

The Civil Contract of  
Photography

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## Introduction

I remember well the drone of the planes and the banister trembling as I tried to clutch it. My mother says I was shaking all over and that my teeth were rattling. When I shut my eyes, I feel as if I'm there, spreading the upper half of my body on the banister, arms wide open, and sliding down. The sliding never ends — a continuous snapshot with nothing before or after it. This is the only image I have of that day, mixed up with the rising-falling shriek of the siren, with strong pounding at the door and shouts of "Get up, get up" directed, I think, at my sister, who was sleeping through the whole thing. All the rest comes from stories. June 1967. I was five. The house we lived in on Weizmann Street in Netanya had no bomb shelter, and we ran to the next building. Two or three bombs fell on Netanya that day.

For years, this war was referred to with pride. My mother said I didn't cry at any point, and I knew this made me a part of the war's success. In time, I understood that this illustrious war, whose victory albums my father sold at his small, crowded shop, was none other than a conquest of people's lives, their ongoing dispossession of many things they had and many other things they would never have. The fact that I failed to understand this sooner, as it was actually taking place, has haunted me since.

I was twelve when I fainted for the first time. In Tul Karm, in the West Bank. My parents used to drive there every Saturday. My father would buy Umm Kulthum cassettes at half price. I think that more than anything else, though, he loved going there so he could eat baklava. It was

the single foodstuff that disclosed his birth in an Arab country. When I came to my senses after fainting, I immediately was handed a slice of lemon and a glass of water. Someone on the street had taken over the situation and had rushed to provide me with a drink. I have no idea who. My mother was anxious to leave and said we wouldn't go "there" anymore. "The smells affect the child," she told my father. In hindsight, it turned out that I had fainted because I was menstruating, and my blood pressure had dropped. I have since fainted several times in Jewish towns. I knew my mother's decision not to go back "there" was not as well founded as it seemed, but I didn't know why. So I said nothing.

My mother wouldn't allow me to go to the beach on Fridays. That's the day the Arabs go. "They go in with their clothes on," she muttered. Ever since, I've carried around in my head an image of Arabs half-submerged in the middle of the sea, struggling to get up, with the weight of their wet clothes pulling them down. While I remember this image as if it were a photograph I actually saw, I know it was planted in my brain, courtesy of my mother's tongue as she tried to embody her warnings. When I was a bit older, in high school, and I went to the "territories" with Peace Now to demonstrate against the occupation, I saw only Jewish Israelis with crisp white shirts, equipped with a vision of how to wipe out the occupation. Even then, toward the end of the 1970s, the image from the sea remained the only image I had of Palestinians.

It took many years before this phantom picture was replaced by real photographs with Palestinian faces looking out at me. A girl with soldiers pulling her hair as they try to arrest her, a young boy tied up and lying on the ground with a group of soldiers and a rifle aimed at him, an elderly couple on the ruins of what was previously their home, shuttered store fronts with armed soldiers out in front, or an elegant woman of my age, standing tall, her arms hanging at her sides, on a background of magical wallpaper printed with a vista of lakes and palm trees. That was during the first intifada. At the time, I had just returned from a seven-year stay in France, and I avidly read the Hebrew daily *Hadashot*, where Palestinians' portraits and their names and stories

were printed for the first time in Hebrew daily newspapers: black-and-white photographs in sharp contrast, the Palestinians in most of them taken from very close up, often in close physical proximity to Israeli soldiers. Every such photograph testified to the fact that the occupation should be ended and a Palestinian state established.

Around the same time, I began writing about art. But I was drawn to photography. There was very little writing on photography at the time within the discourse of art, and I was looking for a way to put photographs into words. I didn't know how to break the silence about it. I suppose the difficulty stemmed, for the most part, from the fact that photography wasn't considered an art form, that writing about it ran the risk of the directness necessitated by the writer's duty to look, first of all, at what is photographed, and only then to deal with issues of an artistic order. But the photographed persons went on looking out of the photographs and demanding something else, even when the gaze turned them into a sign to be drawn on in speaking out against the occupation.

Artistic discourse turned out to be an obstacle to seeing what was in the photograph, but it was not the only one. Postmodern theorists — such as Roland Barthes, Jean Baudrillard, and Susan Sontag — who bore witness to a glut of images were the first to fall prey to a kind of "image fatigue"; they simply stopped looking. The world filled up with images of horrors, and they loudly proclaimed that viewers' eyes had grown unseeing, proceeding to unburden themselves of the responsibility to hold onto the elementary gesture of looking at what is presented to one's gaze.

At the beginning of the 1990s, I began curating photography exhibitions. But I knew that my interest in photography didn't end with photographs taken by artists or professional photographers. In photography — and this is evident in every single photo — there is something that extends beyond the photographer's action, and no photographer, even the most gifted, can claim ownership of what appears in the photograph. Every photograph of others bears the traces of the meeting between the photographed persons and the photographer, neither of whom can, on their own, determine how this meeting will be inscribed in the resulting image. The photograph exceeds any presumption of

ownership or monopoly and any attempt at being exhaustive. Even when it seems possible to name correctly in the form of a statement what it shows — “This is X” — it will always turn out that something else can be read in it, some other event can be reconstructed from it, some other player’s presence can be discerned through it, constructing the social relations that allowed its production.

My main interest was in photographs from the Occupied Territories, and the more I looked at them, the more I felt that they showed more than evidence of what was being done to the Palestinians. Over time, it became progressively clearer to me that not only is it impossible to reduce photography to its role as a producer of pictures, but that, in addition, its broad dissemination over the second half of the nineteenth century has created a space of political relations that are not mediated exclusively by the ruling power of the state and are not completely subject to the national logic that still overshadows the political arena. This civil political space, which I invent theoretically in the present book, is one that the people using photography — photographers, spectators, and photographed people — imagine every day.

By that time, at about thirty, I felt a strong desire to go back to the building on Weizmann Street. My photo album from that period of childhood was very slim. I had a feeling that simply going back there would nudge many things toward deciphering themselves. It was evening when I got there. Just entering the dark entrance hall felt oppressive. At the other end of it there was a large opening leading to the yard adjacent to the neighbors’ yard that we ran to in order to reach the bomb shelter. If, in the course of my childhood at this address, I had entrusted anything there, I wasn’t able to get it back on this visit. I don’t know what I thought I would find there, but for days afterward, the picture of that stairwell stayed with me. Every time it began eluding me, I grasped at its edges as if it were a photograph, trying to keep it with me a moment longer. It dawned on me at the time that I could remember all the stairwells of all the buildings I’d lived in — eight in all. I have a fairly orderly archive in my mind. “It’s the entrance hall that’s the most dangerous”; “Don’t open the door for strangers”; “Take a good look and make sure that no one comes into

the entrance hall behind you.” In the course of adolescence, these warnings were joined by a long series of prohibitions concerning me as a girl, as a woman. An entire world of moving freely through space and its related adventures had been gradually placed beyond my reach, because these had always involved walking at night, entrance halls, and public parks.

Each one of us carries with her an album of these planted pictures. In some cases, the violence needed for their insertion into the album is evident — as happens when the image is engraved through trauma. In other cases, the pictures have been planted while the “owner” of the album remains totally unaware of the violence involved, until the day she is able to see that this or that image that she had taken to be her own was in fact nothing of the kind. What distinguishes such pictures from regular photographs is the mode of their transmission. They are planted in the body, the consciousness, the memory, and their adoption is instantaneous, ruling out any opportunity for negotiations as regards what they show or their genealogy, their ownership or belonging. They lack the *objective* dimension possessed by an image imprinted in a photograph by virtue of its being, always, of necessity, the product of an encounter — even if a violent one — between a photographer, a photographed subject, and a camera, an encounter whose involuntary traces in the photograph transform the latter into a document that is not the creation of an individual and can never belong to any one person or narrative exclusively. The photograph is out there, an object in the world, and anyone, always (at least in principle), can pull at one of its threads and trace it in such a way as to reopen the image and renegotiate what it shows, possibly even completely overturning what was seen in it before. That evening at Weizmann Street made me understand the role of planted pictures in the restriction of my living space as a citizen and a woman, and the potential of photography for dissolving their power.

Photography has served me in ridding myself of these phantom pictures, or at least in reattributing them to their creators and detaching them from myself. Photographs, unlike phantom pictures, have no single, individual author, in principle, they allow civic negotiations about the subject they designate and about their sense. Advertising

photography has come into the world with the wrong users' manual, photos tend to be confused with planted pictures and become phantom images. The existing common manual reduces photography to the photograph and to the gaze concentrated on it in an attempt to identify the subject. It takes part in the stabilization of what is seen, in making it distinct, accessible, readily available, easy to capture, and open to ownership and exchange. The wrong users' manual hinders the spectator's understanding that the photograph — every photograph — belongs to no one, that she can become not only its addressee but also its addresser, one who can produce a meaning for it and disseminate this meaning further.

Photography is much more than what is printed on photographic paper. The photograph bears the seal of the photographic event, and reconstructing this event requires more than just identifying what is shown in the photograph. One needs to stop looking at the photograph and instead start watching it. The verb "to watch" is usually used for regarding phenomena or moving pictures. It entails dimensions of time and movement that need to be reinscribed in the interpretation of the still photographic image. When and where the subject of the photograph is a person who has suffered some form of injury, a viewing of the photograph that reconstructs the photographic situation and allows a reading of the injury inflicted on others becomes a civic skill, not an exercise in aesthetic appreciation. This skill is activated the moment one grasps that citizenship is not merely a status, a good, or a piece of private property possessed by the citizen,<sup>1</sup> but rather a tool of a struggle or an obligation to others to struggle against injuries inflicted on those others, citizen and noncitizen alike — others who are governed along with the spectator.<sup>2</sup> The civil spectator has a duty to employ that skill the day she encounters photographs of those injuries — to employ it in order to negotiate the manner in which she and the photographed are ruled.

Events about which I wrote in that period, such as the gang rape in Kibbutz Shomrat or Carmela Boukhbout's killing of her violent husband, revealed to me the shape of women's narrowed living space, along with the fact that what has befallen them is a symptom of an *impaired civic* status that is characteristic of women in general.

The question of citizenship thus gradually became the prism through which I began observing things. At first, my writing progressed in several parallel channels: writing about photography, mainly photographs of Palestinians and the continuing injury caused them by the occupation, writing about women, mainly focusing on the violence directed against them and their abandonment, and writing about impaired citizenship as it concerned both Palestinians and women. It was the concept of citizenship that made it possible for me to conduct an extended discussion of seemingly distinct cases — the assassination of a prime minister, the killing of a husband by a wife whom he had abused and beaten for years, and the liquidation of a Palestinian individual identified as the planner of terrorist attacks. Unavoidably, this discussion led, in turn, to a reformulation of the concept of citizenship itself. When these incidents are discussed from the standpoint of citizenship, it is impossible to retain the label "domestic" with reference to the killing of a husband by his abused wife, just as the murder of a Palestinian can no longer be viewed as a "liquidation." The common framework of discussion proposed by this book for analyzing the susceptibility to disaster of distinct populations such as Palestinians or women thus resists some of the presuppositions of existing discourses on citizenship.

Because Palestinians are considered stateless persons, they are absent(ed) from the discourse on citizenship; because women are considered full citizens, their susceptibility to a particular type of disaster does not tend to generate an examination of their civic status. Circumscribing the discussion of Palestinians in advance through the scandalous category of "stateless persons" amounts to accepting a narrow reading of citizenship as a "natural" privilege possessed by the members of a certain class that administers the distribution of the good known as citizenship as if it were its own private property. Excluding the discussion of women's abandonment from the discourse of citizenship through the argument that it represents a factional issue overly narrowing the relevant "general" political perspective amounts to accepting the incidence of rape as a natural disaster or an ahistorical conflict between the sexes, rather than an alterable consequence of impaired citizenship.

In spite of my right-wing upbringing, I became convinced early on that injustice was being done to another people and that the solution lay in the establishment of a Palestinian state. This was what I believed for many years. When I started scrutinizing photographs in a serious, systematic way, I understood that terms such as "occupation," or "Green Line" or "Palestinian state" that I had been in the habit of using are part of the discursive structures of the regime and support it, even if one formulated her position toward them in just the opposite way than the one intended by the regime. These terms threaten to circumscribe one's field of vision and, perhaps worse, the boundaries of one's imagination, as well. They threaten to seal the photographs within a protective shield that will turn the photographed people into evidence that something "was there." However, in contradiction to the famous statement by Roland Barthes, which sought to capture the essence of photography as testimony to the fact that this something "was there," when these photographs are watched, not looked at, when they are read both out of and into the space of the political relations instated by photography, they seem — conversely — to testify to the fact that the photographed *people* were there. When the assumption is that not only were the photographed people there, but that, in addition, they are still present there at the time I'm watching them, my viewing of these photographs is less susceptible to becoming immoral. Addressing these photographs is a limited, partial, sometimes imagined attempt to respond to the photographed figure, an attempt to reconstruct the part it played, which is sometimes difficult to discern at first glance, and to realize, even if fleetingly, a space of political relations between those who are governed, a space in which the demand not to be ruled in this way becomes the basis for every civil negotiation.

I began working on this book at the beginning of the second intifada. In hindsight, I can say that observing the unbearable sights presented in photographs from the Occupied Territories, encountering them in the national context within which they were presented and enduring the difficulty of facing them day after day, formed the main motives for writing this book. *The Civil Contract of Photography* is an attempt to anchor spectatorship in civic duty toward the photographed persons who haven't stopped being "there," toward dispos-

sessed citizens who, in turn, enable the rethinking of the concept and practice of citizenship.

I employ the term "contract" in order to shed terms such as "empathy," "shame," "pity," or "compassion" as organizers of this gaze. In the political sphere that is reconstructed through the civil contract, photographed persons are participant citizens, just ~~the~~ same as I am. Within this space, the point of departure for our mutual relations cannot be empathy or mercy. It must be a covenant for the rehabilitation of their citizenship in the political sphere within which we are all ruled, that is, in the state of Israel. When the photographed persons address me, claiming their citizenship in photography, they cease to appear as stateless or as enemies, the manners in which the sovereign regime strives to construct them. They call on me to recognize and restore their citizenship through my viewing. At issue in this book is more than my insistence on using the term "citizenship" in analyzing the act of photography or in understanding the ways in which some populations are more exposed to catastrophe than others. At issue is an effort to disclose the inextricable relationship between the populations facing pending catastrophe and the citizens with whom they are governed, doing so by means of an examination of the civic space of the gaze, speech, and action that is shared by these governed populations.

The book seeks to arouse two dormant dimensions of thinking about citizenship and to recast them as points of departure for a new discussion of this concept. The first of these dimensions consists in the fact that citizens are, first and foremost, *governed*. The nation-state creates a bond of identification between citizens and the state through a variety of ideological mechanisms, causing this fact to be forgotten. This, then, allows the state to divide the governed — partitioning off noncitizens from citizens — and to mobilize the privileged citizens against other groups of ruled subjects. An emphasis on the dimension of being governed allows a rethinking of the political sphere as a space of relations between the governed, whose political duty is first and foremost a duty toward one another, rather than toward the ruling power.

Every day, as I leaf through the paper, looking out at me from its various pages are faces of Palestinians exposed to the rule of Israeli occupation.

