Sensational Jurisprudence: Visual Culture and Human Rights

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Abstract

Sensational jurisprudence is a new branch of sociolegal studies that deals with the five senses and public policy. Because the law privileges the visual, this essay examines social science research about images of suffering and the implications of these findings. The interdisciplinary scholarship about visual culture emphasizes the negative aspects of humanitarian appeals for funding to aid the distant sufferer, and it suggests that bombarding the public with graphic depictions of pitiable individuals is counterproductive. Instead, researchers ought to develop methodologies to ascertain which emotions motivate individuals to engage in global civic action.

INTRODUCTION

Sensational jurisprudence is an innovative field that examines interrelationships among the five senses and public policy. As a branch of sociolegal studies, this highly interdisciplinary scholarship involves researchers in anthropology, law and society, media studies, political science, psychology sociology, and visual studies. This new field illuminates the intricate inner workings of legal orders and considers policies that attempt to regulate phenomena that affect the senses (Bently & Flynn, 1996).[1] Because modern legal systems privilege the "visual" (Hibbits, 1994),[2] this essay considers research about whether images play a significant role in alleviating suffering in human rights and humanitarian crises particularly when states violate international law.

1. In 1996, Flynn noted the novelty of taking up the law as part of the study of senses: "While interest in the senses has occupied the attention of the social sciences recently, that theme has been little explored in legal discourse" (p. 1). Sensational jurisprudence poses a set of questions: "How does the law sense? What does law understand to be the nature of our senses? How does the law constitute our notions of the senses? How does law control or regulate our senses? How does law use our senses? Which senses does law use" (p. 2).

2. In the introduction to *Law and the Senses*, Bentley notes that some contributors criticize the tendency in Anglo-American law to favor visual and suggests that the hierarchy among the senses should be reconsidered (1996, pp. 8–9).

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SCOPE OF SENSATIONAL JURISPRUDENCE

This body of research encompasses a wide range of studies on legal aspects of controversies related to all five senses. For example, sensational jurisprudence about touch considers policies on bodily reaction to pain and permanent body alteration (Bibbings, 1996; Classen, 2012). It also covers the social significance of smell (Classen, Howes, & Synnott, 1994; Corbin, 1988) along with the regulation of scent through trademark law (Maniatis, 1996) and regulation of unpleasant odors (Howes, 1989/1990, Artis & Silvester, 1986).[3] Preeminent scholars David Howes and Constance Classen have published important monographs that identify new developments such as "sensory ethnography."[4]

Another key area, the study of sound policies, is part of an emerging subfield known as *acoustic jurisprudence*. The gist of this approach is an argument that "we must learn to listen to the law" (Parker, 2011, p. 989) in our consideration of how to establish a harmonious "soundscape."[5] Some of this research addresses how courts deal with oral testimony or "auditory reception of oral evidence" (Halder, 1996, p. 124). A vast number of laws worldwide regulate noise, or unwanted sound, often via nuisance or noise pollution. Controversies have arisen concerning the intensity, frequency, and duration of sound emissions. Regulations also stipulate various requirements for the level of noise emitted by products (Hammer, Swinburn, & Neitzel, 2014, p. 118).

Interesting litigation concerns the regulation of loud religious sounds (Weiner, 2014), and the historical contexts during which these disputes occurred. In the twenty-first century, for instance, numerous conflicts around the world have revolved around the Islamic call to prayer or *adhan* (Renteln, 2014). Legal control of noise seems to be based on the tacit assumption that citizens deserve peace and quiet. This presumption on the part of governmental officials that there is a human right to quiet, not complete silence but the relative lack of noise, is a foundational principle recognized by most modern political systems.

Anglo-American legal systems rely heavily on visual culture. Indeed, some question the law's favoring the visual sense or "ocularcentrism." Even though there is a well-known adage that "seeing is believing" (Dundes, 1980) reflecting the conventional wisdom that people tend to embrace what they observe themselves, this does not guarantee that courts will necessarily be influenced by strong evidence documenting injustices. For instance, the police who were prosecuted for brutally beating Rodney King in Los

3. For a discussion of smell pollution, see Classen, Howes, and Synnott, pp. 169–172. For "stink lawsuits," see Huber (2014).

