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Michael Phoenix

Images and Human Rights Towards Sovereignty or Subversion

EMA, The European Master's Programme
in Human Rights and Democratisation

MICHAEL PHOENIX

IMAGES AND HUMAN RIGHTS:
TOWARDS SOVEREIGNTY OR SUBVERSION

FOREWORD

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The selected theses demonstrate the richness and diversity of the EMA programme and the outstanding quality of the work performed by its students. On behalf of the Governing Bodies of EMA and of all participating universities, we congratulate the authors.

Prof. Manfred NOWAK
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This publication includes the thesis *Images and Human Rights: towards Sovereignty or Subversion*, written by Michael Phoenix and supervised by Guy Haarscher, Université Libre de Bruxelles.

BIOGRAPHY

Michael Phoenix was born in 1991 in Belfast, Northern Ireland. He studied law and philosophy in Dublin and Stockholm before working for several years as a teacher, writer and with human rights organisations.

ABSTRACT

The aim of this thesis is to investigate the impact of images upon the human rights movement. It will examine the potential of images to advance and repress human rights by drawing out trends in the ways images are formed and used in human rights contexts. It will consider the extent to which access to the protective web that human rights might provide is mediated visually; the extent to which visual representations determine who can and cannot be seen through the lens of human rights. It will find that two forces are engaged in a struggle for control over this lens, and that this can be seen in specific ways in which human rights images are being created, used and interacted with. It will be argued that the effects of this play out on the plane of intersubjectivity, the space in which human rights violations emerge and in which they might be remedied and prevented.

Key words: images, sovereignty, subversion, control, collaboration, political imagination

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TABLE OF ABBREVIATIONS

CRA	Congo Reform Association
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTY	International Criminal Tribunal for the former Yugoslavia
IDF	Israeli Defence Forces
NGOs	Non-governmental organisations
UDHR	Universal Declaration of Human Rights
UNHRC	United Nations Human Rights Committee

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1.

INTRODUCTION

1.1 CONTEXT AND JUSTIFICATION OF THE TOPIC

'... man is a moviegoing animal'.¹

There is something very communicative at the heart of human rights. Following its official word,² as a seed it was an ideal – an instinctive, utopian, simultaneous hope *and* desire for the way our being in this world together might be understood. It marked an imaginative attempt to grasp the anguish of the human situation, of our being thrown into the world, and to shape responses to it around a conception of ‘dignity’.

Ideas are creations of imagination. They mark engagements in the process of understanding the world. And they manage to do so to greater and lesser extents, for the better and the worse. The idea of human rights has been no different. As such, from its birth it needed to reach out and share something of itself. It needed to try and transcend its origins; to take something from its surroundings in order to feel its own existence, gather up its consciousness, test its truthfulness and, ultimately, as a light to glow on or go out. It did so through acts of self-representation: through action and discourse, and one effort fed into the other at an irregular rate, with the intensity of its rhythm constantly changing. Ideas never lie still. Understanding is a process, never a conclusion. And so those involved in the idea of human rights – those who had seen it –

¹ Giorgio Agamben, ‘Difference and Repetition: On Guy Debord’s Films’ in Tom McDonough (ed), *Guy Debord and the Situationist International* (MIT Press 2002) 314.

² With this official word declaring ‘recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world ...’ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III).

were forced to make decisions. In their making of them the first tensions in the human rights movement emerged. They came with the question of what the idea, once uttered, might mean.

As it broached its first steps and attempted its first words out into the world, some of those in whom the idea of human rights had caught hold fought for its presencing through action we might see as concrete and immediate.³ It happened in the process of the movement's announcement in 1948.⁴ Yet in the same moment, others involved with it preferred to push the idea towards an almost exclusive realm of discourse, tightly policed and narrowly bound, and to merge the two streams building from the idea there so as all might have fallen into the sometimes spinning, sometimes dynamic, plate of constant converse.

Neither movement has fallen away as time has passed. The strength and drive of the second force, that moving towards discourse and touches here and there of action, has grown in strength if not in number.⁵ And in this way the discursive components within human rights have increased their command over the development of it as an idea. They have gained greater responsibility for its direction. As a result, if we want to understand the meaning and power of the movement today, we have to turn our eyes here, towards the ways in which human rights are embodied before realisation and beyond action. We have to reach out towards the communicative paradigm of discourse-as-action that swirls around human rights.

What we first touch when we do so are two forms of discourse, sometimes over-lapping and sometimes standing alone: the visual and linguistic.⁶ I will build this thesis on the partial assumption that in the space that the two take up the visual expression of the ideas of human

³ See, for example, the work of minority groups and women's rights activists highlighted in Susan Waltz, 'Reclaiming and Rebuilding the history of the Universal Declaration of Human Rights' (2002) 23 (2) *Third World Quarterly* 437-448.

⁴ Note, for example, the role played at this point by the Indian feminist, anti-colonial activist, community organiser and writer Hensa Mehta, as highlighted in Gita Sahgal, 'Who Wrote The Universal Declaration of Human Rights?' (*OpenDemocracy*, 10 December 2014) <www.opendemocracy.net/5050/gita-sahgal/who-wrote-universal-declaration-of-human-rights> accessed 1 April 2018.

⁵ For a discussion of this development framed in terms of the gap between human rights standards and enforcement, see Gerd Oberleitner, 'Does Enforcement Matter?' in Conor Gearty and Costas Douzinas (eds), *Cambridge Companion to Human Rights Law* (CUP 2012) 249-268.

⁶ Perhaps to the detriment of the auidial or acoustic. For an interesting discussion of this, see Nancy Rose Hunt, 'An Acoustic Register, Tenacious Images, and Congolese Scenes of Rape and Repetition' (2008) 23 (2) *Cultural Anthropology* 220-253.

rights has held its own, and perhaps has even come to dominate human rights discourse; that we can consider it as ‘a system [which] adjusts the relations between what can be seen and what can be said, between the unfolding schemas of intelligibility and the unfolding of material manifestations’.⁷

‘Dignity’ was the word that came to name the imaginative heart of human rights. Its enunciation was at once a truth claim and a claim for truth. The European Enlightenment provided the basis for what would become the dominant conception of its essence: man’s capacity for individual autonomy through public communication from reason. Following this tradition, after Auschwitz the dignity in human rights defined itself in immediate terms.⁸ It called itself universal, omnipresent and self-evident,⁹ and located itself temporally, already within the present.¹⁰

Amidst this proclamation of its place in the present, however, dignity simultaneously projected itself into the future. It considered itself as a move from ignorance towards knowledge,¹¹ imagined as coming about through the exposure of truth in the course of its development, and the simultaneous realisation of truth through its vision’s adoption in the public sphere.¹² It aimed at saving the past and the future *for the present*.

These existential and temporal elements stand at the core of human rights. They did so at its birth and do so today. They laid the ground for the intimacy that can be traced between images and human rights, for the significance of images has always been connected to truth and revelation; to the building of meta-bridges between action and ethics, and drawing lines of vision to and from reality.¹³

⁷ Jacques Ranciere, *The Future of the Image* (Verso Books 2009) 117.

⁸ This being the case, we should remember that there always have been, and remain, alternative conceptions of ‘dignity’. For a look at them in detail, see Boaventura de Sousa Santos, ‘Towards a Multicultural Conception of Human Rights’ in Felipe Gómez Isa and Koon De Feyter (eds), *International Human Rights Law in a Global Context* (University of Deusto 2009) 97-123.

⁹ To be human, said the revolutions of the 18th century, and of human rights in the 20th, was to be free and equal *in* human rights. *In* them, that is, as we must be *in* anything that is deemed part of the essential fabric of our world.

¹⁰ See Lynn Hunt, *Inventing Human Rights. A History* (WW Norton & Company 2007) 21-28.

¹¹ In Kant’s words, from man’s ‘self-incurred immaturity’. Emmanuel Kant, *An Answer to the Question: What Is Enlightenment?* (30 September 1784) <<http://www.columbia.edu/acis/ets/CCREAD/etscc/kant.html>> accessed 1 April 2018.

¹² For more on this, see Thomas Keenan, ‘Mobilizing Shame’ (Spring/Summer 2004) 102 (2/3) *South Atlantic Quarterly* 436.

¹³ See Susan Tascon, ‘Considering Human Rights Films, Representation, and Ethics: Whose Face?’ (2012) 34 *Human Rights Quarterly* 864-883: ‘While semantically speaking the visual image is but another type of symbol – and thus already a mediated experience, because of its highly motivated and iconic status as a symbol – it is often read as a transparent form of communication and is closer, therefore, to “the truth”’ 869.

This has been particularly pronounced at the western, Christian roots of human rights. The anguish of Christ was *seen* on the cross, *witnesses* attested to his burial, Thomas *saw* and believed that that he had risen. The objects of Christian iconography work as symbols and epistemic stimuli; as pieces of knowledge that reassure believers that a truth exists and that they have access to it or, at the very least, that it has access to them. As windows both of and towards truth, icons become sacred symbols of what Jean-Luc Nancy has called ‘the distinct’:¹⁴ the ‘impalpable’¹⁵ real beyond the real. Walter Benjamin identified this in a characteristic he named ‘aura’: ‘A peculiar web of space and time: the unique manifestation of a distance, however near it may be’.¹⁶ Within the context of human rights in the West, might it be that images, even those of violations, have played a similar role, serving as windows to the truth that the movement proclaimed? Might they stir reactions reinforcing the basic claims of human rights as they officially emerged, and argue for its continued relevance whilst at times glossing over or even covering up its problems, antagonisms and contradictions?¹⁷

Although this thesis will take an earlier date as its starting point, one can think of the photograph of Eleanor Roosevelt holding the large format print of the Universal Declaration of Human Rights (UDHR) as a potential example of this in practice. The photograph stands as one of the defining images of human rights. We can talk about ‘*the* photograph’ here as although there were three photos taken of Roosevelt holding the UDHR that day in November 1949, where they have found a place in the popular consciousness they seem to have fused into one single image. And here something might be revealed, for the key difference between the three photos is not that Roosevelt smiled in one and appeared stern in the others, but that in one she held the English version of the UDHR, in another the document in Spanish and in the third the document in French.¹⁸ In all three photographs and languages, the text is shown.

¹⁴ See Jean-Luc Nancy, *The Ground of The Image* (Jeff Fort tr, Fordham UP 2005) 1-15.

¹⁵ *ibid* 2.

¹⁶ Walter Benjamin, *A Short History of Photography* (originally published in *The Literarische Welt* of 18.9., 25.9. and 2.10.1931).

¹⁷ The connection between Christianity, human rights and images is explored in literature surrounding the Congo Reform Movement. This will be discussed at a later point. However, it might be interesting to note here the idea that photographs brought back from Leopold’s Congo were perceived as the truth of what was occurring there as a result of the photographers in question being missionaries. See John Pepper, ‘Snap of the Whip/Crossroads of Shame. Flogging, Photography, and the Representation of Atrocity in the Congo Reform Campaign’ in (2008) 24 (1) *Visual Anthropology Review* 55-77.

¹⁸ All three photographs can be seen at <www.unmultimedia.org/photo/detail.jsp?id=839/83980&key=14&query=universal%20declaration&sf=> accessed 1 March 2018.

But in each of them all but the title of the UDHR is indecipherable. And yet this has not impeded the canonisation of *the* photograph within the official, western, human rights movement. The reason, perhaps, is that from the moment it was released, this image formed part of the iconography of human rights. It was and remains the sacred and the distant, symbolising, across all temporality, the existence of the truth of human rights. This thesis will be an attempt to understand the extent to which this has truly been the case, along with its potential implications.

I have chosen to investigate the relationship between images and human rights as opposed to that between human rights and literature, theatre, music, radio or any other cultural form or medium. This is not to say that these relationships do not exist or that they are not worth considering, but rather that none have played a role which has so consistently mirrored and been tied to the theoretical grounding and material evidencing of human rights itself in the way images have. Beyond this, further reasons also exist to motivate the choice of images over other forms of ‘contemporary cultural production’.¹⁹ Firstly, the prevalence of the visual within the context of human rights both historically and today, whether it has been as a form of evidence, a means of violation or within advocacy or activism; and, secondly, the prevalence of images in our daily life, in particular online – the expansion across our lives of a visual, digital matrix mediating our world.

My investigation, to a certain extent, is based on the suspicion that these factors have combined to increase the significance of images as battlegrounds in an ongoing struggle to determine the past, present and future significance of human rights. For images never float into existence. They always bear a ‘force’,²⁰ even if this may be indefinite or transient. This force defines them and their symbolic content at the point when they are exposed for resonance – when they too seek transcendence. As Susan Tascon says of film, its ‘power does not lie simply in its utilitarian application, but rather ... its ability to be non-neutral; it is ideologically and culturally loaded’.²¹ Like language, images are never neutral. They ‘do not create meaning without framing’.²²

¹⁹ Here borrowing this term from Mark Fisher in Mark Fisher, *Ghosts of My Life: Writings on Depression, Hauntology and Lost Futures* (Zero Books 2014) 19.

²⁰ Nancy (n 14) 2.

²¹ Tascon (n 13) 865.

²² Meg McLagan, ‘Human Rights, Testimony, and Transnational Publicity’ in Michel Feher (ed), *Non Governmental Politics* (Zone Books distributed by MIT Press 2007) 308.

It is the aim of this thesis to contribute to our understanding of the forces acting upon images within the context of human rights, and to reflect upon this relationship and its importance in a wider context. Its goal is to elaborate some tentative suggestions which may contribute to a move towards a more attentive, watchful approach to the use of images in human rights contexts, and to raise some potentially useful questions about the meaning of human rights theory and practice along the way. A further aim, which I state here without much optimism, is that the work may inspire some action towards the release of those film-makers, photographers and journalists imprisoned for their work amidst the dynamics of this relationship, and the implementation of practical measures for the protection of all socially minded film-makers and photographers who find themselves at risk as a result of their activism and work.

In attempting to do this, I will argue that within the human rights movement, in all its multi-layered complexity, images have existed historically as one of the many sites of struggle over the material impact and ontological meaning of human rights themselves, and that they continue to mediate the meaning of human rights. I will claim that this confrontation has been and continues to be focused defining who can and cannot be seen through the lens of human rights. I will argue that this struggle is marked by two interlocked movements: one towards sovereignty, and the other towards subversion. I will argue that today, the tension between these two duelling forces is expressed in several distinct arenas. My thesis rests on the belief that the analysis and juxtaposition of these examples can provide useful insight into the nature of this tension and the extent to which it impacts upon the potential of the human rights movement. This will be reflected in suggestions and conclusions as to where the relationship might go in the future.

I will begin, in chapter two, with a definition of the first force engaged in this confrontation, which I will call the *movement towards sovereignty*. After unpacking this concept, I will go on to discuss four specific areas, more thematic groupings than individual case studies, wherein the manner in which this movement impacts upon human rights will be elaborated upon. I do not imagine providing an encyclopaedic overview of what are complex and dense subject areas, all of which stand in their own right and upon which a wealth of research exists. Rather, I will focus exclusively on the role of the image within these areas, and the direction they bend in relation to human rights. I will discuss the use of images as threat; visual surveillance; freedom of expression and the use of images

online; and trends in human rights exhibitions and reporting.

In chapter three, the second dynamic I identify in the relationship between human rights and images, which I will call the *movement towards subversion*, will be discussed in detail. Four areas in which this movement can be seen to exert itself will be elaborated upon, namely: in advocacy towards a right to record; visual jurisprudence; the use of new visual technologies and strategies; and collaborative representation in film and photography.

In chapter four, I will reflect upon these two movements with reference to insights offered by those working on the line between images and human rights, with whom I will conduct interviews. Among those interviewed will be human rights activists, filmmakers and members of non-governmental organisations (NGOs).

In chapter five, I will consider all that we have discussed. I will reflect on the wider implications of the dynamics identified within the relationship between images and human rights in an intersubjective world. I will then conclude the thesis with a tentative suggestion as to how the tension between images and human rights might develop.

1.2. METHODOLOGY

What I am proposing here is a relatively novel project. It is always difficult to know where and how to begin an undertaking like that, whether it be big or small. But a start has to be made somewhere in order to allow for something to follow. It is my hope that by making such a start, accepting that a foot might inevitably be put wrong here or there, I might disturb something, shake some dust and make space for whatever needs to follow.

Although much has been written about images across a wide range of disciplines, little has been written about the relationship between images and human rights directly. Two works exist, however, which do just that: *Images and Human Rights, Local and Global Perspectives*, an interdisciplinary collection of short essays examining the relationship between the two, edited by Nancy Lipkin Stein and Alison Dundes Renteln,²³ and *Human Rights in Camera* by Sharon Sliwinski, in which

²³ Nancy Lipkin Stein and Alison Dundes Renteln (eds), *Images and Human Rights. Local and Global Perspectives* (Cambridge Scholars Publishing 2017).

it is argued that human rights rest upon the recognition of others by spectators, as made possible through visual encounters.²⁴

I propose to build my argument in this thesis on the basis of close, critical engagement with literature relevant to the topic. As such, much will be drawn from these two works. However, on their own they do not allow for the development of a substantial response to the question of the relationship between images and human rights. As such, I will also conduct a critical examination of varied works from secondary fields of literature. Here, I will search for ‘traces’ which might lead back or connect to the relationship between images and human rights. These secondary sources shall come in two forms: those written around the topic of images and human rights, and those written about human rights and images separately and specifically. Within the first form, the majority of the source material will be drawn from academic research on images and humanitarian action, with images in this instance primarily meaning photography and film. Of this there exists a great amount. It will also be drawn from research discussing human rights in a digital world, on which there is more and more work being done. Within the second form, the majority of the material will come from film and photographic theory, works on the history and development of human rights, and the fields of continental philosophy and visual anthropology. Analysis of direct sources, taken from human rights exhibitions, films, videos, photographs, campaigns and reports will be used to compliment these sources, as will interviews conducted with individuals involved with images in human rights contexts.

I do not propose to write the history of images and human rights. Disputes continue to rage about just when human rights were ‘born’,²⁵ and pinpointing where they first intersected with images would prove just as problematic. In appreciation of this, I propose to delineate my research, and look at the interplay between images and human rights within a strict frame of time. As a cut-off point, I will use the beginning of the campaign of the Congo Reform Association (CRA) in 1904, which marked the initiation of ‘the twentieth century’s first great human rights movement’,²⁶ and in which images played a crucial role. In my search for

²⁴ Sharon Sliwinski, *Human Rights in Camera* (Chicago UP 2011). On this summary, see 47 and 56.

²⁵ See Samuel Moyn, *The Last Utopia: Human Rights in History* (Harvard UP 2010).

²⁶ Sharon Sliwinski, ‘The Childhood of Human Rights: The Kodak on the Congo’ (2006) 5 (3) *Journal of Visual Culture* 334.

direct examples and sources, with one or two minor exceptions, I will go no further back than this. In coming to this decision on a starting point, several other choices were considered, including the Lisbon earthquake of 1755, the French Declaration of the Rights of Man in 1789, the liberation of the concentration camp at Dachau in 1945, the making of the UDHR in 1948 and the first steps of globalisation in the 1970s. Arguments could be made for all of these as temporal starting points for this thesis, however, with all projects there are always roads not taken and these are just some of mine. Although this may impose limitations on my investigation, I do feel that it may provide some much needed focus, especially when space and time constraints are borne in mind.

