



Photography and evidence: reflections on the imagistic violence

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Abstract

The aim of this paper is to contribute to the understanding of imagistic violence by focusing—by means of a phenomenology open to dialogue with neighboring disciplines, from historiography to semiotics—on the particular case of photographs depicting atrocities, examples of photojournalism or images captured at crime scenes by forensic agents and presented as evidence during trials. To this end, I will implement a three-step analysis. First, I will seek to clarify the meanings associated with photography presented as evidence by adopting Husserl’s phenomenological framework and by following a historiographical and juridical approach while verifying the grounds for the opposition that appears to be emerging between a paradigm of resemblance and a model of indirect, conjectural knowledge. Second, I will focus on how photography’s capacity to sustain a maximum degree of the reproduction of the real is problematized when the pictorial object is a violent scene that suspends, contradicts, and dismantles the order of the viewer’s experience. Finally, I will conclude by offering a hypothesis on the act of “seeing-with-other” and its phenomenological implications for the case of imagistic violence as evidence. Specifically, I will argue that we are more likely to understand imagistic violence at the level of a collective seeing than through a solitary gaze.

Keywords Photography · Evidence · Violence · Phenomenology

“Photography furnishes evidence. Something we hear about, but doubt, seems proven when we’re shown a photograph of it.”¹

¹ Sontag (1978, p. 5).

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1 Introduction

The starting point for my analysis of imagistic violence is a particular situation that arose during the trial that followed the carnage that took place at the *Charlie Hebdo* editorial office in Paris. As many will recall, on January 7, 2015, two assassins armed with heavy weapons turned an editorial meeting into a bloodbath in less than two minutes. The attack left 12 people dead and 11 wounded. The trial did not commence until five years later, and one of the aspects that shocked the public was the decision taken by the court's president to show photographs taken by the forensic identity agents at the *Charlie Hebdo* headquarters several hours after the massacre during the trial. This is a rare occurrence in common law criminal trials, and the public exposure of these images was perceived as a new form of violence—"a form of legal desecration," as the French press put it—and denounced as a violation of the victims' right to dignity.² According to some *Charlie Hebdo* colleagues who had escaped the attacks unharmed, the photographs depicting the bodies of those killed were almost impossible to look at, unbearable. It is worth mentioning here that over seven bullets were discharged into editor Stéphane Charbonnier alone. Confronted by this intolerable visual experience of juridical proof, the audience in the courtroom clung to the words of the man who led the investigation and presented the images. This is not an isolated example; unfortunately, we might add to it several trials cited in scholarly studies in which violent imagery, such as forensic photography, was used as evidence by both the prosecution and the defense.

The inclusion of photography in the register of evidence, particularly when the "photographic referent"³ or "image subject"⁴ depicts shocking and unimaginable violence, raises several major theoretical challenges, the most important of which concerns photography's veracity, its potential to "bear witness" and its capacity to aestheticize violence, the categories of the real, representation, and absence being among the most widely discussed here. Indeed, imagistic violence, which assails us in various forms as we go about our everyday lives, has recently become central to several approaches that claim their perspectives from the sphere of cultural, visual, or film studies. The aim of this paper is to provide a contribution to the understanding of imagistic violence by focusing—by means of a phenomenology open to dialogue with neighboring disciplines, from historiography to semiotics—on the particular case of photographs depicting atrocities, issues of photojournalism or images captured at crime scenes by forensic agents and presented as evidence during trials. In depicting monstrosities that are almost visually intolerable to the viewer, such photographs prompt reflections on their uncertain epistemological status—that is, their potential to deliver an "complete likeness"⁵ of reality—and the literalness of imagistic violence.

² See, for example, Stéphane Durand-Souffland's series of articles in *Le Figaro*, dedicated to the *Charlie Hebdo* massacre, especially the one from September 07, 2020: <https://www.lefigaro.fr/actualite-france/les-images-insoutenables-de-la-tuerie-de-charlie-hebdo-20200907>. Accessed 5 June 2023.

³ Barthes (1982, p. 76).

⁴ Husserl (2005, p. 20 [19]).

⁵ Husserl (2005, p. 156 [138]).

To address these reflections, this paper implements a three-step analysis. First, I will aim to clarify the meanings associated with photography presented as evidence by adopting Husserl's phenomenological framework and by following a historiographical and juridical approach while verifying the grounds for the opposition that appears to be emerging between a paradigm of resemblance and a model of indirect, conjectural knowledge. Second, I will focus on how photography's capacity to sustain a maximum degree of the reproduction of the real is problematized when the pictorial object is a violent scene that suspends, contradicts, and dismantles the order of the viewer's experience. Finally, I will conclude by offering a hypothesis on the act of "seeing-with-other" and its phenomenological implications for the case of imagistic violence as evidence. Specifically, I will argue that we are more likely to understand imagistic violence at the level of a collective seeing than through a solitary gaze.