Why are these men, women, children, and families looking at me? Why have they agreed to be photographed so as to look at me? At whom, precisely, did they seek to look — was it truly at me? And why? Does their use of photography express a civic skill that they possess? What am I supposed to do with their look? What is the foundation of the gaze I might turn back to toward them? Is it my gaze alone, or is their demand directed toward the civil position I occupy? What happens to my citizenship in its encounter with this look? What happens to it in this encounter with their catastrophe, knowing that they are more vulnerable than I to catastrophe?

The question “Why are they looking at me?” has enabled me to rethink the civic space of the gaze and our interrelations within it. Both the photographer’s vantage point and the process of watching photographs have emerged as only one component within a whole, very complex fabric of relations. Within its weave, the photographed subjects’ act of addressing the spectator bears decisive weight. For example, take the merchant from Hebron, one of many, many people from Hebron who staged protest strikes against the occupation in 1982 (figure 1.1). On encountering the photographer, Anat Saragusti, the merchant faced the camera and demonstrated directly, for all to witness, evidence of the damage caused to him, the lock of his store forced open and destroyed by Israeli paratroopers sent in to break the strike. The photographed subjects of numerous photographs participate actively in the photographic act and view both this act and the photographer facing them as a framework that offers an alternative — weak though it may be — to the institutional structures that have abandoned and injured them, that continue to shirk responsibility toward these subjects and refuse to compensate them for damages. The consent of most photographed subjects to have their picture taken, or indeed their own initiation of a photographic act, even when suffering in extremely difficult circumstances, presumes the existence of a civil space in which photographers, photographed subjects, and spectators share a recognition that what they are witnessing is intolerable.

Vis-à-vis such photographed persons it becomes patently insufficient to account for photography through a focus on photographers or spectators, as occurs in any discussion suited to the title *Regarding the Pain of Others* with which Susan Sontag christened her last book.

performance

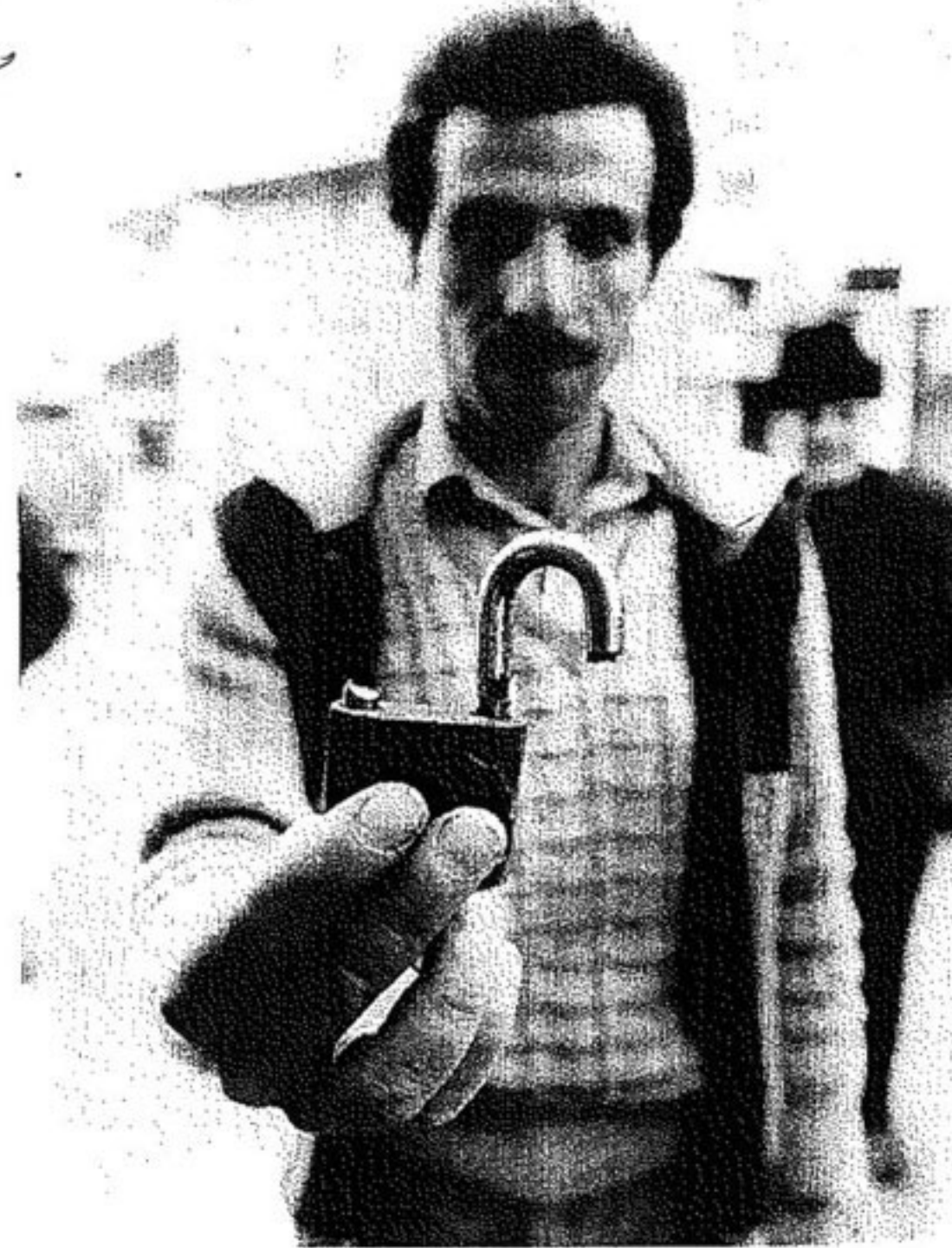


Figure 1.1. Anat Saragusti, Hebron, 1982.

Discussions such as these elide the gaze of the photographed subject, which can vary enormously between sharp, probing, passive, exhausted, furious, introverted, defensive, warning, aggressive, full of hatred, pleading, unbalanced, skeptical, cynical, indifferent, or demanding. The photographed person's gaze seriously undermines the perception that practices of photography and watching photographs taken in disastrous conditions can be described and conceptualized as separate from the witnessed situation. When photographs or the work of particular photographers are characterized as "partisan," "subversive," or "critical," the assumption is that the photographs show or perform something that is already over and done, foreclosing the option of watching photographs as a space of political relations. When the Hebron merchant stands up in front of the camera, lock in hand, he isn't demanding remuneration for the broken lock. His stance is an insistent refusal to accept the noncitizen status assigned him by the governing power and a demand for participation in a sphere of political relations within which his claims can be heard and acknowledged. This book seeks to trace the blueprint of this political space through the construct of a civil contract whose main points it presents. The contract is one between the partner-participants in the act of photography and the various users of photography whom the book proposes to extract from the practices of both picture taking and the public use and display of photographs.<sup>3</sup>

What is the civil contract? I will present it through the earliest examples of the political use of photography. In 1845, six years after the official birth date of the technology of photography, a photograph of Jonathan Walker's palm was taken (figure 1.2). Walker was tried in Florida for attempting to smuggle slaves out of the state northward. His sentence was imprisonment and a fine, as well as the branding of his hand with the letters "SS," denoting "slave stealer," the mark of Cain, as it were.<sup>4</sup> Following his release from prison, Walker turned to the Boston studio of photographers Albert Sands Southworth and Josiah Johnson Hawes to eternalize his branded palm in a photograph, which he proceeded to distribute as a protest against the court ruling. This resulted in a subsequent reinterpretation of the SS mark as denoting "slave savior."



Figure 1.2. Southworth and Hawes, *The Branded Hand of Captain Jonathan Walker*, daguerreotype, 1845 (reproduced courtesy of the Massachusetts Historical Society).

The photographic act initiated by Walker did not challenge the penalty that had already been seared into his flesh. The challenge was of another type, including three dimensions: to the *content* of the court ruling, according to which the assistance that Walker provided to seven human beings to escape slavery was a criminal act; to the *stable meaning* of the punishment, part of which was manifested through inscribing a mark of shame on the body; and to the boundaries defining the *community* authorized to reinterpret the court ruling.

What the encounter between Walker and the two photographers engendered was not the portrait of an abolitionist, but rather a direct and focused photograph of Walker's palm. The represented hand is reminiscent, in its directness, of a still life — a shell, a hat, a fossil. However, unlike the assorted articles usually photographed at the time in the genre of the still life, this hand was not meant to stay still and silent. Walker, Southworth, and Hawes sought to publicize and disseminate it and assigned it a place and a role in the sphere of speech and action. The daguerreotype had the power to publish the disgrace meant to exclude Walker from the public and, through this very act of publication, to overturn the disgrace.

In their act of photography, the photographers and the photographed person assumed the existence of a hypothetical spectator who would take an interest in the image and be aroused by it to show responsibility toward Walker and toward the ongoing injustice evidenced by the brand burned into his flesh. The spectators that Walker was assuming were not particular, familiar ones to whom he could have displayed his actual palm; he was assuming unfamiliar, anonymous spectators who — so he conjectured, presumed, or at least hoped — would form a community through the act of watching this photograph and others. Walker wasn't directing his attempt exclusively to the members of a particular community of abolitionists, but to possible, potential members of such a community. His photograph presupposes and is addressed to a virtual community, one that is not identical to the local community to which Walker belonged and from which he would supposedly be excluded by his mark of shame. The members of this presupposed community made use of the photograph as photographers, as photographed persons, as spectators.

These various and new uses of photography created a new commu-

nity, in part actual and in part virtual. It was not a community of professionals or members of any particular church, party, or sect. It was a new political community of people between whom political relations were not mediated by a sovereign ruling power that governed a given territory. Neither were the people of this community subject to such a ruling power. The civil contract of photography that the emergence of this community exemplifies is the hypothetical, imagined arrangement regulating relations within this virtual political community. It is not dictated by the ruling power, even when this power attempts to rule and to control photography. When the ruling power interferes in this sphere, it amounts to no more than an additional player acting alongside the others. Even rude interference on the part of the ruling power in the encounter between the photographer and the photographed person or in a meeting between the spectator and the photographed person will fail to reach various other encounters between the same or other players committed to the civil contract of photography. Some of these will always elude intervention.

The political theory laid out below is founded on this new conceptualization of citizenship as a framework of partnership and solidarity among those who are governed, a framework that is neither constituted nor circumscribed by the sovereign. The theory of photography proposed in this book is founded on a new ontological-political understanding of photography. It takes into account all the participants in photographic acts — camera, photographer, photographed subject, and spectator — approaching the photograph (and its meaning) as an unintentional effect of the encounter between all of these. None of these have the capacity to seal off this effect and determine its sole meaning.

The civil contract of photography assumes that, at least in principle, the governed possess a certain power to suspend the gesture of the sovereign power seeking to totally dominate the relations between us, dividing us as governed into citizens and noncitizens thus making disappear the violation of *our* citizenship. Given the circumstances that Israel is an occupying and colonizing power, speaking of "our" citizenship — that is, of the citizenship of both Palestinians and Israelis — is based on the assumption that being governed along with and beside individuals who are not citizens also causes damage to the seemingly

whole, unimpaired citizenship of the citizens who *are* recognized as such. No attempt is implied here to claim symmetry between populations of citizens and noncitizens or to lay a foundation for their comparison. Rather, this is an attempt to rethink the political space of governed populations and to reformulate the boundaries of citizenship as distinct from the nation and the market whose dual rationale constantly threatens to subjugate it.<sup>5</sup>

Although my claim is that the civil contract of photography is as old as photography itself (and although a lot has been written about citizens and citizenship), civil contracts and photography have been mostly kept apart in the theoretical discourses. Photography, its history, and its philosophy belong to the study of visual culture, media, or art history; contracts and citizens are the business of political theory or political science, sociology, or jurisprudence. *The Civil Contract of Photography* seeks to develop a concept of citizenship through the study of photographic practices and to analyze photography within the framework of citizenship as a status, an institution, and a set of practices.

The widespread use of cameras by people around the world has created more than a mass of images; it has created a new form of encounter an encounter between people who take, watch, and show other people's photographs, with or without their consent, thus opening new possibilities of political action and forming new conditions for its visibility. The relations between the three parties involved in the photographic act — the photographed person, the photographer, and the spectator — are not mediated through a sovereign power and are not limited to the bounds of a nation-state or an economic contract. The users of photography thus reemerge as people who are not totally identified with the power that governs them and who have new means to look at and show *its* deeds, as well, and eventually to address this power and negotiate with it — citizen and noncitizen alike.

For the governing power, citizens can be equal among themselves, but not equal vis-à-vis others governed by that same power. Much of recent literature on citizenship ignores these two aspects of citizenship: citizens are governed together with noncitizens; citizens are governed differently from and therefore cannot be equal to others.

Citizens cannot be equally governed if they are governed with others who are not governed as equals. The proposed analysis of the photographic act and the space of photographic relations enables us to overcome the limit set on the concept of citizenship by the nation-state.

- The nation-state (re)territorializes citizenship. It provides a protective shield to those declared as citizens within a certain territory, and discriminates between them and others, noncitizens, who are governed with them, in the same territory, by the same power. Photography, on the other hand, deterritorializes citizenship, reaching beyond its conventional boundaries and plotting out a political space in which the plurality of speech and action (in Arendt's sense) is actualized permanently by the eventual participation of all the governed. These governed are *equally* not governed within this space of photography, where no sovereign power exists. Thus, citizenship can be restored at one and the same time as a relation to a state and a sovereign power and a relation between equals. These two aspects are constitutive of citizenship, and their logic will be retraced here from the French Revolution onward.

The conceptual valences between photography and citizenship are in fact twofold. Because, as we will see, photographs are constructed like statements (*énoncés*), the photographic image gains its meaning through mutual (mis)recognition, and this meaning (even if not the object itself) cannot be possessed by its addresser and/or addressee. Citizenship likewise is gained through recognition, and like photography is not something that can be simply possessed. Further, plurality is a prerequisite of both citizenship and photography. The principle of equality that citizenship upholds is supposed to preserve the conditions of plurality and to constrain the governing power. When citizenship is conceived and practiced as equality only between citizens, and not more broadly between the governed, it yields to the constraints of the governing power. Citizenship should be indifferent to the ties — from kinship through class or nation — that seek to link part of the governed to one another and exclude others. Free from the nationalist perspective, or any other essentialist conception of the collective of governed individuals, citizenship comes to resemble the photographic relation. Photographs bear traces of a plurality of political relations

that might be actualized by the act of watching, transforming and disseminating what is seen into claims that demand action.

The civil contract of photography is a social fiction or hypostatized construct in the same sense that Rousseau's social contract was conceived of as something that has "perhaps never been formally set forth" previously, yet that is "everywhere the same and everywhere tacitly admitted and recognised."<sup>6</sup> Its theoretical recognition rests on the fact of its historical existence in every act of photography. It has been conceptualized here via its historical emergence as a convention that regulates the various uses of photography and its relations of exchange.

The book is organized as a progression of different, but related topics. The first chapter analyzes the Declaration of the Rights of Man and the Citizen, written at the time of the French Revolution (1789), and the Declaration of the Rights of Woman and the Female Citizen, formulated two years later (1791), from which it attempts to extract a blueprint of the figures of modern men and women as citizens and of the conditions either protecting them or exposing them to catastrophe.