I am aware of the challenges posed by the interdisciplinary nature of my research and source material, however, I feel it is necessitated by the scarcity of direct research on the topic. I am also conscious of the potential pitfalls in the idea of searching for traces to shine a light on the topic of discussion, an approach Sliwinski highlights as being adopted by Walter Benjamin and aligned by him with dream analysis.²⁷ Such an approach surely risks some things being overlooked and others overemphasised. My fears here are clear: inaccuracy and distortion. However, I feel that at this stage of the question's development, taking such risks is not only necessary but useful. Furthermore, I feel that it may be particularly well suited to the topic at hand, for if something sacred has indeed been attributed to human rights images throughout the history of the movement, if there is something of 'a familiar dream of liberation and redemption'²⁸ at their core, then a form of triangulation might be needed to wake us up (!) to this. As Sliwinski notes, 'For Freud, the task of dream analysis is to tear patients away from the illusion ...'²⁹ It is my hope that my method may also have the capacity to do this; to create space for thought, reflection and innovation. I accept the risks associated with it, however, I do so in the hope that they might be mitigated by competing views to be found in the varied sources of literature, by the use of examples drawing from images emerging in human rights contexts, and through the interviews conducted with those working on this line in the human rights field.

²⁷ 'Passagen-Werk was to offer a historical study akin to dream analysis, that is, a methodology that could reveal unconscious wishes contained within the material form.' *ibid* 355.

²⁸ *ibid* 356.

²⁹ '... to show them again and again that what they take to be new, real life is actually a reflection of the past'. *ibid* 357.

2.

TOWARDS SOVEREIGNTY

2.1 A DEFINITION

*'Power is no longer substantially identified with a particular individual who possesses it or exercises it by right of birth. It becomes machinery that no one controls.'*³⁰

In order to understand the forces at play between images and human rights, we first have to consider the question of whether or not we can imagine and accept a limit to the 'human' or the 'who' of human rights. That is, we must consider the question of whether the 'human' which pre-fixes the 'rights' is inclusive or exclusive in its character. Does this 'human' act as a border, limit or frame, or does it gesture, linguistically and symbolically, towards an undelineated plane of potential rights and, crucially, rights-holders? This question arises when we consider the relationship between images and human rights as it is precisely in images, rather than international agreements, legal texts or academic scholarship, that human rights most frequently transcend the particular and enter into the 'political imagination', described by Ariella Azoulay as 'a form of imagination that transcends the single individual alone and exists *between* individuals and is shared by them'.³¹

Images are objects of a subject's visual perception that really exist in the world. To move into the field of science for a moment, they play a crucial role in our physiological struggle to make sense of our

³⁰ Michel Foucault, 'The Eye of Power' in Alex Farquharson (ed), *The Impossible Prison. A Foucault Reader* (Nottingham Contemporary 2008) 14.

³¹ Ariella Azoulay, *Civil Imagination: A Political Ontology of Photography* (Verso 2015) 5.

environment and ‘narrate the past and the present’³² in response to it. Images feed into a process of cerebral categorisation whereby ‘folders’ are created in our memory from information gathered in the past. These are then used as referential sources that serve to decode visual information that confronts us in the present and allows us to respond to it.³³ The images we see on a regular basis ‘prime us to navigate whole classes of images in prescribed ways’.³⁴ These categories may not be definitive. The possibility to alter, overrule and dump categories and cases of categorisation may always be available.³⁵ However, they do act as baselines or standards; as the default to be challenged or acquiesced to. They are defined by their borders and, crucially, the rigidity with which they are fixed.

Human rights related images work in the same way. Within the political imagination they define the borders of human rights; of who can and cannot be seen through the movement’s lens. Considering another as holder of human rights involves imagination. As Azoulay underlines, however, ‘The imagination is always shot through with splinters of images that have their source in the outside world and in other people’.³⁶ Images of human rights, and the ways we react to them, always ‘succeed in a world’.³⁷ This world is full of forces.

Before we can go further with this thought, we have to deal with a supplementary question already beginning to raise its head: what do we see when we see human rights? Or, more simply put, what do human rights look like? If we try to answer this question by turning to positive presencing of human rights, we might come across images of assembly and protest, or images depicting scenes liberation. However, the right to protest itself is constantly targeted with the fact and threat of erasure; freedom of association and assembly being among the most frequently

³² Sarah Brown, ‘Perception of the Visual. We See With Our Brains’ in Nancy Lipkin Stein and Alison Dundes Renteln (eds), *Images and Human Rights. Local and Global Perspectives* (Cambridge Scholars Publishing 2017) 60.

³³ ‘The eye scans for features while the brain retrieves information from memory, trying to attach the present visual information with something similar in the past.’ *ibid* 65.

³⁴ Farida Vis and Olga Goriunova (eds), ‘The Iconic Image on Social Media: A Rapid Research Response to the Death of Aylan Kurdi’ (Visual Social Media Lab 2015) 48.

³⁵ ‘We know ‘cortical representations are triggered either by perception or internally retrieved with recall, imagery and simulations. But mindsets would imply that we have a sustained (though *updatable*) list of needs, goals desires, predictions, case-sensitive conventions and attitudes.’ Brown (n 32) 67 (emphasis added by the author).

³⁶ Azoulay (n 31) 4.

³⁷ Brown (n 32) 68.

limited and highly regulated and bureaucratised rights amongst those enumerated.³⁸ And furthermore, a question can be raised about whether a connection is actually made between images of protest and human rights, and if it is, whether it is not the content of the demonstration – the thing being targeted – rather than the act of demonstrating or protesting itself that is seen and considered in terms of human rights. The same can be said for scenes of liberation, in which groups and individuals are situated in reference to the past violation of their rights.³⁹ Is it not rather the case that the visualisation of human rights most commonly involves the visualisation of human rights *violations*? In images not of the absence of rights, but of rights in a *cowered mode* – in the defilement of the human through the transgression of their crucial characteristic for the sake of human rights, namely, being a being who holds rights.⁴⁰

Human rights violations – social and cultural as much as civil and political – have always occurred on a mass, daily scale. Through images however, and in particular with the expanded reach and immediacy of new forms of media, a large proportion of the world population has been carried into the role of witness to this fact. As Brown highlights, ‘Social media and the immediacy of online access have made viewing of human rights issues instant, often unfolding in the present moment’.⁴¹ Human rights come to exist between people – within the political imagination – through the witnessing of human rights violations. This might occur in person, but more predominantly it will come in a secondary-manner, at a distance.⁴² For our purposes, human rights violations can be defined as repressive acts perpetuated against individuals and groups seen to be human and thus deemed holders of rights.

But who is a holder of rights? This returns us to our initial question concerning the ‘human’ of human rights. And it returns us there

³⁸ See ‘Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association – Observations on communications transmitted to Governments and replies received’ (2017) A/HRC/35/28/Add.3.

³⁹ Consider, for example, the photographs of liberated prisoners from Dachau as discussed in Sliwinski (n 24) 83-110.

⁴⁰ There are some weighty questions that arise from this line of thought, but they lie beyond the scope of this thesis. As a starting point, see Hannah Arendt, *The Origins of Totalitarianism* (Penguin Books 2017) 267-302.

⁴¹ Brown (n 32) 69.

⁴² For a more in-depth discussion of the dimensions and implications of witnessing today, see Sam Gregory, ‘Ubiquitous witnesses: who creates the evidence and the live(d) experience of human rights violations?’ (2015) 18 (11) *Information, Communication & Society* 1378-1392.

specifically via images for the role they play in answering this question. Brown states that, 'In handling issues of human rights, the visual can narrate a powerful and visceral reaction by the viewer. The physiological process, memories, mindset, and established beliefs generate *what we see*'.⁴³ The holder of rights – the 'human' of human rights – is the individual or collective subject who can be *seen* as human and so imagined as having their rights violated. The potential constituents of this imaginary category – who can be seen – are substantially mediated by images. What this implies is the potential for people or groups *not to be seen*, and thus to be excluded from the 'human' of human rights and all the strength it might represent.

The factors at play here thus begins to become clear. What is involved is a process of memory, imagination, representation and relation. These are what we might call the *transcendentals*⁴⁴ of images connected to human rights. What is at stake amongst them appears to be the boundaries of human rights as theory and in practice. What is impressed upon this, and revealed in the relationship between images and human rights, is a struggle for control.

The history of human rights can and often has been understood as a history of slow progress brought about by way of critical thought and creative action, normally at the grassroots level. As Michael Ignatieff has prominently argued, '... human rights represent moral progress and, specifically, progress from the disaster that was the Holocaust'.⁴⁵ We can think of this in terms of an engagement and expansion of the political imagination: '... the ability to image a political state of being that deviates significantly from the prevailing state of affairs'.⁴⁶ This has often materialised in mobilisation and organisation. Most frequently, it has been turned upon a sovereign, who responds by making concessions, the depth of which depends, amongst other things, on the extent to which the imagination has been able to mobilise itself. These concessions subsequently form the next immediate site of struggle. Here, efforts to overturn or undermine the concessions by the sovereign are combatted by people situated outside of it. These people seek to

⁴³ Brown (n 32) 68.

⁴⁴ Understood, following Agamben interpreting Kant, as '... the conditions of possibility for something ...' Agamben (n 1) 315.

⁴⁵ As summarised in Sliwinski (n 24) 59.

⁴⁶ Azoulay (n 31) 3.

cement the concessions and move on to charge different areas or issues as sites of imaginative political action.⁴⁷

In this formulation, the sovereign, a politically loaded concept, is defined by its control over power, either in whole or in part.⁴⁸ The sovereign predominantly determines the direction and pace of movement within society, including that of all its institutions, internal disputes, challenges and ideas. Within traditional human rights thinking, sovereignty has predominantly been unbreakably tied to states. Yet the sovereign spoke of here could also be the people, the market, the media, parliament, the judiciary, the executive or organisations. It could also be a combination of these bodies, and could vary from situation to situation and operate on multiple levels. Regardless of its constitution, it can always be defined by its purpose: to keep the distribution of power, and the character of power in society, under its control.

Within the relationship between images and human rights, a movement towards sovereignty may exist. It is hinted at by Azoulay, who states ‘Efforts made by various agents, usually state establishments, to control the content and accessibility of photographs, seek to obtain sovereignty over the event of the photography and over the interpretive framework of its consequences’.⁴⁹ Its development might be traced through four distinct areas, beginning with what we can call ‘the threat of the image’.

2.2. THE THREAT OF THE IMAGE

An image does not capture a moment *in time* but brings moments *out of time*. The making of an image engenders a moment, an occurrence or an event – anything that is capable of physically being seen – with the possibility of political and temporal transcendence. Political, meaning *into plurality* – the position from which we affect, per Azoulay, ‘the relations between human beings in the plural’.⁵⁰ Temporal, as having the

⁴⁷ For a very modern example of this mode of progress towards social justice, take a look at recent movements in Ireland: firstly for a ‘Right 2 Water’ (beginning in approximately October 2014), subsequently for the legalisation of same-sex marriage (2016) and most recently in the campaign to legalise abortion (2018).

⁴⁸ As such, if we are to think of the sovereign in terms of states we can include those from across the entire spectrum, from the most democratic to the most authoritarian.

⁴⁹ Azoulay (n 31) 231.

⁵⁰ *ibid* 49.

potential to be seen at any point in time. Recording a moment lends to it the possibility of being experienced and engaged with by people other than those who were immediately and physically present at the point of its emergence. And further, it creates that possibility constantly, and without temporal limitation. This is part of what Azoulay has called ‘the event of photography’.⁵¹

However, as a phenomenon this event is not limited to any one particular visual form. All visual recording, not simply photography, has the potential to bring about the ‘phenomenon of plurality, deterritorialization and decentralization’⁵² that Azoulay identifies in photography. A phenomenon of *plurality*, as recordings can be experienced by more than one person and by groups of people simultaneously; of *deterritorialisation*, as they can exist and have effects in many places at once; and of *decentralisation*, importantly, as they strain against concentrated control. All this creates the recipe for what Jacques Ranciere has described as ‘the unstable nature of images’.⁵³

This final characteristic of images, their decentralisation, forms a key part of Azoulay’s theory of the visual event. Historically, understandings of the dynamics involved in the making of a photograph were dominated by conceptions of a process involving just two actors. Initially, the images produced were deemed to be under the sole control of the photographer; ‘photography was conceptualized from the perspective of the individual positioned behind the lens’.⁵⁴ This was subsequently extended to include the machine – ‘the pencil of nature’⁵⁵ – as an active player in the creation of an image. The subject, and all else beyond these two elements, including the people who would see the images produced, were assigned no agency. In her theory of the event of photography, Azoulay argues to the contrary, claiming that ‘no one is the sole signatory’⁵⁶ to the creation of an image. For her, images are unfixed propositions. Any closure of them, she claims, ‘is overthrown thanks to the agency of the spectator’,⁵⁷ which exposes images to the possibility of constant and eternal reconfiguration, alteration and (re)interpretation.

⁵¹ Azoulay (n 31) 17.

⁵² *ibid* 13.

⁵³ Ranciere (n 7) 26.

⁵⁴ Azoulay (n 31) 12.

⁵⁵ *ibid* 17.

⁵⁶ *ibid*.

⁵⁷ *ibid* 27.

Spectators, those who receive images, become empowered actors in her theory, capable of discovering, rediscovering, editing, remixing and engaging with or responding to images in a variety of ways and on a spectrum of levels. This gives images transcendental potential *in the world*. That is, it creates a space for their constant appearance amongst people and, potentially, against them.

Things may be a bit more complicated than Azoulay makes out. It is not the same to discover, rediscover or remix as it is to create, understood in the sense of bringing something into being where once there was nothing. A different kind of power is involved. The creator retains choice over the source material, whilst the secondary (inter)actor must make do with what exists. Like a dreamer they can combine, juxtapose and replicate only what they have already seen. A further question concerns the role of the subject – it is unclear what agency they have in Azoulay's theory. Nonetheless, if we can also attribute agency to subjects of images in this transcendent space, we can broadly agree with Azoulay's analysis. We must then ask what the potential presence of images throughout *time* and the apparent decentralisation of control over them mean in human rights contexts. Although there are multiple manifestations of these characteristics, and a wealth of potential repercussions leading from them, one in particular might catch our eye. This is the threat of the image in the context of human rights violations.

Human rights violations come in many forms. However, upon being recorded their nature is transformed. Recording changes them into something that *can* exceed temporal boundaries. Something that *may* never be forgotten; that by its constant potential for reemergence *might* stretch into permanence. As Mark Fisher noted, we live in a world in which it seems that nothing can really be left behind – a world of eternal recall.⁵⁸ Recording, combined with the technical possibilities for instant reference provided by the internet, and in particular for instant visual referencing, makes this so.⁵⁹ We ought to think about this in the subjunctive, because what makes the difference is not the actual

⁵⁸ See Zoe Fisher, 'Q/A Mark Fisher. Is it still possible to forget?' (*Spike Art Magazine*, Winter 2014) <www.spikeartmagazine.com/en/articles/qa-mark-fisher> accessed 20 April 2018. 'This is the dialectic of cyber-time: everything beyond the near-past recedes from our attention, but it's all still there, indelible, lurking with an infinitely patient malignancy, waiting for its opportunity.'

⁵⁹ The question of 'why we record', whilst interesting, lies beyond the scope of this thesis. For a viewpoint on it, see Fisher (n 19).

occurrence of any re-emergence, but its possibility. We should follow Benjamin here, and his idea that the quality of some 'cult' objects lies not in them being seen, but in simply being 'extant', that is: being thought of as being somewhere out there in the world.⁶⁰ Recording violations, especially the *act* of the violation or someone's experience of having their rights violated, depending on how the lens is focused, creates a spectre that can amplify the effects of the violation. This stimulates their potential re-emergence in newly repressive and damaging contexts and it does so in perpetuity. A human rights violation never exists for a single moment alone. A violation involves scars and traces. The recording of a violation, however, fortifies *the event of the violation*. It makes it increasingly possible that the wounds opened by a violation may never heal. It is in this sense that the threat of the image comes to bear upon human rights.

We can say that this threat has two dimensions. It first manifests in situations where human rights violations involve a physical act – as opposed, for example, to an administrative decision. Here, those held under the violation are recorded in their suffering, knowingly or unknowingly, by the perpetrators, and are threatened with its use against them via its release or otherwise. Here the threat is brought about immediately and directly. It amplifies the violation by drawing the future into the moment of its occurrence.

The second dimension manifests in the aftermath of the violation. During this period, under the threat of the image, the person or group who experienced the violation faces the constant risk of being thrown back into it at any moment as a result of its visual re-emergence, in a manner akin to trauma.⁶¹

The deployment of the threat of the image has always been connected to the violation of human rights by the sovereign. The cataloguing⁶² that was undertaken by the Nazis in their attempted extermination of the Jewish populations under their control, which emerged as evidence at Nuremberg, has been well documented and discussed.⁶³ However, in the 1990s something in the way the sovereign exercised this threat changed.

⁶⁰ See Byung-Chul Han, *The Transparency Society* (Stanford UP 2015) 30.

⁶¹ For more on this, see Sliwinski (n 24) 93-99.

⁶² See, for example, the 'Stroop Report' detailing the quashing of Jewish resistance in Warsaw, in particular the annex of photographs supporting it. Available at <www.yadvashem.org/yv/en/exhibitions/warsaw_ghetto/collection_gallery.asp> accessed 30 June 2018.

⁶³ See, for example, Lawrence Douglas, 'Film as Witness: Screening Nazi Concentration Camps before the Nuremberg Trial' (Nov 1995) 105 (2) *The Yale Law Journal* 449-481.

This occurred in the Balkans.

Underlying the threat of the image in connection to the event of a violation is an assumption that breaks with traditional human rights thinking. Namely the idea that visibility is ran from by perpetrators, and that ‘the camera and the witness’⁶⁴ are allies of human rights. Although this may remain true in situations involving vulnerable or isolated perpetrators, it seems far from valid as an immediate assumption when it comes to violations committed from a position of sovereignty. Thomas Keenan poses the question of what the camera can threaten after the ‘made-for-television ethnic cleansing’⁶⁵ that was inflicted upon the Albanian populations in Bosnia and Kosovo. With the failure of the world to react to what was happening in the Balkans in the 1990s, and its failure to do so despite the saturation of visual media within the conflict, a space opened for helplessness to be stimulated and take root. It has since expanded, cutting away at imaginative solidarity and action amongst those who can see. In Kosovo, this was confirmed in a moment during the Serbian destruction of the village of Mijalic.⁶⁶ Here, the soldiers carrying out the act turned to the television cameras, welcomed and waiting, and waved to the audiences at home.⁶⁷ Here Keenan isolates the moment in which the tables were turned. With this wave, the perpetrators of human rights violations declared that they would no longer play by the rules of the game, and set about staking out a territory for their new advantage – one in which the threat of the image could be deployed to amplify human rights violations without fear of repercussions flowing from visibility. From this moment on, witnessing no longer served as a basis for action to stop human rights violations or find remedies for them, but as a trap in which all ideas of agency and intervention could be stripped from the spectator, and the person suffering the violation could be isolated. In this new space ‘we all know everything, and there are no second thoughts, not buts. We know and hence we enact or knowledge, our status, our sense of the complete irrelevance of knowledge’.⁶⁸

⁶⁴ Keenan (n 12) 438.

⁶⁵ *ibid* 439.

⁶⁶ For an account of the destruction of the village see Carlotta Gall, ‘For Villages of Kosovo, War Is Part Of Daily Life’ *The New York Times* (New York, 16 March 1999) <www.nytimes.com/1999/03/16/world/for-villages-of-kosovo-war-is-part-of-daily-life.html> accessed 1 April 2018.