Prior to detailing the steps and directions that this analysis will take, I shall offer a preliminary and narrow definition of violence and imagistic violence that will be further nuanced and clarified throughout the study. Among those who have reflected on violence, most scholars agree that violence largely evades attempts at theorization and that integrative or comprehensive approaches remain at the project level. This is largely due to violence's "protean character,"⁶ and the complex and multi-faceted dimensions that it entails at the level of human experience: its excessive phenomenality is due to the "relational" and "parasitic" nature of violence, which typically manifests itself as an alteration, violation, or disruption of something—more precisely, of the fundamental structures of our being-in-the-world, of our comprehensive way of relating to the world, from embodiment and affectivity to intersubjectivity.⁷

Once situated—or rather, captured—in image, violence brings forth new meanings and questions. At first glance, imagistic violence appears to be a phenomenon derived from a lived experience of violence, which is why any first attempt to understand it should take into account the idea that "in any instance of imagistic violence, the reference to the meaning of a real event of violence is always phenomenologically co-given in the background."⁸ Thus, through a back-and-forth movement from the derived phenomenon to the lived experience, one might more easily grasp the modifications that occur through the imagistic mediation of violence. However, the premise of my research, which will be confirmed (or refuted) during the course of this analysis, diverges slightly from this position: without denying the essential role that the reference to the real experience of violence plays, I argue that we prefer to understand imagistic violence less as a derived phenomenon, but rather as an autonomous, parallel experience that mirrors the real one.⁹ Given that most of us first experience violence at the "medial" level, our first encounter with violence happens at the level

⁶ Dodd (2017, p. ix).

⁷ Several conclusions from phenomenological studies on violence are assembled here: Breyer (2017), Dodd (2009, 2017), Staudigl (2011), Mensch (2008), Ciocan (2020, 2021). See also *Studia Phaenomenologica* issue *On Conflict and Violence*, Ciocan and Marinescu (2019).

⁸ Ciocan (2021, p. 334).

⁹ In supporting this meaning autonomy of imagistic violence, however, I do not embrace more radical positions such as that of Mondzain (2015, pp. 35–36; my translation), who argues that "Every image is the image of another, even in the self-portrait. This gap is that of symbolization, a gap that widens an unbridgeable abyss with the incorporation of a substantial and fatal presence."

of the image. Furthermore, I believe that the experience of violence at the imagistic level does not entirely overlap with and is not merely a modification of the actual, lived experience: even for the victim of a photographically documented atrocity, the experience of seeing one's own suffering captured in images is substantially different from the experience of enduring suffering. In the case of imagistic violence, other dimensions are involved: first, we are dealing with a materiality, a visible, with a medium that captures a rupture, a violation, an affectation of meaning; second, the fact, as such, that there is an image of a violent event constitutes in itself a violence, a disturbance of relations of meaning for the viewer, for the one who takes the image and for the one who is depicted. The existence of a material medium (from silver-plated copper plate through celluloid to digital memory) that renders an instance of a violent experience thus carries the potential of an item of accusatory evidence, a trigger of a traumatic memory, a piece of testimony, or an instrument of denigration or humiliation. Third, by virtue of what it represents—through the image-subject, as Husserl would say—the experience of imagistic violence erupts into and destabilizes the viewer's world every time they look at the photograph. This destabilizing potential of imagistic violence is not, however, attributable exclusively to the reference to a real experience but also to a characteristic of the image that presupposes technical intervention, particularly photography—namely, its “aura of believability.”¹⁰ Understood as reproduction of a technical nature, such images have not only the capacity to repeat mechanically “what can never be repeated existentially”¹¹ but are also capable of bearing multiple views that are all retreating, fracturing meaning. Finally, this last feature paves the way for a discussion of the problem of (the constitution of) a collective gaze that has as its “object” an imagery of violence, an aspect that will be further explored in the conclusions.

2 Photography, evidence, and types of knowledge

Given that the starting point of my analysis was a court case, in our first considerations of the relationship between photography and evidence, I might legitimately mention as a brief historical contextualization that prior to the invention of photography and its use in courtrooms, judges used court sketches made on the spot by professional artists. As photographs would later do much better, these drawings had to capture the crime scene as unchanged as possible. The disturbance or disruption that violence imprints on the order of experience is so powerful and unique each time that it needs to be “frozen” in a snapshot to be understood.¹² Perhaps this also explains

¹⁰ Strauss (2003, p. 71): “Photography as a mechanical reproduction almost immediately altered the aura of the work of art, and over the next 150 years photography acquired its own aura—the aura of believability.”