The second chapter presents the civil contract of photography itself. It is, of course, not a document unearthed in some library or archive. I have encountered the traces this contract leaves at any and every site where there has been photography — that is, almost everywhere. This contract binds together photographers, photographed persons, and spectators. Each of them fulfills her role — persons are being taken in photos, photographers take pictures, spectators look, and all of them know what is expected of them and what to expect from the others. This shared set of expectations is a civil knowledge that amounts to more than just a technical skill. It is an assembly of civil skills that are not subject to nationality, but rather to borderless citizenship, to the modern citizenship of individuals who know, even when they are subject to boundless rule — and this is part of their civil skill — that the actual rule to which they are subject, in its concrete configuration, is always limited, always temporary, never final, even when there seems to be no exit from it. The photographs that they produce, that are made of them, that they look at, are traces of this civil skill, whose contract I have sought to make explicit, based on historical facts and a reliance on the experience of many people.

In the third chapter, I reconstruct the consent of the partners taking part in the act of photography to the binding contract between them, attempting to clarify the limits of this partnership. In order to outline the ethics of the spectator, I propose to understand the photograph's unique status as a product of the encounter between a photographer, a photographed person and a tool, in the course of which none of these three can treat the other as a sovereign such that even when one of them seems for a moment to possess the means of production, he or she is in fact no less operated than capable of operating. Introducing the dimensions of time and movement into the act of watching stills is the foundation for the ethics of the spectator. This ethics is based on a series of assumptions: Photographs do not speak for themselves. Alone, they do not decipher a thing. Identifying what is seen does not excuse the spectator from "watching" the photograph, rather than looking at it, and from caring for its sense. And the sense of the photograph is subject to negotiation that unfailingly takes place vis-à-vis a single, stable, permanent image whose presence persists and demands that the spectators cast anchor in it whenever they seek to sail toward an abstraction that is detached from the visible and that then becomes its cliché.

The fourth chapter describes the structural conditions of the field of vision in contemporary times, characterizing a certain type of photographic image — the image of horror — and examining the conditions for its transformation into what I will call an emergency claim. An emergency claim is an alert to a disastrous condition demanding urgent and immediate action. Through an analysis of various photographs from the second intifada, I cite the status of Palestinians as noncitizens as a central factor of the creation of conditions in which images of the horrors perpetrated against them were prevented from becoming emergency claims.

The fifth chapter discusses the ways in which injury to women appeared as a new object in discourse — since the 1970s, one distinguished from what had been perceived in the past as rape. This new object is characterized by a new understanding of what rape is, who a rape victim is, and who a rapist is, and also by new tools for dealing with rape that transform it into a phenomenon regarding which data and testimonies can be collected, in turn allowing its treatment and

panor. A. 10

the implementation of means to prevent it. When the dimensions of rape relative to all women in the world emerge, rape appears as a catastrophe befalling a specific population, and its incidence — despite the change in its status in public discourse since the 1970s — indicates that the civil status of the population vulnerable to this type of injury is still impaired. The chapter points out that this is the only kind of catastrophe with no visibility in public discourse and attempts to understand the absence of pictures of rape as part of what leaves the dimensions of this catastrophe unchanged.

The sixth chapter presents the living conditions of the Palestinians as existence on the threshold of catastrophe and, through an analysis of photos and conversations with several photographers, addresses the question of how the threshold of catastrophe is photographed. The assumption is that the situation in Palestine is not on the verge of a catastrophe about to occur, but rather that it is a “threshold catastrophe” in the sense of a new configuration of catastrophe, a chronic and prolonged situation that doesn’t interrupt routine.

The seventh chapter presents the figure of the universal spectator as an implied absentee presence in the act of photography and analyzes the relations conducted with her on the part of the photographer, the photographed person, and the actual spectator. The universal spectator, hovering, during the photographic act, above the encounter between the photographer and the photographed person, is an effect of the act of photography itself, necessary to the various protagonists taking part in this act so as to continue adhering to their mutual pact. Through observation mainly of portraits of Palestinians, the chapter attempts to reconstruct the face-to-face encounter between the photographer and the photographed person under conditions of threshold catastrophe.

The eighth chapter seeks to reject the prevalent perception of authentic or approved photography and to reconstruct the contours of the penal colony in Palestine (while discussing practices of detainment, imprisonment and torture) through a reading of existing and nonexistent photographs. The chapter points out the way in which the General Security Service (Shabak) employs photography as part of its methods of managing and oppressing the Palestinian population and, through a reading of missing photographs, proposes a rethinking of the category of collaboration.

The ninth and last chapter discusses the figure of the woman collaborator and the sexual violence employed by the Shabak against Palestinian women. Following the discussion of rape at the center of the fifth chapter, this chapter, too, deals with the manner in which the field of vision is sanitized of traces of this sexual violence, which is consequently compressed into an elusive rumor. Based on testimonies collected in the report by B’Tselem (The Israeli Information Center for Human Rights in the Occupied Territories) on collaboration in the course of the first intifada, the chapter tries to reconstruct how the modus operandi of the Shabak inscribes Palestinians with the sign of collaboration, whether or not they have consented to collaborate.

\* \* \*

My work on this book began in parallel with the writing of *Once Upon a Time: Photography after Walter Benjamin*,<sup>7</sup> and for some time I believed that I was working on a single book or on twin books. While the two have since been separated and each has developed in a distinct direction of its own, there remains a strong link between them. The thinking of Walter Benjamin and the way in which photography percolates throughout his work are present in the background of this book. He wrote very little about photography relative to the whole corpus of his work, but the special way in which he read photographs and the place he allocated to the material aspect of photography — from the camera through the photographer’s eye-hand relations — guided my first meeting with photography.

My reading of Benjamin was from the outset Deleuzian, and my debt to Benjamin is therefore also my debt to Gilles Deleuze. His discussion of caring for sense, along with the discourse of Jean-François Lyotard and his description of the duty to link phrases, has served me in discussing photography as a statement (*énoncé*) and in examining how and to whom it is being addressed as a civil act. I could not have developed my discussion of watching as a civil act and a rehabilitation of the political without Hannah Arendt’s discussion of action and of the loss of common sense in modernity. The Declaration of the Rights of Woman and the Female Citizen, written by Olympe de Gouges (1791) and enunciating the way in which exclusion from the collective

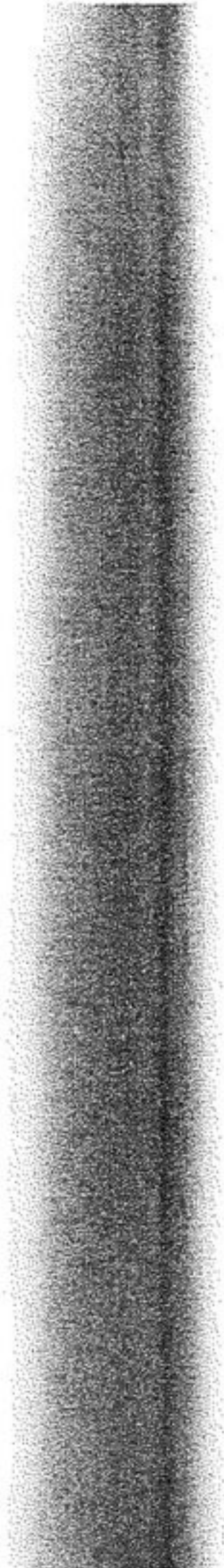
has been inscribed on women's bodies, as well as Giorgio Agamben's *Homo Sacer* and its development of the concept of exception between the sacred and abandonment, helped me clarify the connection between abandonment and rape.

The discussions of rehabilitating citizenship under contemporary conditions are greatly indebted to the thinking of Étienne Balibar on citizenship and radical violence and to the thought of Azmi Bishara on citizenship in general and on the Israeli-Palestinian case in particular. Adi Ophir's work on the continuum between the particular injury and the condition of catastrophe contributed to my understanding of catastrophe as a preventable event. Joan Copjec's discussion of the condition of the gaze in modernity and her emphasis on its intransitive dimension enriched my formulation of the civil contract while posing an enduring challenge to it. Carole Pateman's discussion of the sexual contract as the repressed contract of the social contract and Juliet Flower MacCannell's work on the regime of the brother that has replaced patriarchy nurtured my thinking on women's impaired citizenship. This book also owes a great deal to my longstanding and unique ties with three artists, all of whom deal with photography and with theoretical thinking about photography: the project *Photographer Unknown* by Michal Heiman and her conception of photographs as subjects to be nursed and treated, Miki Kratsman's long-term work as a photojournalist in the occupied territories and his insights into what the act of photography is in the circumstances in which he practices it, and the tools that Aïm Deüelle Lüski constructs through which he dismantles the traditional rationale of the camera. To a large extent, their work has formed my understanding of photography and has allowed me to elaborate the civil contract of photography. The writings and photographs of many others likewise have made this book possible, and traces of their contributions are highly evident throughout.

## Citizens of Disaster

Why try to think the categories of citizenship and disaster together? The answer is that the association of citizenship with disaster and the characterization of certain populations as being more susceptible to disaster than others show that citizenship is not a stable status that one simply struggles to achieve, but an arena of conflict and negotiation. The question of what constitutes the exception assumes a new meaning and helps distinguish two different political conditions: On the one hand, disaster is declared an exception because it is a situation in which citizens suffer immensely and need special protection from the state (or from their sovereign); on the other hand, certain people or populations governed by the state are declared an exception, and this makes them more vulnerable to disaster or abandons them in ways that turn their living environment into a disaster zone. In both cases, and from both perspectives, the political administration of disaster becomes a major scene for the claiming of citizenship or for its differential construction.

Let us begin at the beginning. Common definitions of the term "citizen" can be divided into three main types. The first describes the citizen's status vis-à-vis the state: A citizen is a resident of permanent status in the state, with full legal rights and obligations. In the second type, the state is replaced by the body politic: Citizenship is membership in a political community (originally the polis, but now the nation-state), and it carries with it rights of political participation. A citizen is someone who is a member of such a community. The third type refers to the relationship between the citizen and the sovereign power that



CHAPTER SEVEN

Whose Gaze?

The person in the photograph wants something from me. She's staring at me. Her stare doesn't falter. The first photographs ever made already bore the mark of a human presence reaching beyond a mere image.<sup>1</sup> The denotation of the photograph appears in them, but exceeds the boundaries of the material presence of an image printed on a sheet of paper. The photograph frames a new space of observation and action for the person who is shown in it. The spectator employs the gestures of identification to banish the ghost of the photographed person, which threatens to use and to act from the space that the photograph has opened up for it. The spectator attempts to circumscribe this presence, to identify it, determining "This is X." But this gesture never exhausts what or who it is that is shown in the photograph. At best, it allows the spectator to suspend her encounter with the person in the photograph, to imagine that this person isn't present, to act as if what she's looking at is no more than a photograph. However, the person in the photograph comes to life out of the picture, makes demands, activates, tries to pull strings, hovers in the air, commands, seduces, repels, troubles, and irritates. But she always also remains opaque, dumb, distant, locked in a space separate from the surroundings of the spectator. In order to remove her presence, the spectator can file away the photograph in a family album; she can bury it in a drawer or turn to the next page of the newspaper. Then, the photographed people will go away for at least a while. When the gesture of identification is suspended and the

photographed people are allowed to come back out of the photos, to become present, however, the distress may become overwhelming.

The photograph emerges, then, as a field of evasive presences, loaded with details that escape consciousness and knowledge while awakening the anxiety that I may be missing what I'm called on to do in front of it, alongside the phantasm — that if I just fix my gaze for a few more minutes, more hours, the photograph may divulge its secret. In the meantime, all that's possible is to assist this process with varied uses of the photograph: a long unbroken gaze, intermittent recurring looks, blowing it up, shrinking it, embedding it, framing it, cropping it, hanging or printing it. These actions are confessions, as it were, of the impossibility of maintaining a direct gaze between the spectator and the photograph and between the photographer and the photographed person, or — alternately — confessions of the fundamental incapacity of the photograph to show and the spectator to see: "Imagining that the blowup — like a magnifying glass — would explain the photo to me."<sup>2</sup>

Under these conditions, when the photograph is at one and the same time no more than a piece of paper and a space of relations between spectators and photographed people, the civil contract of photography allows photographs to call up a complex system of relations between photographed persons and spectators.

For example, a photograph of Amia Zakin and Chaira Abu-Hassen was printed in *Ha'aretz* at the beginning of 2002. Taken by Miki Kratsman, it accompanied an article by Gideon Levy in their joint weekly column "The Twilight Zone." The column centered on an encounter with two Palestinian women with similar stories. Levy and Kratsman used this similarity in order to point out a recurring practice in the checkpoints. Amia Zakin and Chaira Abu-Hassen hadn't known each other before the article was written. Their analogous stories converged on a single common denominator: their victimization by soldiers at checkpoints, which prevented them from reaching the hospital in time while in labor, resulting, in both cases, in the death of their newborn babies.

For fifteen hours the two women in labor — each separately — had to travel roundabout paths, looking for a passageway at one of the many checkpoints that separated each from the respective hospitals

that they were trying, desperately, to reach. Their persistent movement among checkpoints for such extended periods in their condition testifies to the fact that the soldier standing guard at the checkpoint repeatedly either presented himself to them or was positioned by them as someone who might be the addressee of their plea. To no avail. Not one of the soldiers helped them, and they each reached the hospital too late. The infants they bore died soon after birth. Fifteen hours, phone calls to commanding officers, quite a few soldiers with various ranks and authority who were called on to decide on the case before them, to make and implement decisions: The death of the two babies wasn't caused by the "mistaken" decision of one individual soldier at this or that checkpoint, but rather by the very system that turned the women's trip from their homes to the hospital into a route strewn with decision makers bearing directly on their lives.

An encounter with a photograph in a newspaper always occurs after the fact. Most, if not all of the channels of assistance that were open during the fifteen hours of these women's tortuous trips among checkpoints are already closed. And yet the photograph is nevertheless branded with a seal of actuality — the actuality that attributes the photograph to a concrete event, that gives the photographed people names, that frames their story in time and place. This actuality, Walter Benjamin wrote, is compellingly visible in the portraits from the age of the daguerreotype, in which "there remains something that goes beyond testimony to the photographer's art, something that cannot be silenced, that fills you with an unruly desire to know" — in the case of a portrait of a fishwife, for example — "what her name was, the woman who was alive there, who even now is still real."

No matter how artful the photographer, no matter how carefully posed his subject, the beholder feels an irresistible urge to search such a picture for the tiny spark of contingency, of the here and now, with which reality has (so to speak) seared the subject, to find the inconspicuous spot where in the immediacy of that long-forgotten moment the future nests so eloquently that we, looking back, may rediscover it.<sup>3</sup>

The photograph's presentation as evidence and as a remnant of what "was there," of a "here and now," realizes one of the possibilities embedded in portrait photography. Benjamin, however, hints at more than that. Actuality lends the picture an unequivocal title, permanently stabilizing and finalizing the meaning of the photograph, nailing it to that "here and now" and accordingly robbing it of all the other possibilities and meanings that have so far not been realized or manifested. "The human countenance" in these daguerreotypes, Benjamin wrote, "had a silence about it in which the gaze rested."

In contrast to Benjamin's claim, I will argue that even if actuality does hover, like a constant threat, over photographs, it will never succeed in locking a given photograph completely or in totally cutting off its transmissibility, its potential for conveying an experience that is not merely information. At most, actuality can seal the photograph for a while, until the storm passes, can block the civil horizon of the person looking at it, can damage her capacity to see, but it cannot totally remove the unease, the uncertainty, the ground-level observation point that will affect the next spectator, will unnerve and compel her to rethink what appears before her, including the boundaries of her own gaze.

