Street Photography Ethics

John Hadley

Abstract
In this paper I examine the ethics of street photography. I firstly discuss the close-up ‘in-your-face’ style street photography made famous by American photographer, Bruce Gilden. In close-up street photography, the proximity of the camera to the subject and the element of surprise work in tandem to produce a striking and evocative picture. Close-up street photography is shown to be ethically contentious on wellbeing-related and autonomy-related grounds. I next examine the more orthodox ‘respectable distance’ kind of street photography. In orthodox street photography, the photographer positions the camera some distance away from a nonconsenting subject that may or may not be aware a picture is to be taken. The main ethical problem with this form of street photography relates to the subject’s vanity and sense of self. When street photographers produce and publish images without the consent of subjects, they express their own creative freedom at the expense of the subject’s right to editorial control. I discuss the scope and potentially demanding practical implications of a right to editorial control. To conclude, I offer a workable solution to the ethical dilemma facing street photographers and discuss the implications of smart phones and photo-sharing social media platforms.

Keywords Ethics · photography · photography ethics · privacy · freedom of expression · rights · street photography · right to editorial control · Bruce Gilden · Vivian Maier · Henri Cartier-Bresson

While the ethics of street photography is a popular topic of debate amongst photographers in the blogosphere, there has been little serious academic discussion of the issue. One notable exception is a paper in the 1980s by journalism scholar, A.D. Coleman (1987). Coleman cautions photojournalists against hiding behind the existing US legal convention that a

---

1 Alkharafi (2020) applies a novel avowedly relational approach in a recent arts education PhD thesis. For Alkharafi, applicable relations are not simply any emotional ties that may develop between photographer and subject but also the interplay of unique forms of agency she attributes to nonhuman entities such as light and cameras.

1 School of Humanities and Communication Arts, Bankstown Campus, Western Sydney University, Locked Bag 1797, Penrith NSW 2751, Australia
person loses their right to privacy when they venture out in public. He claims that too often photojournalists make self-serving appeals to the public interest to justify publishing images without the consent of subjects. While Coleman’s case studies illustrate some of the costs to nonconsenting subjects of unwanted media attention, he neither applies ethical concepts in a systematic way nor frames street photography as a creative practice as opposed to a journalistic practice. Street photographers of the kind I am concerned with below are in the business of making art in the name of expressing their creativity. A different clash of values ensues when the freedom of expression of a street photographer qua artist is pit against the rights or interests of photographic subjects. I begin with close-up photography and then examine the more orthodox respectable distance form of the practice. I then discuss the right to editorial control and suggest a way to navigate between the horns of the dilemma facing street photographers.

1 Close-Up Photography

Close-up street photography involves the production of images in which the camera is positioned very close to the face or body of the subject. The aesthetic aim of positioning the camera in this way is to capture the subject with a strikingly candid expression such as shock or alarm. In close-up photography, the subject is ordinarily caught unaware, or may realise that an image is about to be taken only moments before it is recorded. In such cases, the photographer intrudes upon the physical space of the nonconsenting subject in the same way that a person in a social exchange may stand inappropriately close to another person. Given that close-up photography involves taking subjects by surprise and potentially causing them distress or irritation, the risk of violent confrontations or awkward exchanges between photographer and subject ensures that close-up photography is the less common form of street photography.

The signature style of the famously combative New York street photographer, Bruce Gilden, is a close-up image of an unsuspecting subject taken with a hand-held flash gun. Consider, for illustrative purposes, Gilden’s Untitled, New York, 1993. The picture is of a middle-aged businessman wearing what appears to be a vintage overcoat and hat. His mouth is agape and he is looking to the right at something that has caught his attention. In Untitled, New York, 1990, Gilden captures an elderly lady with a look of astonishment on her face. She appears to be wheelchair bound and is being pushed by a second, seemingly younger,

---

2 I use the term art advisedly. Scruton (1981) revives a long-standing debate over whether photography qualifies as a bona fide artistic practice. See Costello and Phillips (2009). It is not crucial for my purposes whether street photographers are bona fide artists or whether, instead, they are merely creatives of some kind. What matters is whether they have artistic or quasi-artistic intentions that serve to distinguish them from, firstly, photo-journalists acting in the public interest and, secondly, the ordinary person unreflectively taking pictures with a smartphone.

