Some frowned, some smiled, some muttered to themselves; some made light gestures, as if anticipating the conversation in which they would shortly be engaged; some wore the cunning look of bargaining and plotting, some were anxious and eager, some slow and dull; in some countenances were written gain; in others loss. It was like being in the confidence of all these people to stand quietly there, looking into their faces as they flitted past. In busy places, where each man has an object of his own, and feels assured that every other man has his, his character and purpose are written broadly in his face. In the public walks and lounges of a town, people go to see and be seen, and there the same expression, with little variety, is repeated a hundred times. The working-day faces come nearer to the truth, and let it out more plainly.

Charles Dickens, *The Old Curiosity Shop*

In these words Charles Dickens, himself an astute observer of public behavior, gesture, and expression, described Little Nell’s impressions of the streets of London. He was writing in 1841, only two years after the introduction of photography, largely uninfluenced by the new medium and certainly unaware of its future applications. Yet the urbanite fascination with the street that he presents through the innocent eyes of Nell manifested itself early in the history of photography—the genre can be traced back to Nièpce and Daguerre—and eventually became one of the medium’s mainstays.

Much of the initial photography of “street scenes” was in its intent primarily informational and representational: John Thomson’s *Street Life in London*, the activist photojournalism of Jacob Riis and Lewis Hine, Eugène Atget’s obsessive Parisian survey. But, as this century progressed, more and more photographers took to the streets with concerns that were not those of the reporter but rather those of the novelist and poet—a search for resonant contrasts, rich metaphors, and found dramatic scenarios.

The appeal of the street to photographers is readily understandable. Blaise Cendrars wrote, “Le spectacle est dans la rue”—the theatre is in the street—years before such performers as Judith Malina and Julian Beck of the Living Theatre carried it back out there again in the 1960s. As the one place in our culture where the most disparate elements are consistently thrown together in the most paradoxical juxtapositions, the street is a continually replenished source of extraordinary and surreal imagery.
Susan Sontag has argued that photography is “the only art that is natively surreal,” going on to ask, “What could be more surreal than an object . . . whose beauty, fantastic disclosures, emotional weight are likely to be further enhanced by any accidents that might befall it? It is photography,” she continues, “that has best shown how to juxtapose the sewing machine and the umbrella, whose fortuitous encounter was hailed by a great Surrealist poet as an epitome of the beautiful.” If that is indeed the case, what stage more ideal than the street could be conceived for such “chance meetings”?

Perhaps this is why Joel Meyerowitz, who began his professional career as a street photographer and has returned to the genre regularly, was quoted as saying in an interview, “I believe that street photography is central to the issue of photography—that it is purely photographic, whereas the other genres, such as landscape and portrait photography, are a little more applied, more mixed in with the history of painting and other art forms.”

Whether or not the form is “purely photographic” may be debatable. But there can be no doubt that such diverse photographers as Irving Penn, Berenice Abbott, Harry Callahan, Arnold Genthe, Paul Strand, Brassai, Lee Friedlander, Charles Gatewood, Henri Cartier-Bresson, Diane Arbus, Robert Frank, Garry Winogrand, Imogen Cunningham, Walker Evans, Alfred Stieglitz, and Jacques-Henri Lartigue have chosen to address at length one or another aspect of the street at some time in their lives, while others—Weegee and Helen Levitt, to name just two—have built virtually their entire bodies of work within this form.

In so doing, they have helped to redefine and expand the street as subject, transforming it from a reportorially oriented locus of social concern to the proscenium for a surreal theatrical centered around cultural symbols. They have also stretched the parameters of “the street” itself, so that it now includes the subway (and the interior of any other mode of public transportation), the park, the beach, the café—indeed, any and every venue that can be thought of as essentially “public.” This has led to a number of dilemmas, some of which can be thought of as imagistic, general, and philosophical, others of which are quite pragmatic, specific, legal, and even legislative in nature.

For instance, it could be argued that, over the past century and a half, the integration of photography into the fabric of our culture has alerted us all to the impact of photographs and our own appearance therein. Thus it seems not unreasonable to suggest that this has generated a heightened self-consciousness in regard to the aspects of ourselves that we project when being photographed. This in turn implies that we may very well modify our behavior in ways both
subtle and significant whenever a camera is in our presence (or even when we think we might be photographed). Perturbation theory applies to photography as well as physics: observation changes the nature of the situation observed.

Beyond that remarkable but general effect on everyone who lives in a photographic culture such as our own, photographs made of people on the street or in other public places without the consent of the subjects raise questions of ethics as well as aesthetics. What rights do we have as citizens over the control of representation of ourselves, and what rights do photographers have in regard to making images in public situations?

A decade ago, this debate manifested itself in a widely reported and much-discussed legal dispute in the courts, concerning a photograph of Clarence Arrington made by free-lance photographer Gianfranco Gorgoni. Gorgoni photographed Arrington on the midtown streets of New York City, without his knowledge or consent. Gorgoni's agency sold the image to the New York Times without Arrington's knowledge or consent. And the Times used the image as the cover illustration for a story in its Sunday Magazine titled “The Black Middle Class: Making It,” again without Arrington's knowledge or consent. Thus Arrington's image, in a multiple of over a million copies, was distributed by the Times nationwide—expropriated by the photographer, his picture agency, and the Times editorial staff as a symbol of the black middle-class experience.