#### *Chaira Abu-Hassen's Laugh*

If, for a moment, we suspend the actual information and detach the photograph from the concrete event that it is purported to document, we will be able to see how alongside the topical content, a chasm opens up in the same picture between the photographed figure and the photographer, between the woman in the photograph and anyone who seeks to situate herself in front of her. Something in the photograph of this double portrait by Kratsman, something that at first I couldn't decipher, indicated this abyss and led me to ask Kratsman to show me the rest of the photos he took during his encounter with these two women. From "the human countenance" of Amia Zakin and of Chaira Abu-Hassen there indeed radiates silence, ease, containment, and all these seemed in a stereotypical gaze as alien to the picture's actuality. A woman who just days ago had lost her newborn after carrying it in her womb for nine months, — how can this woman emanate a silence "in which the gaze rested"?

I studied the whole series of photographs that Kratsman took. In almost all of them, the face of Chaira Abu-Hassen bore an insuppressible laugh (figure 7.1). This laugh increased my sense of disconnection between the tragic incident and the photographed portrait. This time, suspending the actual meant responding to the undeciphered strangeness conveyed by the photograph, to the inscrutability arising from it, and to the way in which the situation it depicts defies exhaustive explanation. Watching the photograph, I envisioned the moment when the camera in Kratsman's hands stripped its protagonists — both the photographer and the photographed woman — of their "here and now," hurling them into a situation that was impossible for both. She, whose words — quoted in the article by Gideon Levy — were razor sharp, was overcome by an insuppressible smile-laugh. He found himself embarrassed by this laugh, mechanically clicking the camera again and again as if willing the camera to capture randomly what the encounter between him and the Palestinian woman did not allow — a serious face, reserve, poignancy, a face from which laughter had receded. And indeed, among the series of almost unbearably repeated images, the photographer found a single frame that he sent to print, a single frame that he felt he could own up to as a photographer assigned to convey the photographed woman's story. This frame, too, however, was not devoid of the troubling traces of Chaira Abu-Hassen's laugh.

It is possible, of course, to ask why Chaira Abu-Hassen laughed. And it's possible to attempt an answer as follows: In front of the camera, she was revisited by the ghost of the photographer's traditional instructions to "smile" when taking a portrait photo. The classic demand of the studio photographer is designed to cause his subjects, without letting them sense it, to put "all else" aside and allow a smile to spread across their faces. And the smile does indeed spread, perhaps more a response to the demand's absurdity than to the demand itself. The smile is an effect of the photographed person's posture in front of something — the camera — before which she is supposed to simulate standing in front of someone and therefore is supposed to smile in response to the person acting as proxy for that something or someone. The gradual erosion of the status of the studio photographer's demand that his subjects smile, hasn't weakened

the troubling structure of the relations embodied in the circumstances of portrait photography. Therefore, it might be assumed that this is none other than the trace of the laughter or the embarrassment overcoming the photographed person — a person for whom the camera has not become a daily routine — before a camera that is raised toward her.

The camera, in this case — and this should not be forgotten — is raised in the hands of an Israeli photographer, who vis-à-vis Chaira Abu-Hassen will always also personify the position of occupier. Confronting him, Chaira Abu-Hassen laughed, as if saying without addressing him: "Oh no, not again." It might, perhaps, be assumed that this is the forced laughter of a woman whose moment of encounter with another woman who experienced a trauma similar to hers — a woman she hadn't met until the moment of the photograph — and with an Israeli man from the other, occupying side divested her of the ability to contain her condition. In this case, the laugh on her face will amount to a testimony of sorts to her effort to rid herself of a foreign body lodged in her throat and seeking a nonverbal outlet.

However, all these explanations, however accurate or misled, seek to give the laughter reasons and justification; they seek to erase the laugh of Chaira Abu-Hassen as an inscrutable, undecipherable, and troubling presence. This presence, in the mere fact that it is not open to exchange or communication, protects the Palestinian woman from the Israeli before her who stands for those responsible for the loss inflicted on her. This is not the reason for her laughter. This is its effect. The laughter makes present the open abyss between occupiers and occupied, the observer's inability to understand, as well as the uselessness of any empathy or sorrow after the fact, which will never amount to much more than self-righteous gestures. This abyss, embodied in the photograph, is much closer to what "was there," what happened there when the photograph was taken, than any factual report conveyed by the photographed details.

There is something in the presence of the camera that reaches beyond its technical attributes. It is a relatively small, usually black box with a seeing apparatus sticking out in front — an adjustable lens. The lens embodies a gaze, which can best be described with reference to Lacan's use of the term, following Sartre.



Figure 7.1. Miki Kratsman, Chaira Abu-Hassen and Amia Zakin, Yamoun village, 2001.



Figure 7.2. Miki Kratsman, Ramallah, 1995.

Sartre... brings it [the gaze] into function in the dimension of the existence of others. Others would remain suspended in the same, partially de-realizing conditions that are in Sartre's definition, those of objectivity, were it not for the gaze. The gaze, as conceived by Sartre, is the gaze by which I am surprised – surprised in so far as it changes all the perspectives, the lines of force, of my world, orders it, from the point of nothingness where I am, in a sort of radiated reticulation of the organisms... In so far as I am under the gaze, Sartre writes, I no longer see the eye that looks at me and, if I see the eye, the gaze disappears.<sup>4</sup>

As long as the lens, along with the gaze embedded in it, hasn't been directed at someone or something, the gaze remains a secret. Even when it is directed, the secret is not totally revealed. At most, it may be possible to follow its axis, its direction. The black body of the camera with the lens fixed in front threatens with its gaze. But it also seduces: "Sawarani, Sawarani! ('Take my picture, take my picture!'), the children of the [occupied] territories shout when they spy a camera, as if conditioned," Kratsman wrote during the years of the Oslo Accords (figure 7.2).<sup>5</sup> At times, the camera's gaze also arouses violence of the type that is exhibited to it, for it, or that is directed at it. Either way, although the camera has become a routine part of modern life, its presence always arouses some degree of discomfort or at least disrupts the situation that preceded its entry. The knowledge that there is a gaze in this black box makes it an object unlike other objects. The threat embedded in this gaze can take on many forms. Common to all of them is the fact that the gaze inside the camera is not the gaze of another looking at me, but rather, the gaze of the camera.

### *The Gaze of the Camera*

The gaze of the camera is not the gaze of the photographer, because the viewpoint of the camera is not the same as the viewpoint of the photographer. The photographer points the lens and adjusts the shutter (or skips the latter when the camera is automatic) and positions the camera at a specific point relative to what she wishes to turn into the object of her photograph, after which she sets the

frame and presses the button that activates the camera. The photographer repeats this action several times with slight shifts in lighting, angle, distance from the object, all in order that the variety of pictures will allow her to choose the one that meets her expectations from the photographic situation.

Skilled photographers usually know – or at least pretend to know – how to decrease the gap between the photographed result and the way in which they imagine it while taking the photograph.<sup>6</sup> In some cases, they use Polaroid cameras to teach themselves, in real time, how to decrease that distance, and those working with digital cameras use the screen that actually displays the picture before it is taken. Sometimes, the photographer is positioned opposite a ready-made frame predetermined by a public-relations person, an impresario, the security forces, or other agents in whose power it is to employ legal or illegal violence. Even then, the photographer's point of view is not totally erased.

For instance, in a photograph taken by Kratsman in 1989, during a funeral in Nablus, he was pushed by the Palestinians walking behind the coffin to a standpoint right in front of the coffin, a standpoint from which he couldn't move: "It's one of those photographs where the frame is set for you; you don't need to plan much. You take the picture from where you're standing; you're not free to move. It's like a political event where there are cordons, and you're told up to what point you can proceed. That's your spot, and this is our spot"<sup>7</sup> (figure 7.3). The viewpoint of the photographer extends beyond the skills she may display during the photographic situation or beyond her freedom to craft the frame. Her position is distinctive both culturally and in relation to other positions, before she has even raised the camera to point it at some object.

But just as the photographer's position cannot be removed from the photograph, neither can the photographer totally remove another viewpoint. Photographers, despite their skill and professionalism and despite technical aids such as Polaroid cameras or digital screens, are unable to lock the frame around their viewpoint alone. The photograph will always include something else that is not reducible to the photographer's viewpoint. It is a viewpoint, or perhaps it should be termed a viewing position, that is not attributable to

anyone but the camera.<sup>8</sup> This viewing position is not reducible to a single point distinct from the other points, but it is a focal point, as it were, connecting all the other viewpoints. The viewing position of the camera is not equivalent to a human viewpoint and cannot be replaced by it. During photography, the camera does not respond totally either to the photographer or to the photographed person. The photograph is a result of the encounter between the two, with the camera in between. Each vantage point is imprinted in the photograph, and none of these vantage points can be reduced to the others.

The single photograph itself is, accordingly, a montage of the heterogeneous viewpoints of those who participated in the act of photography. This heterogeneity doesn't result from a montage of different shots, but exists simultaneously within the single frame (or within the single shot in a video recording or a film camera). The various and conflictual viewpoints that leave their mark within the frame split the frame itself. The frame offers the human gaze a rectangular, steady, frozen field of vision in which, by moving the gaze, every millimeter of its length and breadth can be studied without losing what was seen before. Because it freezes the gaze, everything seen in a photograph is retained in a manner distinguishing it from what can be seen from a human viewpoint.

I'll return to the photograph of the funeral taken by Kratsman in Nablus in 1989 (figure 7.3) to exemplify the way in which the single photograph connects a heterogeneous multiplicity of viewpoints. A multitude fills most of the photo frame; the people in it are seen to be crowded together. They are pushing ahead and forming a circle of sorts around an open casket displayed at the center. The white cloth wound around the face of the dead man lends him a peaceful and restful look, in contrast to the furious hubbub and the violence surrounding him.<sup>9</sup> The bodies of those present slant markedly toward the dead person. Each of them is pushing his way through in order to be as close to him as he can. Many hands are stretched forward in a V-for-victory sign, and together they assemble over the head of the dead man like a crown rising upward. The crowd's looks are also focused on the dead man, directed at his visible face, mouths open in a shout of outrage or loss and revenge. The dead man is the visible



Figure 7.3. Miki Kratsman, Nablus, 1989.

addressee of all these physical, emotional, voiced, and optical gestures. The crowd turns to him and tells him, as it were, "We promise 'you' we'll show them the price of your death."

But the addressee is dead and cannot hear their address, yet he continues to exist. The crowd converging on the coffin deepens its message to the dead man with movements and gestures. This address, however, is actually directed at someone else who is present opposite the coffin at the time. It is the photographer invited to the site of the event to witness this address to the dead. The address, whose traces we can see in the photograph, is thus carried out while doubly inverting the addressee of the crowd's physical signs and actions. The crowd turns to the dead man so as to turn to the photographer, but the message to the photographer is merely intended to show him to whom the address is truly directed. The address directed toward the photographer doesn't confirm the photographer as their addressee. On the contrary, it denies his stand as addressee by displaying before him the true addressee and exhibiting the crowd's commitment to him. The true addressee is dead, and yet he continues to exist.

One of the early photographs in Michal Heiman's *Photographer Unknown* series shows the body of a person who has just been beheaded (figure 7.4). The head is lying beside the body, turned toward the camera, like a flower arrangement at the center of a still life. Autographing the picture with the "PHOTOGRAPHER UNKNOWN" signature allows Heiman to direct attention to the fact that someone "was there" and went to the trouble of creating this composition.

The composition, she says, is the result of an attempt to bear witness, through the photograph, to two things: first, to the fact that an execution was indeed carried out; second, to the fact that the executed person was indeed the one who had been sentenced to death. The photographer may have been compelled by his superiors to organize the scene in this specific way, or this may have been the way in which he understood his role, but it is also not unlikely that he simply wished to demonstrate an aesthetic sensibility or to lessen the horror destined to be revealed to the sensitive eyes of future spectators. Be this as it may, he was there, and he negotiated the character of the image for whose creation he was responsible. In the

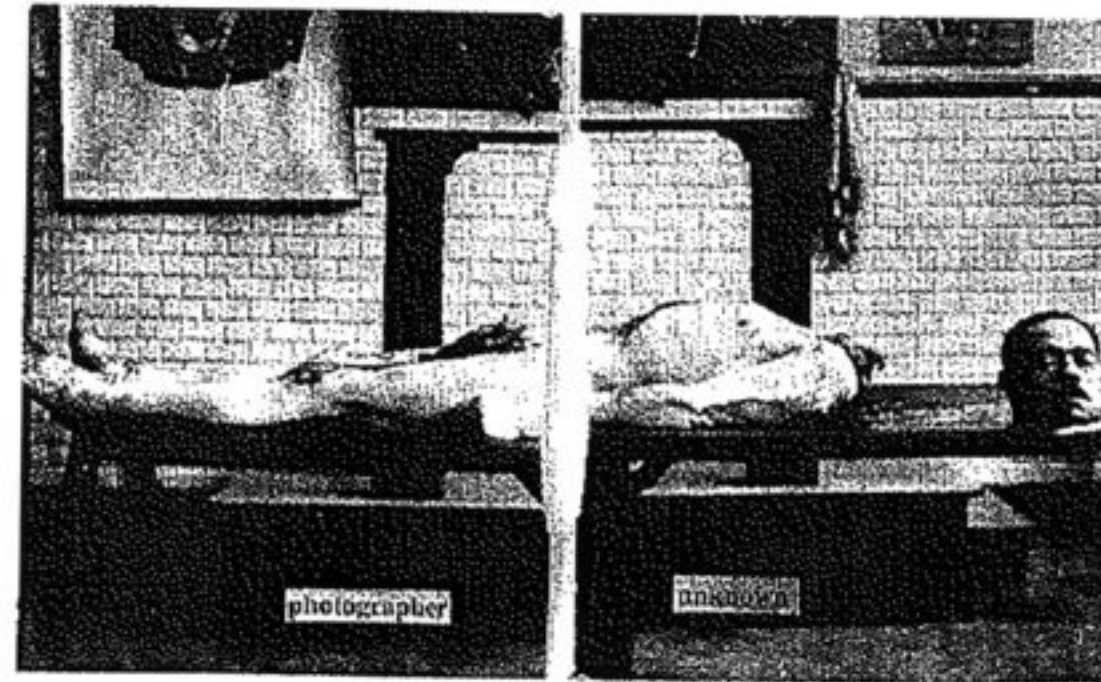


Figure 7.4. Michal Heiman, *Photographer Unknown*, *Photo magazine*, 1978, (*Les Archives des exécutions – La section des corps*, head and body of Fournie, Tour, France, 1920), duratrans, light box, 120 x 160 x 10 cm, Ian Potter Museum of Art, University of Melbourne, 1994.

case of this particular photograph, he was there "alone," or in other words, the photographed person was a corpse that was totally at his mercy, his to arrange as he willed. And yet, even in such circumstances, the world seen in the picture is not totally vanquished by his point of view. What is imprinted on the paper of the photograph is never completely circumscribed by what the photographer meant, and it always includes something else requiring clarification.

The future spectator of the photograph may identify that "something else," but even if she ignores it, the photograph, the hard copy of a given event, will never turn into words graven in stone. Another spectator, at another time, may return it — this "something else" — to the complex of relations of exchange that are always part of a photograph. Heiman tore this particular photograph out of the French magazine *Photo*.<sup>10</sup> Because it was published by the magazine without a photographer's name, it became a natural item for her archive of photographs by unknown photographers. Her gaze at the photograph opposes the erasure of the photographer and draws attention

not only to his presence in the arena of the photograph, but also to the extra effort he invested in designing the appearance of death.

