

The Civil Contract of Photography

We have seen that citizenship is a form of relations between the governed individual and the governing authority, relations ultimately based in a political equality between each and every governed individual. I will now explore the ways in which, when separated from nationality or any other essentialist conception of a group of governed individuals, citizenship comes to resemble the photographic relation. Exactly like citizenship, photography, is no one's property. It cannot be owned. Photography, at least the kind that I'm concerned with in this book in which photographs are taken on the verge of catastrophe, also is a form of relations of individuals to the power that governs them, a form of relations that is not fully mediated through such power, being a relation between formally equal individuals — individuals who are equal as the governed as such. It is a form of relation that exists and becomes valid only within and between the plurality of individuals who take part in it. Anyone who addresses others through photographs or takes the position of a photograph's addressee, even if she is a stateless person who has lost her "right to have rights," as in Arendt's formulation, is nevertheless a citizen — a member in the citizenry of photography. The civil space of photography is open to her, as well. That space is configured by what I call the civil contract of photography.

Photography is an apparatus of power that cannot be reduced to any of its components: a camera, a photographer, a photographed environment, object, person, or spectator. "Photography" is a term

that designates an ensemble of diverse actions that contain the production, distribution, exchange, and consumption of the photographic image. Each of these actions involved in the photographic event makes use of a direct and an indirect force – taking someone's portrait, for example, or looking at someone's portrait. Much has been written about this violent dimension of photography – the potential for turning any concrete encounter into a violent clash. However, compared with the endless number of photographs taken, rare are those cases where eruptive violence replaces the relations between the protagonists. That is because a civil contract regulates these encounters, reducing and most of the time eliminating the possibility of direct violence. As long as photographs exist, I will contend, we can see in them and through them the way in which such a contract also enables the injured parties to present their grievances, in person or through others, now or in the future.

This turn to the rhetoric of the contractarian tradition in political theory may seem curious, and in need of explanation. After all, the contractarian tradition has left the moment of contract itself outside the political order and wasted no time on the relations between governed people that are not enabled, mediated, and constrained – let alone dictated – by the ruling power. In fact, many thinkers in that tradition have tacitly agreed with Carl Schmitt's reduction of the concept of the political to the space opened by and demarcated through the sovereign decision (or a series of sovereign decisions).¹ They were mostly interested in ways to justify and limit sovereign power, which many of them understood very differently from Schmitt, and this has been the main way in which the rights of individuals, the interests of the public, and the commotion of the multitudes have been taken into consideration. The individual, the public, and the multitude have always been considered with a view to the power that is at one and the same time the most dangerous for individuals and ultimately necessary for their protection, a condition for their coexistence in a group.

Thinking with Schmitt from the opposite direction, Agamben uses the image (or metaphor) of the contract to articulate the ways in which social and political relations manifest themselves in the realm determined by the sovereign decision. Concluding his discus-

sion of bare life as defined as "sacred life" under Roman law – the life of *homo sacer*, he who "cannot be sacrificed and yet may be killed" – he notes:

It has been rightly observed that the state is founded not as the expression of a social tie but as an untying (*déliason*) that prohibits (Badiou, *L'être*, p. 125). We may now give a further sense to this claim. *Déliason* is not to be understood as the untying of a preexisting tie (which would probably have the form of a pact or a contract). The tie itself originally has the form of an untying or exception in which what is captured is at the same time excluded, and in which human life is politicized only through an abandonment to an unconditional power of death. The sovereign tie is more originary than the tie of the positive rule or the tie of the social pact, but the sovereign tie is in truth only an untying. And what this untying implies and produces – bare life, which dwells in the no-man's land between the home and the city – is, from the point of view of sovereignty, the originary political element.²

The incommensurability of contractarian political theories with sovereignty which Agamben underlines is a superficial one, because, as noted above, the original moment of the contract itself has been left outside the political-historical domain, and concrete contracts are always seen in terms of the authorities who can limit, impose, induce, or invalidate contracts. The true opposition, I suggest, is not between contractarian theories and theories of sovereignty, but between "sovereign violence," which "is in truth founded not on a pact but on the exclusive inclusion of bare life in the state,"³ and multiple voluntary associations between many individuals, which reproduce the original moment of contract without necessarily reproducing its result, that is, the constitution of a sovereign authority.

And where Agamben insists (rightly) on the fact that "the state of nature is, in truth, a state of exception, in which the city appears for an instant" and "is thus not an event achieved once and for all but is continually operative in the civil state in the form of the sovereign decision,"⁴ I would like to insist on the fact that "the state of contract," too, is continually operative in the civil state – in order to reproduce not sovereign power, but rather a space relatively free

from its intervention, a space where “thinking a politics freed from the form of the State” becomes possible.⁵

“Thinking a politics freed from the form of the State” is Agamben’s own project, described in *The Coming Community* (1993) as a politics founded on the “Whatever,” on “singularity,” “not in its indifference with respect to a common property (to a concept, for example: being red, being French, being Muslim), but only in its being *such as it is*.”⁶ But there is another way of thinking politics freed from the state, one that not only can receive a theoretical account, but that can do so because it is manifest, in the form of nongovernmental political activities of many forms and agendas, in empirical form throughout the world today. That is a politics founded not on singularity, but on the equality of the governed “as such” — as *they* are. It is based not on a community to come, but on a community, or rather several communities, both within and beyond the boundaries of the sovereign state, that already exist, communities that employ a variety of means — photography prominent among them — to edify an open political space where no one can decide on the exception, and a final decision cannot be made, a community in which a new beginning is a right preserved for each of its members and solidarity among its members precedes the submission and the identification with power. As Hannah Arendt has noted with regard to the power of the sovereign, “the moment the group, from which the power originated to begin with (*potestas in populo*, without a people or a group there is no power), disappears, ‘his power’ also vanishes.” In a politics founded on the equality of the governed, power regains its meaning, not as a governmental tool, but as “a human ability not just to act but to act in concert”⁷ and to negotiate, sometimes successfully, sometimes not — with sovereign power.⁸

The civil contract of photography, whose text I have drafted during the years of the second Palestinian intifada, bears witness to an attempt to find refuge amid the loneliness of being a spectator who has been addressed every day by photographs documenting the daily horrors of the Israeli occupation. Working out and making explicit the clauses of this tacit contract has been an effort to think my relation to and attitude toward these photographed individuals beyond guilt and compassion — outside of the merely psychological frame-

work of empathy, of “regarding the pain of others” — on the basis of civic duty and the mutual trust of those who are governed. I will try to show that this mutual trust, mediated by photography, is a form of relations between individuals that was first established during the mid-nineteenth century and that has gradually developed ever since. The civil contract of photography can be extracted from existing photographic practices and uses, but is irreducible to any of them, nor can it be depicted as a product of their accumulation. Rather, positing this contract is a way to delineate part of the newly constructed space of civil relations that has been opened — and even necessitated — by photography. In addition, developing the characteristics of this contract is my way of questioning photography’s political configuration and reflecting on its effect on the modern form of sovereignty and its territorial articulation. Briefly put, the camera modified the way in which individuals are governed and the extent of their participation in the forms of governance. It is that change that I explore here.

The Invention of Photography

To this day, historians of photography persist in exploring the issue of the origin of photography’s invention in a sustained attempt to determine its precise moment of birth. While the moment of birth is controversial, the consensus is that it exists — a single, magical moment reappearing as a constant anchor in all the narratives of photography’s evolution, an axis relative to which the many alternative chronologies are all presented, a time from which the age of photography is calculated and its centennials celebrated.⁹ I’m referring here to the summer of 1839, when the daguerreotype, named after one of its two inventors, was exhibited in the French Chamber of Deputies. This was the date that marked its transformation into an object of national legislation and a source of monthly payments to its inventors by the French state, entitling the state to render it a publicly visible invention, open and accessible to all, whose uses were not restricted by copyright. However, it is well known that before this official birth date, Henry Fox Talbot of Great Britain had already claimed the title of inventor of this new technology and had provided evidence of his presentation of his invention to the British

Royal Society over a decade earlier. Another claimant to the title was Hippolyte Bayard, who went to dramatic lengths to make his claim. Nevertheless, the daguerreotype endured as the prototypical term for what soon became photography.

In 1931, about ninety years later, Walter Benjamin opened his essay "Little History of Photography" by noting "the fog that surrounds the beginnings of photography," obscuring the beginnings of this technology. And yet, he wrote, in contrast to the case of printing, the fog in this case is not all that thick, for "the time was ripe for the invention, and was sensed by more than one — by men who strove independently for the same objective: to capture the images in the camera obscura, which had been known at least since Leonardo's time."¹⁰ Benjamin elaborated somewhat on each of those protagonists, in fact circumventing the question of the origin of photography whose answer converges into a single inventor's name. There was no single inventor. Instead, Benjamin proposed a new perspective of photography's beginnings. The origin, he suggested, was the appearance of a professional community.