Arrington's response, with which I sympathize wholeheartedly, was to initiate a lawsuit for invasion of privacy that slowly worked its way through the courts. Unfortunately, its eventual resolution appeared to hinge on a peculiar combination of factors, one being a technicality concerning Gorgoni's free-lance status, the other the practical problems and economic clout of the free-lance photography trade and the enormous publishing industry it services. With that as the basis on which this suit was resolved, the ethical issue could hardly be effectively addressed by the legal system. That was regrettable, because it merited (and still merits) the most serious consideration—not only by lawyers, judges, photographers, and others in the communications field, but by all of us.

As I've just indicated, I think Arrington was in the right here. Despite the fact that, over the years, I've fought ardently for the rights of photographers, I also believe (in the words of Voltaire, if I recall correctly) that "your rights stop at the end of my nose." I've also had enough direct experience with photographers (particularly photojournalists and free-lancers), picture agencies, and picture editors to have a clear understanding of the emphasis most of them place on ethical considerations.

So my empathy with Arrington's outrage has its roots in my personal history as
well as in my critical understandings. Let me give just two examples, one of which concerns a photograph that was made, the other a photograph that wasn’t.

My mother, who gave me my first box camera, retired to a ranch she bought in northern California, where my son (who’s now twenty-five) and I often spent a good part of our summer vacations. There are fields and hills, cattle and peacocks, pygmy goats and horses, woods and swimming spots. It was akin to having a summer camp or dude ranch at our personal disposal—quite a pleasure, and quite a privilege.

Some years ago, during the course of a riding lesson, the saddle on the horse my son had mounted slid to the side, not having been tightly enough cinched. My son fell, breaking his arm near the elbow. Present at the time was a free-lance photographer, a close friend of ours, who was thoroughly helpful during this emergency, yet also—as much out of habit as any other impulse—took photographs of the ensuing events when time and discretion permitted. One of these showed my son just prior to going into the operating room for anesthesia, bone-setting, and the application of the cast. Dirty, tear-stained, in great pain, slumped in a wheelchair with his arm in a makeshift sling, he appeared about as helpless, woebegone, and pathetic as an eleven-year-old boy can look.

This image, on the contact sheets, made its way to my friend’s stock agency, which requested a print for its files. Then, about a year later, the agency asked my friend to inquire if I would consent to a particular usage of it. Seems a textbook publisher wanted it for a volume on child abuse. Would my son or I object?

We certainly would—and did, on several grounds. The most immediate was that publication of a recognizable picture of my son identified as a battered child could have serious repercussions in our personal life and my professional sphere. Beyond that, however, there was a broader concern: such usage would be a willful falsehood, a deceitful recontextualization. All of those involved (my friend, the agency representative, my son, and myself) knew very well that on the occasion depicted in that photograph my son was a “victim” of nothing more malevolent than a combination of accident and carelessness—certainly not child abuse. Yet the agency was, in effect, asking me to permit this image to be used as visual “evidence” of an entirely different nature, so that the agency (and my friend) could make some money.

Ultimately, what upset me most was this latter issue—that, and a remarkable moral opacity on the part of the agency spokespersons, who made it very clear that they were more than willing to abide by my wishes in this particular case but were incapable of grasping the principle at stake and not especially interested in pursuing it. Consequently, to protect my son and myself, I required of the
agency and my friend that in the future I would be consulted beforehand on any usage of images of us.

Thinking about it later, I realized that it was only because the agency knew of the friendship between the photographer and my son and myself that they'd bothered to check with us in the first place. Had we not been traceable, and readily available for consultation, I was convinced the requested usage would have been permitted by both photographer and agency, with no compunction, without even any second thoughts.

How many of the images we see in the mass media, in textbooks, and in other vehicles, are such spurious, falsified “factoids”? Does anyone in the field consider the consequences to the subjects of such images generated by such misuse? And, on a larger scale, the consequences to the citizenry when its informational network is thus compromised and corrupted?

Now for the photograph that wasn’t made.

The night it wasn’t made was several years ago. I’d had dinner in Manhattan with a photographer who was staying at my house; I was driving us back to Staten Island, where I live, across the Brooklyn Bridge. It had rained earlier in the evening. The city looked clean and bright, the air sparkled, the bridge gleamed and glistened. Traffic was crawling, with all three lanes merging slowly into the far left lane for no apparent reason.

Just over the curve of the bridge’s center, the reason came into view. There, in the middle of the roadway, was a well-dressed, middle-aged woman sitting in a wheelchair, facing traffic. Behind her was a taxicab, empty, all doors open, emergency lights flashing. The scenario virtually wrote itself: the cab developing engine trouble or running out of gas, the driver heading off for assistance, the decision made to put the immobile passenger in full view to slow traffic down and prevent the rear-ending of the cab with her in it.

