IMAGES DO NOT TAKE SIDES.
THE FORENSIC TURN OF IMAGES

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In February 2019, Human Rights Watch praised the decision of the Örebro court in Sweden for convicting to prison a former officer in the ISIS war: he had posted images of himself on social media with beheaded bodies, a well-known war trophy.[1] International law considers the desecration of human bodies, dead or alive, to be a war crime. The verdict was not given any attention in the Swedish media, which seemed surprising. Not even after the Supreme Court held up the verdict in early May 2021, a historical first, was it given much publicity. After all, any crime of a returning ISIS fighter could be expected to be well reported. But the explanation for this lack soon became clear: ISIS fighters were the victims and not the butchers in this case. This example makes it clear what photography and the law have in common: war crimes have no "sides," neither do images. What is seen in the image from the perspective of the law, is a criminal act of desecration. This relates to the changing ontology of the image: it is no longer a document of conscience, but a judicial one.

The depiction of war crimes may appear as a cynical niche of photography. And yet, some of the world's best-known images derive from war: photographs from the opening of concentration camps during WWII, a Vietnamese girl running from a napalm bomb, the drowned body of Syrian child Alan Kurdi on a Turkish beach. To many, war photography represents what photography is—serving as a primary example of the role that images play. Brecht's montage collages from the 1950s address the intellectual reflection of a viewer on images of war.[2] Susan Sontag, in turn, wrote in *On Photography* (1977) about the complications of the canonization of war photos: such images become increasingly "aestheticized," which to Sontag means that we use aesthetic judgment to distance ourselves from their content. This idea derives from a narrow definition of aesthetics, where aesthetics and feelings do not seem to correspond. In the 1970s, Sontag highlighted the relation between suffering and empathy—the image should make us want to act.[3] Photographic images make demands on us, they imply "an ethics of seeing." At the same time, photography is an act of "non-intervention," complicit with

the world as it is, also when engaging with the pain of others. In her much quoted *Regarding the Pain of Others*, Sontag contrasts photography to a written account: "A photograph has only one language and is destined potentially for all."[4] This language is, primarily, emotional.

Today, however, with the judicial and forensic dimensions springing up from wars in Syria to George Floyd, Sontag's ideas appear dated. The question is not what we feel when we see an image. The question is aesthetic—what can we say about its statement of fact, its perspective. What must be taken into account is that where images have a symbolic value in a conflict, there is a possibility of the photographic staging of situations. As Thomas Keenan has put it: "…things happen in front of cameras that are not simply true or false, not simply representations and references, but rather opportunities, events, performances, things that are done and done for the camera…"[5] Images may be provoked by the presence of the camera and the photographer, and photographers may play a role as agents in the event. Photographic images are not only historic documents, but forms of expression to be interpreted—which was very much the case in the trial of George Floyd's killing. Images carry a reference to an event, but the camera angle, the timing, and the agency of the photographer are also elements that demand analysis.

In this way, the new role of war photography is very much a symptom of the changing ontology of the image: it constitutes a world of facts, a sphere of forensic evidence, which sets itself above and beyond any emotional relation that we might bear towards it. What this development demonstrates is distancing from images and emotions—feelings and thoughts become less important than technical forensics. As we have seen, this has become an important development for the judicial sphere. But the forensic dimension may at times appear to overtake the world of facts: as exemplified by the father of a returning female ISIS fighter, who argued for the innocence of his daughter: she could not have been part of war crimes, since there are never any women in the images of beheadings posted by ISIS.[6]

This change of the image from ethical towards legal and forensic came with the Bosnian war, which produced a new role for the war images, since they were now used in trials.[7] Images from, for instance, the genocide in Rwanda, also played a similar role. This has been an ongoing development, with the recent footage from Tigray proving a genocide is taking place. Images of war are often used in propaganda and as a means of influencing attitudes.

But they can also be used to expose transgressions, violations, and crimes. It is not always the case that the photographer has the intention of bringing human rights to the forefront; but the photographic material may still be used that way. Moreover, the photographer sometimes participates in the event itself in a way that affects what is happening. In other words, the notion of rights intersects with the production of photographic images of conflict in multiple ways.

This development has to some extent been driven by the emotional capacity of images, although the ethical dimension is now detached from the legal one. The Universal Declaration of Human Rights (UDHR, 1948) states that no one should be subjected to torture or cruel, inhuman, or degrading treatment. The international law against war crimes, in turn, aims at stopping rape, torture, pillaging, and so on. The essence of these laws is that human beings should be protected by the rule of law, in life and dignity. Sliwinski contends that the UDHR was partly motivated by the images of concentration camps that became public after WWII.[8] The history of human rights is a "richly illustrated one" and the idea of rights intersects with the visual realm.[9] Linfield, in turn, has pointed to the intrinsic relation between the widespread imagery of human suffering and our "globalized" consciences.[10] Linfield has argued that photographers cannot show human rights, only "what the absence of such rights does to a person."[11] Researchers have identified the genre of "atrocity photography" documented ever since Leopold's atrocities in Congo in the same vein.[12] Against this, the artworld, in turn, negotiates the "right to the image," a concept launched by Syrian film collective Abounaddara who challenge the de-humanization of war victims by claiming the right to dignity.

But there are also cases when the law has not followed the forensic turn of the image—having integrated, instead, emotions into its own reckoning. As exemplified by another court case when a Swedish citizen, a former Syrian refugee, was convicted of spreading video violence by posting footage from the war in Syria, including both Assad forces and the ISIS. This was, as he explained, what he had fled from. But the law, using a 40-year old law against video-violence, films such as *The Chain Saw Massacre* and the like, did not accept the presence of such scenes of violence on social media.[13] Perhaps, again, because the law, like the image, holds no sides, it only sees the act of desecration. This is where the forensic turn of the image becomes powerful and problematic at the same time.

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2   Bertholdt Brecht, *War Primer* (London: Penguin, 2017).

3   Susan Sontag, *On Photography* (London: Penguin, 1977).

4   Susan Sontag, *Regarding the Pain of* Others (New York: Picador, 2004), 18.

5   Thomas Keenan, "Mobilizing Shame," *South Atlantic Quarterly*, 103, no. 2-3 (2004): 435–449, 435.

6   *Dagens Nyheter*, March 6, 2019.

7   Jens Eder and Charlotte Klonk, *Image Operations. Visual Media and Political Conflicts* (Manchester: Manchester Up, 2016).

8   Sharon Sliwinski, *Human Rights in Camera* (Chicago: University of Chicago Press, 2011).

9   Sharon Sliwinski, "Human Rights," in *Visual Global Politics,* ed. Roland Bleaker (London: Routledge, 2018), 170.

10   Susie Linfiled, *The Cruel Radiance: Photography and Political Violence* (Chicago: University of Chicago Press, 2010), 46.

11   Linfield, *The Cruel Radiance*, 37.

12   Christina Twomey, "The incorruptible Kodak: photography, human rights and the Congo campaign" in *The Violence of the Image*, eds. Liam Kennedy and Caitlin Patrick (New York: I.B.Tauris, 2014).

13   Oisin Cantwell, *Aftonbladet,* December 14, 2020.