3 Walter Benjamin saw the advent of photography as fundamentally altering the normative significance of artistic intention. He pointed out that, thanks to the advent of the camera, the capacity to represent material reality was no longer the exclusive purview of an elite coterie of purportedly divinely inspired geniuses but instead in the hands of everyone. For a survey of Benjamin’s views on photography see Puppe (1979).

4 See WNYC Street Shots: Bruce Gilden https://www.youtube.com/watch?v=kkIWW6vwrM accessed 28/05/2020; Gilden himself has loudly proclaimed “I have no ethics” and “I don’t like people who tell me what I should do and how (Koetzle 2014).”
woman who is grimacing. In both images, the subjects look startled or, at least, apprehensive, if not outright fearful.

While photographing unsuspecting subjects up-close may allow a street photographer to promote the sought-after artistic values, the element of surprise and the proximity of the photographer to the subject render the practice ethically contentious. As far as a person’s experiential welfare is concerned, instances of surprise may not be phenomenologically neutral but instead can have a valency. In line with the theory of wellbeing known as hedonism (Gregory 2016), anything that causes a person to feel a negatively-valanced emotion has a negative impact, however brief, upon the person’s wellbeing. Assuming that bad feelings are reliable commonsense pointers to any red flags a person’s conduct may raise, then it is safe to say close-up street photography is contentious because of its potential to negatively impact upon a subject’s wellbeing. The extent to which the nonconsenting subject feels a negative emotion such as fear, anger, irritation, or distress will be the degree to which a particular instance of picture-taking is bad for their wellbeing. Subject’s that are caused to feel very bad will experience a significant negative impact; subjects that experience only low-level irritation will experience only a minor negative impact. In cases when a subject does not feel bad at all, then, while the picture-taking may not actually have had an impact upon the subject’s wellbeing in those instances, the conduct of the photographer is nonetheless open to criticism because of it’s potential to negatively-impact upon the wellbeing of the subjects. In such cases, the photographer displays a self-interested willingness to risk causing a negative impact upon the subject’s wellbeing to get the desired image.

It is true that, in comparison to other unsettling events that a person may endure when out in public, having a camera thrust in your face, even in cases when the flash-gun fires, is a low-level form of harm; more akin to, say, a stranger bumping into you without apologizing than someone shouting directly at you. Nevertheless, when considering the ethically concerning aspects of street photography, the potential to cause a subject to have negative experiences is an obvious consideration and when bad feelings do arise the actions of the photographer are clearly causally responsible for them. In fact, when the element of surprise and proximity work in tandem to produce the sought-after image, the photographer purchases aesthetic value at the expense of the subject’s wellbeing.

The conduct of close-up photographers is particularly contentious when the subjects they represent are women, children, and people with disabilities. Such subjects are especially vulnerable to the physical power and caprice of male photographers. Against the background of social pressure to conform to ideals of beauty, female subjects often face predatory behaviour from street photographers that practice their craft like a hunter intent on capturing prey. Physical or cognitive inequalities can make it difficult for children and people with disabilities to object to being the subject of photographic attention. Children

---

5 As one commentator (Wiley 2019) recently put it: “Street photography is not census-taking. To be good, it must be built on moments – the eruption of the theatrical, the fortuitous, or the inexplicable, into the humdrum everyday.”

6 The hunter-prey metaphor is widely used to describe the relationship between street photographer and subject. Henri Cartier-Bresson once famously said, “The creative act lasts but a brief moment, a lightning instant of give-and-take, just long enough for you to level the camera and to trap the fleeting prey in your little box. Cited in Zeronda (2010, 1132). For a famous illustrative example of photographic predation, consider Daido Moriyama’s Yokosuka 1970. The image is of a barefooted young girl in a refuse-strewn alley, seemingly running away from the stalking photographer. Moriyama’s image draws attention to a set of conditions that may constitute the most problematic of all contexts for a street photographer – shooting vulnerable and distressed subjects in out of the way places.
and people with disabilities may lack the conceptual knowledge and life experience to comprehend the situation and could be physically unable to take evasive action in cases when the photographer is persistent.