¹¹ Barthes (1982, p. 31).

¹² A similar situation is encountered in the case of the imagery of military conflicts: engravings and paintings depicting battles, for information purposes and as a form of visual memory, have gradually been replaced by photographs taken on the spot. The Crimean War (1853–1856) is among the first bloody mass events captured in photographic images by Carol Szathmari and Jean-Charles Langlois (see Foliard 2020, pp. 91–97).

the juridical fascination with photography as evidence in a trial. On a general level, of course one can easily argue, as lawyers in France have done since the mid-19th century, that photographs taken on the spot, “from their reality, are more eloquent than words.”¹³ With the development of photographic technology, the verisimilitude that photography offers also reinforces this legal fascination, so much so that in light of it, there has also been a change in the level of evidence admitted during a trial. Although the photograph was considered an appendix at first, which, together with other representational elements, such as maps and diagrams, supported the position of a witness, it later came to be considered a new category of evidence, namely demonstrative evidence—its name explains everything. In other words, at the juridical level, the photograph is transformed from an appendix or support of testimony into a “silent witness.”¹⁴

To these two reasons that explain the juridical fascination for photography as evidence in general, I add another one that concerns trials in which extremely violent acts are judged. A violent scene that contradicts the natural order of experience would otherwise be difficult to reconstruct and to believe in its abominable character if it were not for this visual “replica” of what happened or the effects of what happened. Photography that depicts violence, whether the act or its effects, is a neutral form that pretends to be objective and reproduces something that the imagination refuses to do, or if it does, it does so incompletely in the register of derealizing the representation rather than completing it.

Thus, photography seems to be a phenomenon that provides support both for direct knowledge, which evokes the self-giving of an affair, and for indirect knowledge in which the representation remains within its boundaries. It all depends on the emphasis, as when one says that an image renders what happened versus a photograph as image of what happened. Indeed, since photography’s beginnings, this product can be praised either for its ability to “directly transcribe nature” and be recognized as “a privileged kind of evidence” or as a human representation, which would make it “a potentially misleading form of proof.”¹⁵

To further investigate these apparently contradictory meanings of photography as evidence, I will follow them along the expressions and emphases that they first acquired in the field of Husserlian phenomenology and then in that of historiography.

¹³ Mnookin (1998, pp. 8–9). If I dwell for a moment in the French context of the relationship between the descriptive power of words and the new technique of photography, I can’t help but refer to Émile Zola’s original position in his *Le Roman expérimental* (1880) (and I thank the first anonymous reviewer for this suggestion). An impassioned photographer, as was to be discovered much later, Zola nevertheless rejects an identification of “science,” of the art of the naturalist novel with that of photography; the writer is not merely a “photographer of phenomena,” as is the scientific observer, but makes room for “temperament, personal expression” that produces an experience which implies the idea of modification (Zola 1881, p. 6, 11).

¹⁴ Warlen (1995); Mokwena (2020). In today’s context, where digital images are the most widely used, one rather wonders whether they are actually photographs and if they can be considered as evidence in trials: see Witkowski (2002).

¹⁵ Mnookin (1998, p. 4).

2.1 Photography and resemblance

Even though the practice of photography was not so widespread at the beginning of the 20th century, Husserl paid attention to it in his lectures from 1904/1905 (Hua XXIII), and his distinctions between “the image subject,” “the physical image” and “the image object” (or “representing image”) have since become a kind of school-book for those interested in the subject. Despite the analytical limpidity of these distinctions, one must remember Husserl’s warning, in the opening of Paragraph 9, that once the discussion reaches the case of the physical image, “the situation is somewhat more complicated.”¹⁶

The difficulty appears, at a first level, in the example given by Husserl of the photograph representing a child. Indeed, for photography to do this, it opens up an experience crossed by strong tensions between resemblance and contrast.¹⁷ Referring, then, to the physical image, the photograph sketches an image that resembles the child, “but deviates from it markedly in appearing size, coloring, and so on.”¹⁸ The tension between contrast and resemblance becomes even more complex when we go a step further and consider the image object, more precisely the moment when one sees the depicted thing. Husserl uses here the plastic, suggestive term *vorschweben*, which implicitly refers to having something in mind, and which has been rendered by the verb “to hover.” Thus, a phantasy image—such as the Berlin palace Husserl has in mind—but equally well an image object—such as the child in the photograph—hover before the viewer, but without being “taken by us for even a moment as something real.”¹⁹