⁶⁷ For a description of this incident, and the destruction of Mijalic, see Keenan (n 12) 444-448.

⁶⁸ *ibid* 447.

We bestow what we are shown with the quality of complete reality – of being, unchallengeable, all that there can be. This posed a significant challenge for the supporters and promoters of human rights. What has been seen since is the exploitation and simultaneous fortification of this paradoxical space of proximity and alienation.

The events that occurred in the United States (US)-run prison in Abu Ghraib, Iraq, during the post-war, post-9-11 occupation of the country are well known. That this is the case is largely a result of the dual role played by the US soldiers stationed at the prison. Specialist Charles Graner, PFC Lynndie England and their fellow soldiers at Abu Ghraib acted as both perpetrators and documentarians of the violations that they inflicted upon those held at the prison. We should understand this dual role as an intensification of the wave at Mijalic. The recording of prisoners in situations clearly violating human rights served to amplify these violations immediately and directly. As Meg McLagan has said, the images ‘were not just the means through which humiliation and abuse were revealed, but also a part of the abuse itself’.⁶⁹ At the same time, however, the images condemned those men who were being recorded to a fate beyond their immediate plight. Within them one finds no trace of fear of possible revelation; ‘the motivation of the image-maker was not exposure of human rights violations ...’⁷⁰ Rather, the act of recording in Abu Ghraib demonstrated the presumption, arrogant or not, of complete control of the image – of its content, distribution and meaning. It was a claim for ‘visual dominance’.⁷¹ As Allen Feldman has stated, ‘There is nothing shameful or hidden here, nothing clandestine, the photographer is part of the apparatus of intimidation and exposure ...’⁷² Furthermore, it served to communicate that presumption to the people upon whom they were inflicting the suffering. From the perspective of the soldiers, through the lens of their camera, these people did not qualify as humans for the purposes of human rights – they could not be seen within its frame. The Abu Ghraib photographs stand as images of humanity under erasure.

⁶⁹ McLagan (n 22) 309.

⁷⁰ Michel Angela Martinez and Alison Dundes Renteln, ‘The Human Right to Photography’ in Nancy Lipkin Stein and Alison Dundes Renteln (eds), *Images and Human Rights. Local and Global Perspectives* (Cambridge Scholars Publishing 2017) 27.

⁷¹ Although not only visual dominance by the United States in the context of the war in Iraq, as McLagan would have it, but the visual dominance of sovereignty. McLagan (n 22) 309.

⁷² Allen Feldman, ‘Abu Ghraib: ceremonies of nostalgia’ (*OpenDemocracy*, 18 October 2008) <www.opendemocracy.net/media-abu_ghraib/article_2163.jsp> accessed 29 April 2018.

Following the revelation of the torture that was being perpetuated at Abu Ghraib, a narrative was developed by the US administration at the time to paint those directly involved as ‘bad apples’. It was an attempt to place what happened in Abu Ghraib within a frame that would dissuade anyone from looking too closely at the questions of institutional policy that underlined the abuses. Despite the development of a contemporary counter-narrative, it was this official narrative that eventually came to dominate the Abu Ghraib images, and thus largely determine their meaning, at least in the immediate aftermath of their publication.⁷³ The sanctions that followed their publication, as well as the steps taken by US administrations to remedy the situation, correlated directly to this frame. Rather than serving as evidence of human rights violations and leading to justice and remedy, the event of the photographs taken in Abu Ghraib, at least initially, only compounded the effects of what had happened in the Balkans just a few years before.

Recent events show the continued momentum behind this movement. On 9 April 2018, a video emerged online. It had been taken by a member of the Israeli Defence Forces (IDF) at the border of the Gaza strip, and showed the shooting of an unarmed Palestinian protestor by a second IDF member, a sniper.⁷⁴ It was confirmed as authentic by the Israeli military, who claimed that it had been taken on 22 December 2017, during protests in Gaza.⁷⁵ Aside from the shooting of the Palestinian man, the video also captured the cheering of Israeli soldiers out of shot as the Palestinian was hit. One soldier, presumed to be the cameraman, yells, ‘What a legendary film! I haven’t seen this kind of thing for a long time’.⁷⁶ The film was widely discussed in both Israeli and international media. However, as of yet this has not resulted in justice for the wounded Palestinian. Indeed, the shooter has already been cleared of

⁷³ For an in-depth discussion of this, see Kari Andén-Papadopoulos, ‘The Abu Ghraib torture photographs. New frames, visual culture, and the power of images’ (2008) 9 (1) *Journalism* 5-30.

⁷⁴ For the video, see Oliver Holmes, ‘Video emerges of cheering as Israeli sniper shoots Palestinian’ *The Guardian* (London, 10 April 2018) <www.theguardian.com/world/2018/apr/10/video-appears-show-cheers-israeli-sniper-shoots-palestinian> accessed 15 April 2018.

⁷⁵ See Robert Mackey, ‘Israel Confirms Video of Sniper Shooting Unarmed Palestinian, as Soldiers Cheer, is Genuine’ (*The Intercept*, 10 April 2018) <<https://theintercept.com/2018/04/10/gaza-protests-palestine-israel-sniper-video/>> accessed 15 April 2018.

⁷⁶ Per translation at Oren Liebermann, ‘Video shows Israeli sniper shooting Palestinian as soldiers celebrate’ (*CNN*, 11 April 2018) <<https://edition.cnn.com/2018/04/10/middleeast/video-israeli-sniper-intl/index.html>> accessed 15 April 2018.

any wrongdoing.⁷⁷ It seems that forthcoming sanctions will be reserved for the soldier who recorded the video, and those who responded to the shooting with cheers. At an initial military inquiry, these acts were deemed against ‘the spirit and level of restraint expected from IDF soldiers ...’⁷⁸ Whether any such sanctions will actually follow remains to be seen. Responding to the video on twitter, Israeli Defence Minister Avigdor Lierman claimed the photographer should receive a ‘demerit’, yet shared an edited still from the video alongside his view.⁷⁹ Israeli Public Security Minister Gilad Erdan spoke of people ‘going overboard’ with the video, stating that ‘It doesn’t show gunfire at everyone, but at a terrorist who approaches the barrier in an unauthorized zone coming from an area controlled by Hamas terrorists’.⁸⁰ For the Israeli soldiers and the Israeli state and military apparatus that support them, the man shot upon by the sniper, like the men held at Abu Ghraib, did not constitute part of the human of human rights. Neither he, nor his rights, could be seen through the human rights lens. What this means is that those who suffered the violation must live with the potential for its constant reappearance, and beyond this, face its use as evidence against their inclusion within the human of human rights. Control over their fate, in this regard, is held in each case by the sovereign, with each case furthermore serving to solidify these dynamics of control. And it appears that states, from their place within the sovereign, have been instrumental in both carrying us to this point and allowing us to be carried there.

⁷⁷ See Yaniv Kubovich, ‘Israeli Army Clears Sniper Seen Shooting Palestinian in Video; Cheering Soldiers to be Disciplined’ (*Haaretz*, 10 April 2018) <www.haaretz.com/israel-news/.premium-israeli-army-clears-sniper-seen-shooting-palestinians-in-video-1.5990262> accessed 15 April 2018.

⁷⁸ *ibid.* Quotes taken from the findings of the initial inquiry.

⁷⁹ See <<https://twitter.com/AvigdorLieberman/status/983807838853230592/photo/1>> accessed 15 April 2018.

⁸⁰ See ‘Anger erupts over video of Palestinian shot by Israeli sniper’ (*Al Jazeera*, 10 April 2018) <www.aljazeera.com/news/2018/04/anger-erupts-video-palestinian-shot-israeli-sniper-180410160058867.html> accessed 15 April 2018.

2.3. SURVEILLANCE

Surveillance has long existed and within its existence it has always been changeful.⁸¹ Today it appears in historically unique circumstances. The current situation is one in which there is little room to assume that privacy is the normal condition into which actions and expressions of hopes, interests and emotions emerge. Where once the default stance to adopt was an assumption of confidentiality, now the immediate understanding is that many manifestations of our subjectivity are visible by default, whether we give them up voluntarily through terms and conditions of our use of social media or banks, or they are extracted through everyday surveillance-as-security. As individuals and groups, we have from a certain perspective been transformed, and have transformed ourselves, from potential subjects of surveillance into a readily accessible mass of appearances – ‘masses, samples, data, markets or “banks”’.⁸² If once we might have conceived of ourselves as private persons in the world, we have now become, willingly or not, managers of our own publicity⁸³, living in what Byung-Chul Han has described as a ‘society of transparency’.⁸⁴

But whilst this state-of-affairs extends to many facets of our lives both on and offline, it seems unclear how it stretches to images. Banks, internet companies, intelligence agencies and governments may have access to information about where we shop, what we buy and who we chat with and when we do so, but it is not so apparent that they know how we look. This may be so despite the fact that our images have long been mined as modules of information. This began as far back as 1843, when Belgian prisoners first had their faces photographed through the daguerreotype process,⁸⁵ and things have developed significantly since. The average person in Britain is now captured on CCTV camera 300

⁸¹ Letter-opening being legal provided for in the British Isles as early as 1657. See Joseph Clarence Hemmeon, *The History of the British Post Office* (Harvard UP 1912) 23.

⁸² Gilles Deleuze, ‘Postscript on The Societies of Control’ in Alex Farquharson (ed), *The Impossible Prison. A Foucault Reader* (Nottingham Contemporary 2008) 29.

⁸³ See Greg Elmer, ‘Panopticon-discipline-control’ in Kirstie Ball, Kevin Haggerty and David Lyon (eds), *Routledge Handbook of Surveillance Studies* (Routledge 2012) 21-29.

⁸⁴ See Han (n 60).

⁸⁵ See Jake Goldenfiel, ‘Surveillance: From Image to Archive’ (*Critical Legal Thinking*, 18 June 2013) < <http://criticallegalthinking.com/2013/06/18/surveillance-from-image-to-archive/>> accessed 19 June 2018.

times per day,⁸⁶ and moves to make this facet of data collection more efficient are constantly being pursued.⁸⁷ As Paula Campbell notes, ‘Such vigorous observational techniques cannot help but function as a significant factor in how we regard ourselves ... the subject becomes the object seen, captured on camera and potentially exposed to public view’.⁸⁸ However, when it comes to images, the kind of biopolitical repercussions Campbell refers to seem to rely upon *knowledge* of the situation at hand – an understanding that one’s image is being collected. In connection to this, what can be observed today is an attempt to construct a popular understanding, and curated response, to the growing reality of observation and collection of images of appearance.

A recent event in China, widely covered in the international press, might serve as an entry point into understanding how this is happening. In April 2018, a Chinese man, wanted for unspecified⁸⁹ ‘economic crimes’, was arrested at a concert in the city of Nangchan. He was one of 60,000 people in attendance at the gig. According to various reports, the man was identified as a result of ‘facial recognition technology’ triggered by cameras installed at the entrance to the concert.⁹⁰ Why did this make the news and spread across the internet in the way it did? Working with the assumption that the news coverage is never neutral, three possible answers emerge. It may have been picked up as a point of comparison – as a means of saying, this happens there but not here. Alternatively, it may have been a subtle means of reminding readers in the UK, US or Australia⁹¹ that they too live under such conditions. However, if the first rationale motivated the coverage, why publish the story at all,

⁸⁶ See John E McGrath, *Loving Big Brother: Performance, Privacy and Surveillance Space* (Routledge 2004) 19.

⁸⁷ Take, for example, the Singapore government’s call for tenders to turn the country’s lampposts into security cameras equipped with facial recognition software. See Aradhana Aravindan and John Geddie, ‘Singapore to test facial recognition on lampposts, stoking privacy fears’ (*Reuters*, 13 April 2018) <www.reuters.com/article/us-singapore-surveillance/singapore-to-test-facial-recognition-on-lampposts-stoking-privacy-fears-idUSKBN1HKORV> accessed 20 April 2018.

⁸⁸ Paula Campbell, ‘Dan Graham, Reality Television and the Vicissitudes of Surveillance’ in Griselda Pollock (ed), *Visual Politics of Psychoanalysis. Art and the Image in Post-Traumatic Cultures* (IB Tuaris 2013) 135.

⁸⁹ As of the time of writing.

⁹⁰ See Amy B Wang, ‘A suspect tried to blend in with 60,000 concertgoers. China’s facial-recognition cameras caught him.’ *Washington Post* (Washington, 13 April 2018) <www.washingtonpost.com/news/worldviews/wp/2018/04/13/china-crime-facial-recognition-cameras-catch-suspect-at-concert-with-60000-people/> accessed 14 April 2018.

⁹¹ Three counties outside China where the news was widely broadcast.

when doing so surely runs the risk of drawing the attention to the story at home, and it would have been unlikely to enter into the English-language consciousness spontaneously? If the second motivation were in play, a story simply demonstrating current conditions of surveillance in these countries would have sufficed. What seems more likely, therefore, is a third possibility; that in the post-Snowden landscape, one in which everybody potentially knows the conditions of their privacy, the widespread distribution of the story can be read as part of a gradual transition, led by the sovereign, into a situation of *awe at surveillance*. This should not be read as a strategic plan, drafted by any one institution, ideology or individual, but as a genuine effect rooted in the drive for efficiency within the surveillance-as-security complex.⁹² What it amounts to is a state in which the reality of CCTV cameras on street corners, motivated by ideology, policy and business, and therefore challengeable and changeable, is replaced by a *hyperreality* of assumed observation – an unquestionable real more tangible than reality. Within this, there is no room to discuss whether the system used to identify the Chinese man at the concert was justified, or whether he was correctly identified.⁹³ Rather, what this hyperreality seems to close off is any space for the opposition to surveillance turning into revolt against surveillance and the sovereign.

For our purposes, two consequences emerge from this. The first, commonly highlighted as a negative consequence of ubiquitous surveillance, can be seen as an extension of our previous discussion concerning the threat of the image. Human rights obligations rest almost exclusively with the sovereign – with the conflux of states, institutions, companies and individuals that together set the boundaries of human rights through their acts, omissions and, importantly, their framing of human rights through images. If images of our appearances are stored on records controlled by the sovereign, and are accessible to its members and *only* to them, with limited democratic oversight, the possibility of these images being used against people in one way or another may engender a form of self-censorship impacting upon the

⁹² By which we here mean the position that information accumulation builds actionable knowledge which leads to increased security.

⁹³ This is striking in the coverage of the story by the BBC, although light critical reflection is hinted at in the independent video accompanying it. See 'Chinese man caught by facial recognition at pop concert' (*BBC*, 13 April 2018) <www.bbc.com/news/world-asia-china-43751276> accessed 1 May 2018.

creation and interaction with images in human rights contexts. The development of awe at surveillance only entrenches this threat.

Where this comes to bear, frequently, is in retaliation against those opposing the securing of the borders of human rights that the turn towards awe at sovereignty carries within it. Amongst those at risk we find human rights activists, community organisers, social justice campaigners and sections of civil society, all of whom use images in their efforts. They include people and groups dedicated to struggle through images – filmmakers, photographers, archivists, documentarians, architects and artists. To take just one example, drawing together many of characteristics common to those at risk, one can turn to the case of the Bangladeshi photographer Saiful Huq Omi, a Bangladeshi photographer targeted for his work with refugees from Myanmar's Rohingya community.⁹⁴

What stands against this is the right to privacy, one of the oldest concepts to be enumerated in terms of rights.⁹⁵ Historically, as with many rights, the right to privacy has encompassed individual, rather than group or societal, protection. One of the things this provides for is the possibility of it being respected selectively, in particular in cases where the individual involved has the power to invoke it as a defence. This power comes from one's place within the human of human rights, and it is here that we find the second consequence of the transition to awe at surveillance.

Images first entered into the practice of surveillance through police photography. Detainees were photographed and their photos were subsequently archived – stored on file so as people could not escape identification in the case of repeat offences.⁹⁶ However, they had further life in them. Beyond this practical use, these images also served to build up a collective image, type, or profile of people *likely* to commit offences. In Britain, this had been cemented by the creation of a photographic register of 'dangerous classes' with the Habitual Criminal Act of 1869. The distribution of power in society and the character of the sovereign have changed since the 19th century.

⁹⁴ For a full account of his case, see James Estrin. 'Rohingya Refugees: Stateless in Southeast Asia' *The New York Times* (New York, 4 June 2015) <<https://lens.blogs.nytimes.com/2015/06/04/rohingya-refugees-stateless-in-southeast-asia/>> accessed 20 May 2018.

⁹⁵ Particularly within liberal political thought. See Goldenfien (n 85).

⁹⁶ See the UK Prevention Against Crimes Act 1871, s 6. Accessible at <www.legislation.gov.uk/ukpga/Vict/34-35/112/body/enacted?view=plain>.

However, images being collected today are used in a similar way. The categories or 'classes' that were created on the basis of images collected through data collection, whatever its form, may now be logistical, political or commercial. They may also be, as was the implication of the 1869 register, existential. As such, they can play a role in the creation of distinct categories of people, on the basis of which people are attributed distinct sets of rights. The people whose images form these categories today are 'enemy combatants' targeted in pre-emptive drone strikes, 'illegal migrants' and 'non-citizens' deported in violation of due process, and 'identity extremists' arbitrarily arrested and faced with trumped-up charges in an attempt to stymie their legitimate activism.⁹⁷ These people are labelled with terms that cannot be found anywhere within human rights law, and these frames exclude their access to the protection that human rights might provide. What this then justifies, in the eyes of those setting the frame, is differential treatment. In 1871, this included 'police supervision'. Today, this is translated into intensified surveillance and greater freedom concerning use of data collected on certain categories of persons – including biometric data and images. In this way, through surveillance, images come to be used as evidence to disaggregate society into the human and the less than human for the sake of human rights, the effects of which are forcefully perpetuated through the persistent dialogue surrounding surveillance claiming that 'normal citizens' have nothing to fear. What the transition to awe at surveillance ensures is that the way in which these images are collected, controlled and used will not be questioned, and that the categories they are used to create will continue to exist and be defined by the sovereign.

2.4. FREEDOM OF EXPRESSION AND THE INTERNET

There are many ways to think about the internet and many ways to define it. One such way is to think of it as a platform for the political imagination. In this view, the internet exists as a space in which people, in collectivity, can animate and work through the pains, joys, difficulties

⁹⁷ See Sam Levin, 'Black activist jailed for his Facebook post speaks out about secret FBI surveillance' *The Guardian* (London, 11 May 2018) <www.theguardian.com/world/2018/may/11/rakem-balogun-interview-black-identity-extremists-fbi-surveillance> accessed 22 May 2018.

and wonder that arise from being thrown together into the world.⁹⁸ Action within the internet conceived of as such may take many forms. It may emerge as digital creation, interaction, sharing, representation, observation or otherwise. All such actions, however, both contribute to the making of the internet into such a space, and find themselves enabled by the internet constituted as such. This dual-natured action may also emerge in forms of expression. As the internet remains a predominantly visual forum,⁹⁹ this will often come in the form of images. This includes images created, uploaded, shared, reproduced, edited, remixed or otherwise used in direct or indirect connection with human rights. The internet has to be acknowledged as a crucial platform for human rights images. Furthermore, its character should be simultaneously understood as an important determinant for the ways in which these images can emerge and be interacted with, as well as for their content.