To say all this, however, is not to imply that a street photographer may never be justified in causing a negative impact upon a subject’s wellbeing. There may be cases when a close-up photographer produces an image that causes a subject to have bad feelings but, subsequently, upon publication and viewing by many other persons, causes a net aggregate balance of positive wellbeing to be produced in the world. Presumably, by the lights of classical utilitarian theory, the production of the image in such a case would be justified. In fact, an implication of classical utilitarianism would seem to be that close-up street photographers must disseminate their images to secure the requisite pleasure to override the bad feelings and thereby mitigate the initial problematic intrusion into the subject’s space. Of course, the dissemination of an image may well compromise the wellbeing of the subject even further if publication of it causes them to feel additional distress. In line with classical utilitarianism, however, this additional distress will be a means to an end. Other forms of utilitarianism may view the justifiability of close-up street photography differently. An indirect utilitarian may consider thrusting a camera in an unsuspecting subject’s face as a violation of a utility promoting rule to respect the personal space of other persons. The variability of ethical analyses, depending upon the normative ethical framework, reflects the fertility of close-up street photography as a topic of philosophical interest. My aim here is not to apply all the competing normative theories to the phenomenon of close-up street photography, but simply to point out that street photographers can negatively impact upon the wellbeing of subjects and doing so is an ethically contentious aspect of the practice.

Some might argue that the negative experience of having one’s picture taken in public is on an ethical par to any bad feelings that may arise in a commonplace public interaction, such as when a fellow-passenger beats you to a seat on a public bus. The idea is that, just as the actions of the sitter causes a negative experience to arise in the stander, so the actions of the photographer causes a negative experience to arise in the subject. The objection continues: just as the sitter is at liberty to sit, the photographer is at liberty to take a picture. But it is not clear that the cases are relevantly similar. Intuitively, seat taking is uncontroversial and no one can object to a fellow passenger taking a seat before them, so long as the sitter did so within the norms governing the practice of bus riding. In contrast, taking a picture of someone is controversial because the norms governing street photography are comparatively opaque.

In addition to causing a subject to feel negative emotions, close-up photography can also be ethically problematic for considerations independent of any negative emotions the subject may or may not experience. Taking a person by surprise by entering the immediate space of their body is akin to appearing in a living room without an invitation. The problematic nature of proximity in such cases relates, not only to any aversive phenomenology that may arise in the subject, but also to their autonomous agency. At such times, the photographer disregards the subject’s possession of their space, taking it upon themselves to make judgments about the subject’s willingness to share it with others. In this respect, the ethical analysis of close-up street photography and respectable distance street photography overlaps. I will reserve further discussion of the agency-related implications of street photography until the examination of respectable distance street photography in the next section.
A sceptic may respond to the above analysis and argue that a subject’s wellbeing is not important because, like any artist, street photographers have a license to push the boundaries of acceptable behaviour. But artistic expression in street photography occupies an analogous place to truth-telling in journalism. Both journalism and artistic expression involve the promotion of foundational liberal values such as individual liberty and freedom of expression. That someone intends to promote a benchmark value, however, does not give them a pass to do whatever they like. Presumably, were a street photographer to make an evocative picture by stepping on a subject’s foot, she would be going too far. In a sense, ethically, the close-up photographer is a victim of her own success at achieving her aesthetic aims. Her images are so aesthetically striking because of her timing and proximity to unsuspecting subjects, and it is these two features that makes her practice ethically contentious.

A further objection is that the scope of the analysis of close-up photography is too broad because it calls into question the ethics of producing any artwork in which a subject happens to experience negative feelings in the process. In line with the objection, the aversive feelings of a shivering portrait sitter, for example, would call into question the ethics of painting or sculpting portraits. But a shivering portrait sitter consents to being the subject of an artwork whereas the unsuspecting subject of close-up street photography ordinarily does not. Were a portraitist to position a subject in a freezer without first asking for their consent, then this would be grounds for calling into question the ethics of the work’s production. Clearly, the feelings of subjects are a legitimate topic of concern when ethical assessments of an artwork’s production are to be made.

A final objection is that the ethically contentious nature of close-up photography is best explained by a violation of the autonomous agency of the subject and not any potential negative impact upon the subject’s wellbeing. But, a focus on the subject’s wellbeing is needed in order to show that close-up street photography can be troubling in two respects, whereas respectable distance photography, as the analysis below will suggest, is likely troubling in only one respect.7 If both forms of street photography are viewed exclusively through the ethical lens of autonomous agency alone, then a problematic feature of close-up photography of unsuspecting subjects, namely, any negative emotions that may arise in the subject, would be obscured behind a wholly agency-centred analysis.

