist JR, who undertook a project in 2019 in a maximum security prison located in Tehachapi, California (JR 2019). He worked on a collaborative

art project with the inmates along with formerly incarcerated individuals and prison staff, by photographing them and creating a magnanimous mural installation in the central yard (Figure 3). He also recorded their individual stories and published them in a podcast. This project reconnected many prisoners with their families and was life-changing for some of them (JR 2022). This is a great example of how the gaze towards the inmates can be softened with sensitivity as opposed to the hardened approach adopted towards the visuals from the carceral system.

[D] THE GAZE

Taking photographs is a voyeuristic act; it encompasses keen observation and is also a form of passive participation in whatever is happening (Sontag 1977: 11). The gaze of the photographer is inevitably linked to their positionality and identity vis-à-vis their subject's identity. Lalla Essaydi, a Moroccan photographer, created a series of photographs called *Harem* (Jansen 2019), in which she “mimics and subverts Orientalist tropes”. In an interview she stated:

I am using the female body to complicate assumptions and disrupt the Orientalist gaze. I want the viewer to become aware of Orientalism as a projection of the sexual fantasies of Western male artists, in other words, as a voyeuristic tradition, which involves peering into, and distorting private space (Nysten 2017).

Guerilla Girls, an anonymous group of feminist artist activists have criticised the gender and ethnic bias and the “male gaze” in art, film and pop culture (Guerilla Girls 2021). Annie Leibovitz, despite being an acclaimed female photographer who is well-known for her dramatic celebrity portraits, has been criticised for not doing her subjects justice in capturing their dark skin tones due to her white gaze (Bero 2022).

Amidst these debates over identity and gaze, I want to also address the concept of gaze from the perspective of privacy and consent. The celebrity phenomenon and the paparazzi culture have spiralled debates on privacy, personal space and ethics in photography. One of the cases that shocked the world was a photograph taken at the scene of the death of Diana, Princess of Wales (an event often linked to the car in which she was travelling being aggressively chased by the paparazzi in Paris). The legalities surrounding the invasion of privacy versus media outlets' contention of public interest in the publication of the photograph have been dealt with in many studies (see, for example, Rolph 2014).

Douglas v Hello! is an important case that discusses privacy and breach of confidence with respect to photographs of actors Michael Douglas and Katherine Zeta Jones leaked by the paparazzi to the media outlet *Hello!* magazine. In this case, the Court of Appeal differentiated “photographic information” from verbal description and asserted that:

Special considerations attach to photographs in the field of privacy ... They enable the person viewing the photograph to act as a spectator, in some circumstances a voyeur would be the

more appropriate noun, of whatever it is that the photograph depicts. As a means of invading privacy, a photograph is particularly intrusive (*Douglas v Hello!* 2006: 157).

The notion that a photograph is information and thereby superior to the spoken word has been contended by various theorists who have written on photography, and, admittedly, more nuance can be brought to the reading of a photograph (Rolph 2014). Nevertheless, it does not take away from the fact that photographs can be intrusive and violative if snapped without consent.

The issue of lack of consent often surfaces in street photography. Street photography is candid photography done in public spaces. While it is not necessarily so in all cases, human subjects are usually an integral part of this genre. There are some ambiguities surrounding the legalities of street photography because it is not explicitly prohibited in many countries. However, ethical concerns often arise, especially in situations when a subject is apprehensive or uncomfortable about being photographed. Photographers like Bruce Gilden have taken the concept of candid photography a notch higher by aggressively confronting the subject from a close distance and taking their picture to capture so-called “authentic expressions” (Helm

2024). This makes us question at what cost photography is creating art or documenting facts.