In 1999, the American historian of photography Geoffrey Batchen published a book that he titled, with a quote from Daguerre, *Burning with Desire*. As I noted, Daguerre is conventionally considered the inventor of photography, despite repeated retractions of this title since the moment it was granted. In 1827, when Daguerre himself was still far from solving the question of how to fix and preserve the images created within the camera obscura, Joseph Nicéphore Niépce had already discovered the solution. At the time, however, it was considered unsatisfactory. Daguerre wrote Niépce: "I am burning with desire to see your experience from nature."¹¹ Batchen's thesis develops further Benjamin's intuitively written claim that photography was "sensed by more than one — by men who strove independently for the same objective." Traveling backward in time, Batchen's work periodizes the beginnings of photography at the end of the eighteenth century, joining together the findings of various scientists working in separate disciplines (optics, chemistry, and physics), all of whom were experimenting with means for producing images that would endure after the shutter of the black box had snapped shut over the aperture.

Batchen didn't do away with the question, but he can be said to have broadened the arena within which historians still attempt to pinpoint a moment of photography's birth. This, for instance, is the vein mined by the studies of the historians who contributed to the 2003 exhibition at the Musée d'Orsay and to the exhaustive accompanying catalogue, both centering on Daguerre and the daguerreotype. However, most of the historians who participated in the catalogue (including Quentin Bajac, Stephen Pinson, and Dominique Planchon-de Font-Reaulx) not only analyzed Daguerre's singular contribution, but also claimed primacy for it. The national dimension, intertwined from the outset in this debate and on which I will not elaborate here, thus surfaced, even in these recent studies.¹²

In his article in the catalogue, historian André Gunthert sought to offer an answer to a question that had already been posed by his predecessors: If the technical achievement of preserving an image was attained as early as 1825 by Talbot, and if Niépce and Daguerre had in fact possessed this knowledge while Niépce was still alive, why was it that they failed to publicize their discovery? In response, Gunthert has claimed that from 1835 to 1837, the scientists had invested their concentrated efforts in perfecting the invention, while from 1837 to 1839, they had focused on what he called the packaging of their invention and on the means of distribution, "What Daguerre wishes to present to the public is not a mere process or principle or recipe, but a finished product, containing both the necessary equipment, provided as a ready-to-use kit, as well as practical and symbolic instructions."¹³ The development of photography after the daguerreotype, to which it put an end, Gunthert sees as a marginal phase in the history of photography, a phase that he described as "reprofessionalization by elitist photography militants." Their efforts toward liberation from the rigidity of the daguerreotype, toward opening up photography to individual creativeness as regards the photographic apparatus itself, were vanquished, he claims, by the photographic technology developed around 1880. This technology returned photography to the principle characteristic of the daguerreotype which, today, still remains a defining feature of photography — its condensation into a black box between whose walls all technical matters are obscured and buried, so that it

works itself, so to speak, at the click of a button, making it accessible to all.

Gunthert accordingly ends his article with a call to view Daguerre "as a pioneer in the full sense of the term, not of the process of perfectly inscribing [an image] but, of photography as a practice."¹⁴ Gunthert thus recognizes that Daguerre did not develop the process single-handedly and cannot, consequently, be considered its inventor. He does, however, seek to credit him with being the first to make this invention sufficiently simple and reliable for it to become accessible to the public at large. This achievement, though, in keeping with Gunthert's own claims, was attained only in 1907, about half a century after Daguerre's death.¹⁵ While the accessibility and operational simplicity of cameras, according to Gunthert, was achieved only at the beginning of the twentieth century, he nevertheless views photography as a nineteenth-century invention.

None of the historians contributing to the Musée d'Orsay exhibition or catalogue perceived themselves as historians of the apparatus: the daguerreotype or camera. And yet, all of the histories they narrate are caught within a single narrative framework centered on the technological invention and on its inventor and distinctly converging toward this center. Contrary to these narratives, I'll contend that photography was invented at precisely the moment when the individual inventor lost the authority to determine the meaning of his invention. Thus the question "who invented photography?" is drained of its meaning. At that moment the use of a variety of technologies of creating images — daguerreotype, Calotype, Panotype, Talbotype, Crystallograph, or Ambrotype, to name just a few,¹⁶ all placed at the public's disposal by their various inventors toward the end of the 1830s — exceeded the realm of control of this or that single inventor, this or that sponsoring state, and proceeded to create a new sphere of relations between people.

The invention of photography, then, is not the achievement of a single person who may have isolated several chemical elements and activated them by means of a certain mechanism. Instead, the invention of photography was the creation of a new situation in which different people, in different places, can simultaneously use a black box to manufacture an image of their encounters: not an image of *them*,

but of the encounter itself.¹⁷ Not only is the invention of photography the invention of a new encounter between people, but the invention of an encounter between people and the camera. Photography was invented at the moment when a space of plurality was initiated, at the moment when a large number of people — more than just a certain circle of acquaintances — took hold of a camera and began using it as a means of producing images.

Photography was invented at *that* moment, by *those* people. They cannot be identified; they do not belong to any milieu of professionals, but are ordinary people who, simply by using a camera, both promoted photography and initiated what I am calling the civil contract of photography. A description of them would be impossible to complete and could not provide a full account of the civil contract of photography's conditions of possibility if we failed to note explicitly that looking at photographs was an inseparable part of photography's institutionalization and that the validity of the contract is due, at least potentially, not simply to the new ability of photographers to take photographs, but to the oscillation between the photographer's and the spectator's position. This oscillation inherently undermines any legal or juridical claims that anyone does or can "own" a photograph. Not only can no single individual claim to have invented photography, but the properties of photography itself make it impossible for any single individual to claim exclusive property rights to a photograph.

The Space of Political Relations in Photography

The invention of photography offered the gaze an absolute plane of visual immobility, a plane on which all movement is frozen, transformed into a still picture that can be contemplated without disturbance. However, in this picture what has been established — what has been fixed and stabilized — what "was there," to employ the succinct phrase coined by Roland Barthes in *Camera Lucida* to characterize what every photograph says of its subject, that it "was there,"¹⁸ is at most a testimony to the moment of the photograph's eventuation in which photographer, photographed, and camera encountered one another.¹⁹ Even when this encounter occurs under the difficult conditions of distress or disaster, when a threat looms over or has already caused harm to the political space, as a space of plurality and

action, the act of photography and the photographs it produces might, at least potentially, restore it. In other words, although photography may appear to be a distinctive object of the contemplative life (*vita contemplativa*), a moment in which all movements have been eliminated, it is actually deeply embedded in the active life (*vita activa*); it attests to action and continues to take part in it, always engaged in an ongoing present that challenges the very distinction between contemplation and action.²⁰ The photograph always includes a supplement that makes it possible to show that what "was there" wasn't there *necessarily* in that way.

The disappearance of what "was there" from the first daguerreotype of 1837 and its transformation over time into an imageless monochromatic surface might serve as an allegory for this structure of relations. The daguerreotype shows "a section of wall and bench (or perhaps a window ledge) cluttered with various objects typically found in such places. These include the following: plaster casts of the heads of two putti or cupids, complete with small wings."²¹ This description, which adheres to the plane of the visible as closely as possible, is revealed as an utter fabrication after inspecting the daguerreotype preserved in the vaults of the French Society of Photography (SFP) in Paris. The daguerreotype, which has (re)turned into a plane of silvery ash, is kept inside a safe-deposit box alongside a reproduction intended to attest to what *is* seen in it, despite it no longer being visible. The omission of this daguerreotype from the great Daguerre exhibition at the Musée d'Orsay in 2003 was based on the assumption that a yawning divide lies between what was seen in the first daguerreotype and what can actually be seen.²² What lies in this in between, between what was seen in the first daguerreotype and what can actually be seen in it, is the very space of relations of photography.

This space is characterized by a particular relation to the visible. There has always been a regard for the visible. The world has a visible dimension; human beings are equipped with eyes and conduct themselves, to a large extent, in and through the world in keeping with the ways they observe it. The traditional distinction between the life of study and contemplation (*vita contemplativa*) and the life of action (*vita activa*), assigns contemplation a realm of its own that

is essentially visual — reverie, wonderment, marveling, disinterested pausing vis-à-vis a landscape or a figure. Since the days of ancient Greece, the metaphor of this gaze has served to conceptualize abstract thought: theory, speculation, study, things that people imagine or understand through the use of their imagination, and so forth. However, attitudes toward the visible have always included two additional modes, as well, both of which are unrelated to the world of contemplation and, conversely, more closely approximate the world of action. The gaze, after all, is an inalienable part of action, of instrumental activities, of the effort to achieve goals and objectives, to grow more efficient and more sophisticated.