2 Respectable Distance Photography

The second mode of street photography to examine is standard or respectable distance street photography. Arguably, most street photographers, professionals and amateurs alike, shoot unsuspecting subjects from some distance away without first obtaining their explicit prior consent. While such image-making may initially seem ethically benign because an unaware subject cannot feel bad at the time an image is produced, standard street photography is contentious because of its potential impact upon important rights or interests of subjects. One influential recent suggestion is that taking pictures of people without their consent is ethi-

---

7 Any upsettedness on the part of a subject in a case of respectable distance photography was not intrinsic to the production of the aesthetic qualities of the image. In cases when the camera is positioned some distance away, any upsettedness at the time of production was not caused by surprise or proximity; instead, bad feelings may arise when a subject contemplates publication or because the subject desires not to be photographed.
cally problematic because it violates the right of photographic subjects to control their own representation (Danto 2001; Bell 2019). In line with this view, to take a picture of someone without their consent is to fail to respect their autonomous agency by usurping their editorial authority over their own representation. Like a slanderous narrative, a representation of someone has implications for their interests and life chances because it may influence how others perceive them. More importantly, for proponents of the right to editorial control, a photographic representation can purportedly influence a person’s self-image and a negative, or unapproved of, representation can jeopardise a person’s sense of self. As Bell (2019) puts it,

Photographs can threaten subjects’ agency by undermining their sense of themselves as self-presenting agents. To be a self-presenting agent is to be someone who is largely in control of her self-presentations and appearance; to discover that one’s fly was down after delivering a lecture is embarrassing because it is evidence that one lacks this control. Caring about one’s status as a self-presenter is not the same as being vain. The vain person thinks that her appearance merits high esteem from others; threats to one’s vanity, such as a blemish or bad hair day, might be thought to undermine the vain person’s grounds for esteem. But threats to one’s status as a self-presenter are different in kind. Being in control of one’s self-presentations is not thought to merit esteem but a basic kind of recognition respect. Significant threats to one’s status as a self-presenter don’t just undermine grounds for esteem; they are disqualifying (296–297).

Bell is suggesting that certain photographic representations have the potential to cause a person to experience a kind of alienation from the self – a profound feeling of incongruence that in extreme cases can lead to a loss of self-respect. She argues that a person’s interest in being a self-presenter is so important that picture-taking is properly a joint activity between the photographer and the subject. Bell goes so far as to claim that a subject should be regarded as a co-creator of an image (2019, 298). For Bell, following Danto (2001), consent is not simply giving a photographer permission to take or publish an image but, in addition, endorsing the image, as Danto put it, “as one’s own” (291), after careful consideration. If Bell’s normative view that subjects ought to be seen as co-creators of the images in which they feature is sound, then taking a photograph of someone without their consent is akin to a painter passing off an artwork as wholly their own when, in fact, the brushstrokes of another person are present on the canvas. In line with Bell’s view, the act would be “morally objectionable” (2019, 293) irrespective of whether the artwork ever goes on display in a gallery because it would be a case of the artist failing to afford a person the respect they are due as a “photographic subject” (294). Bell (2019) argues that such wrongdoing is particularly serious in the case of street photography because of an inherent power imbalance between photographer and subject (297). Her view is that the photographer, in effect, holds the subject’s sense of self in their hands and the mental health of the subject remains in jeopardy from the capture of an image to any subsequent publication of it.

---

8 This kind of autonomous agency-centred argument can also be expressed in terms of self-ownership (See Zeronda 2010, 1147). In line with a self-ownership narrative, a representation of someone is functionally a part of their person and taking a picture without their consent is like stealing a body part. Zeronda claims that a strong concept of self-ownership informs legal rulings in favour of litigant subjects in street photography legal cases in France.

9 Bell and Danto may differ in respect of the grounds for endorsement. For the former, the image may need to leave the subjects’s sense of self intact; for the latter, the image need only pose no threat to the subject’s vanity – “if not attractive, at least not unattractive” (Danto 2001, 258).
The right to editorial control and the privacy of subjects.