This brings me to the work of the photographer Arne Svenson, who further pushes the definition of street photography. In the series titled *Neighbours*, Svenson used a telephoto lens to take photos of his neighbours through the expansive glass windows of Manhattan. The faces of the subjects were not usually visible, but it still makes us reflect on the process of peering into the domestic spaces of people to capture particular moments. When his neighbours learnt that they and their children were the subjects of Svenson’s photography, they filed a legal suit for breach of privacy. Both the district court in 2013 and the Appellate Court in 2015 dismissed the action in favour of Svenson (*Foster v Svenson* 2015). While the court stressed the First Amendment of the Constitution of the United States (1789) on freedom of expression, Justice Renwick made an observation that photography can be legitimately intrusive and offensive, and complaints about it would be best addressed to the legislature (*Foster v Svenson* 2015). This case reminds me of the Alfred Hitchcock movie *Rear Window* (Hitchcock 1954). The protagonist photographer picks up his camera and uses it to watch his neighbours and keep himself entertained because he is confined to his house due to a broken leg. In



Figure 4: “Windows” by Hamsini Marada.

the film, his actions were shown to be frowned upon by both his nurse and his girlfriend. However, the fact that he was able to detect a crime due to his incessant observation through the camera seems to be the only redeeming factor in the movie for this dubious behaviour.

In this context, I position the artwork *Windows* (Figure 4) as a metaphor for one’s personal space, be it the confines of their home, where the window acts as a means for the inhabitants to look outside but not the other way round, or for people or celebrities occupying public spaces but in a private sense,

where the metaphorical window exists as a barrier to unhinged access—which technically means that not everything or everyone can be photographed at all times. I have purposefully made the buildings in the painting look like the film rolls of a camera.

Noting the reaction of the law in the abovementioned cases, it becomes imperative to look beyond the law and reflect on the ethical considerations involved in photography. Therefore, one must employ nuance and context to take photographs in public spaces.

[E] THE POWER

Being in possession of a photograph is power.

Although paparazzi, photo-journalists, or anyone in possession of the photograph and the knowledge can thereby command power, I wish to focus particularly on the role of the state and its agencies, including the police. In this segment, through the painting *Pieces of Power* (Figure 5), I visually represent how the state promotes or suppresses photographs. I also highlight the state's use of the camera to survey and monitor individuals, communities, and so forth, which in turn impacts their behaviour.

The painting *Pieces of Power* is inspired by the lines from George Orwell's *Nineteen Eighty-Four*:

Power is in tearing human minds to pieces and putting them together again in new shapes of your own choosing (Orwell 1949: XX).

I depict a cubist human head cut into multiple pieces and re-arranged to the liking of the state and its agencies. This painting portrays the level of control the state has over our minds, our behaviour and our activities. I link this control to how the state treats the images or visuals from the camera. Costas Douzinas propounded the phrase “regime of visibility” to articulate how every epoch, depending on the political power in dominance, supports a certain kind of imagery and rejects or represses the ones that harm its political aesthetics (Douzinas 2000). Drawing from the regime of visibility, it can be clearly seen how state authorities have suppressed photographs emerging out of political movements or photographs that shed light on government failures during the pandemic in countries like India, by censoring them and subjecting photojournalists to arbitrary travel bans (Hassan 2022). This, I argue, also impacts and manipulates the collective memory of the nation in the long run (Marada 2022).

The “eye” in the painting is an adaptation of the Orwellian Big Brother, which is a synecdoche of mass surveillance by the authorities. Visuals through



Figure 5: “Pieces of Power” by Hamsini Marada.

surveillance cameras with inbuilt face recognition technology, social media or even smartphones are constantly used by the state to monitor activities that are not of the state’s “own choosing” and are used to suppress dissensus (Melgaco & Monaghan 2018: 2).

This painting laments the use and misuse of the camera by powerful state authorities which results in the alteration of individual behaviour as well as distorting the collective memory.

[F] CONCLUDING NOTES

Ever since the creation of the first camera, still and motion photography have perpetually struggled with establishing a serious place for themselves in the realm of fine arts (Berger 2013:17). This gatekeeping stems from the argument that the camera merely replicates reality rather than creating it, *albeit* subjectively, which is what “real” art seems to

be doing. However, despite this ongoing debate, the camera has not only been seen as an instrument for artistic expression but has also become a device without which we cannot conceive life in this contemporary world.

Looking at the law and the camera through the lens of memory, justice, gaze and power, the overarching theme in this

visual essay has been that of developing ethical and responsible ways of engaging with the camera. The essay also reflects on the role and responses of law in various scenarios. It concludes that ethics, as a field, can play an important role in filling the gaps in understanding and interacting with the camera where the law is ambiguous or silent.

About the author

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