This potential for online action to reinforce the internet as a forum for political imagination, and for human rights images to be used on the internet in a way that can reinforce the internet as such, is given a limited form of protection under human rights law. This is chiefly done under the auspices of freedom of expression.¹⁰⁰ This protection gains increased importance when traditional spaces for the political imaginary are closed down, restricted or otherwise alienated. This rings true in today's world of concentrated media ownership,¹⁰¹ particularly in the fields of print media and television, as well as corporate dominance of radio waves,¹⁰² and threats to the independence and secure funding of public service

⁹⁸ The conception of the internet as such a space has appeared and reappeared repeatedly since its inception. See 'A Declaration of the Independence of Cyberspace' <<https://www.eff.org/cyberspace-independence>> and the 'Guerilla Open Access Manifesto' <<https://openaccessmanifesto.wordpress.com/guerilla-open-access-manifesto/>>, written by the digital rights activists John Perry Barlow and Aaron Swartz respectively, in 1996 and 2008. Both accessed 10 May 2018.

⁹⁹ See Tok Thompson, 'Memes, Mashups, and the Battle for the Future of Human Culture' in Nancy Lipkin Stein and Alison Dundes Renteln (eds), *Images and Human Rights. Local and Global Perspectives* (Cambridge Scholars Publishing 2017) 206.

¹⁰⁰ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 art 19.

¹⁰¹ Take, for example, the case of Ireland, a country commonly considered a leader in human rights, where the large proportion of non-state media is controlled by the country's wealthiest man. See 'Ireland's media ownership concentration breeds pessimism' (*Index on Censorship*, 10 August 2017) <www.indexoncensorship.org/2017/08/irelands-media-ownership-concentration-seen-as-problem-without-solution/> accessed 1 April 2018.

¹⁰² In particular in Latin America. See 'Legislation on Community Radio Broadcasting, Comparative Study of Legislation of 13 Countries' Division for Freedom of Expression, Democracy and Peace, Communication Information Sector, UNESCO, 2003 (CI-2003/WS/1).

broadcasting.¹⁰³ Compounding this, we find an accumulation of factors contributing to the transformation of other traditional spheres for the political imaginary into hostile environments. This is seen in restrictions on the right to protest and freedom of association,¹⁰⁴ including through legislative restrictions on civil society in the form of ‘foreign agent’ laws,¹⁰⁵ heavy-handed policing of protests and surveillance of protest movements.¹⁰⁶ What is threatened here is the dynamism of the political imagination broadly, and of the human rights movement which feeds into this.

Within this context, there might be a temptation to see the internet as a bastion for collective struggle. This might be particularly true given the web’s seemingly metamorphic character and ubiquitous accessibility. However, the internet has been no stranger to attempts to limit its potential as a plurally engaged, creative space. This is as true today as it has ever been. Two general, intertwined trends stand at the forefront of those to be observed here. The first pertains to the continued commercialisation of the internet through the capitalisation of web activity. This involves the transformation of people into users and subsequently producers, with individual data collated or isolated to form the product. The second trend, directly related to the first, concerns the ‘fencing off’ of the internet, of the building of borders within it both by states and large internet companies, as seen with in China’s ‘great firewall’ and ‘Free Basics’, Facebook’s limited internet for developing countries. Like all potential spaces for political action, the internet is contested; it is an arena. Throughout its existence, various actors and movements have attempted to mould it into their desired shape and, to greater and lesser extents, have it set.

¹⁰³ See ‘Public Service Broadcasting Under Threat in Europe’ (*Council of Europe, Human Rights Comment*, 2 May 2017) <www.coe.int/en/web/commissioner/-/public-service-broadcasting-under-threat-in-europe?desktop=true> accessed 1 June 2018.

¹⁰⁴ See, generally, the recent work of the UN Special Rapporteur on the rights to freedom of peaceful assembly and association, with an overview at <www.ohchr.org/EN/NewsEvents/Pages/NewsSearch.aspx?MID=SR_Peace_Assembly> accessed 28 May 2018.

¹⁰⁵ Often identified as having their recent origins in Russia, these laws have since spread across the map. To take one example, see ‘UN rights office raises concern about Israel’s “NGO Transparency Law”’ (*UN News*, 19 July 2016) <<https://news.un.org/EN/story/2016/07/534812-un-rights-office-raises-concern-about-israels-ngo-transparency-law>> accessed 11 April 2018.

¹⁰⁶ Take, for example the case of Spain, documented in ‘Spain: The Right to Protest Under Threat’ (Amnesty International Publications 2014) <https://www.amnesty.nl/content/uploads/2017/01/spain_formatted_24_03_14.pdf?x93008> accessed 11 April 2018.

Whilst this occurs on a grand scale, it can also be observed in more precise areas. Indeed, the apparent large-scale attempts to define the internet in one way or another, and to create facts on the ground that match these definitions (with the same process also seen in reverse), may be seen as cumulative waves built up of many such precise struggles. What we can find at the micro-level may reflect the larger struggle to define the internet, and vice-versa. Such a bipolar relationship goes some way to explaining what we find when we zoom in to the level of human rights images online. When we isolate this section of the web we see that the manner in which such images can be used has been the subject of some attention. Much of this has come from what we have defined as the sovereign. It has manifested itself in three distinct ways.

The first, most direct, and bluntest manner in which this can be observed is through the direct banning of specific images based on their use, at least substantially, in human rights contexts. This is done through legislation backed up by the threat of criminal sanctions. To take an example of this in action one can look to China, a key presence behind the development of the idea of ‘internet sovereignty’,¹⁰⁷ described as ‘the right of the state to control their citizens’ online cultural exchanges’.¹⁰⁸

In 2012, videos, images and memes of alpacas began to appear on social media websites in China. The alpacas were depicted as singing about ‘evil river crabs’, at once a reference to the Chinese folk story of the ‘grass mud horse’ and an act of rebellion against the multitude of censors working to keep internet use in China under the control of the state.¹⁰⁹ In response, the Chinese government launched a ban on all videos of singing alpacas.¹¹⁰

¹⁰⁷ Alongside Russia. See Stanislav Budnitsky and Lia Lianrui, ‘Branding internet sovereignty: Digital media and the Chinese-Russian cyberalliance’ (2018) Special Issue Article 00(0) *European Journal of Cultural Studies* 1-20.

¹⁰⁸ Thompson (n 99) 203.

¹⁰⁹ It is estimated that around 2 million people are employed in such jobs, tasked with censoring politically sensitive content. Although this number might be inflated, it may be more the belief in their existence that counts. For more on this see Elizabeth C Economy, ‘The great firewall of china: Xi Jinping’s internet shutdown’ *The Guardian* (London, 29 June 2018) <www.theguardian.com/news/2018/jun/29/the-great-firewall-of-china-xi-jinpings-internet-shutdown> accessed 30 June 2018.

¹¹⁰ Along with the phrase ‘grass mud horse’. For a full account of this example, see Tok Thompson, ‘Netizens, Revolutionaries, and the Inalienable Right to Internet’ in Trevor J Blank (ed), *Folk Culture in the Digital Age: The Emergent Dynamics of Human Interaction* (Utah State UP 2012) 45-69.

A slightly softer version of this trend, though often with more perverse effects, is the criminalisation of the creation, use or indirect interaction with images on the basis of their symbolic content. As in the first example, this also comes in legislative form, backed by the threat of criminal sanctions. However the scope of the treatment in such cases will often be extremely broad, with the exact type of images prohibited only vaguely defined. Where this is done, it will be through association with a topic, and often bundled in with a prohibition of online action of any kind related to it. States are the primary actors here, and a clear example comes from Russia. In 2014, a law passed through the Russian Duma requiring ‘popular’ bloggers to comply with stringent controls over acceptable statements. This law was subsequently extended to images online. In 2015, a reminder of the law and clarification of its reach was posted on the home page of Vkontakte, the most popular social network in Russia. The post, published by the state internet regulator Roskomnadzor, prohibited the use of memes depicting ‘public figures’ in a way which has ‘nothing to do with the celebrity’s personality’.¹¹¹ While the extension of the law has been used to tackle the use of masochistic memes and online sexism, its more common use has been to curtail freedom of expression online, including in situations of human rights investigations involving state authorities. This has also been seen in other legislative settings in Russia. Take, for example, the charging of the environmental and human rights activist Alexander Savelyev with violating ‘the honor, dignity and reputation’ of a civil servant following his uploading of two videos documenting corruption amongst the civil service in the city of Krasnodar.¹¹² The case was closed in return for Savelyev’s removal of the videos from YouTube.¹¹³

A second manner in which an attempt to influence the emergence and use of human images online can be observed is through a form of censorship. In these cases, images are uploaded onto a website, most commonly the property of a major internet company such as Google (in the case of YouTube), Twitter, Facebook, Vkontakte, QZone or one of their competitors across the globe. Subsequently, the images will be

¹¹¹ The original post can be accessed at <https://vk.com/wall-76229642_37568> accessed 4 April 2018. Translation taken from ‘Russia’s (non) war on memes?’ (*BBC Trending*, 16 April 2016) <www.bbc.com/news/blogs-trending-32302645> accessed 9 June 2018.

¹¹² On the basis of the Civil Code of the Russian Federation, art 152.

¹¹³ For a full overview of his case, see <www.frontlinedefenders.org/en/case/aleksandr-savelyev-trial> accessed 1 May 2018.

removed, or the person who uploaded them will be given a warning or sanction. This may be motivated by external actors, such as private individuals or states, who report the image, flagging it for inspection. However, the final decision is taken by the company involved. Most commonly, the argument put forward for removing such images claims a breach of the company's terms and conditions of use, agreed upon, almost always blindly, by the user upon setting up an account with the company. The key contact point here can often be clauses prohibiting graphic content.¹¹⁴ However, it would seem that the balance that tips the scales often stands open to influence. Examples of this proliferate in an age where a great percentage of the population has access to a camera phone. In human rights situations, they may involve electoral-fraud, corruption, or evidence of torture, as in the case of the Pakistani journalist and human rights activist Gul Bukhari.

In January 2018, Bukhari uploaded a photograph on Twitter. The image was of the body of a man who had died in police custody. The police involved alleged the man to have died of natural causes and had spread their story as such through the media. The picture Bukhari uploaded, however, indicated that the man had been tortured. Following her sending of the tweet, she discovered that her account settings had been altered. Twitter had changed the way she could use their service. The content of her tweets, including any images she shared, could no longer be seen by anyone else on the platform.¹¹⁵ Underlying this are issues of access to markets, with internet companies adopting a conservative approach as a default in new markets, and bowing to elite pressure in order to maintain permission to operate in certain countries.¹¹⁶ However, further examples seem to question whether this motive alone can explain such actions. As highlighted by a broad coalition of civil

¹¹⁴ See, for example, the case of the artist Khaled Barakeh, following his posting of seven images on Facebook relating to the death of Aylan Kurdi, as discussed in Sam Gregory, 'When Should We Share Distressing Images? Seeing Aylan Kurdi' in *Vis and Goriunova* (n 34) 62.

¹¹⁵ Ms Bukhari was subsequently abducted, allegedly in relation to her human rights activities. She was later released. See 'Pakistan relief after abducted journalist Gul Bukhari is freed' (*BBC News*, 6 June 2018) <www.bbc.com/news/world-asia-44382719> accessed 8 June 2018.

¹¹⁶ Such has been the case for Google in Pakistan. In 2012, YouTube (owned by Google) was banned in the country, only to be reinstated in early 2016 under the condition that the Pakistani government be allowed to dictate the removal of content deemed offensive. See Tommy Wilkes, 'Pakistan lifts ban on YouTube after local version launched' (*Reuters*, 18 Jan 2016) <www.reuters.com/article/us-pakistan-youtube-idUSKCN0UW1ER> accessed 28 April 2018.

society groups,¹¹⁷ images and videos have been removed from Facebook in cases where they displayed police violence in the US,¹¹⁸ real time footage from protests¹¹⁹ and historical images of human rights abuses.¹²⁰

The third and final trend that emerges in relation to the use of human rights images online concerns the much storied conflict between freedom of expression and the rights to privacy and property. Within these two conflicts questions are raised over who can assert what right, and at whose expense.

As clarified by the Human Rights Committee in its General Comment 34, the protection offered by article 19 of the International Covenant on Civil and Political Rights (ICCPR) extends to ‘all forms of audio-visual as well as electronic and internet-based modes of expression’.¹²¹ However, the right to freedom of expression is not absolute, and can be limited in situations where it conflicts with other rights. These include the right to privacy. Here, and concerning human rights images online, the confrontation manifests itself in conflicts between those who can demand not to be seen and those who demand to be seen. But to be seen or not to be seen as what? The manner in which the answer is reached might vary depending on the starting position of they who provide it. However, it inevitably falls squarely between the goalposts of the human of human rights. Those defending their right to privacy assert their position within this category, at the expense of those whom they deem outside it. Those seeking to exercise their freedom of expression, on the other hand, and who may speak for themselves or for others, claim a place for *at least one more* within the human of human rights. At the same time, they insist not only on the protection that this belonging

¹¹⁷ See the open letter to Facebook CEO Mark Zuckerberg signed by 79 civil society organisations here: <https://s3.amazonaws.com/s3.sumofus.org/images/79_FacebookCensorshipPolicySign-OnLetter.pdf> accessed 14 April 2018.

¹¹⁸ See Baynard Woods, ‘Facebook deactivated Korryn Gaines account during standoff, police say’ (*The Guardian*, 3 August 2016) <www.theguardian.com/us-news/2016/aug/03/korryn-gaines-facebook-account-baltimore-police> accessed 14 April 2018.

¹¹⁹ See Amar Toor, ‘Facebook censored a live stream video posted by Dakota pipeline protesters’ (*The Verge*, 15 September 2016) <www.theverge.com/2016/9/15/12926058/facebook-dakota-pipeline-video-censorship-protest> accessed 1 May 2018.

¹²⁰ See Julia Carrie Wong, ‘Mark Zuckerberg accused of abusing power after Facebook deletes ‘napalm girl’ post’ *The Guardian* (London, 9 September 2016) <www.theguardian.com/technology/2016/sep/08/facebook-mark-zuckerberg-napalm-girl-photo-vietnam-war> accessed 1 June 2018.

¹²¹ United Nations Human Rights Committee (UNHRC), ‘General Comment No 34, Article 19, Freedoms of opinion and expression’ (12 September 2011) CCPR/C/GC/34 para 12.

involves, but also its responsibilities. In doing so, they challenge and problematise the idea of boundaries of the human of human rights.

In relation to the clash between the right to property and freedom of expression, we see a similar story. Property here concerns ownership of images. It implies 'a belief that the origins of creative expressions are singular, and to be located within a singular individual'.¹²² Following this line of thought, the terms of use of images should be determined by the person who created them until they decide otherwise. In terms of images broadly, this appears as an attempt to negate the event of the image. When it comes to images connected to human rights, the assertion of copyright law translates into an attempt to retain control over the meaning of such images after they appear online. This manifests itself in situations in which images are appropriated by human rights activists, and so re-contextualised and charged with a meaning unanticipated by their creator. The kind of images commonly found in these cases are owned by large media corporations. Through asserting rights of property over images posted on the internet and used in human rights contexts, they feed into the movement towards sovereignty between human rights and images.

2.5. SHOCK AND PITY – HUMAN RIGHTS REPORTING

Today's sovereign is neither the state nor the international market nor the companies that trade on it nor the global institutions that (de) regulate it. It is made up of an ever-changing coalition of actors and is fuelled to fluctuating degrees by a variety of inputs from systems, structures and events. A key characteristic of it is exactly its ability to welcome forces from beyond traditional banks of power into its fold. In this manner, it can be seen to constitute a form of alliance. Within this, it balances all the internal power struggles that such a relationship involves against the disempowering effect it can produce amongst opposition movements and the security it can simultaneously stimulate for those who come into its fold. These structures of sovereignty pose problems for traditional human rights thinking, within which human rights obligations have traditionally been the sole responsibility of states.

¹²² Thompson (n 99) 207.

The way in which sovereignty is distributed, managed and exercised today questions the validity of such a rigid conception of responsibility.

That being the case, we need not necessarily think about this strictly in terms of human rights obligations and responsibilities. Rather, we should consider its implications for the meaning of human rights as a whole, and the possibilities that can flow from it as a concept. We should examine it in relation to the question of who makes the meaning of human rights. For when it comes to defining responses to this, and particular the question of 'whose rights' that is tied into the 'human' of them, it can no longer be claimed that states are the only ones at the table. The traditional idea held that states would shoulder human rights obligations in return for authority over the movement, which was implied by gaining a place at the international table from where human rights would be controlled. This was always a simplified picture. History shows that the meaning of human rights and control over it has always been contested. Within this struggle, the actors and allegiances have fluctuated. This has increasingly been the case since the 1980s with globalisation and neoliberalism's disruption of the balance between states and markets. What this requires when it comes to understanding trends bearing upon the meaning of human rights is a suspension of previous categories; of who has been on what side of the struggle. When this is done, and when one zooms in to the level of images, where the 'human' of human rights is substantially mediated, some potentially surprising actors may emerge on the side of the sovereign.

Increased access to cameras, cameraphones and video recording equipment, as well as to the internet as a platform to share, spread and display images, have increased the possibilities for visual 'citizen journalism'¹²³ worldwide. However, it remains the case that a large proportion of images used in human rights contexts are generated by human rights organisations. As McLagan has described it, these organisations 'constitute a circulatory matrix of dedicated communications infrastructure, out of which human rights claims are generated ... these circuits provide the scaffolding for the making public of human rights

¹²³ Characterised by citizens playing 'an active role in the process of collecting, reporting, analyzing and disseminating news and information'. Sam Gregory, 'Transnational Storytelling: Human Rights, WITNESS and Video Advocacy' *American Anthropologist* Vol 108 Issue 1 March 2016 195-204, 202.

violations'.¹²⁴ This is largely done through links with international media organisations, exhibition and reporting. As with any apparent monopoly, this one merits closer examination.

The majority of images, mainly photographs and films, used by the mainstream or mass media in human rights contexts are supplied by human rights organisations. This does not imply that images coming out of large NGOs are the sole human rights images that exists. Rather it insists that only *these* images are framed by the mainstream media in human rights terms. In other words, only these images form part of stories presented to audiences as human rights stories. As we can imagine, images are not the only thing in the picture here. Rather, it is the case that textual and narrative inputs are in play alongside the images themselves. These help shape understanding of the situations and events at hand, and of their meaning. What we find around these images – titles, layout and reporting styles – serve, to greater and lesser extents, to 'situate and silence the ambiguity and excess in the photographs they use ...'¹²⁵ However, it remains the image that serves, as Franco Berardi suggests, to 'stir up'¹²⁶ this frame. When we consider humanitarian organisations, reporting, images and the media, we see a similar story. And indeed, when a historical perspective is adopted, a substantial blur between what might be considered as 'humanitarian' action and imagery, and what may be considered as falling into the category of 'human rights', can be seen. Much that has been written about the use of images in reporting by humanitarian organisations and the media also holds true for human rights images and reporting, about which substantially less has been said. If we allow ourselves then to draw from the existing analysis of humanitarian images and reporting an outline of the way human rights images are created may emerge.

The first manner in which human rights and humanitarian images are referred to is in terms of 'shock effect images'. Such types of images first emerged in 'magic lantern shows' organised by the CRA in the UK at the beginning of the 20th century. According to Lilie Chouliaraki, the most

¹²⁴ Meg McLagan, 'Introduction: Making Human Rights Claims Public' (2006) 108 (1) *Visual Anthropology: Technologies of Witnessing: The Visual Culture of Human Rights* 192.

