

# **IMAGE ETHICS**

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**The Moral Rights of  
Subjects in Photographs,  
Film, and Television**

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*Edited by*

**Larry Gross  
John Stuart Katz  
Jay Ruby**

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## The Moral Rights of Subjects in Photographs, Film, and Television

EDITED BY LARRY GROSS,  
JOHN STUART KATZ, AND JAY RUBY

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# IMAGE ETHICS

COMMUNICATION AND SOCIETY  
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IMAGE ETHICS

*The Moral Rights of Subjects  
in Photographs, Film, and Television*  
Edited by Larry Gross, John Stuart Katz,  
and Jay Ruby

CENSORSHIP

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## Preface

In July of 1907 the periodical *The Independent* ran an editorial with the title "The Ethics and Etiquet of Photography," warning that

Tourists who have loaded themselves with rolls of film for use in Europe this summer will have to be careful when they go to Germany. In that thoroughly regulated country a new law goes into effect July 1st prohibiting the photographing of any person or his property without his express permission. (7/11/07:107f)

The editorialist of *The Independent* viewed this development with a somewhat chauvinist skepticism, noting that the German government "tends to prohibit anything that can be prohibited and many things that cannot. Photography belongs in the latter class." The editorialist goes on to admit that there are "undeniably abuses in our present free and unlimited practice of photography," but these cannot be remedied without "interference with the rights of the camera"!

As regards photography in public it may be laid as a fundamental principle that one has a right to photograph anything that he has a right to look at.

In the eighty years since that principle was stated with such clarity and simplicity, it has not been universally accepted nor has it sufficed to resolve ethical and moral issues surrounding the use of the camera. Moreover, as photography was joined by motion pictures and later by video, and as our world has become ever more inundated by visual images which inform, educate, and entertain us, these concerns grow sharper and more inescapable.

Consequently, when we began discussing these matters a few years back, it was something of a surprise to discover how little scholarly attention had been paid to the moral rights of those individuals and groups whose images are used by photographers, film-makers, and video producers. Our response to this discovery was to begin discussing these is-

sues with our colleagues and students, in an effort to stimulate more active and extensive consideration of what we began to call image ethics.

It is unlikely that any single collection of papers could do justice to the range and complexity of ethical concerns invoked by the use of visual media. Nonetheless, we believe that the present collection will make a valuable contribution, not only by calling attention to an important but neglected domain of moral accountability but by providing a set of theoretically informed analyses grounded in discussions of particular cases.

The volume begins with an introduction which provides a historical context and an overview of the territory, with particular attention to the issue of privacy—the theme most frequently encountered in the discussion of image ethics. The first essay, by Brian Winston, continues the historical groundwork by tracing the roots of the tradition that dominates most documentary work in photography, film, and video, namely, the dedication to “social amelioration through the documentation of societies’ victims,” and asking whether in fact the promises implied by this doctrine are realized in practice.

The next four essays examine aspects of the relationships between image makers and their subjects, approached within the framework of informed consent. These papers can be seen as representing an ever closer engagement of image makers and their subjects. Beginning with the documentary film-maker exposing an instance of social victimization (in the very tradition described by Winston), Carolyn Anderson and Thomas Benson explore an unusually challenging instance of the problems inherent in attempts to obtain truly informed consent.

Lisa Henderson’s focus is the more familiar but still sensitive terrain negotiated by photographers who take pictures of people in public places. As the editorial writer in *The Independent* remarked back in 1907, “. . . when one appears in public it is always with the expectation and often with the purpose of being seen, and nowadays he must also anticipate being photographed.” Yet, we do not necessarily feel that photographers have an inalienable right to photograph us without our consent. As Henderson shows, photographers must learn the strategies necessary to obtain and sustain access and consent.

“Most documentary film-makers have relatively little commitment to the subjects of their films,” Robert Aibel notes, in preparing to argue that even those film-makers who do feel a sense of commitment to their subjects will invariably encounter difficulties in balancing ethical considerations with the exigencies of film-making. Aibel illustrates the conflicts that face documentary film-makers through an example from a

film he produced and directed in collaboration with colleagues also committed to a stance of moral accountability.