However, what makes it possible for the image object to hover before us is that in “the exhibited objects,” in every component of the exhibiting, we have a “reference to ‘something corresponding.’”²⁰ Husserl confirms that his thought belongs to a paradigm of resemblance. By insisting on correspondence and resemblance, Husserl aims, of course, to provide the exhibited objects with gradually different forms of being anchored to reality. But in doing so, he cannot avoid the problems that arise when the contrast turns out to be, in fact, a radical dissimilarity. So, we are not talking about differences that arise from the relation of the physical image to the depicted objects, such as, for example, differences in size or color. Most of the time, a photographed portrait, if we are to follow Husserl’s example, is smaller than the child, and the colors in the photograph differ from those we would have seen in the case of an actual perception. We are not referring either to the difference between the visual space that the photograph outlines and the much wider field of vision. Husserl warned us, however, that the resemblance that governs image consciousness in general and

¹⁶ Husserl (2005, p. 20 [18–19]).

¹⁷ Biceaga (2014, p. 84): “Husserl acknowledges that, according to the type of image under consideration, the image object will appear to agree with or resemble the image subject with respect to some traits and to a certain degree while also entering in conflict with it.”

¹⁸ Husserl (2005, p. 20 [19]).

¹⁹ Husserl (2005, p. 21 [19]).

²⁰ Husserl (2005, p. 565 [475]).

the photographic register in particular is not one and the same with a “complete likeness.”²¹

Having noted that for Husserl, photography is situated in the paradigm of resemblance, I shall now turn to an analysis of the relationship between evidence and photography as it is outlined in historiography and the legal field.

2.2 Photography and conjecture

As dictionaries confirm, the semantic register of evidence includes this meaning of material things that stand for the past. To this, I add the important clarification that evidence standing for the past is not to be confused with “a record for the past” precisely because the former requires an interpretation that opens up the back-and-forth dynamic between present and past, i.e., between the present meaning—that is, the evidence before my eyes—and the absent world of which the evidence was part of. From Marc Bloch, founder of the *Annales* School, to Carlo Ginzburg, known as the theorist of the evidential paradigm, modern historiography places at the center of its concerns the recourse to evidence, which, cross-examined, can form the basis of an elaborated representation of the past.

It seems relevant in this context that the English translators of Bloch’s famous book *Apologie pour l’histoire ou Métier d’historien* chose to translate the very important term “témoignage” precisely with “evidence.” And having admitted, along with Bloch, that history is indirect knowledge of people situated in time and knowledge that proceeds by researching traces, the category of historical evidence is now opened up to us in its overwhelming largeness: “The variety of historical evidence is nearly infinite. Everything that man says and writes, everything that he makes, everything he touches can and ought to teach us about him.”²²

Having in mind the emphasis on the indirect nature of knowledge put on by historical evidence, which is limited in its power only to the fact of standing for the past, I can now also look at the meanings that the concept of evidence borrows from a field somewhat neighboring historiography, namely the legal or juridical field. Carlo Ginzburg skillfully made this transition from one register to the other. When he identified the emergence of a new epistemological model in the human sciences, i.e., the evidential paradigm, Ginzburg referred to, among others, Sherlock Holmes’s investigative method of reconstructing the so-called reality of what happened starting from almost imperceptible, negligible traces. Combining elements taken from medical semiotics, art criticism, psychoanalysis and police investigations, Ginzburg’s evidential method [*metodo indiciario*] recovers a sense of evidence situated somewhat at the pole opposite to that attributed to Husserlian phenomenology. Instead of referring to “intimacy with the thing itself,” historiographical evidence belongs to knowledge that is “indirect, based on signs and scraps of evidence, conjectural.”²³ If we step more firmly into the legal field, the term “evidence” gains closer proximity to that of proof, as

²¹ Husserl (2005, pp. 138, 155–156 [125, 138]).

²² Bloch (1953, p. 66).

²³ Ginzburg (1980, p. 16). Ginzburg (1991). For a broad perspective on how fact-evidence is configured differently across disciplines such as biology, history, law, see Chandler et al. (1994).

“evidence” is also used in the sense of “a reason for believing that something is or is not true” or “anything that helps to prove that something is or is not true.”