4. David Howes, Professor of Anthropology at Concordia University, is founding editor of the journal *The Senses and Society*. Dr Constance Classen edited a six-volume series on the cultural history of the senses to be published by Berg. See Howes and Classen (2013).

5. Schafer (1976) famously coined the term *soundscape*.

Angeles were ultimately acquitted, despite the fact that the jury watched a videotape of the actual attacks. This suggests that even though there is a tendency to assume that visual culture will influence behavior, this may not necessarily be the case.

One branch of research that addresses the relationship between visual culture and human behavior concerns graphic images of suffering that are disseminated in attempts to mobilize humanitarian action. In what follows, I discuss some of the major contributions to this debate and difficulties associated with this line of research. Finally, I offer suggestions for future studies to investigate the effects of images in human rights and humanitarian campaigning to promote compliance with international legal standards.

VISUAL CULTURE AND HUMAN RIGHTS

Images of suffering are pervasive in the media, and yet, it is unclear exactly how they affect public perceptions of gross violations of human rights and humanitarian crises, whether they promote enforcement of international standards, or if they help pave the way to significant social change. Even though human rights advocates tend to assume that exposure to information about serious governmental misconduct and the dissemination of photographs of atrocities leads to mass action via "the mobilization of shame" (Borer, 2012; Keenan, 2004), many scholars argue that continuously bombarding the public with visual culture of this sort may cause individuals to become desensitized (Cohen, 2001; Seu, 2013) and result in what some have termed *compassion fatigue* (Moeller, 1999) or *demand fatigue* (Cohen & Seu, 2002).[6] The question central to this body of research is whether images of suffering have the potential to help people in empirically demonstrable ways (Ritchin, 2013).

Scholars have certainly written about social uses of images (see, e.g., Gombrich, 1999), but their purpose has rarely been the empirical demonstration of their effects. In addition, while there are many different types of imagery and many forms of art that do raise awareness of social injustices (Martinez & Renteln, 2014), the social science literature about the effects of images of suffering and the mobilization of shame tends to focus principally on photographs.[7] Despite widespread use of still images in these campaigns, remarkably little evidence exists documenting their actual impact in society.

The importance of studying the role images play is greater now than ever before. While photographs were a key technological innovation of the

6. Some refer to the constant 24-h news coverage of international conflicts and the possible impact on foreign policy the "the CNN effect," even though the effect is not based solely on CN.

7. Increasingly, scholars are turning to the moving image. For an overview of human rights films, see Gibney (2013).

twentieth century, digitized social media constitute the new form of visual communication of the twenty-first century (Ritchin, 2013), which means a larger potential for influence. Because images are disseminated much more easily via the Internet by citizen-journalists armed with camera-phones (Anden-Papadopoulos, 2013), it is crucial to determine their social and behavioral consequences. Research that examines the circumstances under which visual culture has a positive impact on human rights and humanitarian efforts could make a significant contribution to progressive social movements (Gregory, 2006).[8] These images are deployed to exert pressure on governments to stop abuses and to generate revenue for NGOs (Seu, 2013, p. 2).

What is the current state of the existing literature on the influence of images of suffering? Since the 1970s, the Western media have been saturated with many pictures of starving children in Africa. This "iconography of famine" generated a discussion as to what constitute ethical uses of images and led some commentators to argue that the photographs had unmistakably negative consequences for perceptions of Africans (Campbell, 2011; Graham, 2014). The recurring image of a famished child reinforces a negative stereotype of victimhood that implies individuals there lack agency. Some go so far as to compare images of suffering and atrocity pictures to obscene material (A. Kleinman & J. Kleinman, 1996). They make the "allusion to pornography" because of " … the way imagery of brutality and violence appeals to our prurient interests and the exploitative nature of graphic imagery of suffering victims" (Pruce, 2013, p. 221; see also Linfield, 2010, pp. 40–42). It is this type of representation that many have condemned in harsh terms.

Various problems are associated with picturing those in dire need of humanitarian assistance. By showing extreme depictions of suffering, the viewer may turn away or feel a sense of hopelessness. There is widespread concern that constant exposure leads to feelings of helplessness, frustration, and disengagement. By inundating members of the public with representations of suffering continuously and over long periods of time, the NGOs seeking financial assistance for victims of famine and other natural disasters found, contrary to expectation, that some people reach the conclusion that giving aid does not appear to help in the long run. Research reveals that respondents are concerned about whether their contributions will make a difference, so signs of progress may prove to be quite important (Radley & Kennedy, 1997, p. 450).