¹²⁵ Aubrey Graham, 'One Hundred Years of Suffering? "Humanitarian Crisis Photography" And Self-Representation in the DRC' in Nancy Lipkin Stein and Alison Dundes Renteln (eds), *Images and Human Rights. Local and Global Perspectives* (Cambridge Scholars Publishing 2017) 135.

¹²⁶ Franco 'Bifo' Berardi, 'The Image Dispositif' (2005) 11 (2) *Cultural Studies Review* 64.

prominent thinker in this area, the use of shock effect images, which still pervade humanitarian and human rights reporting today, are based on a belief in the ability to mobilise people through ‘the power of grand emotions’.¹²⁷ These images are intended to ‘speak for themselves’,¹²⁸ to be considered as evidential in nature. In order to create this effect, they ‘rely on a documentary mode of representing suffering in its plain reality’.¹²⁹ Stylistically, they embody ‘raw realism’.¹³⁰ They seek to symbolise self-evident truths needing no further explanation or argument: to be what they seem to be and mean what they seem to mean. In positioning themselves within this classical conception of photography, they create and place their focus exclusively on victims, often in isolation. Amongst the photographs that reached the UK from Leopold’s Congo, the majority of which were taken by just a handful of religious missionaries,¹³¹ the images most commonly shared for British audiences were of severed hands and feet. These were either captured in close focus, or displayed the limbs of children being looked over by their parents. In the first instance, such images adopted a predominantly objective or scientific mood, forming part of the history of images of pathology. In the second they tended towards a more emotive or sentimental style.¹³²

A second category of imagery used by human rights and humanitarian organisations has often been named ‘positive image photography’ or, more broadly, ‘positive imagery’. As described by Chouliaraki, in contrast to shock effect images these ‘reject the imagery of the sufferer as a victim and focus on the sufferer’s agency and dignity’.¹³³ Here photography and video are used in an attempt to personalise sufferers, representing them as relatable individuals in an attempt to engage potential spectators through the establishment of a ‘sympathetic equilibrium’ through ‘bilateral emotion’.¹³⁴ Here, negativity is dispensed with. In its place, the narrative developed by the imagery documents the individual struggle of the person represented. A prime example of the deployment of such images comes from the disability rights movement. Here, where ‘human rights discourse

¹²⁷ Lilie Chouliaraki, ‘Post-humanitarianism: humanitarian communication beyond a politics of pity’ (2010) 13 (2) *International Journal of Cultural Studies* 107-126.

¹²⁸ Aubrey Graham (n 125) 127.

¹²⁹ Chouliaraki (n 127) 112.

¹³⁰ *ibid.*

¹³¹ See Hunt (n 6) 222.

¹³² Peffer (n 17).

¹³³ Chouliaraki (n 127) 115.

¹³⁴ *ibid.*

has always had some visual affiliation',¹³⁵ visual representations of disabled people 'often slide into a resilience narrative entangled with a neoliberal transcendent individualist ideology',¹³⁶

A third form of human rights imagery emerging from organisations in the field, proposed by Chouliaraki as an emerging style within the visual representation of human rights appeals, has been discussed under the name of 'post-humanitarian imagery'. Here, images 'tend to privilege low-intensity emotions and short-term forms of agency'.¹³⁷ They involve 'an emotion-oriented discourse of suffering: a language of indignation or guilt that blames the perpetrators',¹³⁸ and aim to break the link between positive action and pity. Their use involves the deployment of irony and unexpected juxtaposition, involving the placing of images of human rights violations or humanitarian suffering in unexpected spaces where they can be encountered and responded to by others. It relies on the creation of individual 'hyperrealities' – 'a perfected sense of the real that can only be fictional'.¹³⁹ Here, universal moral principles no longer apply in relation to which moral decisions are subsequently subjectified.¹⁴⁰ As such, it can be read as a response to increasing individualisation in society, and in particular in what might be termed 'donor-societies', ie, wealthy states or wealthy pockets within states, most commonly in the global North and West.¹⁴¹

When analysing the effects of these dominant approaches, we immediately see that all three are charged with a purpose. Most commonly, as Sam Gregory has highlighted, this will be one of three things: stimulating media coverage of an organisation's area of work and of the organisation itself, raising funds by attracting donors and encouraging support among activists.¹⁴² Within the work of human rights organisations, images are tools.

¹³⁵ Anastasia Klupchak, 'Human Rights Films and Disability: Towards Observational Cinema as a Practice of "Shared Human Rights"' in Nancy Lipkin Stein and Alison Dundes Renteln (eds), *Images and Human Rights. Local and Global Perspectives* (Cambridge Scholars Publishing 2017) 43.

¹³⁶ *ibid* 49.

¹³⁷ Chouliaraki (n 127) 109.

¹³⁸ *ibid* 3.

¹³⁹ *ibid* 12.

¹⁴⁰ *ibid* 16-17.

¹⁴¹ For an example of such a style of imagery, see Chouliaraki's account of Amnesty International's 'It's not happening here' appeal. *ibid* 13. A sample of images from the campaign are also available at <<https://osocio.org/message/its-not-happening-here-but-it-is-happening-now/>> accessed 20 May 2018.

¹⁴² See Gregory (n 123) 197.

They may be used in many ways, however, it is the organisation that dictates this. All acts of representation are acts of power.

All of these styles of images have been fiercely criticised. In relation to shock effect imagery, the strongest critique concerns their depiction of people not as humans but as symbols of truth, raising the question of ‘whose truth?’¹⁴³ The obvious refrain here is anyone’s but that of those depicted. As has been pointed out, there were no magic lantern shows in Leopold’s Congo.¹⁴⁴ Rather, the truth that they depicted was the sole reserve of those framing the violations that took place, the British missionaries based in the Congo. Concerning positive imagery, criticism focuses around the simplification and negation of traces of violations and discrimination with it, and the isolation of suffering individuals from their environment. Violations and discrimination, within their frame, are things suffered by individuals and to be combatted at the level of the individual. Such an approach blocks off the examination of society and its structures in the search of root causes of human rights violations and their remedies. And so, ‘the responsibility for disability [is placed] on the disabled person, not their disabling environments and social settings’.¹⁴⁵ The ‘post-humanitarian imagery’ that Chouliaraki identifies, finally, can be criticised for the shallow responses it seeks and can easily be imagined as engendering, namely efficient but transitory and largely individualised acts of solidarity, with the potential cumulative effect of removing discussions as to moral or ethical bases for solidarity from the public realm, and undermining ideas about solidarity more generally. Solidarity, in its approach, is presented through images as something to be purchased by an external actor. What is seen, subsequently, is not fully deemed to be *their* world by the individual who sees it.

What is most relevant for our immediate purposes, however, concerns the way in which these images are created, selected and shared. Although there may be space for participation within this process, it appears to be isolated to the first stage, with some human rights organisations experimenting with participatory techniques for representation at the moment of making the image. What this means is that the meaning attributed to these images

¹⁴³ A further significant criticism, however, alludes to the images that are drowned out by shock effect images or excluded in favour of them. For a discussion of this in relation to the presence of sterility clinics in Leopold’s Congo, see Hunt (n 6) 228-229.

¹⁴⁴ *ibid* 237.

¹⁴⁵ Klupchak (n 135) 49.

remains largely dictated by the organisations themselves. In the subsequent stages of the process, when images are selected for inclusion in reports or distributed to the mass media, communication teams within organisations are in control. However, their choices may often be dictated by their environment, which has become increasingly competitive for human rights NGOs. Organisations not only compete with daily news stories and editorial agendas when trying to find an audience for their reports or appeals, but with other NGOs, with whom they vie directly for funding. This leads to a tendency towards the use of certain kinds of images in human rights reporting, and the ascription to them of a very particular meaning. In most cases, this will focus as much on the organisation themselves as on the cause or people they are working for. In the competitive landscape within which they operate, organisations are required to justify their own existence. As such, the images they choose to publish inevitably serve this purpose, at least in part. With most organisations working on single issues, this leads to a very narrow framing of images; to images that say: this is a violation of this particular right and only this right, and we are the ones best placed to combat it.¹⁴⁶ The issue here is well summarised by Azoulay in relation to human rights photography. An analysis of human rights and photography, she states:

cannot be limited by the institutional boundaries that the organizations set in regard both to photographs and to the very concept of human rights itself. The assertion that a human rights violation is whatever the human rights organizations portray as a violation is a tautology that should be resisted.¹⁴⁷

The possibility here is that this attitude feeds insecurity over posing the question of who can be seen within the lens of human rights, and especially over-democratising the process of answering this question. What this leads to then, leaving considerations of subjugating gaze and misrepresentation aside, is the movement towards or entrenchment of human rights NGOs within the sovereign, and increased authoritarianism amidst images and human rights.

¹⁴⁶ Whilst this is the general trend, some organisations can be seen to use images in a rather different way. Take, for example, Amnesty International, “‘We Will Destroy Everything’”. Military Responsibility for Crimes Against Humanity in Rakhine State, Myanmar’ (Amnesty International Publications 2018) <<https://mapping-crimes-against-rohingya.amnesty.org/>> accessed 10 July 2018.

¹⁴⁷ Azoulay (n 31) 244.

2.6. SUMMARY

In this chapter, we have examined four potential expressions of the movement towards sovereignty in the relationship between images and human rights. What we should take from them at this point is the clear existence of the movement and something of the variations within it. We might also underline the general force of the movement with greater certainty. It may be understood as a movement towards increasingly authoritarian control over the intersections between images and human rights, and therein over the meaning of the human of human rights – of who can be seen through the human rights lens. It is the movement towards undemocratic control over the visual information relating to human rights there to be worked through in the political imagination.

3.

TOWARDS SUBVERSION

3.1. A DEFINITION

*'Ultimately, Photography is subversive, not when it frightens, repels, or even stigmatizes, but when it is pensive, when it thinks.'*¹⁴⁸

We have now seen something of the dynamism within the relationship between images and human rights. The picture, however, remains incomplete. What remains to be dipped in the fixer is the thing that might at once challenge and stimulate the movement towards sovereignty. In our investigation so far we have come across hints of such a force's existence. In order to investigate it directly, we might give it a name. For this purpose, we will call this second suspected force the *movement towards subversion*. But how might we think about it? In order to come to a proper understanding of the movement, we first have to deal with some of the dialectical implications bundled into the term 'subversion'.

Subversion, first of all, of what? We have already gone some way towards unpacking this part of puzzle. The *place* of the 'what' of the subversion we are talking about here appears to lie exactly amongst the sovereign. However, bearing in mind what we have already discussed about the movement towards sovereignty, its *content* – the *target* of its subversion – might be the boundaries set around the human of human rights through the sovereign's control of images.

¹⁴⁸ Roland Barthes, *Camera Lucida. Reflections on Photography* (R Howard tr, The Noonday Press 1988) 38.

Let's take the opportunity here to remind ourselves of what we know of the movement towards sovereignty. It manifests in boundary-setting by an eclectic and fluctuating group of states, groups and individuals, (re)enforced by way of modes and means of visual control and violence. This results in the development of a canonised class of human rights image and human rights image creation, the protection of which is aimed at keeping control of the potential of political imagination when it comes to human rights, and therein reinforcing the position of the sovereign itself.

The movement towards subversion might not simply be the sovereign movement's opposite. The relationship between the two forces appears less straightforward than a first step and response. If it is a dance it is not clear who leads.

In order to understand which force might push and which might pull, if the dynamic between these two movements can be described in such a way, we need to turn to a baseline – not necessarily a starting point, but an explicit zone of examination. Despite the problems making a determination of this sort involves, as far as our investigation is concerned we have already bitten the bullet and set such a point. So let's turn to the beginning of the 20th century for a moment, and look at the emergence of the CRA in opposition to human rights violations being committed in Leopold's Congo. From this historical moment, that of the first human rights movement in which images 'pushed the question of ethical response out of the arena of immediate action',¹⁴⁹ something useful for our current purposes might be gleamed.

Images brought from Leopold's Congo to Europe and in particular to England, where the CRA began, came almost exclusively from Christian missionaries stationed in the country.¹⁵⁰ They did not come from Leopold's forces, nor from the oppressed peoples themselves, but from a particular kind of mediator. Why then, did they take the photographs and distribute them? It seems clear that their aim was not to strengthen or solidify the control of Leopold and his forces over the Congo and its people, but rather to *undermine* it. The term *undermine* seems correct here, as opposed to *subvert*, because we should hesitate before defining these actions as subversive. There is no evidence of any of

¹⁴⁹ Sliwinski (n 24) 67.

¹⁵⁰ Primarily Alice and John Harris, at least up until the publication of Roger Casement's report in 1903. See Sliwinski (n 24) 57-64.

the missionaries' photographs being distributed within the Congo itself; no exhibitions were organised for those in the vicinity of the violence. If there had been, we might have been forced to see things differently. Helping local communities to organise is a very distinct proposition to encouraging the population of one colonial state challenging the rule of another. The visual human rights movement related to the Congo allowed for the visualisation of an 'other' that was 'constructed for Western audiences for both private and public consumption'.¹⁵¹

As such, we should see the efforts of the missionaries as attempts to undermine the sovereign, to alter its ways of acting and force its hand in a certain direction, and all this rather than to subvert it. For what was the end result of the CRA's movement? In 1908 Leopold's hand was replaced with another – that of the Belgian government, as opposed to the Congolese. Immediately after Leopold's sale of the Congo, missionaries stationed in the country were instructed by their home councils to stop producing or exporting any further photographs of violations occurring in the country.¹⁵² By 1910 the CRA's momentum had fizzled out, despite continuing reports of atrocities. What could be seen – the human and the violation – was shut down in response to the change effected by the visual. The movement towards sovereignty in the relationship between images and human rights was propelled into action by the hint at subversion present in the images that the CRA spread out in the first decade of the 20th century. Perhaps it is in this way that subversion and sovereignty interact between images and human rights. They appear to attempt to assert themselves and at the same time to undo one another, with each struggling against the weight and momentum of the other for room in an always limited space.

But what might subversion in the context of Leopold's Congo have looked like and projected towards? Rather than a transfer of control *over* the Congolese population, would it not have attempted to transform the nature of power and control themselves? It seems that this would indeed have been an act of subversion – not an act of rebellion but of revolt, aimed at splintering into the dynamics of control, breaking it up, and through action redistributing it.

¹⁵¹ Sliwinski (n 24) 73.

¹⁵² *ibid* 80.

The movement towards subversion between images and human rights, as with the movement towards sovereignty, concerns itself with control over who can be seen to have their rights violated, who can be a human and thus a holder of rights. It may be an attempt to democratise the means of production when it comes to images related to human rights. The extent to which it politicises the ‘human’ of ‘human rights’ through the use of images, and the ways in which it does so, may be traced through four interconnected areas, beginning with what has been called ‘the right to record’.

3.2 THE RIGHT TO RECORD

Rights frameworks are social constructs emerging out of wider attempts to understand and communicate the sense of our being in the world.¹⁵³ They may help or hinder our ability to orientate ourselves in our surroundings, and subsequently to navigate our ways through our environment as it unfolds, changes and challenges us. They can be dragged and drawn in many directions depending on underlying existential and ideological positioning and concerns – preliminary understandings. Parallel constructs forged for similar purposes as rights frameworks carry the potential to influence them. Rights frameworks are affected by other paradigms of intersubjective orientation, by environmentalism, nationalism, socialism, liberalism, anarchism and a web of other ‘isms’. The human rights framework is no exception here.

With this in mind, we should consider human rights as a dynamic process rather than as a concept with any *a priori* sense, set meaning in the present or plateau to be reached at some future point. To borrow from discussions relating to the right to food, the human rights framework should be understood and analysed as an interactive, relational movement squarely situated in history.¹⁵⁴ The upshot of this is that within the human rights framework lies the co-existing potential for repression and emancipation; the capacity to shield access to justice as much as to provide for it.

¹⁵³ With ‘rights frameworks’ here including citizen rights, human rights, species rights, environmental rights etc.

¹⁵⁴ This concept borrowed from discussion of the right to food through the lens of ‘food sovereignty’ in Christina Schiavoni, ‘The Contested Terrain of Food Sovereignty Construction: toward a historical, relational and interactive approach’ (2017) 44 (1) *The Journal of Peasant Studies* 1-32.

This facet of the human rights allows for the emergence and entrenchment of fundamental antagonisms within it. That is, for the meaning of rights to be pulled in one direction *and* the other. These struggles at once stimulate and second-guess the ‘interdependent and interrelated’¹⁵⁵ nature claimed for human rights, and raise further questions about the meaning of their universal character. They have manifested in many areas over time, and can be observed everywhere today. To take one example, look at the interplay between property rights and advocacy for a right to housing,¹⁵⁶ and to take another, at the debates over the relationship between the right to life, the right to bodily integrity, and reproductive rights.¹⁵⁷

Rights can be turned to confront one another like pieces on a chess board. As we have noted, the results of these confrontations – their outcomes – are determined by a multitude of factors that flow into the human rights framework from separate conceptual frameworks and underlying considerations and positions. This understanding converges with our present investigation in current debates centring on the right to privacy. In particular when the right to privacy, charged by competing security and justice paradigms, is challenged through images.

Ideas of privacy found their way into international human rights law through article 12 of the UDHR and article 17 of the ICCPR. Different aspects of the right have been expanded upon by its monitoring body, the Human Rights Committee, in its General Comments No 16¹⁵⁸ and 19,¹⁵⁹ from 1988 and 1990 respectively. It has also been transferred into regional human rights law, through, for example, article 8 of the European Convention on Human Rights.

¹⁵⁵ Vienna Declaration and Programme of Action (12 July 1993) UNGA A/CONF.157/23 para 5.

¹⁵⁶ As being worked through in current debates around homeless in Ireland, for a summary of which see ‘Our Voice, Our Rights: a parallel report in response to Ireland’s Third Report under the International Covenant on Economic, Social and Cultural Rights’ (Free Legal Access Centre 2014) 65-77 <www.ourvoiceourrights.ie/report/16/114-right-to-housing/> accessed 1 June 2018.

¹⁵⁷ As seen in debates ranging from Western Europe to Central America. For a summary of the struggle over this issue in El Salvador, to take one example, see Haley Wiebel, ‘El Salvador’s Ban on Abortion: A growing human rights crisis’ (COHA, 21 September 2017) <www.coha.org/el-salvadors-ban-on-abortion-a-growing-human-rights-crisis/> accessed 1 May 2018.

¹⁵⁸ UNHRC, ‘CCPR General Comment No 16: Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation’ (8 April 1988) INT_CCPR_GEC_6624.

¹⁵⁹ UNHRC, ‘CCPR General Comment No 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses’ (27 July 1990) INT_CCPR_GEC_6620.

The initial international guarantee of the right, in a rather anomalous move, went far beyond what had been implemented in any national context at the time of the UDHR or the ICCPR. ‘Something new was created that knew no example in any state constitution.’¹⁶⁰ Privacy, however, was not totally absent from national contexts prior to their inclusion in the post-war human rights documents. Elements of privacy were directly alluded to in the US Constitution through its Bill of Rights.¹⁶¹ And what may be more significant for our purposes is that privacy had been a key element in what we might broadly call ‘political thought’ long before the official human rights movement got under way. Indeed, it can be traced back to the middle of the 18th century, and the birth of liberalism, in which the individual and the state were defined as isolated entities, with the security of each carrying different connotations while nonetheless remaining paramount. The conception of privacy included in the UDHR, ICCPR and subsequent human rights documents laid the ground for an expanded and varied conception of privacy. With this has come a wider field of potential consequences than were encompassed in its origins as a structured social concept. However, it is these original roots that dominate conceptions of privacy today, wherein they manifest on individual and national levels in combination with the language of ‘security’. Its manifestation on each of these levels can be considered as pulling towards similar objectives, namely the maintenance of the status quo in relation to power and authority.