Even in this case, evidence is by no means confused with the full truth: a jury can thus examine conflicting pieces of evidence and admit some while rejecting others.²⁴ When rejecting one piece of evidence in favor of another, the jury may also do so because the process of preparing and collecting that piece of evidence was vitiated either by technical issues (the device was not properly calibrated) or improper handling by the personnel in charge of identifying, collecting and archiving it (contamination or alteration of the evidence). All this is to say that the evidence considered in legal theory is a social phenomenon rather than a characteristic of knowledge. Indeed, juridical evidence requires the engaging of several practices and social actors, in the absence of which it may not have epistemological relevance.²⁵ Therefore, it depends on the activity of various agents to preserve, describe, analyze or integrate it into an argument. This idea is succinctly expressed by the French sociologist Renaud Dulong’s statement “there is no trace without witnesses:”

It has been said that the trace could not be thought of without its invention that, decontextualized, it no longer means anything without a commentary on it and a summary of the conclusions of its analysis. Consequently, there is no trace without one or more instrumental or several instrumental witnesses, the first of whom is its inventor; and conversely, the lack of explanation of the circumstances of the discovery and the lack of expert analysis of the trace deprives the object of all meaning.²⁶

3 Photography and violence: from shock photography to the numbness of the viewer

At the next level of my investigation, where I consider photographs of violent scenes that are used as evidence in trials or integrated into art projects, things become even more complicated in terms of the meanings of evidence. The two stakes that I assumed at the beginning of the analysis are even more acute and challenging here: first, to understand how a photograph sustains a capacity to support a greater degree of the reproduction of the real and second, to see how this capacity is called into question when a photograph depicting a violent scene decomposes the order of experience.

The painful quasi-impossibility of the subject composing a visual experience following exposure to violent photographs has been the subject of many analyses. For example, in his seminal book *Mythologies*, Roland Barthes devoted several pages to what he called “shock photography.” After visiting an art exhibition of shock pho-

²⁴ Whether the concept of photographic truth actually exists and advances knowledge, see the analysis of Porter & Kennedy (2012, pp. 183–192).

²⁵ However, I must underline, along with Mnookin (1998), that “the meaning and epistemological status of the photograph were intensely contested, both inside and outside the courtroom.”

²⁶ Dulong (2013, p. 37) (my translation).

tography, he distinguished between two kinds of horror or violence. There is the “overconstructed” one, which the artist wishes to produce. By joining images in an unusual manner and adopting particular angles of shooting, the artist seeks to confer an “intentional language” to horror, but the result is disappointing and contrary to the shock he aims to trigger. This is precisely because the viewer is deprived of the experience of the visual disarticulation specific to horror but is offered an already composed experience instead.²⁷

Of course, the problem of imagistic violence aesthetically converted does not stop with Barthes’ observation, which is limited to—and is particularly concerned with—the relationship between artistic intention and reception. A wide body of literature of phenomenological inspiration adopts as its starting point Husserl’s considerations in his famous letter to Hugo von Hofmannsthal, in which he draws a parallel between phenomenological reduction and aesthetic attitude.²⁸ Both are opposed to the natural attitude, as Husserl points out—that is, both demand “a strict suspension of all existential attitudes” and both manifest a lack of interest in “the being and non-being of what directly appears or appears in an image.”²⁹ More precisely, the aspect that brings the image consciousness and the aesthetic attitude closer together is, according to Husserl, the neutrality modification; an effectuation that, however, has different meanings in the two cases: in the first case, the neutrality modification may be assimilated to the “bracketing” of the natural world-belief, while in the second case, this modification seems to focus exclusively on the mode of appearance of the image-subject. Particular attention is required in the case of images that depict real violence and staged violence, such as photographs that aesthetically process images of suffering which often have their source in documentation. For example, the intention of photographers such as Martha Rosler in the series “House Beautiful: Bringing the War Home,” (1967–1972) is to transform the photographic moment of real human suffering, captured in the theatre of war in Vietnam, into a prolonged opportunity for contemplation by embedding it, through photomontage, within images that depict familiar interior scenes.³⁰ However, this photomontage can have a double effect on the viewer: it can be either a neutralization of violence by means of aesthetic beauty, which consists in a kind of “incapacitation,” an inhibition of violence from the perspective of the object, sustained in parallel by a modification of the viewer’s feelings.³¹ Alternatively, the effect may be that of an even stronger exposure to the poignancy of the violence, with an intensification of the viewer’s experience of vio-

²⁷ Barthes (1957, pp. 105–107).

²⁸ See Husserl (2009) and—for some studies on this issue—Huemer (2003), Popa (2011), de Warren (2020). Ferencz-Flatz (2009, p. 477) adopts a unique standpoint, warning that an interpretation of the question of image consciousness within the framework of aesthetic attitude can easily lead down the wrong path.

²⁹ Husserl (2005, p. 459 [386–387]). De Warren (2020, p. 274) goes even further and considers that “This neutrality, or indifference, has not only neutralized the existential positing of objects; it has also neutralized any existential positing of the self, or consciousness.”

³⁰ One might as well refer to Jeff Wall’s works, particularly “Dead Troops Talk” (1992), or An-My Le’s “Small Wars” series (1999–2002), in which the boundaries between photojournalism and fiction are intertwined.