The normative basis of a right to editorial control is of a piece with the kind of autonomous agency-related considerations that undergird prevailing normative claims about the importance of privacy (Bok 1982; Marmor 2015). In fact, litigant subjects in street photography legal cases often express their arguments in terms of a right to, or interest in, privacy (Coleman 1987; Zeronda 2010; Bell 2019). The rationale of a right to privacy is that persons need protection from interference by others to be able to flourish and freely exercise their autonomy (Griffin 2007; Matthews 2008). In line with this kind of view, a representation of oneself would be among the class of information that the right to privacy protects. By consenting to be photographed and allowing the image to be published, a subject, in effect, chooses to disclose a sensitive piece of information. It behoves to ask: does a right to editorial control apply in circumstances when a subject is unaware that their photo is taken and, therefore, cannot possibly experience feelings of alienation because of any representation that may have been made? While an unaware subject cannot be caused to feel upset at the time an image of them is made, they can still be harmed on preference-related grounds. Consistent with the desire-fulfilment theory of wellbeing (Heathwood 2016), if I have a desire for knowing when my picture is taken, then someone who takes my image without letting me know frustrates my preference. But proponents of the right to editorial control are not concerned with a subject’s desires so much as their dignity or worth as persons. While it is true that Bell goes close to offering a hedonistic analysis by framing the discussion of the issue in terms of feelings of alienation and incongruence, her use of experiential vocabulary is merely to evocatively explain what is involved in cases when the autonomy of subjects is violated by street photographers who prioritise their own creative goals at the expense of the dignity of subjects. For advocates of the right to control representations, like Bell, disrespecting unaware subjects by not consulting them during the production phase of the image is sufficient to render the conduct of street photographers as morally objectionable. In this respect, unaware subjects and nonconsenting aware subjects are in the same unfortunate position – they are both wronged, as a Kantian may put it, by being used as a means (Bell 2019, 293). Such cases point to the importance of consultation during the production of the image as a facilitating condition for the subject’s endorsement of the image. Recall that endorsing the image as one’s own is what proponents of the right to editorial control regard as a crucial element of genuine consent.

A subject, aware or unaware, can also be wronged in the publication phase of an image, if an image is published without their consent. Frustratingly for photographers, perhaps, the wrong occurs even in cases when consent was given to produce the image. After all, agreeing to be photographed is one thing; agreeing to be the object of public scrutiny is another. If a subject agrees to be photographed, thereby consenting to the production of an image, a photographer needs to obtain consent a second time in order to make publication morally

---

10 Whether a right to editorial control is logically distinct from the right to privacy, and whether the ethics of street photography is better framed against a privacy-centred background as opposed to a specifically right to editorial control-centred background is not a matter of concern for this paper. I presuppose that, at bottom, autonomy and the dignity of persons is grounds for the normative significance of each concept.

11 Pepper (2020) grounds the privacy rights of nonhuman animals in their capacity to form relationships with others of their kind. The implications of her theory for the ethics of photographing nonhuman animals are a topic that cannot be explored here in adequate depth; other than to say that, at first glance, qua subjects of street photography, nonhuman animals could have the status of children or cognitively impaired human animals.
permissible. This is a significant burden on photographers who most likely would not have taken down the subject’s contact details. Certainly, it would be prudent for a photographer to discuss publication with a subject at the time an initial endorsement of the image is sought, but there may be cases when time and circumstances make this impossible.

An alternative approach might be to say that unless a subject expressly asks about publication, then consent to publication is a presupposition of a subject consenting to the production of the image. After all, what is the point of endorsing an image ‘as one’s own’ if it is never published? It is not as if any image left in a camera can pose much threat to a subject’s vanity or sense of self. While posing for a photograph may take some time and effort, being the possible object of attention upon publication of the image seems a more obvious explanation for why a subject ought to think carefully about whether to consent to being photographed. Placing the burden on subjects would reflect the gravity of giving consent and attest to the moral significance of being what Bell (2019) calls ‘a self-presenting agent’. Suffice to say that, were a photographer to publish an image after consent to publish was expressly denied, they would be guilty of serious wrongdoing; so much would be an instance of the photographer using the subject as a means.