Hannah Arendt, who revisited the classical distinction between the realm of contemplation and the realm of action in *The Human Condition*, drew a distinction between three forms and three areas of action. The first form, which she defined as labor, consists in activity designed to provide for the basic needs of existence, allowing survival and the reproduction of life. The second form, which she defined as work, consists in activity creating products that do not serve immediate needs and that are not used up through direct consumption. Such products include instruments, tools, and tool parts that may be used in creating additional products and, finally, in creating an entire world, arranging the life of humans on the planet and allowing them to turn its space into their abode. The third form is action, which is unlike work in that it does not produce an end product or carry out a previously made plan. This form consists in individuals' venturing to generate something new through action or speech, doing so in public, among many other people, exposed to their gaze, in the recognition that the individual cannot fully predict the outcome of this venture or control the way in which it will evolve in the world.

I will draw on Arendt's distinction among three modes of *vita activa* to characterize various forms of active, noncontemplative gazes. The two most widespread ones are the identifying, orientative gaze, which, I propose, is analogous to labor, and the professional gaze, guiding and accompanied by certain types of action, which I'll present as analogous to work. Gazes of the first kind constitute part of the practice of orientation and survival based on the mechanism

of identifying what is visible, which is a necessary condition for existence. The individual observes her surroundings in order to identify herself within them, to plan her movements, and to identify the objects, animals, and people that she encounters, discerning their intentions as well as the dangers and opportunities implicit in each encounter. Gazes of the second kind, which might be termed "directed" or "intended," are typical of professionals (doctors, artists, police, architects, educators, etc.) and allow the arrangement and control of what is visible through the use of a body of knowledge that is incremental, ongoing, and evolving. The professional gaze isn't necessary to basic survival, but, rather, to the ordering of certain types of activities, to the analysis of events and circumstances, to hand-eye coordination, and so forth, in situations where action is free of the need to satisfy immediate needs and is, instead, anchored to goals of a higher order.

The identifying gaze and the directed gaze have accompanied human existence from its very beginnings. Prior to the invention of photography, however, it was difficult to find a gaze of the type that was analogous to action in the sense defined by Arendt. Until then, the practical gaze was either an identifying, orientative one or a professional gaze directed toward a definitive activity. The gaze recognized as distinct from these two forms lay outside the realm of action altogether — the contemplative gaze that gives pause and wonders. Then, the invention of photography added a new way of regarding the visible, one that previously did not exist or that, at least, existed in a different manner. This gaze is based on a new attitude toward the visual. It constitutes in an approach toward items, situations, customs, images, or places that, before photography came into existence, were not held worthy of contemplation in and of themselves. This approach or attitude now exists in contexts of plurality, among people, in a public sphere, contexts within which every participant not only contemplates what can be seen but is also, herself, exposed and visible. Such regard for the visual departs from the disciplinarian gaze or the pattern of communicating prerecognized messages. It approximates at least the central distinguishing features of action: it includes the aspect of a new beginning, and its ends are unpredictable.

The members of the community of photography are, as stated above, anyone and everyone who bears any relationship whatsoever to photographs — as a photographer, a viewer of photographs, or a photographed person. While it is customary to draw distinctions between amateur and professional photographers and also, perhaps, between random or occasionally photographed persons and those for whom being photographed is a profession, the community of photography is not actually organized around these distinctions. It is a broad community, which I venture to call "the citizenry of photography," and it is borderless and open. The relations between its members cannot be defined in terms of a common professional interest in photography. Within the framework of this community, the third manner of gazing, the third form of regarding the visible, which I have related to Arendt's concept of action, appears from the outset with civil characteristics. Much like action, which always occurs within a political sphere of human plurality, the singular gaze enabled by photography, which I view as a civil gaze, also exists — always and only — within a plurality. The spectator activating this gaze views the photograph and recognizes instantly that what is inscribed in it and discernible in it are products of plurality — the plural participants in the act of photography (the photographer, the photographed person, and the spectator). Moreover, the spectator instantaneously recognizes them as products of the multiplicity of elements that enter into the frame, whether in keeping with the photographer's intentions, or despite these intentions, or unrelated to them. The civil gaze doesn't seek to control the visible, but neither can it bear another's control over the visible. In particular, it cannot consent to any attempt to rule the visible while seeking to abolish the space of plurality.

The Properties of Photographs and Photographs as Property

In *Techniques of the Observer*, Jonathan Crary postulates that the appearance of a new figure of the viewer was witnessed in a mixture of three positions: "An individual body that is at once a spectator, a subject of empirical research and observation, and an element of machine production."²³ The invention of photography, he claims, is secondary to the revolution brought about by the invention of various

seeing instruments during the first decades of the nineteenth century and to the new observer these apparatuses established. However, as Crary himself points out, photography also establishes "a new set of abstract relations between individuals and things" and imposes "those relations as the real."²⁴ Crary's understanding of that transition from the *camera obscura* to the seeing instruments of the nineteenth century, which created a new observer, will serve as a point of departure for my discussion of what the properties of photographs imply for the status of photographs as property.

Let us begin with the photographer. It is commonly accepted and legally established that the photographer owns the images that he or she makes — that the photographer's ownership of the image is his or her "right" under the doctrine of property rights. It is this putative "right" of ownership that, in the case of photographs, I want to contest here. My questioning of the concept of "right" in this instance is meant to challenge the assumption that the photographed individual has no right over the image made of him or her and that this right is "naturally" given to the person holding the photograph's means of production. Most importantly, I would like to challenge the transformation of the photograph into an object of private property. To do so, I will examine the distribution of those goods known as "images" within their social and political contexts silenced from the discussion over the regulation of photography's exchange relations through market forces and by the judicial system that legitimized this regulation.

Starting in the middle of the nineteenth century, when channels for the distribution of photography were established — the exchange of *cartes de visite*, shop display windows, exhibitions, newspapers, and so on — access has been provided to images of people, objects, and places that in the absence of photography would have remained outside the modern citizen's visual field. Here, I will dwell principally on the most obvious instance of this framework, the photographic situation under conditions in which at least two people gather around the camera and take part in the ritual of photography.

Men and women of the period celebrated this accessibility in a way that made them (and subsequent others) forget the fact that photography is the result of an encounter with an another and with

an other, and, as such, does not have one obvious, constant owner. In that encounter, one is holding a camera, while the other, knowingly or not, becomes the photographed person. The encounter produces a photograph in which an image of the photographed person is inscribed. It is an encounter that always and inescapably involves a measure of violence, even when the situation is one of full and explicit consent between the participant parties. The violence is inherent in the instrumentalization of the photographed person in order to produce an image of him, within which context the photographed person can have as much of a vested interest as the photographer. Because ownership of the image has been assigned to the photographer, however, in only a few particular cases has a photograph been deemed to be in the public domain, and even then only after judicial intervention.²⁵ In rarer instances, typically involving well-known people, photographed individuals have been given certain rights in regard to *their* photographs taken in public, at least to the extent that they have been able to influence their mode of distribution.²⁶ At all other times, whether during moments of happiness or disaster, the photographed persons renounce in advance — or, more accurately, have been treated as if they have renounced in advance — any legal right to their own image, entrusting it to the hands of others.

The "right" to the ownership of a photographic image has been deployed retroactively in regard to the initial decades of photography. The question of who is the proper owner of a photograph did not emerge until the twentieth century.²⁷ The photographic situation, in which the photographer is whoever actually holds the means of production in his or her hands and controls its operation, effectively created the conditions for the photographer's designation as the "natural" owner of the photograph. When the photographer was working for someone else, the question of ownership went through an additional transformation, but the photograph in all cases was recognized as belonging to whomever possessed the instrument that created the photographic image and the support on which the original image was printed, rather than to the one who stood in front of the camera.

The precedence given to the ownership of the support (the artifact)

— a metal or glass plate in photography's infancy, photographic paper at a later stage — also made it possible for the opposite scenario to occur, in which photographs lacking the name of the photographer who made them wander throughout the world.²⁸ In those cases in which photographs are exhibited or printed without the photographer's name, the photographed individuals are presented as content, irrespective of its makers, content whose distribution is of prime importance for the public — an importance that usually suspends the question of legal ownership. In these cases, the photographed individual is usually not the owner of the photograph. Although the photograph is in the hands of someone who presents himself or herself as its owner, the only way of exercising this ownership is to share it with the public as a substitute for the photograph's owner. Thus, the individual or institution (newspaper, archive, etc.), having physical possession of the photograph, the material object itself, can act as if they were performing a "service" to the public, which is, in principle, the photograph's "true" owner.