Aibel and his collaborators are unusual not only in the degree of their awareness of the moral obligations entailed in documentary film-making, but also in that they were making a film in a community where they had all conducted research for several years, and in which they were no longer strangers. The people who figured in their film were known to them, and the film-makers had an investment in the community which they were interested in preserving. While Aibel *et al.* were constrained by their prior professional relationships with members of the community they filmed, Katz and Katz discuss the more dramatic case of autobiographical films about the film-maker him/herself and/or about the film-maker's family. In these instances, "the subject of the film and the film-maker often begin with a level of trust and intimacy never achieved or even strived for in other films." Using examples from many autobiographical and family films, Katz and Katz ask whether—and how—the principles of ethical practice in these cases differ from other kinds of documentary films. In addition, they pursue the intriguing question of what effect a knowledge of the 'special' relationship between film-maker and subject has on the audience's perception.

The papers by Viera and by Beauchamp and Klaidman move us away from the domain of the independent documentary to explore the practice of image makers in the more commercial branches of the visual media, and television in particular. Viera analyzes the legal and economic dimensions of subjects' images, with special attention to 'stars' and to what is known as the right of publicity; the right to profit from one's own image. Using examples such as the image of 'Elvis,' or Bela Lugosi's impersonation of Dracula, Viera explores the issues raised when image makers attempt to profit from the intangible property constituted by media fame. As he shows, a troublesome ethical and legal dilemma surrounds the question of who *owns* a star's image, and who should be permitted to cash in on the investment such an image represents.

Beauchamp and Klaidman offer a case study of a recent and widely publicized dispute concerning not the property rights but the reputation of a public figure. When General William Westmoreland sued CBS News, charging that he had been libeled by the program "The Uncounted Enemy: A Vietnam Deception," he focused public attention on the often troublesome practices common to network documentaries. Despite an official commitment to 'objectivity,' it is well known to anyone who has been involved in documentary production (or almost any



journalistic enterprise, for that matter), that the necessity of selectivity and the demand for a dramatic narrative force the producer towards an artificially simple and inevitably slanted presentation. In Beauchamp and Klaidman's judgment, "The search for 'truth' fades and becomes a search for a preconceived 'moment,' a biased hypothesis that captures the 'essence of truth' in the mind of the documentary maker."

The next four essays maintain the spotlight on mass media practices but, rather than examine the treatment of the rich and famous, these authors are concerned with the depiction of people at the margins of society. In a world dominated by centralized sources of information and imagery, in which economic imperatives and pervasive values promote the search for large, common-denominator audiences, what is the media fate of those groups who for one reason or another (racial, sexual, religious, ethnic, etc.) find themselves outside the mainstream? Briefly, and it is hardly a novel observation, such groups share a common fate of relative invisibility and demeaning stereotypes. Gross presents an analytic model of the role of mass media, television in particular, in American society and then offers a set of criteria by which to judge the ethical dimension of media practice. Stating that the "critical test of ethical guidelines applied to mass media practice will be to examine the treatment of those outside the mainstream," he illustrates the application of these principles through a discussion of how the U.S. media have dealt with sexual minorities.

"The most pervasive negative stereotype today is of the Arab people," Shaheen asserts, and few would disagree. In presenting examples of Arab roles and images on U.S. television, Shaheen shows how the Arab has become practically the last ethnic category which can be safely cast in demeaning and villainous roles. Whatever commitments to objectivity, balance, and fairness might be inscribed in production codes, writers, directors, and producers operate within a highly conventionalized dramatic code that demands easily recognizable and interpretable stereotypes. As long as Arab nations and leaders are the targets of choice for politicians, it's hardly surprising that media professionals practice their own form of disinformation.

The papers by Hostetler and Kraybill and by Volkman discuss two commercially successful films that can be seen as 'travelogues' providing mainstream audiences with dramatic revelations of the life and character of two notably exotic groups: the Amish of rural Pennsylvania and the "Bushmen" of the Kalahari desert in Southwest Africa. In each case there are serious questions to be raised concerning the film-

makers' relationship with the people who served, involuntarily, as the subjects (at least in the general sense) of their films. In these two accounts the authors find little to praise. In the first instance, the film *Witness* was made despite the objections of the Amish whose life and lifestyle form the central focus of the plot. More than merely ignoring the expressed wish of the Amish to be left alone, Hostetler and Kraybill describe tricks concocted by the film-makers to obtain footage of unwilling and unwitting subjects. Despite criticism from black groups and an official condemnation from the American Anthropological Association, the South African film *The Gods Must Be Crazy* became the highest grossing foreign film ever shown in the United States. As Volkman convincingly shows, the film "perpetuates the myth that Bushmen are blissfully simple creatures, while its popularity persuades South Africa that the rest of the world wants to continue to see them that way."