Let's watch the photograph briefly. Before us is a carefully crafted museum look — pictures hang on a wall, a podium hosts the full weight of a naked body. The white-tiled walls are sparkling clean. The head is detached from the body, aligned with it precisely, turned toward the spectator, indifferent to the cold metal of the bed on which it rests. This arrangement looks like a shop window, carefully designed, well lighted, drawing the eye. A perfect phantasmagoria. Traces of protocol are clearly discernible in the frame. It must include the main exhibit; the exhibit must be clearly identified so as to serve as an archival record; the frame must be cleaned so that nothing will interfere with the visibility of the centerpiece. However, in the background, as a silent testimony to the entire event, a rag remains hanging on a hook. This must be the rag that allowed the photographer to position the dead man so that his head would look like a flower arrangement, an artifact of the effort that must have been invested in cleaning the arena of everything that a gaping body could leave in it. The arena looks both perfect and chilling — an icon of covered tracks, removed spots, wiped-up fluids and secretions — a purified space. The rag, which could have uncovered the conditions of the production of the phantasmagoria, serves as part of it in its spotless cleanliness.

This is a cyclical phantasmagoria internalizing into its logic what threatens for a moment to reveal something of its conditions of production. The rag may have simply been forgotten there, but it might be conjectured that at the last minute, with the next body already knocking at the door, so to speak, the photographer had to accelerate his craft and, not knowing where to dispose of it after cleaning the area, decided to make it part of the whole. Perhaps it was out of respect for the deceased that shame overcame him when he was about to hide the dirty rag, as if he were caught in the act of someone who saw fit to conceal a dirty rag while remaining indifferent to the display of a naked body. If the photographer experienced such deliberations, the dead person remained unmoved by them, totally indifferent. But it is not as easy to take for granted the indifference of the living man toward the dead. Even if the photographer treats him as

dead, the dead man goes on staring at him. A very short time has passed since his death. His face still bears the imprint of an expression. Repulsion? Skepticism? Scorn? His beheaded head rests silently on the podium, his eyes closed, but signaling tension under their lids. It seems as if "he" is waiting in ambush for the photographer, for anyone who seeks to look at the naked body, telling him yes "I'm" dead, yes "I'm" bodiless, but "I'm" still a presence that returns a gaze, that stands guard and won't let the spectator look placidly at the uncovered private parts of the dead.

The "PHOTOGRAPHER UNKNOWN" stamp displayed in the middle of the photograph reintroduces the presence of a photographer into the arena while returning the photograph into the context of the act of photography, thus allowing the extrication of a complex theater of relations from the photograph — power relations, only some of which are manifested in the single photo, just as only in some can the protagonists retain control, determining, as a result, how they will leave their mark in the picture. The photograph always includes more as well as less than what they may seek to include in it. What links them — photographer or photographed person — with a future spectator cannot be reduced to what they seek to deposit in the photograph, or, conversely, to what they take pains not to deposit in it. The civil contract of photography removes in advance any possibility that one of the protagonists may be subjugated to someone else. This is a contract according to which all are in principle equal before photography. Every reading of a photograph that is carried out in the service of the photographer or the photographed person and in deference to a message that one of them has sought to place in the picture is prone to be overturned. The photograph will equip the next spectator with the tools allowing her to yank the carpet out from under what others before her have tried to determine.

#### *The Universal Addressee of Photography*

The description "the addressee is dead . . . yet he continues to exist" characterizes the type of address performed by photography in general. Photography is an encounter of a very special kind between a photographer who is holding a camera, and a person who knowingly or not, becomes the photographed person. The violence inherent in

their encounter is due to the instrumentalization of the photographed person in order to produce an image. This violence is there even if the photographed person is interested by the photograph no less than the photographer. In most of its occurrences, the encounter between the photographer and the person photographed is not intended to bring them together. Each takes part in the encounter or happens into it in order to actually address someone else who is not present at the encounter. This someone changes according to the specific circumstances or the genre of the photograph (photojournalism, family snapshots, or a passport photo), but in every case, whoever may have been the addressee of the gestures and movements of those who were photographed, the photographer is not the final addressee of the photograph itself or its "true" addressee. She is, rather, the addressee's proxy.<sup>11</sup> The photographed person's consent to become an image is always given not with regard to this proxy, who is an actual and concrete realization of the vantage point of the picture's "true" addressee, but, rather, with regard to another or end addressee.

This end addressee is purported to see clearly, to be free of prejudices, so that nothing will mar her gaze. To paraphrase Lacan, she is cast as the "subject supposed to see."<sup>12</sup> She is supposed to see what appears in front of her eyes beyond the narrow considerations of time and place or local interests. Such a subject is an ideal concept, a necessary logical postulate, of which actual addressees, defined by precisely those considerations, are at best imperfect copies or representatives, but — at best, as well — an ideal which they can at least aspire, a limit concept embodying the ethics of the spectator. Without positing her existence, it is difficult to envision such a sweeping consent to become a photograph: "A family in distress may think mistakenly that the press will help it," Miki Kratsman once told me. "This is where you feel a bit dishonest. Sometimes you make a point of saying that we'll merely print it in the paper."<sup>13</sup> The photographer is perceived here as a proxy, a service provider who can bring to the eyes of the true spectator what his eyes see.

The sight of the true spectator is supposed to be free of any personal interest save the common interest in the civil contract of photography. She is a universal spectator, a moral addressee — an

addressee who is situated outside of the time and place of the photograph and to whom the photograph can be addressed as the "subject who is supposed to see." In this book, I deal exclusively with photographs in which the photographer or the photographed person addresses this spectator. (See, for instance, the case of Abu-Zuhir.) This universal spectator, hovering above the encounter between the photographer and the photographed person at the time the photograph is taken, is an effect of the act of photography. The photographer or the photographed person each needs her in order to continue entering into this covenant with each other. The fact that she is dead — "the fact that the other is dead is beyond dispute"<sup>14</sup> — and that she doesn't respond to requests, hasn't destroyed the need for her existence or the reality of the gaze of the other she continues to return to us after her death.

Without assuming the existence of such a universal spectator — whether alive or dead — there is no explanation for the willingness of individuals to conquer the world as photographs and to submit to the violence this involves. The place of the universal spectator is kept after his death as a vacant space, allowing individuals to continue to be looted in the act of photography and moreover to participate in this willingly and consentingly. In a conversation with him, Kratsman described the violence embedded in the act of photography as the aspect of this act which is taken for granted: "My part in the contract is that I apply violence. Okay. That's a given. You want to have your picture taken, you want to prevent a photograph, I want to photograph. From here on, how do we keep the contract?"<sup>15</sup> Kratsman speaks of keeping the contract, not of signing it. The fact of the contract's existence isn't a subject of doubt, either for him or for his colleagues.<sup>16</sup> What is repeatedly at issue is how the contract will be adhered to.

Relatively rarely, the person photographed seeks to challenge the power relations between him and the photographer while employing a directly resistant force. When he does so, he is usually doing this out of a commitment to the same universal spectator. Thus, for instance, in the photograph of the funeral in Nablus (see figure 7.3), the photographer was forced by the Palestinians following the coffin to be present at the funeral and to fulfill his role as photographer:

"We saw a funeral procession and we were surprised that there were no photographers there. When we started taking pictures, still from a distance, a few youths who had been leading the procession came up to us and pushed us in a very violent way into the cemetery. There, they started shouting 'Take this, take this.'"<sup>17</sup> The Palestinians knew what Kratsman and another photographer who was with him didn't know when they arrived on the spot. Only later did they understand, from an officer who ambushed them as they were leaving the cemetery: "He explained that there had been a deal between the army and the photographers that the funeral wouldn't be covered so there wouldn't be a mess. That was a time when there were a lot of claims that when there were cameras, the Palestinians made more trouble and that it heated things up."<sup>18</sup>

The Palestinians demanded their right — the possibility of showing the universal spectator what they considered to be worth her gaze, or, alternately, what only she would be able to see. Moreover, they preferred the civil contract of photography, in the framework of which they could both address and not just "willingly accept" the situation forced on them by the army. Kratsman himself, despite the violence used against him, took the photographs out of his commitment to the same universal spectator. Retaining the empty space of the [dead] universal spectator was what enabled him to maintain his contract with the photographed on another level as well: "I had my eye glued to the viewfinder the whole time, I understood that this was what was protecting me there, being a photographer, I didn't press the camera button all the time. With all the noise, they had no way of knowing when I was taking pictures."<sup>19</sup> As long as his eye was glued to the camera, Kratsman knew that he was relatively safe in the violent situation into which he had been physically pushed, shouted, and threatened. As long as his eye was applied to the camera viewfinder, the Palestinians' violence could ignore his concrete existence as an Israeli and see him as a photographer who is equally committed to the universal spectator. This was why Kratsman tried to extend the situation of photography for as long as possible. It allowed their tense relationships to take place under the aegis of the civil contract of photography.

### *Codes and Signals of the Civil Contract of Photography*

Kratsman's reliance on the gesture that signified he was in the act of taking photographs helps illuminate the way in which the civil contract of photography simultaneously signals its presence and signals the ways in which its presence entails the concrete interests of those being photographed, even if — or especially when — those interests may be in conflict with the interests of others, without the contract being reduced simply to the partisan service of any particular interest. For example, since the end of the 1980s, Kratsman has been photographing in the Occupied Territories.<sup>20</sup> During the initial period, the daily press in Israel usually dealt with "events" in the territories from an abstract perspective or from one totally subservient to the Jewish-Israeli perspective. The Palestinian was faceless, nameless, one of a crowd — a rampaging, riot-spreading, injurious crowd that needed to be contained and taught a lesson in order to restore the peace.<sup>21</sup> The daily *Hadashot* took a revolutionary step when it turned the spotlight on the individual Palestinian, her life story, the injustice caused her, her daily tribulations, her biography, her worldview, her struggle against the occupation, her national aspirations, and the way in which she viewed the reality of occupation. During those years, the struggle was over the very act of making the Palestinian's photograph present and introducing his point of view.<sup>22</sup> In practice, the struggle was over making the victim present and drawing attention to her very existence as a victim.

The uniqueness of Kratsman's photographs from this period lies in the fact that they also simultaneously proposed the marginalization of the soldier, pushing him to the edge of the frame and even out of it. In other words, alongside the growing specificity of the Palestinian, they stripped the soldier of concrete facial features and transformed him into a generalized soldier figure. This was how Kratsman succeeded in carving out a space for the Palestinian in the discourse that tried to suppress him while relieving the specific soldier of direct and exclusive responsibility for his actions and addressing the question of responsibility to "the Israeli" in general.

In a collection of photographs from the first intifada that only in hindsight can be defined as a series, this double approach is manifest within the single frame. These are photographs of encounters —

usually extremely violent ones — in which there is physical contact between Israelis and Palestinians, physical contact leaving no space for doubt as to just who the ruled subject is. The subject appears in these photographs in his nakedness, as one who is at the mercy of someone else, for instance, in a photograph of a youth whose hair a soldier is clutching from behind, in a photograph of the Palestinian lying bound on the ground and doubled over in a futile attempt to protect himself, in a photograph of a girl whose hair is being pulled by a soldier, or in a photograph showing a terrified, running boy with a soldier's hand raised toward him.

Simultaneously making one group present and another abstract cannot follow from a grounded position of a single protagonist — Kratsman, in this case — but rather provides a striking example of the way in which the civil contract of photography links individuals with differing interests. In the abovementioned pictures of the first intifada, one could say that Kratsman's photography responded to both the Palestinian and the Israeli. In the context of the occupation, the Palestinian is the party with a damage claim, but his damage claim can be heard only before a nongovernmental court.<sup>23</sup> Regularly and for several decades, harm has been caused to the Palestinian. The harm done to her, accompanied by the lack of any institutional means for demanding that it be recognized and compensated, means she is forced to ignore the local judiciary and employ other channels offered by the local and global public sphere. In many cases, photography may serve as the sole solution at her disposal.

The Palestinian might thus be described as a party interested in photography and the photographer as a party who responds to this interest on reaching the arena of the Palestinian's injury. In contrast, the Israeli soldier, who is directly responsible for the damage and the injustice being caused to the Palestinian, is less interested in the photograph.<sup>24</sup> Kratsman indeed reaches him to photograph him as he retreats from the picture, that is, as one who is not too keen on being photographed. Accordingly, the contract of the photographer — Kratsman in this particular case — is not just with the future spectator of the photograph or universal addressee. It is always also a contract here and now with one or several concrete photographed persons who he encounters through the mediation of the camera.

His not necessarily intentional response to their demands — that of both the Palestinian and the Israeli — to transmit or not to transmit the content of the photograph occurs out of a clear stance that acknowledges the fact that the photograph never merely transmits content, but always also transmits the given stance vis-à-vis this content. In other words, Kratsman understands that the photograph will *always* reveal something about the act of photography, about the attitudes of the photographed people toward this act. Therefore, Kratsman's consent to photograph does not constitute an action serving this or the other party. Even if he had wished to, he could not satisfy both these adversaries. It is, rather, an act of implicit responsibility to the civil contract of photography and toward his professional position in this context.

The encounter of photography usually takes place within the framework of a clear protocol that, in most cases, need not be reiterated, because it is thought to be taken for granted. A camera raised in the hands of the photographer is thought to signal the beginning of the act of photography, and a flash or a click are conventional signals for the end of the action. In between, for as long as the photographer's eye is pressed to the viewfinder, everything may be photographed. The click or the flash of light are agreed-on signals, like the change of lights at a stop light, turning people's behavior in the presence of these signals into a conditioned reflex. Photographing in Nablus, Kratsman used this code in order to maintain his status as photographer, a status that in this specific case served him as a personal bodyguard.

The raised camera, like the clicking sound or the light flash it emits, allows the ritual to take place around mechanical signals that, at least on the face of it, neutralize the sense that it's the photographer who is controlling and manipulating the photographed people. Thus, when the click is heard, the photographed person can free himself of the pose he has taken without the photographer having to tell him explicitly to be "at ease."

These signals are characteristic of still photography. In a series of family portraits that Kratsman took in collaboration with Boas Arad in the Bedouin village Kasser El Sir, they used a small home camcorder similar in size to a still camera. The portraits were intended

as part of a public-relations film that they were preparing for the NGO BIMKOM (see figures 7.5–7.7). They asked the family to assemble for a family portrait in a single space. The family came together and formed a line in front of the photographer. Due to his habits as a still photographer, Kratsman raised the camera and put his eye to the viewfinder, rather than using the video screen of the camcorder. Time passed, and the family members stayed in place. None of the expected signals appeared, and the photographed people turned into captives of the act of photography. After about two minutes, as recorded on the camcorder, a small boy who had had enough started walking off and, following him, the rest of the family members scattered.

The absence of a signal that the photograph was done created a moment of embarrassment for both sides. The reactions of each side to this situation intensified the power relations between them. The photographer, who didn't lower the camera, maintained his position as photographer, although the act of photography was supposed to have been over quite a while before. The people being photographed stayed in place, didn't dare negotiate their status, accepted their subjection to the authority of an other without challenge, although the act of photography was supposed to have been over quite a while before.