When the question of ownership arises legally, before a court, it usually appears only indirectly and does not undermine what has come to be taken for granted — that the photographed individual is *not* the owner of his/her own image. The first instance of such a judicial case concerned a photograph of Napoleon III. The painter Adolphe Yvon had asked a photographer named Bisson to take a photograph of the emperor to assist Yvon while painting the emperor's picture. The painter posed the emperor in a certain attitude, under certain lighting, in a manner compatible with his own artistic conception. Later, the photographer made commercial use of the photograph, distributing numerous copies.²⁹ The painter, worried that the audience's appreciation of his painting would dwindle once it was recognized to be merely a reproduction of the photograph, pleaded with the court to prohibit the photograph's distribution. His legal argument, which persuaded the court to decide in his favor, was that he had composed the scene in the photograph and had paid the photographer for his work.³⁰ Over the course of the discussion of the photograph's ownership, the name and status of the photographed individual, the emperor himself, failed even to be mentioned as someone who might claim ownership.

Conversely, in the twentieth century, Dorothea Lange, who took one of the century's most renowned photographs, *Migrant Mother*, and lost her rights to it in favor of the institution for which she worked, attempted to challenge her loss of ownership by declaring that the true owner of the photograph was the woman who was photographed: "The negative now belongs to the Library of Congress which supervises it and prints it ... until now it is her picture, not mine," she tried to argue (figure 2.1).³¹ Lange's contention that the photographed woman owned the photograph, however, was largely a gesture of defiance and never prevailed. Had her proposal been accepted as law, the citizens of photography committed to the civil contract of photography would be just as inclined to contest her opinion in order to maintain citizens' ownership. Any final determination of the ownership of the photographed image, whether it is given to the photographer or the photographed person, negates the possibility that others can lay claim to it. It is not simply members of future generations who are entitled to reject these decisions. Not only are they entitled to reject them, as I will soon propose, but it is their moral duty to do so when the latter stand in contradiction to the civil contract of photography. When Florence Owens Thompson, the woman in the photograph, finally was identified and interviewed by the Associated Press in the 1970s in a story that appeared under the title "Woman Fighting Mad over Famous Depression Photo," she declared of Lange that "I wish she hadn't taken my picture" and complained that "I can't get a penny out of it. She didn't ask my name. She said she wouldn't sell the pictures. She said she'd send me a copy. She never did."³² In effect, Florence Owens Thompson was complaining that her rights had been violated.

On occasions in which photographed individuals have brought a claim in regard to their photographs, it was not an issue of the ownership of the image that was at the center of the debate, but the right to protect the character of the image that was made of them. In addition to the right to ownership of the image, other juridical concepts, such as "the right to privacy," "defamation," or "malicious use" have thus been introduced into the discourse on photography. To this day, courts continue to ratify the absence of any rights of photographed individuals regarding the journalistic use of such photographs and tend

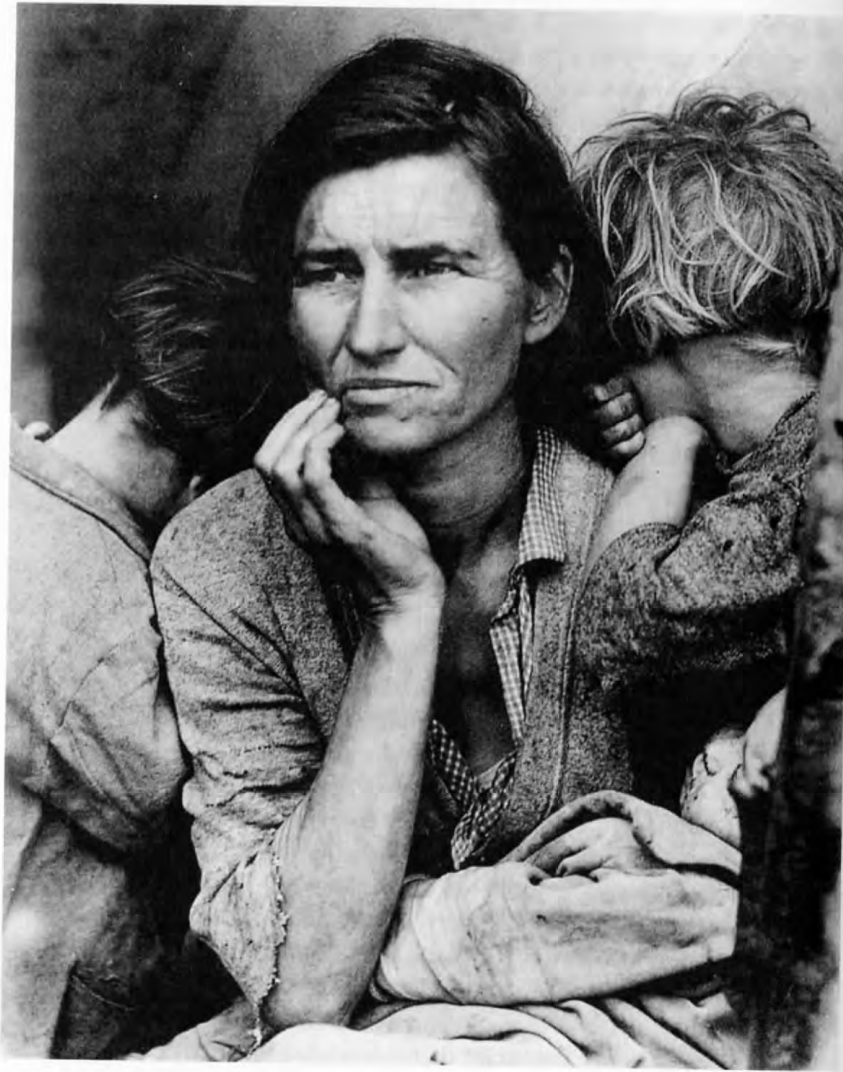


Figure 2.1. Dorothea Lange, *Migrant Mother* (Florence Owens Thompson), Nipomo, CA, 1936 (Prints and Photographs Division, Library of Congress, Washington, DC).

to impose restrictions only in cases of direct economic exploitation or violation of privacy at the moment of taking the photograph.³³

However, the concepts of property and ownership are foreign to the logic of photography. What is seen in a photograph evades all criteria for ownership, and cannot be appropriated; from this it is impossible to establish a single, stable meaning of photography that would negate or supersede all others. A photograph is neither the product of a single person, despite the concept of "author" having been established in relation to photography, nor is it even solely a product of human hands. A photographic image, then, can at most be entrusted to someone for a certain time. It is a deposit, temporarily given over to whomever has it for safekeeping, but such persons are never its owner.

Not only is the deposit temporary, it is only ever partial, conditional, and with limited liability. All of these qualifications apply to the deposit because just as no one can claim ownership of a photographed image, no one can deem himself or herself to be the one who has renounced ownership and put it in someone else's hands. As stated above, the concepts of property and ownership are ontologically foreign to photography. At the same time that a photograph lies in someone's hands, someone else can always claim the deposited image for themselves, or at least demand to participate in its safekeeping. Since the safekeeping of the deposit ranges anywhere from burying it in the archives to giving it widespread circulation, from preservation "as is" to being exhibited in a different light, someone else may still wish to display it or cast it in a different light. The demand to participate in the deposit's safekeeping is not made in the name of a right to possess the deposited image, for this demand expresses a rejection of any right that might be given to someone in regard to a photograph. The demand to participate in the deposit's safekeeping stems from a duty toward the deposit as such, toward what has been deposited, toward whoever deposited it, and toward the archive itself. In what follows, I will try to show how this duty is produced.

It is here that the oscillation between the position of the photographer and the position of the spectator becomes most apparent and most definitively subverts the notion that photographs are the real

property of those who take them. Ever since photography's emergence, there have been efforts to take photographs of areas in distress or those struck by disaster, to collect, distribute and interpret photographs from these places. The assumptions underlying these efforts have been, first of all, that what happens "there" is of interest not only to those concerned with it — those who've been struck by disaster — but to onlookers the world over, and, second, that photographs produced out of what happens "there" participate in constructing the event and the responses to it.³⁴ Since the second half of the twentieth century, this activity has been accompanied by the distribution of cameras within afflicted areas or areas prone to disaster in order to undermine any attempt to seal off such places to the photographic gaze.³⁵

These uses of photography are part of the way in which citizens actualize their duty toward other citizens as photographed persons who have been struck by disaster. The exercise of photography in such situations is actually the exercise of citizenship — not citizenship imprinted with the seal of belonging to a sovereign, but citizenship as a partnership of governed persons taking up their duty as citizens and utilizing their position for one another, rather than for a sovereign. The camera in the hands of the citizen is indifferent to the question of whether or not the injured persons who are photographed are citizens "of" a state. The camera recognizes them as citizens of what I call the citizenry of photography. The civil contract of photography, the essentials of which can be derived from each of these uses, is its founding formulation. These uses are motivated by the duty actively to overturn any ownership that someone has obtained or that is being sought in regard to a photograph — regardless of whether it has already been taken or could in principle be taken — and with it the right to conceal the photographed persons from the eyes of other citizens bound together in the civil contract of photography. The duty derived from the civil contract of photography is simultaneously to reject one's claim to be the owner of a photograph that one possesses as well as anyone's attempt to appoint him or herself as a guardian of another in an attempt to prevent that other person from being photographed.