Returning one last time to the anonymous editorialist of *The Independent* writing eighty years ago, we are assured that

[the] real ground of the grudge that most of us have against the snapshotter is that he confers upon us the gift that the poet unwarrantably assumed to be a common desire of mankind, to see ourselves as others see us.

As we have noted, most of the essays in the present volume demonstrate how rare it is that image makers show us to others as we would like to be seen and, moreover, put in question the assumption that the image makers' perspective is more objective or valid than that of their (willing or unwilling) subjects. There is, however, another possible answer to whether the interests of subjects must always be sacrificed in the process of image production: why not put the means of media reproduction in the hands of the people whose image is to be presented, whose story is to be told? Waugh offers insight into this possibility in his description and analysis of minority self-imaging in the case of twenty-four documentaries made by openly lesbian and/or gay film-makers. In conjunction with Gross's analysis of the treatment of gay people by network television, it is no surprise that Waugh sees the work of lesbian/gay film-makers as inherently oppositional. Waugh brings us back to some of the themes that opened the volume—the intertwining of ethical considerations with political and social commitments.

As we began the series of discussions and investigations that led to this collection, we quickly accumulated a large number of books, articles, and clippings relating in some way to the issues of image ethics.

Lisa Henderson organized and expanded this collection of materials, and her energy and insight are clearly reflected in the annotated bibliography that closes the volume.

One of the colleagues with whom we began discussing image ethics is Howard Becker, whose dual roles as sociologist and photographer have made him unusually sensitive to the fact that ethical problems arise and must be handled within the practical realities of social relationships and institutional constraints. We benefited greatly, as always, from these conversations and are particularly pleased that our readers will similarly benefit from the Foreword that Howard Becker has contributed.

The process of moving from discussion to more formal exchanges and towards publication was encouraged by the support of Dean George Gerbner and the Trustees of The Annenberg School of Communications at the University of Pennsylvania, who funded a small working conference in January 1984 at which many of the present essays were initially discussed, and the International Conference on Visual Communication in June 1985 at which several other essays in the collection were presented. These conferences gave us an opportunity to engage in valuable and productive discussions with colleagues from around the world, and to further extend and deepen our awareness of the moral dimensions of visual media. We hope the book does justice to the contributions made by conference participants and by the many colleagues, students, and friends who have read these papers, listened to us lecture, and put up with our obsession.

*Philadelphia*  
*February 1988*

Larry Gross  
John Stuart Katz  
Jay Ruby

# Foreword: Images, Ethics, and Organizations

HOWARD S. BECKER

## **Unresolvable Paradoxes**

In the early 1970s, the graduate students in the department of sociology at Northwestern confronted us with this problem: how could they do research on socially worthwhile topics while ensuring that their results could *never* be used for bad purposes by reactionaries, would in fact be used for good purposes by progressive social forces, and would absolutely not hurt anyone they didn't think deserved to be hurt? Among other things, that is, they accepted what Brian Winston (in this volume) has identified as the assumption made by documentary film-makers working in the Griersonian tradition: that doing their work should and, well done, would help produce desirable social change. Their worries thus did not differ in kind from the problems of image ethics, although images probably present those problems in a much more difficult form than the typical formats of social science those students had in mind.

Most ethical problems connected with research are just as intractable and insoluble as the one our students presented us with. It seems that, in order to do their work, the workers (I'll use that generic term to cover film-makers, social scientists and others who make representations embodying knowledge about society) have to do things they shouldn't, from many ethical standpoints, do. If the work is worth doing, and if doing it is thus a good thing, this dilemma can only be settled by treating one of the values involved as the one that always takes precedence. But it is difficult to get assent to any such choice of one paramount value. Workers will not face up to the ultimate consequence of such an analysis, which might be that they should just quit doing

what they do. Andersen and Benson's discussion of Frederick Wiseman's films (in this volume) suggests, in fact, that there is an inevitable contradiction between making films in the direct cinema style and following such an ethical imperative as getting the "informed consent" of people in the film.

In fact, workers damn well will continue to work. Few film-makers and photographers will give up their skills and pleasures, their reputations and careers, no matter what they are accused of or how guilty they feel. Similarly, social scientists won't give up methods that produce worthwhile scientific results unless the codes requiring them to do so have real teeth. (Some people in both these groups, of course, will take advantage of the possibility of doing work that just doesn't address these issues: still lifes, research on innocuous topics.)