³¹ Breazu (2023, p. 50).

lence.³² Moreover, this visual experience can also create an uncomfortable, destabilizing, or paradoxical state precisely by suspending the difference between literal and staged violence. In this way, the viewer is prevented from adopting a total aesthetic attitude; they are not simply permitted to “forget” the depicted subject and to focus exclusively on the mode of appearance—namely, on “what presents itself as it presents itself,”³³ precisely because the image consciousness implies the positing of the depicted object, as in documentaries, photojournalism, etc.

Returning to Barthes: after having sanctioned the first type of shock photography—namely, the “overconstructed” one—precisely for its intention to intentionally articulate horror, he recognizes a second kind of horror, one that is specific to the pictures taken by news agencies, which capture the natural violence of events. Such horror is a “literal” one, as he called it, where the captured fact delivers to the viewer only the evidence of its abstruse nature.³⁴ In other words, such imagistic violence “blocks understanding.”³⁵ Looking at pictures depicting gruesome scenes of executions, the viewer understands nothing of the nature of horror precisely because here, the violence is literal, does not compose a meaning and does not convey it. Instead, the viewer is caught up in the scandal of horror and the violent questions that the very existence of horror provokes.

Imagistic violence and its different ways of blocking understanding are also the subjects of Susan Sontag’s book *Regarding the Pain of Others*. Some of the important considerations made in her earlier, well known book, *On Photography*, find a stronger echo here—in particular, those that emphasize the power of photography to alienate us from direct experience by offering us an illusion of knowledge instead. After all, photography can be rightfully considered as “both a pseudo-presence and a token of absence,” and as such, it cannot claim to convey or be a bearer of evidence.³⁶ The photography doesn’t “speak for itself,” as Sontag mentioned in her last essay: “it cannot be simply a transparency of something that happened.”³⁷

This is all the more true in the case of photographs depicting violent scenes. Let us take them one by one. First, about photography in general, it has long been thought that it can provide a relevant and objective cutout of an event, but for Sontag, that means looking at only one facet of the artefact. Of course, verisimilitude or fidelity to the real is a characteristic of photographic reproduction. But we must not forget that even if a machine is performing the recording of reality, the photographic product still has a point of view given by the presence of the person who triggers the camera.³⁸ There is a subject who chooses the moment to be framed while excluding others. Thus, “this sleight of hand allows photographs to be both objective records

³² Ciocan (2021, p. 341).

³³ Husserl (2005, p. 647 [537–538]).

³⁴ Barthes (1957, pp. 105–107).

³⁵ Mesnard (2007, p. 58).

³⁶ Sontag (1977, p. 16).

³⁷ Sontag (2003, p. 38).

³⁸ For Flusser (2000), the very fact that a machine, or in his terms an “apparatus,” takes the snapshot means that photography provides an image whose meaning is essentially shaped by the device, by the parameters at which it operates.

and personal testimony, both a faithful copy or transcription of an actual moment of reality and an interpretation of that reality.”³⁹ Of course, the reasons why photography “cannot be simply a transparency of something that happened” are not only due to its peculiar nature, which unites these two contradictory features. Another reason is the inability of the photograph to secure a unique referent by itself in the absence of a caption, explanation or contextual setting, thus becoming easy prey to multiple explanations and ideologically incompatible uses. It is not infrequent in wars that the same image of suffering (depicting children killed by bombing, for example) is used by both sides of the conflict to stir up hatred against the other. Once we re-enter the realm of violent imagery, we discover new reasons to call into question the transparency of what is portrayed by photography. For example, one may naively believe that “the camera is the eye of history.” This was Mathew Brady’s dictum when he took the first photographs of the American Civil War depicting the victims, but that belief did not stop him from arranging the scenes and altering the positions of the dead bodies before he took the photos to achieve the most dramatic effect. Indeed, many war photographs that have become iconic, such as the flag-raising at Iwo Jima, have been shown to be reconstructions, owing much to set-ups. Besides this danger of distorting the evidence that photography can deliver, Sontag also dwelled on another. The first danger is caused by the photographer-witness’s intervention in the scene, but this one has to do with the numbness affecting the looks between us as viewers and the victims framed in a photograph.

These dead are supremely uninterested in the living: in those who took their lives; in witnesses—and in us. Why should they seek our gaze? What would they have to say to us? ‘We’—this ‘we’ is everyone who has never experienced anything like what they went through—don’t understand. We don’t get it. We truly can’t imagine what it was like. We can’t imagine how dreadful, how terrifying war is; and how normal it becomes. Can’t understand, can’t imagine.⁴⁰

3.1 The literalness of imagistic violence

How do we deal with this blockage of understanding that imagistic violence produces for us? As we have seen, at a general level, photography reveals an uncertain epistemological status. It oscillates between evidence and interpretation, direct knowledge and indirect knowledge, and manifestation and absence. On the one hand, photography is a representation that, even if it fails to deliver a “complete likeness”⁴¹ of reality, nevertheless functions in terms of correspondence and resemblance. On the other hand, photography can only be understood as a point of view on what happened, which, precisely because it excludes other perspectives and moments, has the potential to distort the evidence. The same tension arises, perhaps even more sharply,

³⁹ Sontag (2003, p. 23).