Photography's exchange relations were institutionalized in such a

way that in addition to those recognized as the lawful owners of photographs, the public has been recognized as the virtual owner of all photographs. The familiar slogan regarding "the public's right to see" only partially expresses what is at stake and is thus a mistaken and misleading formulation. It is not simply the right to see, but the right to enact photography free of governmental power and even against it, if it inflicts injury on others who are governed. Photography provides modern citizens with an instrument enabling them to develop and sustain civilian skills that are not entirely subordinate to governmental power and allows them to exercise partnership with others not under the control of this power or acting as the extension of this power's operations and goals. In other words, photography is one of the distinctive practices by means of which individuals can establish a distance between themselves and power in order to observe its actions and to do so not as its subjects. Injury to this right, which is simultaneously injury to both the photographer and the photographed, as two citizens of photography — but fundamentally against all of the citizenry of photography — establishes a duty to protect it. If it is not protected, citizens will be deprived of the protection that can be granted by photography as an instrument that employs power that is in the hands of the governed and not only in the hands of the sovereign or those seeking to win sovereign power. Exercising this right — or discharging this duty — constantly undermines any attempt of founding an exclusive sovereign authority over the exercise of photography.

The Civil Contract of Photography: Terms and Conditions

As we have seen, in the classical photographic situation, the camera mediates an encounter between the photographer and the photographed, and an image is produced. In the legal institutionalization of this encounter, the photographed individual has not been recognized as its owner, whereas the photographer who produces the image has been given legal rights. However, this appropriation of the photographed person's rights, in which there is always a measure of violence, which was taken for granted by both sides from the start, and which has remained unaltered, cannot be understood without assuming that a certain pact or agreement lies at its foundation. Such

an agreement is what makes the photographic encounter between the photographer and the photographed possible. It is important to emphasize, however, that this agreement does not mean there is willing consent, and in no way is it based on knowledge of the conditions of exchange or the possibility not to agree. What this agreement establishes is that the two sides reconfirm the balance of power that has been established between them, doing so without resorting to the use of overt force. When a camera initiates an encounter between the photographer and the photographed, each of the sides is generally responsible for its part and knows what is expected of it. Even the refusal to be photographed or the refusal to be photographed in a certain way is institutionalized — the photographed persons and the photographers act according to conventional expectations; everyone is supposed to know how to act and what to expect at the photographic encounter.³⁶ From the fact that in the photographic encounter itself there is no need for the formulation or signing of a concrete pact, we can assume there has been some kind of tacit prior pact or agreement between the sides that ensures the present encounter: not merely a contractual agreement or ad hoc understanding, but a civil contract.

If one reflects on the agreement between the parties to the civil contract of photography as it is usually enacted, it is clearly an unequal exchange. The photographer produces a picture of an event or place at which he or she is present, a picture that may include all others who are present at the same place. These people can either agree or refuse to be photographed by the photographer, or at least to have what is happening to them or the place they are occupying become the object of his or her photographs. If they grant the photographer the right to turn them into a photographic image, in most cases, they receive no material reward, except for being turned into an image. No photographer promises them anything regarding what the future of "their" photograph might be — whether it will be rejected during editing or widely distributed, whether it will be printed in whole or in part, with or without a name, and so on. They can only be sure of being turned into an image, which from the moment it is taken will be tucked away in a drawer or file in some archive, in some city, somewhere on the face of the Earth.

The photographer makes a living, and in some cases may even become wealthy; the photographer wins fame and prizes, is a member of organizations that defend his or her interests, is protected by publication contracts and agreements. The photographed individual, on the other hand, is abandoned. He or she has no control over the image; in most cases, the individual is unable to determine its composition and the modes of its distribution; like Florence Owens Thompson, he or she receives nothing in return except for being turned into a photograph — no monetary compensation or guarantee. The photographed individual remains entirely outside the economic transaction.

From an early stage of its history, the technology of photography offered itself as a convenient, inexpensive, and easily accessible and operable means of production that anyone could use. In principle, anyone could hold a camera in their hands, giving rise to a situation in which the importance of a photograph is never solely dependent on the specific means of production (high-quality camera versus instant camera), the photographer's professional skills, or his or her artistic talent. The importance of a photograph often transcends all of these qualities and quite possibly stems, in the first place, from the photographed object. In other words, the technology of photography created the relatively simple mobility between the positions of photographer and the photographed. This essential mobility finds no expression in the configuration of their established relationship, which has fixed the asymmetry I have described as the defining model of their relations.

The essential exploitation in the agreement between the photographer — or those for whom he is the agent — and the photographed is even more striking in light of this elimination of any possible reversal of roles. In the framework of this agreement, the photographed individual remains in an exploited position within the exchange — he or she is the one who relinquishes any rights in advance, subordinated to the photographer, who, simply by having the camera, is able to tell those who are photographed how to behave and appear, having the last word regarding the framing that will ultimately be shown to the public. But this description is only partial, at best, for its point of view restricts the contract to what is actually exchanged and recognized as having exchange value in the market.

To understand the nature of the agreement that lies in the background of any concrete photographic encounter, a roundabout path must be taken.

In *Leviathan*, Thomas Hobbes distinguishes between a contract and a compact or covenant in the transmission or exchange of property. In a contract, the right of ownership passes immediately between the signatories; in a compact, however, "one of the Contractors, may deliver the Thing contracted for on his part of the contract, and leave the other to perform his part at some determinate time after, and in the mean time be trusted."³⁷ A compact, then, is a contract based on mutual trust and an anticipated, future reward. The social contract, says Hobbes, enables human beings to renounce their natural right to defend themselves, meanwhile immediately awarding them security and the defense of their lives. Human beings in fact renounce their right to use force directly and in return enjoy the protection of a governmental power, which guarantees that this renunciation will not result in direct harm to them or to their property. The fear of being killed in the war of all against all and the insecurity that derives from the absence of any authority capable of ensuring that agreements and the fulfillment of promises are upheld lead humans to make the rational choice of constituting a community governed by a sovereign. In the course of constituting the community, each of its members renounces the use of force in favor of a collective power "as may be able to defend them from the invasion of Forraigners, and the injuries of one another, and thereby secure them in such sort, as that by their own industrie, and by the fruites of the Earth, they may nourish themselves and live contentedly." Individuals collectively agree to hand over their right to defend themselves to one person or a congress of persons known as the sovereign, "and every one besides, [is called] his Subject."³⁸

According to the story told by Hobbes, along with others in the social-contract tradition, once it was "signed," human beings passed from natural state or patriarchal order to a social state within which a community was constituted on the basis of agreement.³⁹ The story is usually told and even more often interpreted as a thought experiment or a construct of reason, not as a "real" story about an actual agreement that marks the beginning of political states. It is usually

assumed that the contract has such a binding force because human beings are rational creatures, and in the face of fear, they would no doubt have opted for a social contract that extends security to them and improves their condition.

In her critical reading of the various versions of the social contract, Carole Pateman points out that most, if not all presuppose that achieving security and improving the condition of individuals can be accomplished only through the means of sovereign government.⁴⁰ The social contract is nothing less than the text that justifies the form of sovereign rule. In Pateman's critique, she points to the way in which the first stage of the contract, which is described as the formation of a political community that establishes an obligation *between* the members of the community at the same time as it places authority in their hands, is rapidly pushed aside in favor of the second stage, which assumes that the members of the community will necessarily alienate their right to exercise political authority by granting it to their representatives, and in effect to sovereign government.

As mentioned before, the status of the civil contract of photography is likewise not that of an actual document, but a tacit agreement. It differs from the Hobbesian account of the contractarian origin of sovereignty, however, in that it echoes the first stage of the social contract, but seeks to differentiate itself by suspending the second stage. The intrinsic assumption behind this move is that photography is one of the only practices by means of which a political community has been formed that is based on a mutual obligation among its members, who hold the power to act in connection with this obligation.

To put it another way, the form that the civil contract of photography takes is the form of mutual obligation that precedes the constitution of political sovereignty. In the social contract as described by Hobbes, each individual renounces the power to defend himself or herself in favor of the sovereign, whether a single person or congress of people. In Rousseau's version of the social contract, the identity of the sovereign is altered, and the people as a whole come to substitute for it. In both cases, all individuals give the sovereign irrevocable power to govern them for the sake of the sovereign ensuring the protection of their lives. The sovereign exercises its governance by means of the monopoly it has on the use of violence

to regulate social relations. If a subject should violate the contract and commit violence, the subject against whom this violence has been inflicted has the right to demand the protection of the sovereign and the restoration of order. In other words, the sovereign is the mediator among individuals in the framework of a closed and stable system of power relations arising from the fact that each individual is committed to the same contract vis-à-vis the sovereign.