The right to privacy, when charged with ideas about security, is placed at a fundamental level in society. When security conceived as a good in itself comes to play on the right to privacy, the right grafts some of security’s primacy. In this transfusion, ideas of stability, safety and control are packed into the concept. Subsequently, it is used to trump other rights, along with contrasting interpretations of the meaning of the right itself, which may be inflected by other ideas, including those that prioritise justice and democracy over security and sovereignty. Today this comes to bear on the relationship between images and human rights in prohibitions on recording.

What can be seen here is a trend of legislation limiting the possibilities for recordings to be made of what we might call the *capital of sovereignty*:

¹⁶⁰ Oliver Diggelman and Maria Nicole Cleis, ‘How the Right to Privacy Became a Human Right’ (Sep 2014) 14 (3) Human Rights Law Review 442.

¹⁶¹ In particular in the First and Fourth Amendments.

its workers, property, intentions and institutions. Examples of such prohibitions can be drawn from a multitude of jurisdictions. Under section 58A of the UK Terrorism Act of 2000, police officers were given authority to arrest individuals filming police activity if they held a ‘reasonable suspicion’¹⁶² that the images were ‘being taken in order to provide practical assistance to a person committing or preparing an act of terrorism’.¹⁶³ However, not only incidents involving protest or criticism of states or governments are targeted for such prohibition. Recording of activity at state agencies is tightly restricted all over the globe, and companies and corporations also prohibit the use of recording equipment on their properties, with large-scale agricultural companies amongst the most prominent. Their legal arguments in such cases rest upon privacy laws supporting the protection of trade secrets.¹⁶⁴ Propping up all of these prohibitions are sanctions ranging in severity and turn from the civil to criminal. The other side of this coin is the installation of mass systems of visual surveillance by members of the sovereign touched upon earlier in this thesis.

In this manner, a confrontation has emerged over the meaning and primacy of the right to privacy; over when it can be asserted and restricted, and who can involve themselves in answering this question. What we can observe within this, in relation to images and human rights, is a struggle over when, where and who has the right to hold a camera,¹⁶⁵ point it towards a situation with potential human rights connotations and press record. It reveals a struggle over who can capture things visually and thus about what can be visually captured. In precise terms of human rights, this can be understood as a contest over who can show that a human rights violation has occurred.¹⁶⁶

¹⁶² Per Met Office guidelines <www.met.police.uk/advice-and-information/photography-advice/> accessed 1 July 2018.

¹⁶³ The Terrorism Act 2000, s 58A. Note that this section of the Act has come in for criticism at the European Court of Human Rights, see *Gillan and Quinton v United Kingdom* 4158/05 [2010] ECHR 28 (12 January 2010).

¹⁶⁴ See the Utah Criminal Code, Offences Against Property, Property Destruction, Agricultural operation interference – Penalties, title 76, ch 6 pt 1 s 112 <<https://le.utah.gov/xcode/Title76/Chapter6/76-6-S112.html>> which states ‘A person is guilty of agricultural operation interference if the person: (a) without consent from the owner of the agricultural operation, or the owner’s agent, knowingly or intentionally records an image of, or sound from, the agricultural operation by leaving a recording device on the agricultural operation’. Accessed 20 May 2018.

¹⁶⁵ Or more commonly a cameraphone.

¹⁶⁶ And about *what kinds* of human rights violations can be recorded.

It is a struggle between what can be seen and who can have a say in what can be seen. In a historical moment in which evidence more than ever is king, where things almost have to be recorded or be reproducible to have happened at all, where ‘Everything must become visible’,¹⁶⁷ it is a battle over who can see and who cannot: over whose sight counts.

This deserves our attention as it impacts upon the ways in which human rights can enter into the space of the political imagination visually. What can be seen determines to at least a large extent what can be worked through in the political imagination when it comes to human rights. What is involved in prohibitions on recording is the setting of conditionals and obstacles in the way of entering an image into this space, on its ability to be understood and reacted to.

It is in this context that advocacy towards what has been called ‘a right to record’ has emerged. Such a right, according to its supporters, would amount to ‘a human right to take pictures, moving and still’.¹⁶⁸ It should be recognised, it is claimed ‘in order to have the means by which to hold governmental officials accountable’, as ‘the ability to document requires that the public, among other things, has the right to record and share images of abuse of authority’.¹⁶⁹ Its legal basis is argued to be found in article 19 of the ICCPR, and similar legal protections of freedom of expression. Here, General Comment No 34 of the Human Rights Committee is pointed to, and in particular clause 11, which ‘construes the rights in article 19 broadly and explicitly mentions that protection of visual representations extends to images, objects of art and symbols’.¹⁷⁰

It is imagined as a limited right, implying judgement and responsibility in its actioning, with there being easily imaginable cases in which the right to record ought not to trump privacy rights. As such, it is imagined as being ‘broadly construed to permit image capture in the public interest’.¹⁷¹ In this form it has found some judicial support, in particular in the 2012 US case of *ACLU v Alvarez*,¹⁷² wherein it was

¹⁶⁷ Han (n 60) 38.

¹⁶⁸ Michel Angela Martinez and Alison Dundes Renteln, ‘The Human Right to Photography’ in Nancy Lipkin Stein and Alison Dundes Renteln (eds), *Images and Human Rights. Local and Global Perspectives* (Cambridge Scholars Publishing 2017) 14.

¹⁶⁹ *ibid.*

¹⁷⁰ *ibid* 12.

¹⁷¹ *ibid* 18.

¹⁷² *Am Civil Liberties Union of IL v Alvarez* No 11-1286 (7th Cir 2012).

held that the first amendment should be construed as protecting the right to make audio recordings of on-duty police officers without their consent, a form of the ‘right to record’. Further support in the US came in the case of *Glik v Cunniffe*,¹⁷³ at the United States Court of Appeals for the First Circuit Court, in which the right to record video of public officials in public spaces was upheld on the basis of the First and Fourth Amendments.

At its core, the proposed right is about *public interest recording*. It responds to the fact that ‘New technologies have made it simpler for human rights defenders and others to record and report violations, but harder for them to do so securely’.¹⁷⁴ Its objective is to reinforce, through the framework of human rights, the ability of ‘the public’ to check abuses of power. It is ultimately an attempt to patch one of the holes in the web of the social contract, and its emergence should highlight the relevance of our question for liberal democratic states broadly. However, we should understand that it is this and yet carries the potential to mean much more. Images are not just like any other objects in the world. They carry with them the possibility to cut through the vague historical uncertainty that can be brought to associate with the passage of time, and make clear the connection of moments once present, which drift into the past, with the unfolding future. Furthermore, as carriers of representations into the political, as vessels of transcendental possibilities, they are much more than that.¹⁷⁵

Although we can imagine the right to record coming into play in situations of corruption, criminality or other malfeasance, the situation in which it is mostly commonly imagined becoming active is in the context of abuse of power resulting in human rights violations. When brought beyond the materiality of its aims, it involves the sparking of the concept of ‘public interest’ within human rights and challenging the way in which the public interest is determined. We should also note that advocacy around the proposed right does not talk about the right of ‘citizens’ to record, but of ‘the public’ – a much more open term. We should understand this advocacy, therefore, as also opening up the

¹⁷³ *Simon Glik v John Cunniffe et al* 655 F 3d 78 (1st Cir 2011).

¹⁷⁴ WITNESS, *Cameras Everywhere: Current Challenges and Opportunities at the Intersection of Human Rights, Video and Technology* (WITNESS 2011) 10.

¹⁷⁵ For a further discussion of these ideas, in particular in relation to Guy Debord’s conception of images, see John Lechte and Saul Newman, *Agamben and the Politics of Human Rights* (Edinburgh UP 2013) 143.

question of *who* can determine the ‘public interest’. In this sense, it can be seen to be advocacy towards democracy in human rights: as an attempt to make some space for the collaborative determination of the human it refers to, within which one might assert oneself and others as deserving of the protection of the human rights framework, assert the universality of the human of human rights on the behalf of others through acts of solidarity, and to do it all by means of visual recording. It imagines doing so not only through the presencing of the violation of human rights, but of the human that suffers it. To presence the inaction of police officers in the aftermath of the killings of human rights activists, following the logic of the right to record, is not just to create evidence of the violation involved, but to presence the human who has suffered *as human* for the purposes of human rights.¹⁷⁶

3.3 NEW VISUALS, TECHNOLOGIES AND STRATEGIES

In response to increasing restrictions on the environments in which human rights images have traditionally operated, as seen within the movement towards sovereignty, an explorative trend towards new forms of human rights visuals has emerged. Within this, as yet unconquered spaces in which images can be bent towards human rights are being sought out, and new angles from which an approach might be made towards the question of the human of human rights searched for. In order to get to grips with this trend, we can turn to three distinct examples. Each appears to be involved in the investigation and opening up of new spaces in which images might interact with human rights, and from which they might draw and drag the movement into fresh or forgotten territories. Although they are individual examples, I argue that they gesture towards something more than themselves, that they can say something wider than might at first seem possible, stationed as they are in the roots of the particular.

The first example concerns the engagement with new technological space. To understand this in action we can turn to the work of Forensic Architecture. Forensic Architecture are a collective of architects,

¹⁷⁶ Example taken from the work of NAKAMATA, a Philippine indigenous land rights organisation, as documented in Gregory (n 123) 200.

animators, researchers and investigators based at Goldsmiths, University of London. They describe themselves both as a research agency and exponents of a new academic field referring to ‘the production and presentation of architectural evidence – buildings and urban environments and their media representations’.¹⁷⁷ They cooperate with human rights organisations to reconstruct scenes, events and moments of human rights violations. Their aim is to re-examine these situations from perspectives either isolated or extinguished by the visual parameters placed upon them in the past. These might have been created as a result of the absence, weakness or one-dimensional nature of the images of the human rights violation or its event, or through narrow distribution of control over which images are allowed to come to light – bottlenecks – or authoritarian interpretations of the visual traces of these situations. Their work is characterised by the innovative use of existing technologies and the development of new technologies for the purposes of visualising human rights violations. They turn towards visuals in order to understand how human rights violations occur and are allowed to occur, and to provide evidence upon which attempts might be made to see them remedied. They play on exactly the ‘forensic mode of the image’, wherein ‘the image is the vehicle of indexical signs that are evidence of something’.¹⁷⁸ In doing so, they seek to confront and challenge the forces most prominent in dictating the direction of images as such vehicles where it appears that they have been turned towards the repression of human rights. A further significant element of their work is the adoption of a collaborative approach to the exhuming, creation or reconstruction of the images involved. This is exemplified in many of their projects, including the ‘Saydnaya Project’.¹⁷⁹

Saydnaya is a prison close to Damascus in Syria to which no journalists or members of the public had been allowed access for several years. Through intensive interviews with survivors, Forensic Architecture created a visual virtual reconstruction of the prison and made it accessible online, providing a visual walkthrough of the systematic nature of the human rights violations occurring there.¹⁸⁰

¹⁷⁷ See <www.forensic-architecture.org/project/> accessed 1 June 2018.

¹⁷⁸ Lechte and Newman (n 175) 152.

¹⁷⁹ See <www.forensic-architecture.org/case/saydnaya/> accessed 2 June 2018.

¹⁸⁰ Reconstruction available at <<https://saydnaya.amnesty.org/>> accessed 2 June 2018.

In making images anew it might be possible to move beyond existing parameters of visual control. When it comes to human rights, such images might allow for the fact of violations once obscured to be dragged back into a tangible, plural reality. For in the absence of images of Saydnaya and other places like it, more than nothing emerges. Depictions of alternative realities, in which the things experienced by the prisoners held in places like Saydnaya have no meaning, come to dominate in the absence of the representation and transcendence of the reality of the prison. The collaborative development of the picture of the reality covered up by this facade-like real, as brought about by Forensic Architecture, might be able to work as an engine through which people might cast forced-upon ontological categories from their very own shoulders and battle the erasure used to suffocate their being and right to be. The Saydnaya project appears not only as an attempt to bring the fact of what had occurred at the prison into sight, but as an effort to overcome the obstacles that had been placed in the way of its being seen and entering into the political imagination. In the process of realising the project, Forensic Architecture not only created a powerful tool to be used in advocacy for justice in Syria and for those still held at the prison and others like it today, but perhaps also took a step towards quickening the pace of images when used to pursue justice through human rights.

A second example comes not in the creation of new images or the reinterpretation of existing visuals, at least not in the present. It rather concerns the idea of the 'archive'. It involves itself, through images, with the place of the future in human rights movements and of human rights movements in the future.

In the first English language dictionary, published in 1755, a quote was used to help define the meaning of an 'archive'. It was taken from a work by the Englishman Richard Allestree, written in 1675. 'Though we think our words vanish with the breath that utters them', he wrote, 'they become records in God's court, and are laid up in the archives as witnesses either for us or against us'.¹⁸¹ The origins of the term 'archive' lie in the Greek word *arkhe* – the place where power originates.¹⁸² What can be seen in the development of archives of images related to human rights violations committed in specific areas is precisely a challenging of

¹⁸¹ Account taken from Goldenfien (n 85).

¹⁸² Jaques Derrida, 'Archive Fever: A Freudian Impression' (Summer 1995) 25 (2) *diacritics* 9.

the place where power lies, and the control over temporality that sustains power itself. God in his court, in this constellation, might already have been brought down to earth, but what the trend here proposes is to convince God to choose sides and recompose his court. But what does this involve in practical terms? In order to unravel this we can turn to the work of The Syrian Archive.

The Syrian Archive, as they describe themselves, are a Syrian-led and initiated collective of human rights activists dedicated to curating visual documentation relating to human rights violations and other crimes committed by all sides during the conflict in Syria. Their goal is to create an evidence-based tool for reporting, advocacy and accountability purposes.¹⁸³ Their work involves collecting, verifying and preserving images emerging from the ongoing conflict in Syria. Their content primarily comes from independent journalism collectives, media organisations and freelance photographers and multimedia journalists. Beside this, a substantial portion of the images they collect are created or captured spontaneously by people living the situation on the ground, and are subsequently published on social media platforms or other websites. They are images which are often unappreciated, essentialised or overlooked by traditional movers of human rights visuals – human rights NGOs, national and international media organisations or corporations and states. Beyond the evidence-orientated intentions of the collective, the Syrian Archive also envisage their work as forming part of a memorialisation process for Syrians, potentially feeding into the transition that will be necessary in the country if the conflict is ever resolved. A further note should be made of the open accessibility and searchability of the archive.

What is the significance of this? Images, particularly when stored online, have at once a transient and permanent character. They are characterised by potential – to travel or remain, to re-emerge or be left behind. The work being done by the Syrian Archive is one example of an attempt to challenge control over how much of this potential is realised when it comes to images relating to human rights. Although the group holds Syria as the object of its specific focus, the example that it provides has the potential to disturb existing structures of power and control over the human rights image and its event internationally.

¹⁸³ See <<https://syrianarchive.org/en>> accessed 1 May 2018.

Moves towards justice anywhere are a threat to injustice everywhere. But the kind of archive exemplified in the work of the Syrian Archive not only has an effect in the present. Rather, it engages in the struggle over who can be seen as human for the sake of human rights beyond the present and into the future. It can be seen as a preparation for what might lie ahead in Syria and for Syrian people; as a protection of seeds today so that they might sprout in the future. It ensures that what has happened and is happening in Syria cannot be overdubbed, whitewashed or saturated out of time. It marks an interest, involvement and investment, as well as the right to be interested and the right to get involved and invest, in what can and, importantly, *should* be remembered. It restores possibility to the past and present, and fights for it in the future. It is then an acknowledgement that the space in which the working materials of the political imagination are determined is not neutral, but rather an arena full of interests, forces and distinctly motivated forms of representation, documentation and preservation.

The third example within this part of what we have named the movement towards subversion concerns the retuning, remixing and reclaiming of images in human rights contexts. This occurs both online and offline. We have already noted that the dialectical nature of the movements identified within the relationship between images and human rights, but perhaps it is here that it finds its clearest expression. When the making of images or recordings are used within the auspices of the ‘threat of the image’, or when restrictions are placed upon the manner in which images emerging from human rights contexts can be used on the internet, they simultaneously provoke and are provoked by reactions.

What we find here are acts involving the reclaiming of images from their original contexts as people involve themselves in the playing out of the movement of images related to human rights; involving themselves in their ‘event’. It is a process that comes with the reproducibility of images and has long accompanied them, but which is enabled greatly today by the increasing ‘movability’ of images – the potential for them to be transferred across mediums¹⁸⁴ – and by the prevalence of digital images which can be easily shared and interacted with. It can be seen in the sparking of the ‘subversive force’ within the photographs taken

¹⁸⁴ For a discussion of this concept see Simon Faulker, ‘Aylan Kurdi and the Movability of Images’ in Farida Vis and Olga Goriunova (eds), ‘The Iconic Image on Social Media: A Rapid Research Response to the Death of Aylan Kurdi’ (Visual Social Media Lab 2015) 53.

at Abu Ghraib through their ‘re-framing’¹⁸⁵ in an attempt to transform their original meaning, to alter the symbolism built into them by the sovereign frame. It can be seen when the images from the prison are used in protests in Baghdad against the US-led invasion, and when the men detained at Abu Ghraib, and depicted in the original photographs, return to the prison to make images anew.¹⁸⁶

The situation here is surely complex. The potential for images to be re-appropriated and reused also provides for their further misuse, or use with repressive or oppressive effects. Yet risk seems to inevitably accompany any process of democratisation, which appears to be what we have at hand here. The process of reclaiming images challenges the authority of normative frameworks of meaning for them and their frames. It allows light in to illuminate the intention and underlying structures that lead to their creation, and to create new meanings for them. It bypasses the attachment of aura to images, as discussed by Benjamin in relation to cinema.¹⁸⁷ By pushing into fresh contexts, the use of images in such ways appears to carry the possibility to create new space for dealing with human rights violations and for staking claims for human rights. It brings images beyond their original intention.

3.4 VISUAL JURISPRUDENCE

These new kinds of image creation, collection and preservation manifesting within the movement towards subversion add to the wealth of visual traces of human rights violations already ‘out there’. With or without a codified right to record, images with connections to human rights will continue to be produced. The spread of the internet and the increasingly visual dimension of social media, along with the prevalence of social media itself in many of our lives – the ‘visual-digital’ matrix in which we live in – amounts to the opening of something of a Pandora’s box here. In this age of the digital and social image, amongst which we find human rights images emerging, visuals have an expanded

¹⁸⁵ See Andén-Papadopoulos (n 73) 15-16.

¹⁸⁶ For an account of both these examples see Tara McKelvey, ‘I Hated Myself For Abu Ghraib Abuse’ (*BBC News*, 16 May 2018) <www.bbc.co.uk/news/44031774> accessed 1 June 2018.

¹⁸⁷ Benjamin (n 16).

possibility to ‘go’; each has immediate access to a ‘somewhere’ in which they can arrive, remain, be accessed, interacted with, and unfold into a multiplicity of meaning.