As we drew closer, foot by foot, I could see the woman in the wheelchair more clearly. She was alert, neatly coiffed and made up, as composed as possible under the circumstances. She also looked terribly fragile and vulnerable, alone on that metal roadway, surrounded by cars and more cars, never sure that some airhead wasn’t racing toward her from the entrance to the bridge. I tried to imagine myself in her situation; it felt awful.

My companion rolled down the window on the passenger side, instructing me to slow down as we drew abreast of the scene. Watching the camera being checked and set, I suddenly saw in rapid succession five or six different versions of the potential image ahead of us, in the styles of several photographers whose work I knew well, including my companion’s. They were all strong pictures. It
would have been hard to miss; you couldn't have asked for a more resonant symbol of utter, abject helplessness and, at the same time, grace under pressure.

We began to pull closer to the woman. The photographer braced, ready to shoot, when the damnedest thing happened. Instead of slowing down, I instinctively put my foot on the gas and moved us out of range as quickly as I could, despite my companion's objections. There was, of course, no turning back; the scenario was behind us, the images gone.

I was surprised at myself—I do not intervene in other people's picture-making decisions. The photographer was furious. What business of it was mine? As we argued, and I thought about it, I realized that had my companion been at the wheel and slowed down to photograph, I would not have attempted to prevent it. In effect, as driver of the car I'd been asked to become complicitous in the making of that image, and had refused.

The reason for that refusal, I finally understood, was that in addition to all the pictures of that woman that I'd imagined, I'd imagined another image as well—an image of the world as that woman in the wheelchair would have seen it at that moment. There I sat, high on a bridge over the East River, a vast city sprawling away on all sides, myself crippled and unable to move. At the mercy of strangers and the world, in a situation totally beyond my control, I had to wait for what seemed like forever as car after car—hundreds of them—moved slowly past me, the faces in each one staring at me as if at some freakish spectacle. It was a nightmare, and all I had to interpose between myself and it were my courage and my poise. All I wanted was for people to pay me as little attention as possible under the circumstances, and for rescue to come soon. The last thing I needed—the thing that could shatter the delicate balance in which I held myself—was to suddenly find my picture being taken under such difficult and embarrassing circumstances by someone with a camera who'd decided that my plight was news, or art, or merely snapshot material.

Because, in that dreadful hour, when I had to entrust myself entirely to others, I would not want to know that among those others there were some who would take advantage of my helplessness by converting me into a symbol of it, to hang on gallery walls or illustrate the pages of publications or study for their own amusement. I would not want to think that there were those for whom my condition and plight meant only that I was public property, because then I might start to doubt that help would really come, and I could not afford to do that.

So I decided, for myself, not to be the shadowy figure behind the wheel in the image that woman would have registered in her mind's eye when our car rolled slowly past her with my companion busily clicking away. I've never regretted
that decision. Though I don’t think I was forgiven, or my motives ever understood, eventually my companion’s anger at me abated. The nonexistence of that photograph—for which I hold myself absolutely responsible—does not seem to have had any negative consequences.

Though the litigation I discussed earlier was over an image made in far less dramatic and extreme circumstances, the principle involved is basically the same. The assumption that you waive your rights to control of your own image and declare yourself to be free camera fodder by stepping out of your front door is an arrogance on the part of photographers; it has no clear, absolute, and inarguable legal basis. The excesses committed in its name are legion, and extreme. To whatever extent the Arrington-Gorgoni case opened up this vital matter to public debate and legislative consideration on a national scale, Clarence Arrington did all of us (including photographers) a service for which the only proper repayment would have been one we’ll never be able to make—the restoration of his right to a private life in public places. He’ll always be the man who found himself on the cover of the Times Magazine, and sued.

NOTES


5. The only extended study I know of that addresses the sociopolitical consequences of this behavioral pattern within photographic culture is Bernard Edelman’s Ownership of the Image: Elements for a Marxist Theory of Law (Boston: Routledge & Kegan Paul Ltd., 1979). Edelman’s argument, first published in France in 1973, uses the legal rights (or lack of same) of photographers’ subjects as a tool for political and economic analyses of Western culture. Edelman’s reference point is the legal system of France, whose laws on this issue differ in important respects from American jurisprudence. Yet the analogies are considerable, making Edelman’s inquiry a useful starting point for further exploration of this issue.

Another might be the following communique, sent across the Internet in early 1996 by the Zapatistas of Chiapas, Mexico. I suppose we could consider it their position paper on photography. I picked it up and ran it as a “Guest Editorial” in the June/July issue (No. 5) of my newsletter on the World Wide Web, C: The Speed of Light, where it can still be found—but do not know where else it may be archived. It is reprinted here in full, as received (forwarded on to me via e-mail by Henry Brimmer). Aside from a few unclarities and minor translation glitches, it speaks for itself:

From: tcojmjl@corn.cso.niu.edu (lemaitre monique j) Sender: majordomo@mep-d.org
Reply-to: mexico2000@mep-d.org
Date: 96-02-10 01:17:22 EST