⁴⁰ Sontag (2003, p. 97). On the problematic relationship between aesthetic pleasure and illustration of pain, starting from Sontag’s book, see Reinhardt et al. (2007).

⁴¹ Husserl (2005, p. 156 [138]).

when we dwell on imagistic violence. Here, other challenges emerge. Summed up, these relate to the literalness of violence and to the fact that violence does not pass meaningfully beyond what it shows.

To explain this, let us take a step back and recall what Husserl said about the image-object: “I have no inclination whatsoever to take the image object as real; I merely take it as that which is hovering before me.”⁴² Instead, in the case of imagistic violence, an image-object, such as the one depicting Stephane Charbonnier’s body mutilated by more than seven Kalashnikov bullets, haunts the viewer as something whose reality, if accepted as possible, radically distorts the order of experience. Therefore, we are dealing with two different facets of the viewer-image relationship: an image hovering before the viewer and an image that haunts the viewer. How many of us have not been haunted by an image depicting a gruesome scene, which pops into our minds when we least expect it? It is truly a destabilizing experience. Like the appearance of a ghost, which is not commanded by any logic, the specter of a violent event erupts randomly and repeatedly in our minds and breaks with whatever other subjective experience we are having at the time. It does not compose with the rest of the experiences against whose background it appears but neither does it deliver meaning as such. Even if the image object appears repeatedly before our eyes, it conveys no meaning *despite* its iconic evidence. Of course, in a photograph of this kind, elements can be recognized, such as a human leg or hand, as well as even non-visible details that make up the interior of the human body, such as the brain, bones and blood. But although it makes recognition possible, such an image blocks the perceptive imagination, as Husserl would say, of the aboutness of the picture.

Should we be satisfied with this conclusion on the poverty of meaning and the inscrutability of imagistic violence? If we leave the epistemological register in which we have so far approached this question for a while and step into the juridical and fiducial one, the way we understand the dynamics of violent imagery can change significantly. I have already mentioned that photography, taken as a record of a past event rather than as an interpretation of it, is included in trials under the category of demonstrative evidence. Even if the violence captured in an image does not signify for the viewer in the sense that it does not build with their previous experience nor its potential imaginary recompositions, the photograph becomes a literal bearer of the referent, which can be consulted at any time. Moreover, the photograph becomes a complement throughout the act of testimony: it can help the witness remember what they saw at the scene. Taken as a “silent witness,” the photograph also supports the verbal descriptions the witness provides with information about the colors, shapes and sizes of the items found at the crime scene.⁴³

⁴² Husserl (2005, p. 571 [482]).

⁴³ Warlen (1995).

4 Conclusions: seeing-with-other the imagistic interhuman bestiality

Instead of conclusions, I formulate a hypothesis on the question of the judicial register of photography. To do this, I use a concept that I borrow from Emmanuel Alloa but give a new meaning. In a recent article, Alloa makes an interesting distinction between three types of seeing: “seeing-in, seeing-as, and seeing-with.” The last concept echoes an idea of Merleau-Ponty who argued that we “do not look at [a painting] as one looks at a thing [...]. Rather than seeing it, we see according to, or with it.”⁴⁴ “In other words,” explains Alloa, “we do not only see *in* images, rather seldom *as* images, never *despite* them but always *with* them and *through* them.”⁴⁵ The focus lies here on the material medium of the photograph and how it can guide the understanding of the viewer.

However, I prefer to use this notion by placing the emphasis differently so that the term “seeing-with” opens up the dimension of a collective gaze, having as a correlate the subjective structure of seeing-with-other. The phenomenon of the legal process in which photographs depicting atrocities are used as evidence appears to me to be paradigmatic for understanding the dimension opened by this category of seeing-with-other. In this way, I return, through a circularity that I hope is explanatory, to the starting point of my analysis. In this context, seeing-with can also mean that the photographic material is, in fact, a construction prepared by a team, which implies respecting a strict protocol. This is the case with forensic investigators who collect details of crime scenes using photography. It is not only the materiality of photography that provides some guidance on understanding the difficult imagistic violence but also all the procedures prior to taking the photographs and the words describing them.⁴⁶ Therefore, to see-with may also mean to see through the eyes of the investigator who seeks the evidence. To see-with also means that the meaning of an image or its *Bildsujet* is not composed at the level of a single experience but involves the joint effort of several viewers to understand it, which is what happens in the courtroom when the evidence photographs taken at the crime scene are shown. It is not just a single witness who contemplates the unspeakable cruelty of a crime captured in a photograph but also the defendant, judge, jury and witnesses with different subjective stances towards the photographic evidence. This sequence is therefore paradigmatic for understanding aspects of both the gaze, which undergoes collective expressions here, and the nature of (forensic) photography whose meaning can only be deciphered by a collective subject.⁴⁷