The worry often expressed has been that the fleeting presentation of crises fails to provide the historical and political context. By lacking careful explanations of the structural dimensions of global social problems, viewers are not

8. Sam Gregory is the head of Witness, an organization based in New York, that trains activists to use videos and images generally to raise awareness and to hold governments accountable.

afforded insight into the need for long-term approaches to poverty reduction, political reform, and other necessary social changes.

Commentators ordinarily refer to a few images to advance their arguments about the consequences of deploying photographs. Those who assume that images matter refer to the picture of Kim Phuc taken by Nick Ut that won him a Pulitzer prize (Jones, 2014), the youngest individual to receive one. This is the famous photograph of a little girl wounded by napalm, running naked down the road that became associated with shifting public perceptions of the Vietnam War.[9] This iconic photograph is often mentioned in the context of assertions regarding the power of the image (Kaplan, 2011, p. 262; Miller, 2012).

Those who question the ethical aspects of using images often refer to Kevin Carter's Pulitzer prize-winning photograph of a little girl starving in the Sudan who appears threatened by a nearby vulture perched uncomfortably close to her. The viewer asks whether the photojournalist ought to have allowed the bird to come right next to her and is left wondering whether he eventually rescued her, after taking the picture (A. Kleinman & J. Kleinman, 1996).

Some uses of imagery in advertisements have led to widespread outrage and raised ethical concerns about exploitation, for example, a series of commercial ads by Benetton in the 1990s (Arthur, 1992). In the context of human rights campaigns, scholars admit that it is, for the most part, unknown whether these visual representations can accomplish their express goals of social change (Borer, 2012, p. 72). That shocking ads may attract public attention also leaves open the question of whether they should be employed as a matter of principle. The issue is whether the potential benefit of using powerful images to inspire humanitarian action can ever justify the violation of the rights of the subjects represented in them. The answer to the question may hinge on whether one takes a consequentialist or deontological approach to global ethics.

FOUNDATIONAL RESEARCH

Scholars in many fields have asked about the actual power of images. Although representations unquestionably affect people, it is difficult to measure their precise influence. One reason for the challenge is the simple fact that symbols, including pictorial representations, generally influence individuals at a subconscious level, which means that they are largely unaware of the ways in which they react to them, if they do at all. Yet, the

9. This famous photo is incorporated in a satirical work by the British street artist, Banksy, "Can't Beat the Feeling," which shows her holding hands with Ronald MacDonald and Mickey mouse in a scene strangely reminiscent of Dorothy on the yellow brick road in Oz.

fact that it is difficult to ascertain the effects of images does not mean, of course, however, that they lack power. Even if it cannot be demonstrated that they lead to action, they may contribute to shifts in public opinion or cognitive change. It is also possible that their effect is to elicit an emotional response like compassion without necessarily inducing action (Johnson, 2011).

One body of research focuses on the use of photographs in advertisements for charities, that is, aid agencies (Chang & Lee, 2009). An important study investigates whether displaying certain types of pictures, happy-faced and sad-faced victims will result in stronger feelings of sympathy and more donations (Small & Verrochi, 2009). They concluded that "emotional contagion" occurs, that individuals who observe sad-faced victims will "catch" the feeling of sadness, develop feelings of sympathy, and that this generally results in more prosocial behavior. In some circumstances, this tendency can sometimes be diminished by cognitive processing that occurs when individual are presented with information about the victims' plight. That is, where people thought with their hearts, happier images predisposed them to give, but this might be undercut by countervailing texts. Other research using pictures in experiments found that more negative images correlated with potentially higher levels of donations (Burt & Strongman, 2005). One limitation of studies of this kind is the "presumption of universality," namely a presumption that all individuals respond similarly to facial expressions.

An early study of visual rhetoric by Linda Scott in which she argues for a cross-cultural approach to pictorial research highlights the importance of examining different social characteristics of the audience because of the possibility that people, depending on their backgrounds, may react differently to them (Radley & Kennedy, 1997; Scott, 1994). This insight appears to have been missed by many subsequent scholars who seem to assume that an image will lead to a specific response, irrespective of the identities of members of the audience.