### **Consent, Rights, and Power**

Most discussions of ethics arise, as a practical matter, in situations where workers need to defend themselves against an accusation. We use the language of ethics when people accuse us of taking advantage of someone we have used as a subject in our work. Furthermore, most ethical questions arise after the fact, after the work has been done, usually when the book is published or the film screened. Most answers to such accusations rely on some notion of consent (usually "informed") as the ethical touchstone. This criterion was first developed in connection with gross excesses in biomedical research and then transplanted to social research, where it met with great resistance and has had to be modified repeatedly. Film-makers and photographers took it over when people began objecting to their traditional practices: taking the pictures and getting a signed release, or relying on the defense of editorial freedom. If people sign up with their eyes open, or if the pictures serve some purpose that can be connected to the First Amendment, then neither they nor anyone else can complain. Those lines stopped working when subjects and others stopped accepting them meekly.

One standard ethical complaint about those standard practices and justifications relies on the notion of rights. It says that there are some rights no one can bargain away. Just as I cannot sell myself into slavery, no matter how open my eyes are, I cannot (or ought not to be able to) sign away my right to be treated, when someone collects images, in an ethical fashion, whether I want to be or not. But, as in most proposed solutions to the problem, it's not clear that you could apply the

criterion easily. For one thing, the principle conflicts with the clearly legal right (described by Viera in this volume) to sell your image. For another, the general principle doesn't make clear which rights can't be bargained away, and so only moves the problem back a step.

A second standard complaint about what might be called "consent strategies" relies on the notion of knowledge. It says that I cannot give consent unless I am truly informed, and that being truly informed requires that I know at least as much about the process of making photographs and films (or doing social research) as the people doing the work. Otherwise, I may think that I am protecting myself (or that there is nothing to protect myself against) when these people actually have tricks up their sleeves I can't even begin to imagine. Image makers can use selective editing, framing, lighting, and the rest of the familiar catalogue to produce a result in whose making I wouldn't have cooperated had I known what was coming. This principle is likewise not easy to apply. For one thing, many complaints come from or on behalf of people who in fact know quite a bit about these things. They may not know every last trick, but it is hard to imagine, for instance, that someone of General Westmoreland's experience had no idea what he was getting into when he filmed the interview for "Sixty Minutes" about which he later sued CBS (see Beauchamp and Klaidman, this volume).

What makes these problems difficult, if not totally impossible, of logically or ethically reasonable solution is that no one ever knows exactly what they have agreed to, even in situations of consent involving highly informed people. Accounts of negotiations leading to filming and social research typically describe the atmosphere of good will and cooperation in which the work begins, and its gradual degeneration into misunderstandings and recriminations. The process involves these matters:

- 1) Research on contracts and negotiations shows that even the most detailed contract does not cover everything, many matters being left to be settled in the light of the general principles it contains or can be read to imply; but these only settle disputes in the presence of mutual trust and goodwill.
- 2) Filmmakers and social researchers insist—quite reasonably, from the point of view of anyone who has ever done intellectual or artistic work—that they can't know when they begin their work what they will end up with, since that will depend on what material they finally have and how their ideas have evolved. Further, they will say, as Wiseman has, that they will not waste their time and resources making a work with no guarantee of having something to show for it.

3) Workers thus cannot say in advance what they will do so that they cannot, in principle if they are to make the kind of film or do the kind of research they intend, warn people properly. How can I warn you that I am going to expose your dishonesty if, when we are bargaining, I so take for granted that you are honest that the necessity of issuing that warning never crosses my mind?

4) This is compounded in dealings with large organizations, whose members habitually take care to cover their asses and diffuse responsibility, thus enabling themselves to deny that they agreed to anything. Something like this clearly went on in the legal maneuverings surrounding the making of Wiseman's "Titicut Follies," as Anderson and Benson have described it in this volume.

People do not usually decide these questions through a reasoned consideration of ethical principles, but rather by finding out who has the power to make their view stick. Who can do what without being successfully hassled? People who can get away with it can, in the confused ethical state of affairs that now prevails, generally produce a respectable ethical justification. Some situations are pretty nakedly matters of power and not much more. The "Migrant Mother" Dorothea Lange photographed never knew who "that lady" [Lange] was, why Lange never sent her the picture she promised she would send, and certainly not that the picture was destined to become a major stereotype of the Okie migration. And there was nothing the migrant mother could have done about that, certainly not before it happened—or afterward either, because she would have needed lawyers she couldn't afford and probably would have been suing the government anyway. On the other hand, powerful people can influence how they are portrayed. They can control access to themselves and their images more easily, can scare imagemakers off with threats of the law, and can (as has happened with Wiseman) successfully invoke the law on their side.