The intensified power relations were not just those that brought these parties together as photographer and photographed people, but also those that form their civil world — the photographer as a first-class citizen and the people being photographed as citizens, true, but second-class ones whose abode and everything involved in that term are not recognized by state authorities. The people in question lack minimal services such as electricity, education, garbage removal, housing, and so on whose infrastructures the state is supposed to provide for all its citizens. The photographed people who remained hostage to the act of the photographer, who awaited the signal as an external, nonnegotiable force, in fact assigned to the photographer the authority to release them. The photographer appeared before them as the representative of two machines — the camera and the state. Their powerlessness vis-à-vis both, making them subjects of the sentence that each mechanism metes out, is



Figures 7.5–7.7. Miki Kratsman and Boas Arad, Kasser El Sir, 2003.

manifest in the "photograph." The spectator is invited to stand in front of the "photograph," projected in the space of the museum on a thin plasma screen, allowing the temporary illusion that this is a still photograph. Despite the illusion of stills, the picture isn't totally steady, and the spectator can slowly notice signs of discomfort on the faces of the photographed people and watch the way in which it is only the small boy who has the strength to "call out," in his act of desertion, that the king has nothing on, while he demonstrates by walking off that neither the photographer nor anyone else is possessed of the reasonable authority to hold them all hostage.

#### *Ownership and the Uses of Photography*

The power relations between the photographer and the photographed people are not stable. Neither do they unfailingly intensify in only one direction in times of confusion. They are malleable during the act of photography, but in cases where they're distinctly unequal, any temporary and symbolic changes are incapable of totally erasing the actual power relations between the photographer and the photographed person. The angry crowd at the funeral treated Kratsman violently in order to force him to photograph, but even in the context of this temporary inversion placing Kratsman in the hands of the Palestinians, he was the one whose gaze was perceived as the gaze toward which it is worthwhile orienting, the gaze that it is worth attracting, along with the series of future gazes that it generates.

Both this instability and malleability and the underlying power relations that persist are visible in Michal Heiman's work on the photographs of other photographers. Scanning their photographs into the computer unravels their boundaries and establishes them as potentials. From then on, they can be stabilized in different ways, emphasizing the photographer's point of view, making its existence present or, alternately, dropping it altogether, moving away from it and looking at the photographed people from another angle. Heiman takes (the) pictures that other photographers took (of/from others).<sup>25</sup> Even if in the act of taking the photographs the photographer has provided a direct or indirect service, the image is nevertheless one he has *taken*. Heiman doesn't play impostor or claim that *these*

are her photographs. Within *her* frame she includes the credit in which newspaper acknowledged the photographer, as printed underneath the photograph, and she also includes additional fragments of the newspaper, enabling a reconstruction of the scene of the photograph's viewing. Her gesture to the unknown photographer, which contains an element of generosity, also contains a blunt, violent, and challenging gesture that forces a reopening of the issue of the ownership of a photograph of another as victim. "Her" collection grows incessantly and includes thousands of photographs taken by others. Some of them are probably seen by their authors as achievements, perhaps even the best of their work, and the agencies to which they are credited consider them their exclusive property.

The instability and malleability of photographs, as exemplified in Heiman's work, thus returns us once again to the problematic of ownership with regard to photographic images, this time to the related issue of the appropriation of images for uses other than those for which they were created. Bernard Edelman, in a Marxist reading of the history of photography, describes the ways in which the relations of production created the need to stabilize the issue of ownership, with the judiciary preferring to employ old and accepted categories that transformed the photographer, described just a short time before as an apprentice to the machine, into an independent creator leaving his mark on the photograph.<sup>26</sup>

In the rare instances where the photographed people themselves have been party to lawsuits, they have been highly skilled citizens possessed of the means and tools enabling them to manage their image in the world and to hone it as they wish. A famous case of this type was that of Jacqueline Kennedy-Onassis, who sued the fashion house of Dior for publishing "her" picture in an advertisement. Kennedy-Onassis demanded that the photograph be suppressed, claiming that she had never given consent to the use of her image for purposes of advertising consumer goods. Dior claimed, in its defense, that the image was not that of Kennedy-Onassis, but rather that of a model by the name of Barbara Reynolds, employed by an agency for celebrity look-alikes. The court ruled in favor of Kennedy-Onassis and in fact undermined the indexical relation between the photograph and the person standing in front of the camera. It established

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this relation as secondary to the relation between the photograph and what it looks like.

Jane Gaines, who analyses this case, compares the claims of Dior, (the photograph "is what it is") and of Kennedy-Onassis (the photograph "is what it says").<sup>27</sup> She claims that the precedent set by this case is one that views the photograph as what it says. Her claim and the precedent set by the lawsuit are part of the same ongoing attempt to formulate an understanding of the medium of photography and determine its status as an independent image-producing technology.<sup>28</sup> If this ruling is not turned into a claim about the essence of photography, however, a very different claim about the relation between the image and the individual's civil status may be extricated from it. The court totally ignored the question of the photographer's and Dior's ownership of the picture, therefore evading any challenge to the normative attribution of a photograph to its author. And yet it reinforced Kennedy-Onassis's civil status and determined that a person is entitled to decide what uses are to be made of her image.

The court thus distinguished between ownership of the photograph and the social uses to which it may be put. In so doing, it activated the civil contract of photography, which is supposed to protect the citizen not from the act of photography itself, for he or she has given hypothetical consent to conquering the world as a picture, but from improper uses of the photograph. Improper uses of photography, along with the injustices they generate, tend to disappear from sight when legal discourse or its interpretation reduces photography to a unified procedure derived from its "essence" and isolates its characteristics from the civil relations of photography.

I won't elaborate here on the entire range of unworthy uses of photography but, rather, on a particular strain, the type that derives from a breach of the civil contract of photography, either in advance or during the act of photography — in other words, from the abuse of the civil status of the photographed person. To illustrate, I'll address the case of the Afghan girl whose picture was taken in a refugee camp in the mid-1980s by the photographer Steve McCurry for *National Geographic*.<sup>29</sup> Her picture was published on the cover of the magazine, printed in ads publicizing the monthly, reprinted in the organization's fiftieth anniversary book, and became the subject of



Figure 7.8. Steve McCurry, Sharbat Gula, still from documentary film by *National Geographic* on the search of Gula, 2003.

follow-up articles that brought the magazine millions of readers. Before she met Steve McCurry, Sharbat Gula had never had her picture taken (figure 7.8). The technology of photography had not reached her or her environs so the civil contract was not familiar to her. This in and of itself doesn't make her out of bounds for photography, but neither does it exempt anyone wishing to photograph her from an extra degree of responsibility for dispossessing her of her civil status under that contract. Since that single photograph, Sharbat Gula had no other pictures taken of her until Steve McCurry went back to search for her with the intention of telling millions of people the world over, all of whom had made her acquaintance through the first photograph, what had happened to her since — not what fate had befallen the Sharbat Gula who lived in a refugee camp, but rather what fate had befallen "the Afghan girl who was on the cover of *National Geographic*."

When first printed, in 1985, the photograph illustrated an article on a refugee camp of Afghans who had fled their country due to the

Soviet invasion. The girl's photograph wasn't printed along with her name or with any other details about her identity or her life. It was present in the article as an empty signifier of the exotic and of affliction. Following the U.S. invasion of Afghanistan, the photographer went on a search for "his" subject, whose name he didn't know. His efforts to trace her were accompanied by a simulation of legal procedures intended to verify that the woman in the new photograph was indeed the same girl who had appeared in the old photographs, which not only framed her story between two *National Geographic* covers but, indeed, turned the covers into the real story. The photographer had to screen various candidates attempting to claim the coveted title of "the Afghan girl who was on the cover of *National Geographic*" so as to reject impostors, and he employed a series of humiliating examinations — of the pupils of their eyes, of their cheek bones, of their skull structure, and so forth. The testing process was documented, displayed to readers, and recorded in a film on the whole affair. Experts in various fields carried out the process of verifying the photographed woman's identity, not in order to substantiate her ownership of her image, but, on the contrary, in order to substantiate the photographer's and the magazine's ownership of her image. Her consent to have her picture taken and her renewal of this consent, when it was proven to all that the person reaffirming the consent was the same photographed subject, made the photographer and the magazine the eternal owners of the image, relieving them of the need to share with her their ownership of the image or, needless to say, the profits they made from it.

When the first photograph was taken, Sharbat Gula was indifferent to the medium of photography. She didn't ask to voice her complaint through it. Most likely, she didn't know that a photograph could be used for such purposes, and she therefore didn't expect it to free her from her predicament. The first photograph printed on the cover of *National Geographic* didn't express the civil contract between her and the photographer or the readers of the magazine. It was more like a business contract that one side manages without the knowledge of the other side. Her breathtaking beauty and her exotic dress, coupled with her dissociation from any concrete reality and the concurrent preservation of the abstract "otherness" of the landscape

and surroundings, helped turn her into an icon, a logo selling itself. Her beauty — her green eyes and her dark skin, her look, her otherness — all these turned into signifiers of affliction of the kind that remains unseen, unknown, and that therefore is mainly moving.<sup>30</sup>

\* Fifteen years later, the magazine, through the photographer, could not but offer the anonymous and nevertheless universally known figure a new contract. Between the first and the second photograph, between the first random encounter with the camera and the second intended one in whose realization large amounts of money and effort were invested, Gula became part of the civil contract of photography. She gave her consent to a series of photographs, the common element of which was the attempt to stress their linkage to the anonymous icon of the past. In return, she was promised that no identifying details would be disclosed regarding her whereabouts. The contract between her and the photographer (and the magazine) included a commitment on the part of *National Geographic* to construct a school for the education of young Afghan girls, and she, in return, enumerated in front of the cameras — this time the ones recording the *National Geographic* film about the search for her — the many advantages that the U.S. liberation of Afghanistan represented for her and for her people.

It is difficult to overlook the propaganda interests present in this search or its role in the American effort to build up a lobby supporting the invasion of Afghanistan. However, it is also difficult not to see that this time, the camera could not kidnap Gula's image as it had in the past. Whether it was she herself who demanded that a school be built in return for the photograph or the magazine that proposed the barter, the second photograph could no longer be hijacked like the first one.<sup>31</sup> Neither she nor the readers could remain indifferent to the act of photography. Readers who had for years been interested in her fate prepared the ground for a fairer barter, one from which Gula herself could benefit and whose conditions she would take an active role in formulating.<sup>32</sup>

Let us return now to the image of the two Palestinian women in their destroyed home and to the stamp "PHOTO RAPE" imprinted on it by Heiman (see figure 6.24),<sup>33</sup> for there is another dimension to the appropriation of images for uses other than those for which they

were created, a dimension exemplified by what Heiman has, in turn, done to the image. It is an appropriation not for unworthy ends, but for worthy ones.

In the photograph, we can see the traces of the decisive moment that was hijacked from the photographed women, as if the women had been violently forced by the photographer and his camera to turn into a photograph. These women are refugees whose home in the Jenin refugee camp has been destroyed. They are sitting in its ruins. The content of the house has been pulverized, and blobs of color at the front of the frame, between the fragments of wall, are visible remnants of belongings that have lost their identity. Nothing is left whole under the rain of bombs and the force of the bulldozers. The walls are broken apart, and the home is transformed into a past home. Its inhabitants have nowhere to go. Where they sit is neither a private nor a public space. They are there, exposed to the gaze of passers-by. Day and a night, they are there. Sitting on borrowed chairs in the place that was their home — “in” it. There are no rescue forces, no emergency aid agencies, no rehabilitation plans. The photograph in front of us does not capture a single decisive moment. It is static — a “report from a disaster zone,” as Amira Hess called it in the article that this photograph accompanied. In Heiman’s series of photographs of destroyed homes (*Attacks on Linking*), the stamp “PHOTO RAPE” can’t refer to the moment of the photograph. The “Photo Rape” in the Jenin refugee camp depicts a permanent condition. These are people who are totally exposed to others’ gaze, dispossessed of their citizenship and, in this series of photographs, of their homes, as well, people who are unable to obstruct the act of photography. Whether physically or contractually, these are people who are utterly exposed.

In using the stamps, Heiman forces herself on the photographs. She positions herself as a party in the image and in the relations between the photographer and the women, as if she herself wished to bear witness. The women in the picture were raped, she tells us. Don’t be misled by their heavy clothing, their bodies wrapped from head to foot, the silence surrounding them. There was an act of rape here. It’s just that their bodies survived and are now forced to become a photo. It is not a photo of rape but a “Photo Rape.” The photograph realizes the rape of these women, the act that potentially

turned them into a picture. They are forced to become a picture from the moment they have lost their capacity to refuse to do so. Their right not to become a picture has been denied without their having had any means of resisting or anyone to protect their right. The stamp embedded in the photograph addresses the spectator, admits to the incapacity of the photograph alone to address the spectator assertively, to demand her attention, to demand her recognition of the injustice.

When the name of the photographer who took a photograph such as this one is known, Heiman seeks his permission to use the page of the newspaper on which the photo appeared. However, when the photographer is inaccessible, she uses the photo anyway and justifies her decision with the claim that the photographed women did not give the photographer their permission to print it either. In the spirit of the civil contract of photography, one might offer an alternative formulation to the effect that their consent to be photographed can be assumed, while this by no means includes consent to anyone’s ownership or exclusive claim to their image and certainly not to its concealment from the public eye.

Through a series of intervening actions — sorting, cutting, re-photographing, emphasizing details, naming, stamping, enlarging, embedding, and others, Heiman “activates” the photographs. Their “activation” causes them to lose what might have been thought to be their stable content — the content answering to the gestures of identification that is thought to be owned by the photographer or the agency that employs him. As a result, the pictures invite reexamination. These are never photographs that have made the top of the hit list of horror images. They are pictures representing a banal, mundane, nonspectacular evil of a type that some of the spectators consider a legitimate act of punishment. The victims photographed in them are “routine victims.” The Palestinians whose home has been destroyed around them do not stand at the center of a mass relief effort to assist them and to reconstruct their ruins. These static photographs include no dimension of urgency, either on the part of official bodies or on the part of the people photographed, and the spectator, following them, leafs calmly through her newspaper. This is the fate of the routine victim in the procession of horror images.

When the spectator enters the museum space in which this photograph is re-presented, however, she knows she is not alone. The doctored ("nursed") photograph clarifies what she missed about the photographed women earlier, in the picture's former incarnation as a newspaper item. She is not alone vis-à-vis the photograph. Neither is she alone in her shortsightedness. She is invited to reexamine both. Now, when the photograph has been blown up to giant dimensions, it would be difficult to miss either the photograph or what she previously had not seen. This series was displayed in the form of backdrops hanging from the ceiling like the ones displayed in photographers' studios. The photograph as backdrop constitutes an invitation to the spectator to stand in front of it and take a picture. The spectator is invited to use the photograph as a backdrop and take a snapshot. A souvenir. A monument to horror.

This invitation causes a form of discomfort that can be described in the following paraphrase: "Their catastrophe, my souvenir." It forces the spectator to decide, in full view of additional spectators, whether or not to take a picture. In using the invitation, the photographed women become a backdrop allowing the spectator to take a picture with her back to them and then to go home, taking their image along with her as booty. In declining the invitation, the spectator expresses her unwillingness to turn them into booty and her criticism of or reservations about those who do so.

*Spectator A:* Whatever they're handing out, I'm taking.

*Spectator B:* These are human beings. They've just been through a disaster. How can you loot them?