By contrast, the civil contract of photography organizes political relations in the form of an open and dynamic framework among individuals, without regulation and mediation by a sovereign. Although individuals do indeed renounce their exclusive right to their own image and consent to becoming an image, such renunciation, as I will demonstrate, is not in favor of a sovereign that would have the exclusive power to produce an image out of them.

To illustrate the way in which photography's form of political relations are not organized around a sovereign power, I would like to return to the basic photographic situation. I will do so through a reading of an early photograph of Napoleon III's son taken by the firm of Mayer and Pierson in 1859 (figure 2.2). The photograph shows a boy three or four years old mounted on a pony and completely entranced by the camera. The child is posed in a chair strapped to the horse's saddle. Behind him is a monochromatic background typical of studio photographs of the period. Napoleon III, who recognized the importance and power of photography and had photographs of himself taken regularly, wanted to create a portrait of the imperial prince. In order to obtain it, his son had to go to the photographer's studio — a task he duly performed, accompanied by no less than the sovereign, who took the trouble to accompany him. It is almost certain that Napoleon III helped choose — from the repertoire offered to him by the photographer — the background and accessories used in the creation of his son's portrait. In his mind's eye, he may have pictured his mounted son in an oval or rectangular gold frame. Napoleon chose one of the most prestigious workshops of photographers of Paris and most likely relied on them to execute the portrait as he deemed appropriate. More than giving us a portrait of the imperial prince, the frame left from the ritual of photographing attests to the ritual itself.



Figure 2.2. Mayer and Pierson, *The Imperial Prince*, circa 1859.

Jean Sagne, who discusses this photograph in "All Kinds of Portraits: The Photographer's Studio," describes the situation laconically: The emperor "commissioned a photograph of his son, the imperial prince, on a pony. Quite by accident, the Emperor's profile was captured on the right side of the negative."⁴¹ Sagne sees nothing more than a happenstance in the emperor's profile, and his reading of the photograph thus eliminates, in an instant, the dynamic field of power relations that the photographic situation portrays. On the one hand, we have here a sovereign standing on guard, supervising his son. He did not send one of the servants, but went to the trouble of going in person to the photographer's studio to oversee the situation. On the other hand, we can discern a figure that is invisible in the photograph, but that has nonetheless left its imprint; this is the photographer, making sure that no detail of the photograph will escape his control, who has been given a golden opportunity to defy the sovereign, reorganize the frame, and steal Napoleon's image. What we see, in short, is not Napoleon organizing himself before the camera and seeking to control his portrait, but a pilfering of his image.

Standing between the two men is the child. He is completely subject to these two masters and to the power relations that are at stake, yet he is the center of the event, the point around which everything is built, and everyone is there to manufacture his photographic presence. The camera, as well, will get in on the action, participating in the erosion of sovereign authority at the moment of this photographic encounter. In the margins of the frame, without consulting anyone, the camera has captured the image of an assistant (To the photographer? To the sovereign?), whose proximity to the boy belies the fact that he is handling everything close at hand.

The photograph, then, does not exclusively represent the photographer's will and intention, those of Napoleon III, or those of the photographed boy. In fact, the photograph escapes the authority of anyone who might claim to be its author, refuting anyone's claim to sovereignty. The photograph discloses the negotiations among the parties to the contract — photographer, photographed, camera, and spectator — as well as what the parties knowingly or unknowingly achieve, through force, seduction, or even theft.

The meaning of the photographic situation thus cannot be understood without attempting to locate the general context of the praxis of photography and its modes of organization in political space. The photographic situation that I have described is one of many, one that exists simultaneously with many others. Photography, we should remember, is foremost a *mass* instrument for the *mass* production of images, which is not susceptible to monopolization.⁴² The proliferation of images that photography has facilitated is not simply a matter of quantity, but an essential vector of change in the perceptual matrix. The capacity to look can no longer be seen as a personal property, but is a complex field of relations that originally stem from the fact that photography made available to the individual possibilities of seeing more than his or her eye alone could see, in terms of scope, distance, time, speed, quantity, clarity, and so on.

To see more than they could alone, individuals had to align themselves with other individuals who would agree to share their visual field with one another. Photography reorganized what was accessible to the gaze, in the course of which everyone gained the opportunity to see through the gaze of another. In order to create this economy of gazes, each and every one had to renounce his or her right to preserve his or her own, autonomous visual field from external forces, but also acquired an obligation to defend the gaze in order to make it available for others to enter and intermingle. This was primarily the individual's renunciation of ownership of "his" or "her" image or point of view, just as he or she was prepared to give away that image or to become one. Photography, then, broadened the limits of the gaze to encompass a mixed economy of gazes that continually flood the visual field with new data. This mass production of images offered to the gaze is not carried out from a centralized location. It is not synchronized or controlled by a sovereign power. It is performed in different places and by different people who are bound together in civil association on account of photography, but not necessarily with any explicit connection on the basis of a nation, race, or gender. With few exceptions, the mass production of images takes place unabated. Photographers turn into photographed individuals, and vice versa.

In exceptional cases, certain state apparatuses are able to suspend

photography, typically in restricted areas and for limited periods of time. These are usually local prohibitions related to the declaration of a state of emergency — a state of exception. Such was the case during the early 1970s, when, following an order by Moshe Dayan, Ariel Sharon conducted an operation in the refugees camps in Gaza during which the army destroyed hundreds of houses to clear wide passageways in the densely populated camps, improve surveillance, and prevent clandestine movement of Palestinians through the narrow lanes. No photos from this operation are actually available.⁴³ Nevertheless, an innocent photograph that Moshe Milner took for the government press office in 1971, in which a young boy with lips tightly closed and a serious, inquisitive look is looking into the camera's lens, as if he wished that his portrait would seem like a portrait of a grown man to justify the issuing of an identity card, is troubling (figure 2.3). It is not troubling for what is seen in it, but rather for what is not seen and perhaps could have been seen in it: a testimony of the events that took place at that time in the refugee camps nearby. Was the photo supposed to show that life goes on as usual and that normal commerce continues, despite the violence and destruction in the camps? Or was it supposed to calm the Israeli public by showing the kind of cameras owned by Palestinians, for such a static, heavy camera would not be able to follow the army and document its action?

Even when such prohibitions pass into law, the ability to enforce them universally is difficult, due to the logic of the technology — its operational facility can be in anyone's hands — and the global travel networks that make it possible to smuggle the camera into areas that are off-limits.⁴⁴ There are rare instances that attest to this, when a set of photographs is disclosed from places and situations into which it is hard to imagine a camera could have penetrated. For instance, the four photographs recently discovered that were taken of the gas chambers at Auschwitz.⁴⁵

It is the terms and conditions of the civil contract that explain people's compliance, again and again, in being made the objects of a violent act — photography — without necessarily receiving any immediate reward.⁴⁶ The photographer — who is usually on the edge of another, different institution — turns the photographed individual



Figure 2.3. Moshe Milner, Government Press Office, Gaza, 1971.

into his or her object, shapes him or her without allowing the individual to have any direct control over the result. The photographer takes the photographed individual's image and appropriates it for himself. The photographed individual's consent has been given in advance — nobody, including the photographed individual himself, expects it to be given again. Nor is this consent linked to any concrete photographer standing and raising a camera in front of the photographed individual. This consent was given in the past, under specific historical conditions, and the continual disregard and forgetting of this consent perpetuates the problematic separation between the photograph as an image with exchange value and photography as the specific political condition in which this image is made.

I do not propose this contract as the outcome of a rational action that brought together people of different social, economic, cultural, and political classes who willingly have consented to an arrangement detrimental to their own interests. On the contrary, I contend that establishing a civil contract of photography was a mission imposed on the users of photography at the same time photography was imposed on them, perpetuating the inequitable division of goods, which blended nicely with the overall logic of the capitalist order. The civil contract of photography was "signed" when the invention spread, becoming readily available, sometime in the second half of the nineteenth century, between the time of the official declaration of the invention of photography (1839) and the invention of the portable and easily-operated camera (1877). Individuals were not asked for their opinions, quickly finding themselves living in a world in which photography began to mediate social relations, just as it was mediated, of course, by them. Despite the economic and class mobilization that photography afforded to some of its operators and users, photography, in most of its public appearances, nonetheless perpetuated the exploitative relations already existing in society.⁴⁷

The initial deployment of photography on the part of the modern state contributed to the perpetuation of the social power relations of power, turning weak, disadvantaged, and marginal populations such as ethnic minorities, criminals, and the insane into utterly exposed objects of photography.⁴⁸ These groups served as guinea pigs for the mass utilization of photography by the modern state, which quickly

turned the entire population into an object of photography, albeit in conformity with a predefined set of rules — various types of identification cards, personal documents, and so on.⁴⁹

To this day, however, weak populations remain more exposed to photography, especially of the journalistic kind, which coerces and confines them to a passive, unprotected position. In most cases, they are deprived of the ownership of their own images.⁵⁰ In some cases, when one of these photographs breaks through the parade of images of its kind — photographs of horror — the symbolic or economic capital that accrues highlights the gap between their exploitation and the enrichment of others "at their expense." But this kind of critical stance still restricts our attitude toward photography to the question of ownership, positing the photographer and the photographed as opposing one another as the only possible owners of the photograph, leaving the citizens of photography in the background, preventing them from appearing as a crucial player in the practice of photography.