The literature on images in campaigns by aid agencies emphasizes a few key points. First, photographs that portray victims as suffering appear to result in increased donations. Second, the tendency to depict mostly Africans conveys the impression that this is the reality of all Africans. This "othering" of Africans generated a stereotypical representation of them as pitiable, supporting the maligned "politics of pity." (NGOs consistently wish to emphasize that they no longer use "flies in the eyes" images of African children.) Third, because of seeing similar representations of suffering over time for the same geographical area, the public may eventually question whether funding actually contributes to any lasting change. The images convey the impression that the situation remains hopeless and that there is no reason to continue

donating to aid agencies. That is, although showing some degree of suffering may be effective, beyond some threshold, it is counterproductive, from the aid agency's perspective.

Two often-cited scholars call this approach into question. Sontag (2003), in her influential book, *Regarding the Pain of Others*, argues that individuals turn away from excessive suffering without, however, presenting empirical proof to support this contention. Cohen (2001), in his classic study, *States of Denial* identifies a set of psychological mechanisms by means of which individuals absolve themselves from responsibility for assisting those in distress. These works famously raised the question as to whether visual culture actually encourages individuals who have exposed to images of suffering to take any sort of humanitarian action. The desire to motivate the "unresponsive bystander" with visual culture may be sincere, but as of yet, the approach appears to be largely ineffectual. Whether images do sometimes influence people and, if so, in what ways, remains to be determined in future research.

Some studies have examined the communications strategies employed by key NGOs. Their role in promoting humanitarian causes is highly dependent on media coverage, and this evolving relationship has been the subject of research (Cottle & Nolan, 2007). To attract sufficient coverage to achieve their objectives, they may need to deploy graphic images, but this conflicts with their humanitarian goals of promoting human dignity and egalitarianism. That NGOs experience tensions in the strategies of their policy and fundraising departments is well known (Orgad, 2013, pp. 300–302).

Much existing research highlights the distance between the viewer and those in need, and the need to overcome this divide, so the viewer can identify with the suffering of those depicted abroad, the so-called distant sufferer. Insofar as imagery can successfully create a connection between them, it is thought likely to lead the spectator to act. Sometimes, this connection is characterized as evoking feelings of empathy in the viewer (Cikara, Bruneau, & Saxe, 2011; Kaplan, 2011).[10] Ultimately, the question is whether the process of taking away parochialism as a barrier will actually mobilize humanitarian action.

A landmark study, *Media Representation and the Global Imagination*, by Shani Orgad provides a careful examination of cultural constructions in campaigns. Using qualitative discourse analysis, she considers a set of campaigns to find out whether they create a sense of intimacy between the viewer and the "distant sufferer." In this superb book, Orgad (2012, p. 187) argues persuasively that: " … the emphasis on symbolically annihilating distance, which seems to be driving the work of media representation, can be positive and enabling, but is also constraining and even repressive."

10. A vast literature on empathy and the unresponsive bystander is relevant here. Readers may wish to consult works by C.D. Batson, Nancy Miller, and others.

Another major scholarly investigation of public reactions to images of suffering is the monograph by Seu (2013), *Passivity Generation: Human Rights and Everyday Morality*. In this incisive and nuanced analysis, she advances the argument that we need a more nuanced interpretation of spectator reactions to representations. Her brilliant interpretation of psychosocial factors suggests that images of suffering can result in viewers "switching off" (Seu, 2013, p. 180).

A 3-year large-scale study, funded by the Leverhulme Trust, based at the LSE Polis Center, and undertaken by Orgad, Seu, and colleagues, found that the public is often cynical about NGO use of images in campaigns. When those interviewed were asked about their reactions to photographs depicting individuals in dire need of assistance, members of the public indicated that they sometimes distrusted ads that made them feel manipulated (Orgad & Vella, 2012).

The research on visual culture and human rights generally discusses whether images elicit empathy, sympathy, and related notions of sympathy and compassion.[11] By contrast, whether and to what extent other emotions such as anger, grief, or sadness might spur individuals to act has received relatively little attention (Hoijer & Olausson, 2011).

Other scholarship about imagery connected to human rights issues is not concerned with the social effects of imagery, but rather with the ways in which framing affects public perceptions of human rights issues. Some research centers on the misrepresentations of cultural communities (see, e.g., Hesford, 2011). Oftentimes, the individuals who are the subjects in photos are shown without any explanation of historical context (Malkki, 1996). The viewer cannot comprehend the political circumstances that gave rise to the crisis in which the individuals find themselves.