3 CCTV and Electronic Surveillance Images

Does a right to editorial control of the kind put forward by Danto and Bell extend to representations made by CCTV and electronic surveillance technology? There is little scope for a subject to ever be exposed to an image made by these devices, which means it is unlikely that a subject’s vanity or sense of self could ever be challenged by them. Any representation captured by the technology would be randomly generated and not the product of any artistic intent on the part of a specific photographer. If, in rare circumstances, a subject is exposed to an image and subsequently feels alienated upon viewing it, then this is cause for regret but not a case of rights violation because there is no failure of duty on the part of anyone. The operators of such technology do not have a moral relationship with the subject akin to the relationship between artist and subject envisaged by Danto and Bell.12 There is also a distinction to be made between, on the one hand, images produced by technology owned by private individuals and, on the other hand, images generated by employees of the state using state-owned technology, such as speed cameras or the body cameras worn by law enforcement officers. In cases of the former, it is meaningful to say that there is a specific photographer with an intention to record the images of people; in the state-sanctioned cases, the making of representations by unspecified minions is incidental to broader purposes. But a security-conscious private individual does not have an intention to represent a subject in an artistic image, so they too cannot be accused of failing to observe their duty.13

12 The moral relationship between photographer and subject is the centerpiece of David Davies’s (2008) discussion of Diane Arbus’s portraits.

13 Likewise, a parent that uses a hidden camera to keep an eye on children in the family home. Such conduct raises concern about privacy and the rights of children but does not violate a child’s right to editorial control. The parent’s intention is such a case are not artistic, so the child is not a photographic subject in the relevant sense.
The competing values at stake in street photography are important enough to conclude that street photographers face a dilemma. On the one hand, respecting the agency of subjects places a normative burden upon street photographers to at least ask subjects for permission before making an image. On the other hand, timing is everything in street photography - freedom of expression and the promotion of aesthetic values such as creativity and spontaneity often requires that a photographer shoot first and ask a subject for permission later. Having to ask for permission each time that a potentially worthwhile image beckons, however, would be a significant constraint on the production of art. It is fair to say that were photographers obliged to consult with a subject every time they took a picture in a public place, then many of the most famous and purportedly artistically valuable images in the history of street photography would never have been produced.

The challenge, then, is to reconcile the freedom of expression of photographers with the rights or interests of subjects. Bear in mind that not all representations of people can possibly pose a threat to a subject’s vanity or sense of self. There are images in which the subject is recognizable but there is no sense in which the representation could be the focus of a searching self-evaluation on the part of the subject. There will be instances when a subject is photographed some distance away or positioned in the frame at an angle that prevents specific facial or bodily features from being seen. While it is true that the line between images that may elicit soul-searching on the part of subjects and images that don’t will be blurred, workable guidelines are within reach. The challenge is to specify them in a realistic way bearing in mind that it will take a photographer acting in good faith some time to acquire the practical wisdom necessary to employ ethical guidelines effectively. To that end: images that capture subjects in the middle distance, or images that represent them doing mundane activities such as simply standing next to a wall, sitting on a bench, or walking down the street, are innocuous as far as posing a threat to a person’s vanity or sense of self. Perhaps when street photographers take images like this, then a strict requirement to consult with subjects before taking a picture is out of place. It would only be when photographing a subject in close-up, or in the middle-distance when they are recognizable and performing some attention-grabbing action, such as fighting, running, or kissing, that a photographer be obliged to engage in consultation with the subject. Of course, it is open to photographers to err on the side of caution and always ask for permission but requiring them to do so would not be a reconciliatory solution but one that clearly favours the rights of subjects over the freedom of expression of photographers. The danger is a chilling effect on the production of art may be the result.

Three well-known images can serve as illustrative examples. Vivian Maier’s, June 7 1956 New York, NY - an image of a man with his hand in his pockets standing next to three sailors seated with their backs to the camera, would be an ‘innocuous’ image. In contrast, two close-up street portraits, Lissette Model’s, Promenade Des Anglais, Nice, 1938 and Maier’s September 24, 1959, New York, NY would be examples of images that potentially threaten a subject’s sense of self or vanity.

In France, very strict privacy laws have purportedly had a chilling effect on street photography (Laurent 2013).
5 Phone Cameras and Social Media