*Spectator A:* I'm not looting, and I'm not stealing, I'm shouting out my protest.

*Spectator B:* You don't care about anything at all. It's all the same to you as long as you've got something to take home with you.

*Spectator A:* That's so self-righteous — as if you didn't take home your morality?!

*Spectator B:* It's not the same thing.

*Spectator A:* Right. I take the photo home and give it life, show it to others — "and you shall tell to your sons..."

*Spectator B:* Stepping on corpses, huh?

*Spectator A:* The scandal isn't here, where you're looking for it. The scandal is in what you see, and not in the fact that it's seen or that you take a picture.  
And so forth.

Spectator A and Spectator B are formulating their stands. The photograph is silent. The fact that it is a backdrop invites them to act. The scene in the photograph is painful. If they look at the photo and see in it the suffering and affliction, their helplessness in the face of it simply increases. What could they even presume to do about it? The first proposes using the picture; the second proposes refraining from using it. The first suggests seeing and showing, distributing widely, prodding, transmitting, activating, deforming; the other suggests viewing it herself and abstaining from showing it. She calls for compartmentalization, sanctification, ritualization. Every day, as they leaf through the papers, they see photographs like it. They have already adopted a particular viewing practice.

Most likely, the predominant viewing practice is a quick glance at the photo while reading the caption and a hop skip and a jump to the next page. This practice was instituted after they had already seen painful pictures. It's the practice of one who has been there, not that of one who first encounters a photograph of suffering, horror, or affliction. At some point, they don't remember when it happened. Usually, when they flip through the paper, no one is watching them. It's just them and the photograph. It's hard for them to stay with it, to watch it; they're more comfortable when it passes. The space of the museum and the implicit invitation to take a picture causes them to stop for a moment and examine other options, to offer themselves an account of their attitude toward photographs in general and to horror photographs in particular.

The first spectator can't bear the loneliness she feels in the face of the picture and proposes getting herself out of it. She doesn't know what worthy viewing is, she just knows that it's hard for her there alone. Maybe if she shares the photograph with someone, shares her presence vis-à-vis the photograph, something will become clearer — the photo, her attitude toward it, or maybe her attitude toward the world. The second spectator may or may not feel lonely.

but she prefers to stay that way, to immerse herself in her singularity opposite the picture and, through this, to determine what improper viewing is. Not only doesn't she want to peep at the photographed women in their misery, she would also like the newspaper editor to think similarly, and perhaps also the photographer. But the horror goes on, and it generates more and more photographs; what is left is examining the various uses and politely rejecting those that propose making no use of photography.

Heiman is a spectator of the first type. For years now, her work has expressed a refusal to remain alone in front of the photographs. Testers, spectators, photographers — everyone is invited to help her look at the photographs, whether in private or in public. In 1997, she created her first "test" of the spectator — *Michal Heiman Test No. 1* — in the framework of which spectators entering the museum were invited to talk about photographs that were shown to them by an "examiner" (figure 7.9).<sup>34</sup> The discussions of the photographs that this generated publicly transgressed the photograph's dumbness and the museum's silence.<sup>35</sup> The tests created by Heiman, like her transformation of destroyed homes into backdrops offering the conditions for re-creating the photographic situation within the museum, express the anxiety/phantasm invested in the act of viewing horror: "Don't leave me alone in face of these photographed people. Talk about the photographs to me." At the same time they are an attempt to replace the anxiety/phantasm with a civil collaboration that will place it between brackets. "What is in the photograph?" "What is seen in it?" "Who is seen in it?" "Why are they looking at me like that?" "What is she doing?" "What is he up to?" "Why is she silent?" "What is that blob?" "Where is she looking from?" "What does he see?" — myriad questions, all of which are troubling and all of which will remain, in the final analysis, without conclusive answers.

The anxiety in the face of the photograph's silence is transposed onto a double phantasm: that it will stay silent and its truth will be buried beneath it forever, that it will speak loudly, directly or via mediators, and will betray what ought to be silence. These anxieties/phantasms derive from the double status of the photograph as transcendent and as the handiwork of a person. Thus, the procedures employed with relation to the photograph ask it to speak, to explain



Figure 7.9. Michal Heiman, *Enactment, Michal Heiman Test (M.H.T.) No. 1 – My Mother-in-Law*, 1998 (Le Quartier, Centre d'art contemporain, Quimper), installation, projection test, green box, 4.5 x 17.5 x 24.5 cm, Herzliya Museum of Art, 2000.

itself, and see it as "supposed to know," while the procedures creating the network of speakers ask them to speak, to explain the photograph, and with their assistance — examiner, assistant, museum spectator, and so on — to recognize that the one who is "supposed to know" does not exist.

The one who is supposed to know has long ago evaporated. The fact that she doesn't exist doesn't eradicate the desire to latch onto her coattails and demand an account. See the suffocation? It's hot in there, damp, crowded. You can gulp the fear, chew the despair. The sky is angered, ruins, holes in walls, too many hours — all is ominous. Objects swell and expand, the walls contract, the dams of emotion break: anger, destruction and devastation, cries of outrage. The photographs deliver the sights without a soundtrack. Otherwise, you might go insane. Just faces, portraits, of an individual man or woman, parts of families, emblems of death, a substitute for obituaries, so that we may know the face of the dead, recognize the malady of death.

And then a laugh breaks in, bursting out of the photograph, taunting, grating, relentless. This time the photographer didn't erase it. And again the routine silence, measured movements up and down, endless skill, you could go crazy every day, every day, the clenched lips, the razor-sharp direct gaze. The photographer is long gone, will be back tomorrow; the soldier, still there, stays within the frame — without him, I would stand face to face with the lady and her baskets. What could I say to her that hasn't been said to her yet — what? You could go insane, but I go insane when she's absent, when the pictures disappear, when all goes on as usual, but the photographs refuse to appear, turned down, politely rejected, the editor making time for another type of color, better suited to the season, lighter and more transparent, a pastel-tinted chiffon skirt, and again on the next page, you can go crazy, rummage through boxes, use old newspapers, eat breakfast with them — if they hadn't turned yellow, one would never know that what's printed in them isn't new, as fresh as if they were this morning's paper — five killed, four portraits, one missing, the family refused to cooperate, soldiers in night lighting, ready to counter the fall of Qassam rockets. "Like in a David Lynch movie," the editor thought and stretched the photograph

across a double spread: The plaintiff will be charged, her face blurred, intentionally, perhaps *sub judice* or maybe not. The question whether it's a paper from this morning or a year ago is important only this morning — by noon it evaporates, the pages jumbled on the desk, piles of yellowing newsprint, a paper dam.

But whether there are or aren't any photographs, the pictures are present all the time. When the photographs are absent, only words are left; when the words are on their own, language is foreign, threatening, unreliable, abstract, used, sometimes overused, homogenized, without cracks, without blemishes, without a stranger who held it and staked a claim to it, the same stranger who always arises out of the photograph, who has acted on the photograph, acted on the photographer's action, collaborated with him, no, not consentingly — it can happen without consent, as well. The photographer didn't even know, and here she is, the stranger — there in the picture, no, not the photographed person, another stranger, strangeness that has turned the action into a joint one through acting on it, deflecting it from its course, robbing its meaning, returning it to its owner, who no longer recognizes it, who thought it was his, promised better times, as if he were the giver.

Without photographs, one can go insane. The photographs testify that those photographed are still there: Look — they participated in the act of photography, always a joint action, a multiparticipant action, and the photograph is a dam holding back someone's words, a living contradiction. There was someone else there, and sometimes it takes weeks to see the part of it that is the foreign presence, sometimes days, never immediately, at least an hour. Sometimes the photographed man or woman has no part in it — the photograph may have no people in it, nothing in it but landscape, the landscape that all have abandoned. Then, too, you need hours of looking, possibly days, weeks, or years, but in the end, the silver iodide will burst into dance and disrupt the limits of the photograph.

The photograph is the site where the collaboration coughs up its secret. There is no noncollaborative action except when life ends. When life ends on one side, the air thickens on the other. The sky is open and clouds float, laughing above at the border traced on maps in a sure hand and transcribed onto the stony fields.

## CHAPTER TWO

### 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).<sup>1</sup> 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.<sup>2</sup>

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,"<sup>3</sup> 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,"<sup>4</sup> 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.<sup>5</sup>

"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*."<sup>6</sup> 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"<sup>7</sup> and to negotiate, sometimes successfully, sometimes not — with sovereign power.<sup>8</sup>

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.<sup>9</sup> 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."<sup>10</sup> 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."<sup>11</sup> 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.<sup>12</sup>

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."<sup>13</sup> 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."<sup>14</sup> 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.<sup>15</sup> 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,<sup>16</sup> 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.<sup>17</sup> 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,"<sup>18</sup> is at most a testimony to the moment of the photograph's eventuation in which photographer, photographed, and camera encountered one another.<sup>19</sup> 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.<sup>20</sup> 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."<sup>21</sup> 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.<sup>22</sup> 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."<sup>23</sup> 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."<sup>24</sup> 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 another and with

another, 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.<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> 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).<sup>31</sup> 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."<sup>32</sup> 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

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

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

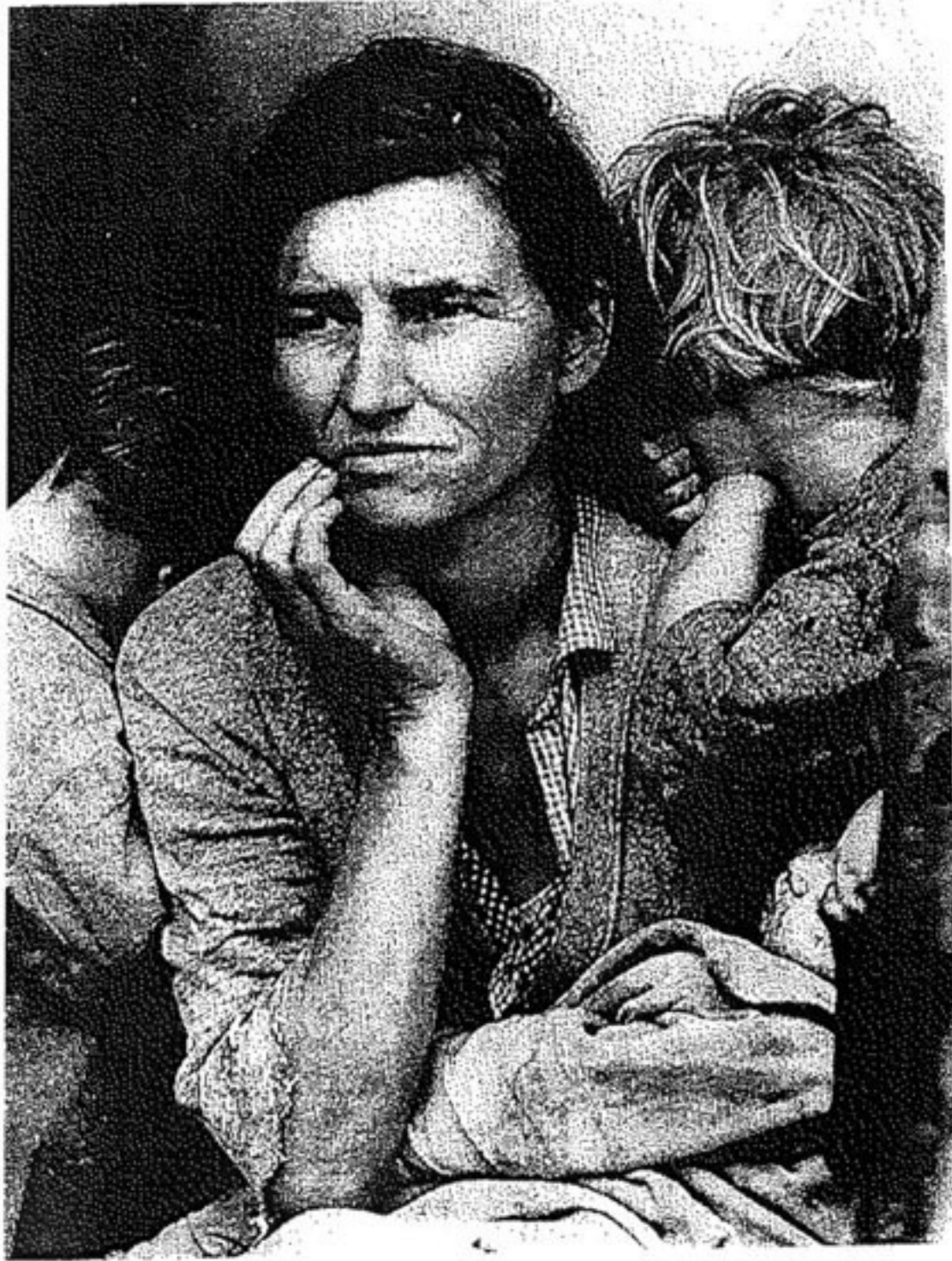


Fig. 2.1. Dorothea Lange, *Migrant Mother* (Florence Owens Thompson), Nipomo, CA, 1936  
 Prints and Photographs Division, Library of Congress, Washington, DC).

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.<sup>34</sup> 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.<sup>35</sup>

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

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."<sup>37</sup> 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."<sup>38</sup>

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.<sup>39</sup> 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.<sup>40</sup> 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."<sup>41</sup> 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.<sup>42</sup> 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.<sup>43</sup> 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.<sup>44</sup> 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.<sup>45</sup>

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.<sup>46</sup> The photographer — who is usually on the edge of another, different institution — turns the photographed individual

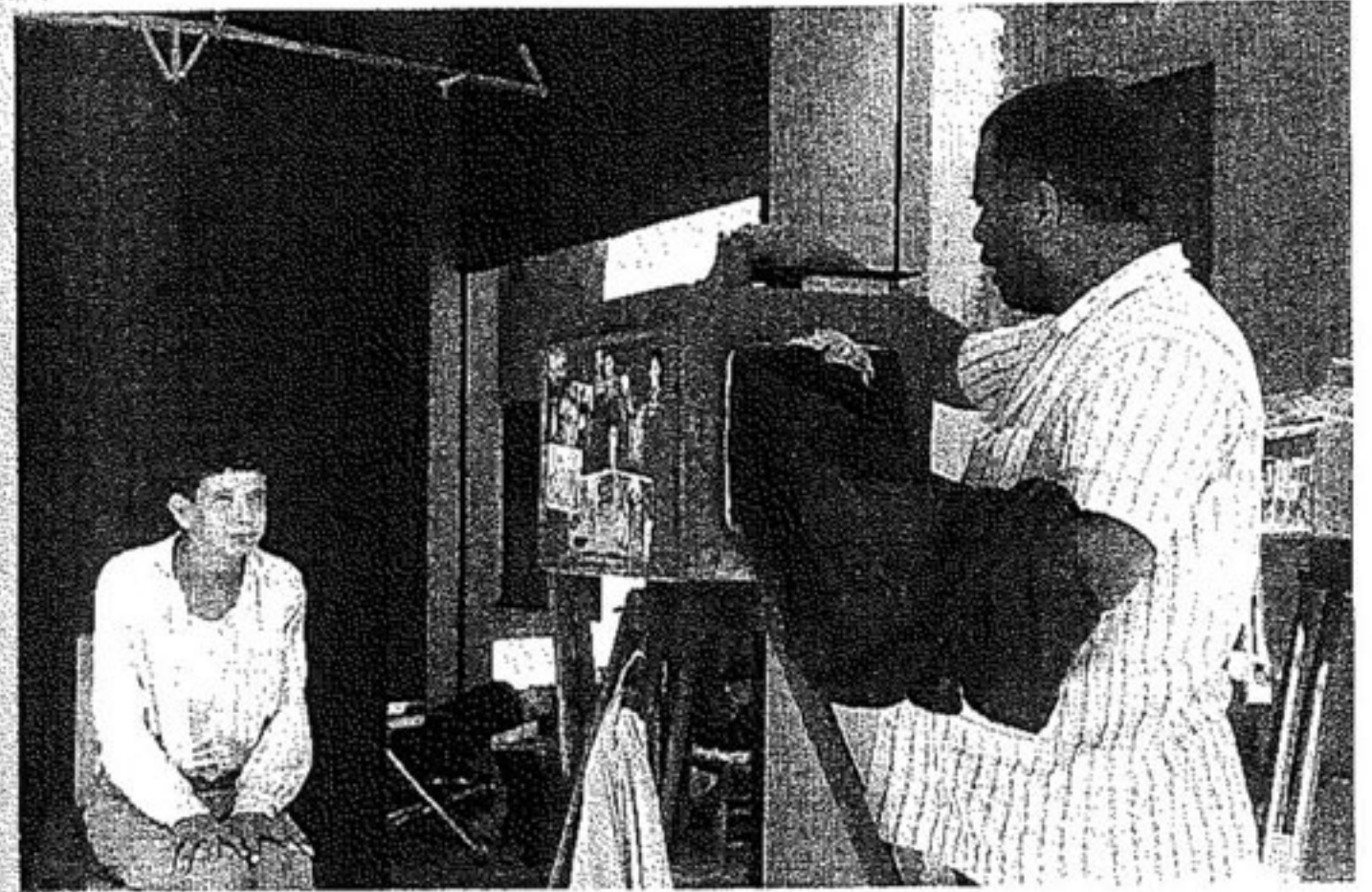


Figure 2.3. Moshe Milner, Government Press Office, Gaza, 1971.