Indeed, by relating the problem of the collective gaze to that of imagistic violence within this context, a new phenomenal field opens up, crisscrossed by apparently contrary presuppositions, in which an aporetic tension prevails for the time being over aspects that can be phenomenologically mapped. The apparently contrary pre-

⁴⁴ Alloa (2021, p. 494).

⁴⁵ Alloa (2021, p. 494).

⁴⁶ This idea is stressed by Dulong (2013).

⁴⁷ Schutz (1960) and Embree (2011). For a keen analysis of the question of collective subjects in Embree, see Beveledere (2017). Also relevant to this topic is the approach to the intentional structures of We-experiences proposed by Salice (2022).

suppositions with regard to the two problematics combined here may be articulated as follows: on the one hand, the gaze of others, in relation to the photographic evidence (within a trial), is a datum that is as primitive as my gaze; on the other hand, violence in general—including imagistic violence—consists precisely in the undermining of the foundations of community as an inhibition of the equally primitive datum of openness and of the subject’s orientation toward the other.

In light of the first presupposition, photography, as a visible material, is not generally given with meaning only to those who look at it when they look at it, in the manner of a performative realization. Rather, it also contains first, in its structure, the invisible gaze of the one who chose or set the angle of view and triggered the camera, as Sontag, Flusser, and others have pointed out. Thus, there can be no solipsistic gaze on evidential photographs (within the context of a trial). Second, in addition to this constitutive invisible gaze, which is auctorial in nature, we must also bear in mind that the invisibility of a photograph’s meaning is also constructed by the “otherness of the gazes” that address it.⁴⁸ Indeed, simply by virtue of its ability to repeat a slice of the visible, the meaning of evidential photography invariably presupposes the exercise of other gazes. Even when I perceive it in a certain way, the photograph, through the potential for repetition that it contains, implies the otherness of gazes that see the same visible in various other ways.

Once imagistic violence becomes the “object” of the collective gaze, the terrain in which we move seems governed by contrary presuppositions. This is obvious if we define violence, along with Mondzain, as a detriment, an affectation, an excessive force that is exerted on the very principles that found the community—namely, “the life and liberty of everyone.”⁴⁹ Continuing along the same lines, imagistic violence excludes the “otherness of the gaze” in constituting the meaning of the violent image, through the degree of visual impossibility that it entails. Indeed, visual horror, captured in images, either does not convey meaning but merely allows the experience of fracture, the annihilation as such of any intention of attribution of meaning, or it has an incommunicable meaning whose bearer is a figure who is usually placed outside of the community: the victim or the executioner.

Violence thus exerts a “destructive influence on the various ways we inhabit our world” and, by implication, imagistic violence may be understood as “destructive of sense.”⁵⁰ However, it is worth pointing out at the same time that one of the subjective structures that is heavily involved in the lived experience of violence but also at the level of imagistic violence is intersubjectivity: “the intersubjective dimension of the phenomenon of violence develops various basic figures of conflict and opposition, such as adversity and antagonism, animosity and dissent, fight and clash, struggle and fight. Here, being-with-one-another is fundamentally lived as enmity and rivalry, and the encounter of the other is dramatically placed under the sign of negativity and negation.”⁵¹ Extrapolating from these reflections on the phenomenon of imagistic violence, we may observe that the subjective structure of seeing-with-other, which is

⁴⁸ Mondzain (2005, p. 153).

⁴⁹ Mondzain (2005, p. 24).

⁵⁰ Staudigl (2011, p. 202).

⁵¹ Ciocan (2021, p. 335).

co-originated with that of being-with-one-another, undergoes several modifications from the register of confrontation and discord.

In these multiple cases, we are indeed dealing with “inimical” and neutral gazes, for which the image-subject of forensic photographs is a “matter” for dispute, contestation, settlement, etc. Thus, violent imagery, despite its destructive, destabilizing effect on the fundamental structures of being-with-one-another, functions—at least within the trials—as a vehicle for material visibility, which, precisely by means of its general aura of credibility, establishes relations between the persons involved in the process and triggers a series of intersubjective relations in the register of violence of a legal nature: from sanction to rehabilitation.

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