### **Organization and Ethics**

This discussion suggests that we should not consider ethical problems in an organizational void. Who invokes ethical considerations, which ones they invoke, and with what success are all matters of the social organization in which the people involved meet. That organization consists of the network made up of all the people who participated in the making and distributing of the film or other work. Questions of ethics, as I suggested earlier, typically get settled in such organizations in a way that is



neither logical nor according to principles arrived at in a reasoned fashion. These questions get settled instead through accommodations and compromises, arrived at in the light of differences in power. They get settled by the various groups involved recognizing what they want and what they will have to give to get it. Remember that the heads of such institutions as hospitals, jails or schools, who need not participate in having films of themselves made, generally think there is something in it for them: perhaps a chance at reform, perhaps some public relations benefit. They may well think they are smarter than the film-maker or researcher. Is it unethical for image workers to pretend to be dumber than they are to take advantage of that arrogance? Others, less powerful, also have their own reasons for cooperating with imagemakers, so the bargain is seldom one-sided (although this argument obviously doesn't apply to people filmed without their knowledge).

A good example of the kind of organizational analysis of ethics I am proposing is Karin Becker's study (1985) of the development of the photojournalistic profession and its accompanying ethic. Where do photojournalists get their gut convictions about the ethical principles that seem so obvious to them? Keep in mind that this question, which seems very particular to journalism, can serve as a model for our understanding of the development of working ethical systems in all the lines of work that make images of social reality, visual and otherwise. Her research shows how editors, photographers and subjects reached an accommodation in the beginnings of photojournalism, as a way of regulating their mutual requirements, so that the work of putting out illustrated magazines could proceed. Subjects, knowing least and having less of a continuing stake in the work, had least to say about it. But subjects who were also photographers (in Becker's study, the workers who produced pictures for the Communist magazine and never became professionals) had more to say and, conversely, were less involved in the social and professional mobility that so affected the ethics of those who became the prototypical "professional photojournalists." In any case, once that accommodation got established as a set of morally justified working practices generation after generation of photojournalists took it up because it worked. That is, it helped them figure out what to do when confronted with accusations that they were unfair to or exploiting their subjects and the magic formula to intone when someone accused them of being unethical: "The standards of my profession."



## **Solutions?**

Discussions of the ethics of imagemaking typically try to establish, in the philosophical style, principles from which we can deduce ethically appropriate behavior under a variety of circumstances (see Beauchamp and Klaidman, in this volume). Just as typically, they seldom discuss sanctions or any other feature of the social organization in which the behavior under consideration occurs. They emphasize, instead, finding moral people or training people to be moral. But ethical principles which have no sanctions connected to them—no rewards and punishments injured parties can invoke and no apparatus for seeing that the sanctions are applied when they ought to be—do not have the full force we hope for. While some people, once they have thought through the logic of an ethical system and accept it, will find that logic constraint enough, a system without sanctions fails to deter precisely those who most need deterring: people who are not moved by that logic or who, recognizing its validity, nevertheless find other considerations equally or more compelling. Appeals to morality simply do not solve problems of this kind, even when the principles are generally agreed to.

The sanctions I am talking about need not be official punishments: fines, days in jail or injunctions banning one's work from being shown. Sanctions like that, of course, really get image makers' attention and become one of the realities they must reckon with as they work. They may still decide to violate certain norms because the logic of their work or their political position seems to them to require it, but that will be a serious choice others will not make. More informal sanctions—the contempt of one's colleagues or the refusal of people to cooperate in the work—can be equally effective. Not being able to raise the necessary resources is also extremely effective.

Ethical systems embodied in social organization, complete with sanctions and an enforcement apparatus—what we might call working ethical systems—hardly ever have a logical coherence. Because they have to take account of conflicting interests, they inevitably have a political dimension, a logic of compromise rather than coherence. To achieve a body of doctrine that most people in an image-making (or any other) trade will accept requires that. It is the price of the consensus through which the work gets done. The result won't satisfy people who want philosophical and moral clarity. It won't satisfy people who do not have enough political power to affect the working consensus. Thus, as a number of papers in this volume argue, ultimate solutions require a redistribi-