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.<sup>47</sup>

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.<sup>48</sup> 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.<sup>49</sup>

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.<sup>50</sup> 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.<sup>51</sup>

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?<sup>52</sup> 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."<sup>53</sup> 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 reformative 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.<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup> 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.<sup>57</sup> People began enjoying the right "to be included in the film," as Walter Benjamin phrased it.<sup>58</sup> From an opposite perspective, Susan Sontag has defined the introduction of the camera as "the right to something called news."<sup>59</sup> 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.<sup>60</sup>

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.<sup>61</sup>

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.<sup>62</sup> 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.

*Citizenship beyond Sovereignty: Toward an Ethics of the Spectator*

The industrialization and dissemination of photography near the middle of the nineteenth century created a new citizenry — the citizenry of photography — whose citizens were equipped with the necessary tools for producing photographs, interpreting them, and acting on what they disclose. Although given to the modern citizen as another means of becoming a citizen in the nation-state, photography provided the possibility of becoming a citizen in this new citizenry of photography. Whereas the nation-state is based on the principles of sovereignty and territorialization, the citizenry of photography, of which the civil contract of photography is the constitutional foundation, is based on an ethical duty, and on patterns of deterritorialization. In principle, photography is an instrument given to everyone, making it possible to deterritorialize physical borders and redefine limits, communities, and places (processes of reterritorialization).<sup>63</sup> The citizenry of photography is a simulation of a collective to which all citizens belong. Neither taking precedence over citizenship or making it conditional, the citizenry of photography is fundamentally and solely defined by citizenship: Membership in the citizenry means citizenship, and citizenship means membership in the citizenry. The citizenry of photography has no sovereign and therefore no apparatus of exclusion. Each and every one is, in principle, a member of the collective. Membership in the collective is based on each one's renunciation of exclusive ownership of his or her image and on each one's willingness and right to be photographed and become a photograph.

The fact that the civil contract has only now been explicitly formulated does not contradict the fact that it exists and has existed as long as photography itself. That I am presently able to formulate its conditions rests on the abundant evidence we have of their existence. As early as the 1840s, the photographers David Octavius Hill and Richard Adamson, in tandem with their photographed subjects, saw photography as an instrument that establishes, on the ad hoc basis of each photograph, a universal tribunal that goes beyond local interests to see clearly what photography has to show.

These two men went to take photographs of the fishermen and fisherwomen of New Haven in an attempt to assist them at a time

when their fisheries were failing. The gathering of photographers and the photographed around the camera was not contingent on a pragmatic answer to the question of whether photography could help them. Instead, it was motivated by the scopic regime that photography established — a photograph produced in the course of an encounter between photographer and photographed is created and inspired by a relation to an external eye, the eye of the spectator. It is not the same eye that is present in the situation, but one for the sake of which the photographed is willing to be photographed and the photographer is willing to take photographs: "She looked as if she knew my photographs might help her, so she helped me. There was a kind of equality between us," wrote Dorothea Lange in her diary about Florence Thompson.<sup>64</sup>

This spectator's eye deterritorializes photography, transforming it from a simple, convenient, efficient, (relatively) inexpensive and easily operable tool for the production of pictures into a social, cultural, and political instrument of immense power. The gap between these two dimensions of photography is newly expressed in each photographic act, summoning a supplementary eye, or at least alluding to the existence of an empty place, a potential place that enables the act of photography to occur while the participants acknowledge that they are not alone in front of the other. Photography thus enables its users to produce images that go beyond the simple technical actions required to produce them, attaining something that transcends the here and now. The reason they enjoy such a status is due to the fact that as soon as they have appeared in the world, it is impossible to dismiss them. Their presence cannot be subsumed under the reign of a higher authority. They are independent. The limits of their interpretation are not determined in advance and are always open to negotiation. They are not restricted to the intentions of those who would claim to be their authors or of those who participate in their production.

This particular characteristic of photographs tends to mislead the spectators who view them. A newspaper editor, for example, will add laconic captions to photographs, as if a denotative relation had been established between them. Such denotative relations assume that what is visible in the photograph exists there — somewhere —

awaiting the precise verbal formulation that would make it a proper object. However, contrary to what Susan Sontag has claimed in her own writings on photography, the transcendent status of photographs does not require what is visible in them to be given or assumed intrinsically to have a "grammar" of its own.<sup>65</sup> Although they write on the social context of photography, both Sontag and Barthes preserve the notion of a stable meaning for what is visible in the photograph and reduce the role of the spectator to the act of judgment, eliminating his or her responsibility for what is seen in the photograph. That judgment assumes a passive attitude toward the image and is primarily interested in questioning the extent to which the photograph succeeds in arousing a desired effect or experience. Sontag focuses on the photographer and sees him or her as responsible both for the photograph and for the fact that the photographed is represented one way and not another or conveys one experience rather than another. "Moralists who love photographs" writes Sontag not without a small measure of contempt, "always hope that words will save the picture."<sup>66</sup> According to Sontag, the picture's fate as good or bad is sealed as soon as it is printed on photographic paper. Any attempt to start speaking for the photo is akin to an effort to revive the dead. Her "ethics of seeing" is based on an aesthetic judgment and gives no attention to the civil contract of photography. It turns photographs into works of art that can be judged. Her ethics of seeing, in effect, reifies the new visual field created with the appearance of photography, leaving the photograph in possession of a special "grammar" that allows it to remain independent of its spectator.

The civil contract of photography shifts the focus away from the ethics of seeing or viewing to an ethics of the spectator, an ethics that begins to sketch the contours of the spectator's responsibility toward what is visible. The individual is not confined to being posited as the photograph's passive addressee, but has the possibility of *positing herself* as the photograph's addressee and by means of this address is capable of becoming a citizen in the citizenry of photography by making herself appear in public, coming before the public, and entering a dialogue with it by means of photographs, which, despite their power are often both silent and silenced.

Once photographs are spoken of, however, they are spoken of among many, in regard to many, and obtain the power to remind citizens that what brings them together, what motivates them to look at photographs, is the common interest, the *res publica*. In an era when speaking in terms of the *res publica* is becoming more and more rare,<sup>67</sup> photography is one remaining site, a place of refuge, from which the discourse on the *res publica* may be revived. Neither a local, sectarian, or national politics nor a politics of identity, photography remains part of the *res publica* of the citizenry and is or can become one of the last lines of defense in the battle over citizenship for those who still see citizenship as something worth fighting for.

This struggle links those who have citizenship and those who are threatened by the denial of citizenship or expropriation of the rights of others with those who have been robbed or denied citizenship, for whom photography and the citizenry of photography are often their first chance to become citizens despite being stateless.<sup>68</sup> In the Israeli context, for instance, the Palestinians became citizens of the citizenry of photography long before there was any possibility of their becoming citizens in the ordinary meaning of the word. The Palestinians are at one and the same time citizens of photography's global citizenry and noncitizens of the state that governs them. Photography enables them — along with many others — to make politically present the ways in which they have been dominated, making visible the more and less hidden modes in which they are exposed to Israeli power. Without the spectator participating in the reconstruction of the photographic *énoncé*, the harm to citizenship will not be perceived. Photography does not put an end to their position as noncitizen, but it does enable them and others who take part in the reconstruction of their civil grievances to exercise the legitimate violence of photography's citizens, regardless of their status as noncitizens deprived of rights who cannot use their citizenship to negotiate with the sovereign power.

Photography thus has formed a citizenry, a citizenry without sovereignty, without place or borders, without language or unity, having a heterogeneous history, a common praxis, inclusive citizenship, and a unified interest. The citizenry of photography is a global form of relation that is not subject to national regimes, despite existing

within their borders, and that is not entirely obedient to global logic, even as it enjoys the channels of exchange and association the latter creates. Photography is a means of employing legitimate violence that is — or, in principle, that can be — in the hands of all of the members of the citizenry of photography, whether or not they are citizens of the space they inhabit. In the citizenry of photography, citizenship is rehabilitated and regains its essence. Not all of its citizens necessarily give active expression to their citizenship, and only a few have ever given their explicit consent to take part. However, even those who explicitly attempt to position themselves outside its bounds, or those who have never encountered a camera, are indeed a part of it.

In the ethics that photography requires of those who view photographs, it requests that its citizens — who are equally *not* governed in the citizenry of photography — not only try to avoid situations of degeneration into which the nation-state and the market often sink, but actively to resist them. For the citizen of photography, national citizenship is not the ultimate realization of citizenship and does not see property and ownership as the principle achievements of human existence.

Instead, photography, while personal, is a mobile and global recording kit for contesting injuries to citizenship. Official UN data estimates the existence of 175 million noncitizens worldwide. This figure does not take into account the millions who, despite being officially granted citizen rights, are far from able to assume their citizen status. Photography can be put forward and read as a nonmediated complaint attesting to situations in which citizenship has been violated. Simply flip through any history book from the last hundred years, any NGO pamphlet, any publication written by a human-rights or civil-rights group, or any humanitarian organization report, and you will see that photography marks the beginning of a demand to become citizens, even when that demand is hidden behind a demand for the protection of human rights. These collections of photograph-complaints would be worthless, however, if it were not for the citizenry of photography and its citizens who produce these photographs-complaints, as photographers or as spectators. When a photograph turns into a grievance, whoever articulates it becomes its civic subject.

Often, photography has been used, in one way or another, by the sovereign power. Photographers were rapidly integrated into routine tasks, ongoing documentation, the collection, classification, and storage of data, the use of data to enforce the law, and other governmental duties. Disciplinary and closed sites, in Foucault's terms, proved to be ideal places for the installation and regular employment of cameras.<sup>69</sup> Supervision and control, refinement and improvement, study and research — these have been the motivating goals behind camera operators and those who command them, even when they are themselves the ones exposed to the cameras.<sup>70</sup> Yet the formulation of these objectives, even in the form of written declarations, has not prevented the creation of a gap between the stated aims and what has actually taken place in the encounter between photographer, photographed and camera. Every photograph is a living testimony to this gap, even if some photographs may still lack an ethical spectator to notice them. In many instances, this gap is the place from which the spectator can become a citizen of photography, making it possible for the photographer or photographed to become a citizen, as well.

Photography plays a crucial role in the civilian status of its users, from their subordination to sovereign power to practices of civilianization that limit the control of this sovereign power.<sup>71</sup> Nonetheless, photography is rarely the object of legislation, nor does the state regulate its usage. The state's renunciation of any crucial governmental role regarding photography effectively abandoned photography to the logic of the market, and the governmental vacuum was filled with the technical jargon of capabilities and possibilities, and the language of neutrality and precision. Thus, the course of photography, which has been marked by different kinds of inventions, was confined to the framework of the market and determined according to public demand. Yet as in other fields, so, too, in photography, the course of development was dictated both by the resources of the state, which indirectly channeled photographic inventions into the fields of warfare, espionage, and supervision, as well as by the money of the masses, whose purchasing power led to the development of mobile, user-friendly cameras. Thus, for instance, the development of night-vision and aerial photography contributed to the process

of restricting accessibility to photography almost to the point of monopolizing it (as in the case, for instance, of satellite photography), whereas the development of prepackaged film or the mobile automatic camera contributed to its popularization.

Even though photography was a French invention, it was anchored in a contract that was not limited to a particular nation.<sup>72</sup> Against the political order of the nation-state, photography — together with other media that created the conditions for globalization — paved the way for a universal citizenship: not a state, but a citizenry, a virtual citizenry, in potential, with the civil contract of photography as its organizing framework. Citizenship in the citizenry of photography asks not to be stopped at borders and plays a vital political role in making sure other cultures are accessible, in all of their prestige or misery, deeming local cultures to be worthy of documentation and public display. Photography, being in principle accessible to all, bestows universal citizenship on a new citizenry whose citizens produce, distribute, and look at images.

This citizenship, in principle, issues actual and virtual transit visas to all, allowing everyone to see, show, and be seen — though it is subject, of course, to supply and demand. The citizen of the citizenry of photography may move as she pleases in the visual field created by photography. It is part of the contract to which she's a signatory, a contract that, like any constitutive agreement, supposes a primal beginning and moment of creation, a moment of transition from a state of presence to a state of re-presence, re-representation, a visual representation. This agreement — although it seems to produce a moment of unity, an unrealistic instant in which all citizens could be represented as if they were full partners in formulating the contract — collapses in the face of the structure of the camera, since its limitations are exposed. If this contract has any representation beyond the imaginary realm that this book seeks to give it, such a depiction exists in the entire body of photographs from which it was extracted.

From an instrument once recognized by the French state as having the power to fuel a revolution on the scale of the French Revolution, photography was reduced to merely its technical components. To this day, it has almost always been employed without any prior and systematic study of its legal, cultural, political, and moral ramifi-

cations or of the effects stemming from its omnipresence.<sup>73</sup> Photography has been naturalized as a disciplinary medium to such a degree that its very use appears to have been universally agreed on, avoiding not only any discussion of its procedures or mechanisms, but of the mode in which these have been adopted, as though they were common to all people who employ photography.<sup>74</sup>

Given this governmental vacuum, the civil contract of photography has a crucial role. It can serve as a regulative power, accounting for the different uses of photography, its modes of production and distribution, the exchange relations that are involved, its mechanisms of interpretation and authorization, its patterns of acceptance, as well as its public or juridical standing.

The exercise of that regulative power is the duty first and foremost of the spectator, and it is to the ethics of the spectator that I now turn.