The pertinent question here turns around what exactly is done with the images put out and into the world through their publication by individuals online. One avenue down which they seem to be being drawn, relevant for our investigation, concerns the emerging field of ‘sensational jurisprudence’, and in particular its visual elements. What we find here is a push to give the proliferating images connected to human rights a specific form of legal potential or force; to transform the situation in which everybody knows, and everybody can see, into one where all sight might matter, where judicial effect can be given to a wider range of images and witnessing can be reinserted into the process of cause and effect that is imagined as forming part of the pursuit of justice through human rights.

There is an implicit connection between images and truth. Upon seeing an image – *in* the moment in which it comes into existence for us – we judge that we are seeing some *thing* of the world; that the image is not so much a window onto reality, as is often claimed, but in fact reality itself. This is particularly true when the recording apparatus, image-maker and even the subject appear to be secondary to the being of the image – to its coming into existence – or are purposefully covered up in order to avoid being seen as such. Without any obvious ‘trace of mediation’,¹⁸⁸ as it has been put, images come to be considered as coming from and being things of reality. This given credence and suspension of critical evaluation of images¹⁸⁹ connects with legal ideas of evidence. Today, new challenges are posed by the idea of images as evidence in the courtroom. As Sherwin states, ‘In an age of smartphones and ubiquitous surveillance cameras, events that once would have gone unrecorded are preserved for posterity and, inevitable, for trial’.¹⁹⁰ New dimensions in the process of production of images, and in the character of them, raise new considerations that have to be dealt with amidst the continued use of images as evidence in legal arenas.

¹⁸⁸ Richard K Sherwin, ‘Visual Jurisprudence’ (2012/2013) 57 *New York Law School Law Review* 14.

¹⁸⁹ Beyond the debate about the aestheticisation of suffering that often surrounds images connected to human rights and social justice. For a discussion this see Azoulay (n 31) 50-52.

¹⁹⁰ *ibid* 13.

Images gain their material communicative value through a process of categorisation and association. They make up part of the process of learning, evaluation, storage and recall that each of us undertakes as a means to hold some kind of physical and cognitive ground in the world we find ourselves in – a place from which to think, speak and act. The question this raises for the purpose of the law and images as evidence is to what extent are the types of images admitted as evidence determined by pre-existing categories and the forces that shaped them? To what extent are these categories responsive and open to change as images and the dynamics of images change? And what forces are involved in determining them as such?

There is an argument to be made that such categories are more fixed than flexible, and more shielded than accessible: that they are rigid when they might need to be otherwise. ‘Once a narrative frame is set’, Sherwin argues, ‘so, too, is the belief system that it embodies. Within that belief system, dissonant details get pushed away, while consonant ones leap to an observer’s attention’.¹⁹¹

In 2006, during the terrorist attacks on the London tube, open-source footage – images recorded spontaneously and subsequently made public by random people – led the six o’clock news on the BBC for the first time.¹⁹² Over ten years later, such images, while still perhaps unfavoured by the mainstream media in comparison to professionally shot footage, are largely accepted in the field of media. It is unclear, however, if this development has been matched in the field of law. The law, it has been claimed, ‘has not caught up technology’.¹⁹³ Might this be true of visual technology in particular? That old ‘visual benchmarks’ and ‘critical standards’¹⁹⁴ prevail?

If this is true, it may be in the process of changing, and what this might represent is a broadening of the visual borders of legal argumentation, and an addition to the toolkit of human rights campaigners seeking to enforce international, regional and national human rights obligations through judicial processes; through direct or strategic litigation.

¹⁹¹ Azoulay (n 31) 13.

¹⁹² See Torin Douglas, ‘How 7/7 “democratised” the media’ (*BBC News*, 4 July 2006), <http://news.bbc.co.uk/2/hi/uk_news/5142702.stm> accessed 1 July 2018.

¹⁹³ Human Rights Center, UC Berkeley School of Law, ‘The New Forensics. Using Open Source Investigation to Investigate Grave Crimes’ (Human Rights Center, UC Berkeley School of Law 2018), 3.

¹⁹⁴ *ibid* 14.

Of particular interest here, for our purposes, are attempts at litigation based on open-source investigations,¹⁹⁵ for it is within efforts as such that we find a great multitude of images traditionally barred from entry into the legal visual canon.

The key development here has come at the International Criminal Court (ICC), specifically in the case of Mahmoud Mustafa Busafy Al-Werfalli.¹⁹⁶ Alleged of war crimes, including the execution of 33 prisoners in Benghazi, Libya between June and July 2016-17, the ICC issued an arrest warrant for Al-Werfalli in August 2017. In support of their decision to issue the warrant stood, significantly for our purposes, seven video recordings of executions carried out during the period in question, all of which had been obtained from social media. In other words, the issuing of the arrest warrant was predominantly based on open-source visual evidence.¹⁹⁷

As Alan Teiger, former prosecutor at the International Criminal Tribunal for the former Yugoslavia (ICTY) has noted, ‘all admission of evidence [in legal proceedings] is and will be grounded in principles of reliability and probative value’.¹⁹⁸ The Al-Werfalli warrant marked a move beyond the prejudices around the necessity for ‘originals’ in legal evidence, as well as the perceived difficulties or imagined weaknesses in methods used to overcome the absence of originals amongst ‘found’ digital material. It pierced through the barrier posed by an absence of a clear legal framework or the presence of guidelines equivalent to ‘soft law’ for dealing with open-source visual evidence. Existing jurisprudence indicates that digitally collected visual evidence may be excluded from the chamber as evidence if gathered in contravention of national law or in violation of human rights. Beyond this, the weight given to digital visual evidence will often depend on the evaluation of its merits, in particular its authenticity, by judges. Its weighting, as a result, has been seen to change on a case by case basis.¹⁹⁹ This is true despite the clear

¹⁹⁵ By which we mean investigations focusing on publicly available sources of information.

¹⁹⁶ *The Prosecutor v Mahmoud Mustafa Busafy Al-Werfalli* ICC-01/11-01/17. The arrest warrant issued 17 August 2017. At the time of writing, the case remains at the pre-trial stage, pending Al-Werfalli’s arrest or voluntary appearance before the court.

¹⁹⁷ The full text of the arrest warrant is available at <https://www.icc-cpi.int/CourtRecords/CR2017_05031.PDF> with para 3 most relevant as to its basis. Accessed 1 July 2018.

¹⁹⁸ n 193 5.

¹⁹⁹ For a further discussion on this, see Lindsay Freeman ‘Digital Evidence and War Crimes Prosecutions: The Impact of Digital Technologies on International Criminal Investigations and Trials’ (2018) 41 (283) *Fordham International Law Journal* 297-8.

value in much of the digital visual evidence in question here, including its capacity to link human rights violations back to their architects, with whom ultimate responsibility for the violation ultimately lies.

The key point here, however, relates to sources. Up until the Al-Werfalli warrant, international courts had been warm to visual evidence emerging from a select group of actors, namely governments and military documentary film footage and photography. This can be traced back to the International Military Tribunal for Nuremberg, which marked the rise of the ‘documentation trial’ in a field formerly dominated by ‘trial by witness’.²⁰⁰ Subsequent trials of near or equivalent international dimension and gravity followed in this direction, expanding the documentation trial in accordance with certain technological developments. At the ICTY, as well as at the International Criminal Tribunal for Rwanda, ‘satellite imagery, forensic anthropology and expert reports and radio broadcasts were offered as evidence’.²⁰¹ Such images are unified by their sources: each is individually created, structured and controlled.²⁰² They are formed through means of production inaccessible to the large majority of people. The embrace of open-source visual evidence by the ICC suggests a coming to terms with the problem this presents, and in particular in cases of grave crimes and human rights violations. International human rights law, the framework that sprung from the UDHR, imagines the placing of legally binding and enforceable obligations upon states to fulfil human rights for all those under their authority or control. Legal avenues, therefore, are the means by which these are ideally intended to be pursued. This is certainly the case with civil and political rights and increasingly so with economic, social and cultural rights,²⁰³ though perhaps to a greater extent in theory than in practice. However, if only images emerging from the ‘canonised’ sources – states themselves, branches of government, military, established media organisations and experts – are to be permitted as evidence in human rights courts, a very clear risk is run.

Images, as we have already discussed, are never neutral. As things existing in the world they are always open to influence, shading and

²⁰⁰ Freeman (n 199) 299.

²⁰¹ *ibid* 301.

²⁰² With the exception of radio broadcasts, where this may or may not be the case.

²⁰³ Take, for example, the right to food, as discussed by the UN Special Rapporteur on the Right to Food Ms Hilal Elver. See ‘Report of the Special Rapporteur on the right to food, Hilal Elver – Access to justice and the right to food: the way forward’ (2015) A/HRC/28/65.

interpretation or meaning making by forces. They are the results of their ‘situatedness’ – their interactions with their environment and their environment’s interactions with them. What this may lead to is the admittance of images into court proceedings that claim to tell the whole story, but invariably mask the truth of it, or present it in carefully censored parts. As an example of this we can turn to the fatal shooting of the Palestinian Bassem Abu Raham by a member of the IDF, in the West Bank village of Bil’in on 17 April 2009. The shooting occurred during regular ‘land protests’ and was captured in three independent video recordings. Upon review of these videos, an Israeli Military Prosecutor decided to close the case, citing a lack of evidence. A visual reconstruction of the shooting by Forensic Architecture using data taken from the three separate video recordings proved unable to persuade the Israeli judiciary to move towards further action. The case is now stuck in judicial purgatory.²⁰⁴ Within the movement towards subversion the Al-Werfalli arrest warrant appears as a step through an opening dug out in the hope of finding a greater balance in the reception of images in courtrooms dealing with human rights.

3.5 COLLABORATIVE REPRESENTATION

In our discussion of the movement towards sovereignty in the relationship between images and human rights we have seen the manner in which the visuals at play can come to be framed by a group of sovereign actors. We have seen how this group seeks to solidify its control over the points of connection between images and human rights. Furthermore, we have argued that all images come with a force; that no image is simply a neutral depiction of reality and thus that all images are framed. We have seen this to be the case in the aftermath of an image’s production, in its interpretation, sharing and management; in its site of reproduction.

This, however, is not to say that forces are not already involved in the moment of an image’s making. Indeed, they may materialise and be evidenced equally in the manner in which an image is created.

²⁰⁴ For a complete account of the case see <www.forensic-architecture.org/case/bilin/> accessed 2 May 2018.

For is it not the case that the way in which images and their frames are put together²⁰⁵ contains within it the possibility for normative visual frames impacting upon human rights to be called into question or reinforced? Might it not be that a manner of production can fix groups of people into certain roles, such as creators and subjects, saviours and victims? And might it not also be the case that the manner of production can question these roles, encourage reflection about their origins and desirability, and help dismantle them all together if they become repressive; if they become categories within which “there are ‘subjects’ who are not quite recognizable as subjects, and there are ‘lives’ that are not quite – or indeed are never – recognized as lives’.”²⁰⁶

To take a step towards answers here we might look to the way in which images relating to human rights are constructed under the control of sovereignty. We have already touched upon this and related issues in our discussion of the use of images in human rights reporting, but let’s take a further example here to allow us to expand the reach of what we might already know. To do so we can turn to mainstream human rights documentary and film. What do we traditionally find here? What is there to be seen and how is it made? Something to grasp immediately is the commonality of the film or documentary being shot, funded and produced by persons other than the subjects of the film. What does this lead to? Inevitably it has something of a fishbowl effect. Those at the controls stand out of the waters, situating those within the images at an even further remove, rendering them not even spectators but spectacle, removing their identity as subjects from them and leaving behind an illusion of presence for spectators. From here, the situations, stories and intentions of the representations involved are framed by the director, producer or interviewer, they are mediated by their eyes rather than *communicated* in the words, actions and existence of those effected by the situation in question. This leads to the web of problems raised by shock imagery, positive representations and post-humanitarian images in human rights campaigns that we have already discussed and will not repeat here.

In contrast to this, in the contested territory within which images and human rights meet, we find observational cinema.

²⁰⁵ Which we should understand as a two-sided process occurring simultaneously.

²⁰⁶ Judith Butler, *Frames of War: When is life grievable?* (Verso 2009) 4.

As a movement, it can be characterised as ‘a sensuous, interpretative, and phenomenologically inflected mode of inquiry’.²⁰⁷ It can be seen as a form of what we might call ‘collaborative representation’, and amounts to an ‘alternative format’²⁰⁸ for creating and framing images with human rights connections. To draw out what it involves practically, and to get to grips with the meaning of ‘collaborative representation’, we might borrow an example highlighted by Anastasia Klupchak in her study of human rights documentaries and disability.

Klupchak writes on the visual elements of the human rights dialogue surrounding disability, and their effect on disabled people and beyond. She highlights the work of the Japanese documentary film maker Hara Kazou, and in particular the ‘action-documentary’ *Goodbye Cp*,²⁰⁹ in which he was involved. At its core, the documentary is about our ontological situation and the peculiarities of being in the world faced by someone living with disability and its surrounding stigma. It investigates how a situation in which people can be designated ‘human, like us’, and what needs to be done about it. In the film, Hara Kazou follows Yokota Hiroshi, a Japanese man suffering from cerebral palsy, as he ‘presents his life’.²¹⁰ Watching it, we see Hiroshi moving across a busy intersection, taking a train, picking tangerines, meeting friends and campaigning. He drags his body across public spaces on his knees and argues with his wife, Yoshiko, who also suffers from cerebral palsy. He eats fruit and discusses sex. In a crucial scene, both Hiroshi and his wife argue with Kazou when he follows Hiroshi into his house, the camera rolling. ‘How dare you in my house!’ Yoshiko tells him, ‘How can you! This is unlawful entry’. The presence of the camera and the film-maker is directly acknowledged and our attention is drawn to the complex relations that their presence creates. Watching the film, we are allowed to feel and think about the way in which the camera somehow knocks time out of joint. The tension that this creates is never shied away from in the film. Rather, it is allowed to roll on when it is come across. Such moments in the film emerge out of the openness of the observational style to spontaneous incident and everyday event. Unscripted and unsought, they come carrying the potential for ‘organic

²⁰⁷ Klupchak (n 135) 44-45.

²⁰⁸ *ibid* 42.

²⁰⁹ *Goodbye, CP* (1972) directed by Kazou Hara, produced by Shisso Production.

²¹⁰ Klupchak (n 135) 43.

and collaborative knowledge production'.²¹¹ They run directly against 'stagnant representations that constrain and marginalize through stereotypical tropes'.²¹² In doing so they also appear to problematise and disrupt them.

Furthermore, they represent the breadth of the lens deployed in the observational, collaborative format of film-making. It is a lens that outlaws ignorance or evasion when it comes to contributions and input from the environment and culture that surrounds people, and simultaneously refuses to allow people to be subsumed into their environments and be left without agency. In this sense, *Goodbye Cp* captures something of the real, complex workings of power in society, and the way it plays out within individual lives. And it is here that we find our way towards the real subject of observational-film: the intersubjective links through the world – relations between people, whether determined by certain structures of power or not, and their effects. This target of the collaborative observational image is reflected in the collaborative model for its construction.

Pity comes into the film and is put on display. In one moment, whilst Hiroshi and others with cerebral palsy hand out informational leaflets about their disability on the street, passers-by who offer donations are questioned as to their motivation. Pity arises in their responses again and again, and Hiroshi addresses it. 'In my opinion, we're the object of pity for them', he states. Positive imagery is eschewed. In the film's closing scene, Hiroshi lays out his intentions for the film, a film he and Kazou went through the process of making together. 'We set out to make this film', he says, 'but I was hoping to do something to make a different kind of film'. Different, that is, to the conclusion he cannot avoid. 'How can I say [it]?' he wonders, 'in many levels I require some form of protection. That's the only way I can survive'. Ultimately, the film aims towards considered, thoughtful, long-standing reactions that might engender political and cultural action and change.

Goodbye CP provides an example of a human rights image and human rights image making that is, and is created, '*with* people and not about them'. It evolves on the basis of a collaborative model that refuses to carry a moral imperative amidst its message, and as a result

²¹¹ Klupchak (n 135) 51.

²¹² *ibid* 56.

produces images that acknowledge the complexity of human rights violations and resist reduction, be it of people, groups or places involved in them, to symbols for external use or ends. In taking this approach it problematises essentialised portraits, sensationalism and spectacle, and draws normative frameworks for understanding human rights and human rights violations into question.

A key element we have to get to grips with here is the revelation that observational cinema forces upon us. Namely, that all images are representations, and, moving a step beyond this, that the means for producing representations can vary. We might consider three manners in which this bears true. Firstly, through what we can call ‘external representation’: representations grounded in the agency of the image-maker, who themselves are not the subject of the image, which we have already discussed; ‘self-representation’: the portrayal of a subject by themselves with the ends sought determined by themselves; and thirdly: ‘collaborative representation’, involving a form of co-creation and an emphasis on links between subjects and our ‘situatedness’ in the world.

The self-representations we refer to here can be seen throughout history. One can turn to the Palestinian cinema movement of the 1960s and 1970s,²¹³ and the politicised imagery that emerged from North Vietnam during the Vietnam War.²¹⁴ Responding to perceived and real colonial and imperialistic representations, categorisation and normative visual standards, both movements embraced the power of images and sought to turn them towards their own political purposes. From these examples we can see how the images at play here extend beyond film. These are attempts by individuals and groups to forge their own identity through representations, to transcend themselves and throw themselves against the visuals that have been built up around them by others. Self-representations mark an attempt to break into the space of the creative process where images make ontological meaning, and to break out of the situation in which groups are bound, as Tascon says, ‘into the discourses of “victim”, “violated”, “minority”’,²¹⁵ and are only allowed to create within these boundaries.

²¹³ See, for example, ‘They Do Not Exist’ by Mustafa Abu Ali, 1974, available at <www.youtube.com/watch?v=2WZ_7Z6vbsg> accessed 1 July 2018.

²¹⁴ See, for example, the posters created by North Vietnamese artists, available at <<https://edition.cnn.com/travel/article/cnngo-travel-vietnam-propaganda-poster-art/index.html>> accessed 1 July 2018.

²¹⁵ Tascon (n 13) 875.

Collaborative representation should be considered as a step beyond these kinds of self representations. In relation to human rights, we can say that it takes the universality the human rights movement proclaims at its word, assuming our shared thrownness into the world as a basis that entitles each of us to get involved in the affairs of others. Within this conception one can see a different kind of power emerging, one essentially self-referential, critical and democratising, that has the potential to overcome the varied and/or overlapping problems presented by both external representation and self-representation. In a curious sense, and against the grain, it emphasises the borders of images: the frames that carry them, and through such emphasis allows them to evolve, open up and fundamentally change in character. What this might hold, crucially for the purposes of our investigation, is the opportunity for people to liberate themselves from repressive frames placed upon them by traditional or dominant forms of human rights images and ways of making human rights image in particular, exemplifying, perhaps, what Klupchak hints at as a ‘shared human rights’.²¹⁶

3.6. SUMMARY

In this chapter, we have looked at four potential manifestations of the movement towards subversion in the relationship between images and human rights. At this point, we should take from them the interconnectedness of the movement, and observe sites at which its manifestations overlap. We might also state clearly the existence of this movement, and speak more clearly about its nature. The movement towards subversion can be understood as the attempt to open up avenues down which images and human rights might connect, to increase the number of people who can access them, and therein to open up the possibility of defining human rights, and particular it’s ‘who’ – the human of human rights – to a broader range of people and groups. It might not go as far as to universalise the ‘human’ spoken of here, but it nonetheless puts the antagonism between the universal claims of human rights theory, and their failure to materialise in the human rights

²¹⁶ Klupchak (n 135) 41-42.

movement under the direction of sovereignty, on display. It attempts to ask the question of whether the ‘human’ of human rights is in fact a border through visual forms. It can be summarised as a movement towards the *possibility* of new realities within the human of human rights. It echoes the thought of Franco Berardi, who claims, ‘The main political task of our time, in the age of video-electronic media, is the creation of video-poetic strategies – in short, the creation of narrative frames for action, *mithopoiesis*, *dispositifs* for constructing new realities’.²¹⁷ It is a movement to increase the working materials and space of the political imagination when it comes to human rights.