By contrast, becoming a citizen in the citizenry of photography entails seeking, by means of photography, to rehabilitate one's citizenship or that of someone else who has been stripped of it. She is someone who sees photography and its civil contract as something that can protect her from anyone who would violate another citizen, which amounts to violating her, insofar as citizenship itself is violated. The citizen — whether she is a photographer or spectator — can demand a role in the deposit, the photographed image, and is thereby a plaintiff, rather than an owner. She is someone who speaks on behalf of the photograph itself. Assuming that any harm to the principle of citizenship is a harm to her own citizenship, she is always already the spokesperson for her own claim as a citizen. As such, she is not reduced to her formal status as citizen. It is by actually practicing her citizenship that she becomes a citizen.⁵¹

To understand photography in the context of citizenship, and citizenship not merely as a status, but as a praxis of becoming threatened and restricted by the deeds of Man, a return to the 1798 Declaration of the Rights of Man and the Citizen is required. In the previous chapter, I discussed that distinction already made between "man" and "citizen" in its title. One might assume that this distinction was meant

to ensure that all human beings would become citizens, but as is well known, not everyone became a citizen. The man of whom the declaration speaks is not the individual in a condition prior to becoming a citizen, but the precise opposite — he is supposed to restrict the dissemination of citizenship as a form of negotiation with power. Man seeks to reduce the citizen to a protector who will safeguard his “natural rights.” In other words, man seeks to restrict citizenship to a status, either innate or acquired under stringent conditions, and to limit its content to the protection of his rights. The civil contract of photography, by contrast, affords enough distance to view a different type of relation between human beings, between the governed, in the framework of which the citizen aims to break away from his or her *status* as citizen and *exercise* citizenship — that is, to turn citizenship into the arena of a constant becoming, together with other (non)citizens.

Photography, which was given to the citizen half a century after the writing of the Declaration of the Rights of Man and the Citizen, is an instrument that thwarts the restriction of citizenship to a particular nation-state. Instead, it enables the citizen and the noncitizen (either directly or through the citizen’s mediation), as those who are governed, to continue voicing civilian grievances despite the “natural and unalienable rights of man” continuing to be grasped as the reason and condition for citizenship. In other words, these civil grievances are distinct from the natural rights of man and are neither subordinate to these rights nor subordinate to the framework of the nation-state that legitimates them. Moreover, it is this citizenship, which is being trampled by “man” and the nation-state, that is being addressed by those actually practicing citizenship, who seek to rehabilitate and liberate citizenship from its subjection to “man” and his natural rights.

Here photography traps one in its paradox. To give expression to the fact that a photographed person’s citizen status is flawed, or even nonexistent (as in the case of refugees, the poor, migrant workers, etc.), or temporarily suspended (citizens struck by disaster, exposed for a limited period of time), whoever seeks to use photography must exploit the photographed individual’s vulnerability. In such situations, photography entails a particular kind of violence: The photograph is

liable to exploit the photographed individual, aggravate his or her injury, publicly expose it, and rob the individual of intimacy. This threat of violation always hangs over the photographic act, and this is the precise moment in which the contract between photographer, photographed, and spectator is put to the test.

Is there any call to renew or reformulate it? Does the photographer not have a duty toward the photographic image — his or her deposit — even before it has been taken, before it has been deposited? Is the photograph, which now potentially lies in the photographer’s camera, not the guarantee given to the photographed person that promises that the photographer will fulfill his or her commitment, even if the photographer might, in the last instance, at the moment of truth, seek to withdraw from it? To add a concrete example to this list of abstract questions, shouldn’t the photographer who took the four frames inside the gas chamber at Auschwitz have had to click the camera out of respect for the photographed, who were naked in front of his camera? Should we leave it only to the photographer to confront the paradox of rehabilitation and violation, given the fact that he or she is the one who is “there” with a camera? Is this not a decision that the citizenry of photography agreed on when they acknowledged that they have no right to their own images — when they agreed to deposit the image as certainty of the fulfillment of their commitment, or the photographer’s, or the spectators’? Did they not understand that their citizenship is stamped with the seal of photography, as distinctly made manifest by the identification cards we have been given?

Miki Kratsman’s 1998 photograph, depicting a body lying exposed on the ground confronts us with these questions (figure 2.4). The body lying on the ground is silent; it is utterly exposed to the photographer who has arrived with his camera and calmly set himself in front of it, using the time at his disposal to compose a dramatic frame. Should the photographer not have taken this picture of the exposed body, abandoned without anyone bothering to cover it, or was it his duty to take the picture, to draw our attention to the length of time that elapsed between the disaster’s occurrence and someone going to the trouble of honoring the dead by covering it, as is customary?⁵² The laconic caption — *Migrant Worker* — that the



Figure 2.4. Miki Kratsman, *Migrant Worker*, Tel Aviv, 1998.

photographer appended to the photograph when he later exhibited it in a museum has turned the photographer into the bearer of the grievance. This grievance is not that of the photographed person, but of the photographed scene or event: the dispossession of citizenship, which the photographic act has posited itself against, in the manner of Antigone demanding that society allow the dead to be covered, and it has recognized as deserving such a minimum of respect.

Photography, at times, is the only civic refuge at the disposal of those robbed of citizenship. Thus, they incidentally benefit from the fact that citizens have accepted photography as a mediating agent in social relations. To trace how photography is tied to citizenship, we may return to France, in the year 1839. The same country that bestowed the Declaration of the Rights of Man and the Citizen, France, also nationalized the invention of photography in order to bequeath it, without delay, to all of humanity: "We believe we are acting in the spirit of the aspirations of this House [the Chamber of Representatives] in proposing to purchase, in the name of the State, the ownership of such a useful and inspiring invention, and that it seems to us in the interest of the sciences and the arts to bestow it upon the public in general."⁵³ A reading of the rhetorical gestures of the first proponents of photography demonstrates that they conceived of themselves as emissaries entrusted with the mission of bringing photography to all of humanity, as a gift of universal value with properties that no individual was entitled to hold: the reformatory properties of rescue, preservation, and commemoration, as well as those of change and renewal.

Moreover, photography appeared as a new tribunal, a universal and impartial judge that could do justice to the past, present, and future. Its object has impressed an eternal seal — what is seen in it cannot be erased. Photography was depicted as history's representative on Earth, an instrument capable of perpetuating everything that was lost yesterday and of saving what may vanish tomorrow. In addition to being educated to look on photography as an event of importance to all of humanity, modern citizens experience it as events of which they are the direct addressees.⁵⁴ Photography has enabled them to participate in events beyond themselves, yet that have no existence without them. Photography has directly interpellated the

citizen — he or she can become the bearer of history, both as photographer and as photographed. An unprecedented responsibility has been placed on the individual, who has the potential to preserve what takes place at the heart of the family for the sake of those closest to him or to her, as well as what takes place in public space, for the sake of people he or she doesn't even know. Thrown into the modern world, which took shape in the spirit of the civil revolution that came in the wake of the French Revolution and spread throughout the globe, and of the Industrial Revolution, which was already in full swing, the individual wordlessly consented. The individual simply became both the photographer and photographed.

The photograph, which preserved singular images on paper, was decisive proof for the individual that the proposed civil contract of photography was reliable. Mute at its inception, the photograph maintained its silence. Such silence, which can sometimes scream to the heavens, attests to the fact that it is our historic responsibility not only to produce photos, but to make them speak. Photography granted moderns the opportunity to be naturalized in their world — to know it, investigate it, contemplate it from various angles, bring it closer or distance themselves from it, critique it, and find answers. Since the eighteenth century, the public sphere has not been the sole origin for acquiring civil skills. The world of instruments opened new possibilities for looking and acting, as well for contributing to the shaping of the modern conditions for citizenship.⁵⁵ This mass naturalization refashioned the political game, reshuffling the cards in a profound way. The encounter between a public sphere and a new instrumental technology opened unprecedented opportunities both for change to take place within the political sphere and for new forms of exchange to occur within it. The camera opened the possibility of redefining the concept of citizenship and the conditions for its fulfillment.