The growing concern about ethical issues in photographing victims resulted in the adoption of a Code of Conduct for several large NGOs (Nelson, 2007). One of the primary considerations was whether subjects give informed consent, particularly if they live in societies in which there is not practice of obtaining it. Furthermore, given that such a large number of campaigns rely on using images of children, because of the apparent preference of NGOs and photojournalists, there is evident concern about ensuring that parents give consent to the use of photos taken of their children.

11. Small and Verrochi (2009, p. 778) distinguish between sympathy and empathy: "Empathy involves experiencing the feelings experienced by another person. In contrast, sympathy is an emotional concern for the welfare of another person … This suggests that empathy resulting from contagion also often generates sympathy". For a study delineating different forms of compassion, see Hoijer (2004), pp. 522–523.

Limitations of Existing Scholarship

The studies conducted to date have most frequently used images of children. The social science experiments and pretesting of images by large NGOs involves focus groups of citizens in England. Furthermore, because the sample size is ordinarily quite small, and the composition is not diverse enough, it is not possible to generalize from the findings. Those who have conducted studies call for more "audience" research to examine how the public responds to differing types of imagery is needed. As Hoijer (2011, p. 513) has said: "There are especially few empirical studies of audiences' reactions to and interpretations of the media exposure of distant suffering." Some contend that the conservative approach of American media regarding bloodless imagery may not be shared and suggest that this may influence audience reactions (Figenschou, 2011, p. 242; Kennedy, 2008, p. 287; Perez-Duenas, Rivas, Oyediran, Acosta-Mesas, & Branas-Garza, 2012). Moreover, it will be important to ascertain differing responses based on social characteristics such as cultural background (Radley & Kennedy, 1997; Seu, 2013).

FUTURE RESEARCH: STUDYING VISUAL CULTURE IN HUMAN RIGHTS CAMPAIGNS

Research is necessary to figure out when visual culture succeeds in generating public support for positive change. Through carefully designed studies with cultural diverse subjects, social scientists can investigate how differing groups react to depictions of various human rights issues. Future studies will have to consider not only still images but also the rapid dissemination of videos via social media, YouTube, and even video games. It remains to be seen how videos that "go viral" contribute to the success and failure of specific human rights and humanitarian campaigns.

Researchers cannot assume that individuals in vastly different societies respond similarly to imagery. A much more nuanced approach to "audience" reaction will be necessary for groundbreaking research on media effects related to human rights.[12] It is worth asking if social characteristics such as age, ethnicity, gender, and religious affiliation appear to influence reactions to particular images.

More studies of how viewers in other countries respond to visual culture are crucial for serious social science. Just as cultural psychology has demonstrated the fallacy that individuals conceptualize their relationship to the

12. For a trenchant critique of existing approaches to the analysis of distant suffering, see Fuyuki Kurasawa (2009).

collective, similarly scholars who investigate the significance of imagery patterns for diverse cultural communities will need to consider the context of viewers.[13]

One of the main challenges that lie ahead is studying the positive dimensions of human rights campaigns that include images. Instead of always assuming that the imagery will reinforce nefarious stereotypes and cause harm, scholars might conduct impact assessments of photographs that contribute to positive social change. These may reveal the features of successful campaigns that resonate with different types of people and motivate them to take faster steps toward global civic engagement.

CONCLUSION

Images are powerful and often play a key role in human rights and humanitarian campaigns. Although they are deployed by organizations lacking resources to test their impact, they help shape public understanding of international affairs. Having a deeper understanding of the precise manner in which visual culture influences decision-makers and the public would benefit those concerned with bringing about positive social change. Social scientists can contribute to humanitarian efforts through research of this kind.

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13. Research has already shown that there is different sentiment about whether photos of the war dead should be shown. This may reflect a different journalistic ethic or a wider sensibility about public knowing the consequences of war conducted in their name.

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Alison Dundes Renteln is a Professor of Political Science, Anthropology, Law, and Public Policy at the University of Southern California where she teaches international law and human rights. A graduate of Harvard (History and Literature), she has a PhD in Jurisprudence and Social Policy from the University of California, Berkeley, and a JD from the USC Gould School of Law. Her publications include *The Cultural Defense* (Oxford, 2004), *Folk Law*

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