²¹⁷ Berardi (n 126).

4.

REFLECTIONS

4.1 SUGGESTIONS FROM THE FIELD

*‘What does it mean to resist? Above all it means de-creating what exists, de-creating the real, being stronger than the fact in front of you. Every act of creation is also an act of thought, and an act of thought is a creative act, because it is defined above all by its capacity to de-create the real ...’*²¹⁸

The playing out of our being in the world – the state of affairs in reference to which human rights find their significance – is becoming increasingly visual. In our investigation so far we have identified a tension in the space in which human rights coincide with images. At the most basic level, our investigations so far indicate that this is a contested space moved in by two interwoven, antagonistic movements. What we now have to investigate is the significance of this dynamism for the human rights movement and its present and future situation and meaning, bearing in mind the concept of dignity that it held out in the making of the UDHR. However, if what we have uncovered so far is indeed a fair reflection of things, there may be a question we have to involve ourselves with first. Before we go on to reflect on the significance of the forces within the relationship, we might ask is where things might go from here.

It might appear that this kind of question would be better posed at the end of an investigation like ours. However, it might be that in order to understand something, including a thing like that with which we have involved ourselves in here, one has to consider its past, present and future, and in doing so remember that the future is not simply a result of history

²¹⁸ Agamben (n 1) 318.

moving through the present. It might be necessary to appreciate that time is much more unified than that; that the future has a very tangible effect on the present. In every moment each of us is affected by things that have not yet come to pass but which we might be able to imagine and respond to. In taking a step towards an understanding of the relationship between images and human rights, we have to consider its future and consider it before drawing our conclusions about the relationship. To do otherwise, to ignore the future's place on the horizon or postpone it, would only limit the scope of our investigation. Understanding is our goal here and understanding is a process. It necessitates involvement in the materiality you find yourself in, and action. From action we find responsibility. Given our present aims, we have to try, as far as we can within the limits that surround us, to get a full picture of the relationship at hand.

In order to begin to do just this, I conducted interviews with several individuals working 'in the field', so to speak; to people stationed on or often crossing the border between images and human rights. Amongst them I met a worker with an international NGO, a member of a professional collective working on human rights investigations and an independent human rights film-maker. Cutting across their profiles and uniting them was their professional interest in advancing causes of human rights through images. In conducting the interviews, each interviewee was asked the same set of questions, available in Annex 1. Permission was requested, and granted in each case, to record the conversation taking place and use the content of it in this process of reflection. Consent was also requested to use the names of those interviewed and their organisations in this project. However, in none of the cases was this granted, and so their requests for anonymity will be respected here.

I here propose to synthesise the most salient points emerging from these interviews. In particular I will focus on one of the interview questions, namely, 'In what ways do you think images should be used in human rights contexts now and in the future?'

In all of the interviews conducted the curious concept of *absence* emerged. Absence of images in human rights situations generally, and absences indicated by images actually available. It was suggested we could think of these in terms of 'negative evidence'. We might refer to them, to these missing images, as the *unimagined*.

In traditional media coverage of human rights related events, as in human rights reporting, a selection or choice of images to prioritise is always made. This either occurs on the ground, in real-time or is carried through shortly

afterwards by journalists or human rights field officers, or at a later point by editors. This choice, like any other, involves an exclusion. A choice is always a favouring of one thing over another. This decision-choice matrix structures human interactions on micro and macro levels. As a result of the choices that are made when it comes to images and human rights – and there might be a myriad of reasons involved in their making – what emerges visually has to be understood as at best a *partial* representation of what has happened or is happening. Here we find the unimagined.

One way of understanding this, and the way in which it emerged in the interviews, came in terms of *information*. Many power relationships, it was suggested, are based on the availability and accessibility of information, and thus are determined by control over information. Much of this information comes in visual forms. The kinds of choices made, and, we may say, the *way* in which they are made when images meet human rights can affect the ability of others to see by providing or denying them with greater or lesser shares of information or information modified. The *creation* of the unimagined can be a real act of taking power away from people or of leaving it open for them.

A second element to note here concerns who makes these choices. In the interviews, the role of external journalists coming into human rights sensitive situations were highlighted, as were the roles of editors and states. In many situations, it was suggested, these actors play a role in the development and perpetuation of what we might call ‘state-led narratives’. Connected to this was the idea of the *timing of imagery* – of who decides *when* images are given place. The importance of this in human rights situations was expressed in the interviews.

What was suggested in relation to dealing with these two factors going forward, and suggested as such across all the interviews, was the need to delve into the space of these absences, to excavate them in a sense and bring the unimagined into view. The importance of challenging imbalances in control and information in order to create possibilities for effective action and, ultimately, the prevention of human rights violations and accountability for their perpetuation, was stressed. Achieving this, it was pointed out, requires working creatively and being unafraid to apply new techniques or technologies to human rights situations that might seem left behind or isolated in time – to harness the ability presented by current technologies and visual habits to, in a sense, *look closer or look again*.

In relation to this, however, fears were voiced over the direction

technology might take us in. Questions were raised over the overall impact of the use of 3D imagery, virtual reality and augmented reality – some of the new visual technologies beginning to get involved with human rights.²¹⁹ These technologies seem to contain the capacity to bring us extremely close sensorally to situations of human rights violations. However, questions were raised as to how effective they might be for preventing them? What kind of connection, it was asked, can such technology really engender? Is this really what we need to feel solidarity? And if so, where will it bring us? What will be needed next? As was stated, opportunities exist when it comes to images, technology and human rights, but it appears crucial to avoid moving towards or cementing a situation where accessing the kind of images we are concerned with becoming merely entertainment – where they enter further into what we have called a kind of *hyperreality*, a space defined by disconnection rather than any form of solidarity, which only enables escape from material reality.

What then might be the alternative to a technology-driven future for the use of images to advance human rights? Across the interviews, the readily available nature of media and the capacity of media to be manipulated was highlighted. What this implied for one of the interviewees, looking towards the future, was the need for image literacy; the capacity to be able to look at an image, or more precisely, multiple related images, and being able to read them for different kinds of information – to *reference* between images. It would seem that this would rely, however, on a wide plane of images emerging from different sources around human rights related events; on something like the idea of a ‘full field of vision’²²⁰ developed by Azoulay in relation to humanitarian photography. The idea of the utility of referencing when interacting with images connected to human rights stresses the need for as full a picture as possible, and that this picture might be allowed to be as *authentic* as possible, in the sense of wearing its motives on its sleeves.

²¹⁹ See, for example, the recent virtual-reality film by the Mexican filmmaker Alejandro Iñárritu ‘Carne y Arena’, which aims to allow viewers to ‘thoroughly live a fragment of the refugees’ personal journeys’. See <www.lacma.org/carne-y-arena#about-the-exhibition> accessed 1 July 2018.

²²⁰ Azoulay (n 31) 2-3.

5.

CONCLUSION

The relation between what we see and what we know is never settled'.²²¹

In this thesis I have attempted to take a step towards a better understanding of the relationship between images and human rights. In doing so, I have identified two interwoven movements competing to define this relationship. I have named these the movement towards sovereignty and the movement towards subversion, and have delved into the meaning of their defining terms – sovereignty and subversion – when it comes to images and human rights.

I have outlined how the two movements concern themselves with control over the meaning of human rights, and argued that within this their focus falls on the human of human rights – on exactly *whose* rights can be seen to be violated and thus whose claims for rights can be heard. I have argued that this ‘who’ of human rights is substantially mediated by images.

I have identified four distinct ways in which each of the two movements finds its expression. Within the movement towards sovereignty, I have discussed the threat of the image: the use of images within human rights violations; surveillance involving the concentration of images into the hands of the sovereign and their manifestation in categories of the human when it comes to human rights; restrictions on the use of images in human rights contexts online; and trends within human rights reporting. Within the movement towards subversion, I have investigated developments around a right to record; the use of new

²²¹ John Berger, *Ways of Seeing* (Penguin Books 2008) 8.

visual technologies and strategies; developments in visual jurisprudence; and collaborative representation in human rights film and photography.

Having subsequently gathered interpretations of the relationship between images and human rights from people working on the line between the two, I here propose to draw together what we have discovered and consider its implications for the human rights movement.

At this point we can make a first conclusion and say with confidence that images matter, and will continue to matter, for the meaning of human rights and the human rights movement. Before we examine the fall-out of this, it might be useful to summarise what we have learnt about the character of images themselves. Following our investigations so far, we can say that they are representations which form part of the raw material of the world we find ourselves in; that they have an effect on other things within that world; that they do so over time; and that the manner in which they do so is largely dependent on the force folded through them at any given moment.

What we have been investigating in this project is exactly what these forces are when it comes to images emerging in human rights contexts. We have identified the existence of two distinct forces. But what should we think of them? In order to really answer this question, we ought to first reflect on what drives these forces; on where they come from and why they emerge.

Why, in any case, do we try and represent ourselves, one another and situations around us? Representations are types of *communications*. Images, as a medium of representation, are no different. But communications of what when it comes to human rights? Here it might be useful to return to our very first example, to look back at Eleanor Roosevelt holding those three versions of the UDHR. What was that photograph trying to do? At its most basic level it was a kind of *declaration of the Declaration* – an attempt to show that something had been grasped. But what was this ‘something’? We find the answer at the foundation of human rights as proclaimed in the UDHR, with the self-evident, universal, *a priori* truth of ‘dignity’ that the drafters proclaimed. This marked an attempt at understanding – that complicated process of orientating ourselves in the world and therein getting to grips with being in the world itself. Attempts at understanding, including individual efforts and universal grabs – are attempts at holding on to something steady about our own intersubjectivity. Communications form a part of these attempts.

If we can say this is the case, we should see images connected to human rights as attempts to communicate the meaning of the dignity the human rights movement proclaims. If we consider them in this light, what are we to make of the two movements we have identified as pulling upon images when it comes to human rights? If, at their core, the use of images within them and the way they are dealt with by the two movements represent attempts to communicate an understanding of the meaning of human rights – taken here as a framework for organising and navigating the world based on the idea of dignity – what can we say of their impact? Let's look back at the identifiable characteristics of the two movements. One, the movement towards sovereignty, pushes for increased control over the points at which images can connect with human rights, and through which human rights causes can be channelled through images. It seeks to draw this control into increasingly authoritarian hands. The other, the movement towards subversion, is the attempt to disrupt this, either by forcing open existing contact points between images and human rights, levering them in different ways or creating new entries, and by exposing human rights struggles to a broader range of images and sources of images.

But there is more to the two movements than this. The movement towards sovereignty does not only seek to secure the borders between images and human rights. It also stakes a continued claim for the validity of the truths of human rights as they have been proclaimed. It involves an attempt to close the door on questions about the meaning of human rights and the human rights movement, insisting that they have been answered. As Keenan highlights, there may be some advantages to this when it comes to advancing human rights. He notes the view that 'the diffusion of images goes hand in hand with a more disturbing dispersion or evisceration of the conditions of action' and the subsequent claim that with the loss of authority over images we also see the loss of 'centrality, authority, borders and clear distinctions, principles and all the rest'.²²² But of how much value is this? What is gained by safeguarding it when it comes to human rights? We should bear these questions in mind when considering the movement towards subversion, for it is just the contrary.

²²² Thomas Keenan, 'Publicity and Indifference: Media, Surveillance, "Humanitarian Intervention"' in Thomas Y Levin, Ursula Frohne and Peter Weibel (eds), *Rhetorics of Surveillance from Bentham to Big Brother* (MIT Press 2002) 10.

It struggles for the space to ask questions about the meaning of human rights, for more and more people to be able to do so, and for them to be able to do so visually. It does not insist on any absolutes other than that the space for these questions to be asked is necessary and that it ought to be accessible to all.

If we are to view harm done to one another through the human rights framework, we have to admit that human rights violations continue to occur with ferocious intensity. We must also admit that the protective web of human rights is not spread evenly. Not everyone is able to be seen through the lens of human rights, and the people and groups who are not are left rightless. The human rights framework is largely reactive. It kicks in, effectively or otherwise, when rights are seen to be violated. When they cannot be seen, it is most often motionless. This being the case, we ought to be intensely suspicious of a movement that seeks to close the door on the question of the 'who' of human rights.

But there is more to be taken from this gap between rights and facts. What it suggests is that the human rights framework, as it stands, has been unable to bring about a change in the way we relate to one another that might be capable of halting these kinds of harms. For it is exactly at the level of intersubjectivity that human rights violations emerge; in the breakdown of relations between people and breakdowns in the individual and group process of understanding our being in the world with others. Violations stem from the failure, in specific instances involving decision and action, to see others as human. From this, in evaluating the two movements we have identified, we have to ask after their impact on relations between people. When we do so what we seem to find is a definitive movement and a queer movement; a movement that insists on answers and another that insists on questions. The movement towards sovereignty is a movement of pre-determined categories and frames. It offers stability and predictability between people. The movement towards subversion, on the other hand, is a movement of competing claims. It offers new possibilities for representation and expression, and new bases on which to relate to one another.

Judith Butler, writing on representation and violence, has argued that frames 'work to differentiate the lives we can apprehend from those we cannot (or that produce lives across a continuum of life)', that they 'not only organize visual experience but also generate specific ontologies

of the subject'.²²³ Is it not the case that these 'specific ontologies' are most commonly determined, when controlled by the sovereign, by the interests of the sovereign rather than their effects on peoples' lives, including their capacity to assert their human rights? And is it not true that these ontologies influence the way we see one another and involve ourselves in one another's lives? And further than this still, is it not the case that visual representations of human rights as determined by the sovereign are haunted by ideas of the meaning of human rights that actually undermine its advancement and emancipatory potential? Are they not haunted by the 'dream of action, power and enforcement' of and by a sovereign which insists on its authority to see human rights realised on its terms alone? Are they not haunted by Roosevelt staring down at the UDHR; by the ghost of a declared universality that sovereignty has largely determined as against its interests to fight for?

We should evaluate the movement towards sovereignty as a movement towards a narrowing of the lens of human rights. It is a movement leading towards the fortification of barriers between people, the repression of the emancipatory potential of human rights and the likely further breakdown of intersubjective relations, with all the human rights violations and suffering that is sure to follow.

Taken in this light, the movement towards subversion seems to deserve support. It may offer less control than the movement towards sovereignty, and as such bring with it risks, but we have to ask what kind of control is desirable ultimately. If human rights violations are rooted in the breakdown of intersubjectivity, what is needed is an approach to images that opens spaces for these breakdowns to be acknowledged and worked through.

On this basis there are many forms of visual human rights defence and activism that we might want to support, including those already detailed within the movement towards subversion. But what should our overarching approach be when it comes to images and human rights?

We have talked throughout this thesis about the concept of the 'political imagination' – the space in which being in the world together can be worked through amongst people. Where should the meaning of human rights be decided upon if not here? Where else should its ghosts be faced, its contradictions dealt with and its universality sought out?

²²³ Judith Butler, *Frames of War: When is life grievable?* (Verso 2009) 3.

Images, as both representations and communications, at once make up the raw material there to work with in this space, and embody the process of understanding which might take place within it. Perhaps what is needed when approaching images connected to human rights is the lifting of restrictions on their making, sharing and form. This might involve accepting the dangers that will continue to exist within images, with there being legitimate concerns about privacy and the threat of the image among other things to consider here. However, it may enable them to be dealt democratically within the political imagination, in particular if the concept of universal dignity can be retained there as the foundation stone. The hope here would be that through this process, images might come to be used most dominantly as tools by which we find our way to others. That they might engender solidarity and help keep us in touch with the universality of the human concept within human rights.

If we take this as the overarching idea that should drive our appreciation of human rights images, we might also be able to make some concrete proposals about their use and creation. Specifically, we might be able to identify certain kinds of image-making that foster connections between people and a democratic way of working through problems between ourselves – images that strengthen the space of the political imagination.

We find examples of some potential forms here in our discussion of the movement towards subversion. One element which cuts across them is that of creative collaboration in visual representations, a kind of imaginative action in which the need for people to work through being in the world together is acknowledged, accepted and acted upon. It can occur at all stages of the life of an image and should be encouraged and safeguarded for its potential to foster the realisation that it is not the world, situation or time of the person or group represented that is unreal or unacceptable, but *our world, both of our worlds, the one world we both inhabit*.

As a process, creative collaboration is a microcosm of that which we might want to see in the space of the political imagination. Images emerging from collaborative processes appear as simultaneous acts of creation and solidarity. They are at once a cry for the way the world ought to be, or a declaration of what needs changing, and the immediate putting into practice of the change wanted to be seen.

It was the aim of this thesis to contribute to our understanding of the forces acting upon images within human rights contexts, and to reflect on the wider relevance of these. I hoped to make some suggestions as to how we might approach such images, and to draw out a more watchful and aware way of considering them. I hoped that my method – the search for traces – might allow this to be done, and that it might furthermore help to open up some new spaces for thought and reflection about the meaning of human rights and the human rights movement. In this regard it appears to me that the aims of the thesis have been fulfilled.

CODA

Sometimes an assumption that we have all of the words we need to express ourselves gets in between people. The truth, as it seems to me, is that we rarely do. A few months before beginning this thesis I was sitting in an observatory in the north of Berlin. I was there for an event about the situation in Syria, and in particular about justice for the mass violations committed there since the revolution began in 2011. During the event a short film was screened. In it, several photographs smuggled out of a military hospital in Damascus were shown. They came from the cache of photographs shared by the whistleblower known as ‘Cesar’, and depicted the emaciated bodies of Syrian men who had been brought to the hospital from detention centres. The room in the observatory was full for the film. There were a great mix of people there. Amongst us were many Syrians, including people whose relatives were amongst the dead in the photographs. This thesis really began there, upon seeing those photographs, taken as they were with the apparatus of those responsible for the deaths and all the loss and suffering that accompanied them, and upon witnessing the will of the people they touched most directly to change their force and meaning.

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VIDEO MATERIAL

- Goodbye, CP* (1972) directed by Kazou Hara, produced by Shisso Production
- They Do Not Exist* (1974) directed by Mustafa Abu Ali

ANNEX

INTERVIEW QUESTIONS

1. Can you summarise your current work/the work of your organisation?
2. Who, if anyone, controls images in the context of human rights?
3. What might the implications of this distribution of control, or indeed lack of control, be?
4. How can images strengthen the human rights movement?
5. Can images threaten, violate or repress the development of human rights?
6. What do you see as the current trends in the area?
7. What ways do you feel images should be used in human rights contexts now and in the future?

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The present thesis - ***Images and Human Rights: towards Sovereignty or Subversion***, by Michael Phoenix and supervised by Guy Haarscher, Université Libre de Bruxelles - was submitted in partial fulfillment of the requirements for the European Master's Programme in Human Rights and Democratisation (EMA), coordinated by EIUC.