People deprived of citizenship — women, first and foremost — began to take an active part in this formation of a new world.⁵⁶ As soon as the first daguerreotypes were distributed, hundreds of women began using the new technology to produce photographs of the same quality as those produced by men, although their careers did not enjoy the benefit of stability and protection that accompa-

nied men's social and political status.⁵⁷ People began enjoying the right "to be included in the film," as Walter Benjamin phrased it.⁵⁸ From an opposite perspective, Susan Sontag has defined the introduction of the camera as "the right to something called news."⁵⁹ The camera embodied the possibilities available to the modern citizen to take part in the production, investigation, and distribution of what interests the public. These practices — in which the general public could in principle participate, either as active or passive agents (photographer or photographed) — constituted a significant stratum in the new exchange relations formed in the political sphere. In other words, the camera changed the way in which the individual is governed and the extent of his or her participation in the forms of this governance.

Photography, then, was the forerunner of a missed revolution. The body of citizens was given the means to instigate change, but the relations between these citizens were newly regulated through a unified sovereign power, most often on the basis of a national model, in conformity with coercive rules of exclusion, hierarchical order, discrimination, exploitation, and oppression. In the brief interval between the creation of the new political conditions and the exclusion of entire populations from equal partnership in the political game, the modern citizen signed a compact, the civil contract of photography, which the market and the nation-states shared an interest in weakening and even eliminating altogether.

The market and the nation-states had an interest in distributing photography without the contract that had been established with the invention of photography. The regulation of social relations with emphasis on ownership, on the one hand, and on national citizenship, on the other, in effect deprived modern citizens of what the contract had bequeathed to them. The political game in which the contract was involved — a game that cannot be predicated entirely on market logic, governmental power, and the nation-state is perhaps the only one of its kind in which citizens are able to fulfill their membership in a political community in a framework not dictated by a sovereign power, where they are able to act on their own behalf.

The civil contract of photography does not bind the photographed person to the photographer — or to those who might keep

the photographer from standing opposite the person. It binds all individuals who take part in photography, both photographers and photographed alike. Every "signatory" to the civil contract has received, in return, the possibility of producing images of the other, that is, of supplementing the inventory of images that he or she can access. Every individual has been given the opportunity to see beyond his or her immediate surroundings and to use the gaze of others on people and places that the individual cannot access or photograph — including the individual himself or herself. The modern citizen has thus renounced the exclusive right to his or her image in favor of an economy of images that, in principle, includes the individual and all others. This consent is conditional on the consent of all others. Within a short time, the individual has been able to obtain photographic evidence of the consent of all these others, irrespective of their class, nationality, or whatever. Those who are enclosed solely in a private sphere are excluded from this game, but this limitation is temporary, for they might (re)appear in the public domain, (re)exposed to photography.⁶⁰

The citizen's renunciation of the exclusive right to possess or distribute his or her photographic images does not mean that the citizen renounces the right to become a photographed image. It can be expected that the former renunciation would help produce one's images when one needs them, for example, when one considers what happens to a person as a matter of public concern. This is not simply a one-time agreement given to a particular photographer at the moment of an encounter, but is in principle a renunciation performed only once by each citizen, linking them all in the contract.

In *The Sexual Contract*, Pateman discusses contracts that concern not regular property but property in person — as in the cases of the marriage contract, employment contract, or prostitution contract. Irrespective of the eventual generosity of such contracts, in everything relating to the compensation given to the person whose body becomes property, they do not eliminate the fact that one side of the contract has the authority to dictate to the other side everything concerned with their bodies. Pateman contends that all of these contracts exist under the auspices of the "original" contract — the social contract — in the framework of which obedience is portrayed

as free will. The act of photographing confronts us with the contract latent within it, an unusual type of contract in which what is at issue is also property in person. The act of photographing can take place within a broad spectrum of agreements, ranging from an absence of any explicit formulation of the principles of exchange (snapshot photography, for example), through hasty consent as to the nature of the engagement (a photographic studio), to a detailed contract in which the form and character of the exchange are described, including sanctions stipulated in the event of any noncompliance with the contract (fashion photography). Whatever the case, if there is a contract it refers only to the act of photographing. The civil contract of photography, however, which serves as a contractual framework for the regulation of photography's relations, refers to the different uses of photography, which includes spectatorship, and recontextualizes each of these concrete contracts, which could have threatened to impose on photography stable relations of exploitation and control.

Photography is one of the instruments which has enabled the modern citizen to establish her liberal rights, including freedom of movement and of information, as well as her right to take photographs and to be photographed, to see what others see and would like to show through photographs. Photography has become a means of viewing the world, and the citizen has become a well-trained spectator, capable of reading what is visible in photographs. With photography, the modern citizen found herself in a situation in which she was not previously familiar. On the one hand, she had been given strong and powerful tools — the production of images of herself and others, and the right to see and interpret what was disclosed in these photographs. On the other hand, as an individual the citizen felt cheated: "I'm tired of being a symbol of human misery, moreover my living conditions have improved," complained Florence Thompson, when *her* image as the *Migrant Mother* reappeared hundreds of times in the press decades after the photograph was taken.⁶¹

Despite the equality of means that are held in principle, "others" — institutional bodies, the rich and powerful, etc. — still have the ability to exercise these means in a discriminatory, and even oppressive

manner. In other words, the gap between the power granted to the individual and the possibilities of personally exercising it has become even more glaring. She will be able to fully exercise her power — not merely symbolically, as one who is in principle the owner of the new technological instrument — only by means of a civil contract, which makes it possible to turn the mutual agreement to become an image into a way of securing a mutual guarantee. As stated above, this compliance to become an image was neither protected nor limited to the sovereign, but given to anyone and everyone. The mutual guarantee is supposed to ensure protection for the individual when her entitlement to become an image is threatened, or when her becoming an image is taken to an extreme that threatens to turn her into *only* an image. The mutual guarantee established amongst the citizens of the citizenry of photography is the basis for the formation of a political community that is not subjected or mediated by a sovereign.

This is not simply a mutual guarantee between individuals, but a mutual guarantee linked to the medium of photography and predicated on a mutual consent regarding the truth value of photography, the fact that what we find in it really “was there,” in the words of Roland Barthes. In *Camera Lucida* and in his lectures, Barthes attempted to grasp the essence of photography, in its specificity as a medium. This formulation, which has since become classic, fails to exhaust the essence of photography, as Barthes wished, but undoubtedly offers a precise description of the social attitude toward photography. Barthes’ expression, which he arrived at one hundred and fifty years after the invention of photography, succinctly captures the particular characteristic of the photographic medium, as it is grasped by the users of photography since its invention. Without understanding the civilian context of the medium, in addition to Barthes’ definition, it is impossible to understand the institutionalization of photography as a medium of truth which attests to what “was there.”

Critical discussions seeking to challenge the truth of photography, or argue that “photography lies,” remain anecdotal and marginal to the institutionalized practices of exhibiting and publishing photographs. Only a glance at a newspaper kiosk is needed to realize the enduring power of the news photo. Photography’s critics tend to forget that despite the fact that photography speaks falsely, it *also*

speaks the truth. A photograph does in fact attest to what “was there,” although its evidence is partial, and only in this sense is it false. What was there is *never* only what is visible in the photograph, but is also contained in the very photographic situation, in which photographer and photographed interact around a camera. That is, a photograph is evidence of the social relations which made it possible, and these cannot be removed from the visible “sense” that it discloses to spectators who can agree or disagree on its actual content. The social relation that “was there,” to which a photograph attests, is an expression of a mutual guarantee, or its infringement. Either way, the realization of the contract is not something only subsisting in the photographic act, between photographer and photographed, but draws most of its strength and validity from the very fact that it is inexhaustible and does not flow merely in expected directions. Even if it appears, at a certain time and place, that an individual or group is capable of destroying the civil contract of photography, along with the citizens of the citizenry of photography, the contract itself surprisingly reclaims its place through the efforts of some of its numerous trustees. There is nothing inherent to the technology of photography that creates discriminatory or oppressive situations for different populations, and in the same way it cannot erect a barrier against movements between different positions in social reality. The most prestigious photographer, for example, might be caught in a disaster area, and turned into a passive photographed individual, whereas someone in the position of a photographed individual at the mercy of others can turn into an important photographer, having the power to provide visual evidence of events.⁶² The mutual guarantee that is derived from the essential equality among the citizenry of photography — even if some are currently being recognized as full citizens of the states in which they live, and others are not — organizes social relations without the mediation of a sovereign, the place of the sovereign overtaken by the consensual social attitude toward the truth in photography.