Does the ubiquity of phone cameras and photo sharing social media platforms mean that ordinary persons ought to abide by the same ethical standards as a would-be Cartier-Bresson who self-consciously identifies as a street photographer? After all, images taken by a friend can pose just as much a threat to a subject’s vanity and sense of self as images recorded by a serious artist. To answer this question confidently in the negative would be to presuppose a clear line between serious street photographers and ordinary camera-happy smartphone users when no clear line of demarcation exists. Some smartphone users are cognizant of the interests of their subjects and invest a lot of time in the production of their images without having any desire to enter photography competitions or post their work on street photography Instagram pages. Some serious street photographers know as much about Kantian concepts, such as ‘respect for persons’ and ‘using as a means’ as an ordinary smartphone user knows about the interplay of shutter speed and depth of field. All that can be said with confidence is that if a chilling effect on the production of art would be a regrettable consequence of the encroachment of ethics into the domain of street photography, then so would an analogous effect on the recording of everyday social relations. Given the important role photography plays in forging social bonds, especially between young people, any ethical prescriptions that served to put people off taking and sharing pictures of their friends would be unfortunate. Perhaps, then, it is only serious artists who should be held to the standard required by proponents of the right to editorial control to work in consultation with subjects to the extent that they are co-creators of the work. In that case, failing to conform to ethical standards could be akin to a failure of professional ethics. On the other hand, given that friends and acquaintances already know each other to some extent, then perhaps requiring them to meet the consultation standard laid down by proponents of the right to editorial control would not be too much to ask because, functionally, when a subject is a friend or acquaintance consultation is an ever-present ongoing process. The ubiquity of smartphones and photo sharing social media platforms means that the interests of the subject are built-in to the practice of picture taking amongst friends and acquaintances.

6 Conclusion

Street photography is ethically contentious on wellbeing-related and autonomy-related grounds. While not as concerning as other kinds of negative experiences that a person may be forced to endure on a public street, such as being bumped-into or shouted-at, being photographed up-close is nonetheless ethically troubling because of its potential to cause a subject to have bad feelings such as distress, shock, irritation, or anger. In addition to the potential impact upon the subject’s wellbeing, close-up photography is also troubling because of how it relates to the subject’s autonomous agency. Like in so many standard street photography cases, close-up street photography, in the absence of consent, involves overriding or violating a subject’s right to editorial control.

While standard street photography may also cause a subject to have a negative experience, the negative experiences in such cases are not intrinsic to the production of the sought

16 Davies (2008) frames Susan Sontag’s famous criticisms of Diane Arbus as the former charging the latter with a failure of professional ethics.
for aesthetic values, so the ethical controversy relates primarily to the autonomous agency of the subject. Proponents of the right to editorial control argue that it is wrong for a photographer to take a picture of a nonconsenting subject because it is disrespectful and a case of using the person as a means. In they are right, then to avoid acting unethically, a photographer needs to enter a dialogue with a subject with the aim of securing their endorsement of the image. The dialogue may well be time consuming and require considerable patience, not to mention superior communication skills, on the part of the photographer. In the above, I suggested that the right to editorial control did not extend to cases of CCTV and other surveillance technology. It would be prudent for photographers to seek permission to publish at the time they seek a subject’s consent to produce an image. 17

Funding Open Access funding enabled and organized by CAUL and its Member Institutions

Declarations

Conflict of Interest The author has no conflicts of interests.

Open Access This article is licensed under a Creative Commons Attribution 4.0 International License, which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons licence, and indicate if changes were made. The images or other third party material in this article are included in the article’s Creative Commons licence, unless indicated otherwise in a credit line to the material. If material is not included in the article’s Creative Commons licence and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder. To view a copy of this licence, visit http://creativecommons.org/licenses/by/4.0/.

References

Alkharafi M (2020) Street photography ethics beyond consent: A relational approach to an ethics of encounter. PhD diss., Pennsylvania State University
Bell M (2019) Respecting photographic subjects. In: Maes H (ed) Portraits and philosophy. Routledge, London, pp 287–301
Bok S (1982) Secrets: On the ethics of concealment and revelation. Pantheon, New York
Coleman AD (1987) Private lives, public places: Street photography ethics. J Mass Media Ethics 2(2):60–66. https://doi.org/10.1080/08900528709358295
Costello D, Phillips DM (2009) Automatism, causality and realism: Foundational problems in the philosophy of photography. Philosophy Compass 4/1 (2009): 1–21, https://doi.org/10.1111/j.1747-9991.2008.00193.x
Danto A (2001) The naked truth. In: Levinson J (ed) Aesthetics and ethics: Essays at the intersection. Cambridge University Press, Cambridge, pp 257–282
Davies D (2008) Susan Sontag, Diane Arbus, and the ethical dimensions of photography. In: Hagberg GM (ed) Art and ethical criticism. Blackwell Publishing Ltd, London, pp 211–228
Gregory A (2016) Hedonism. In: Fletcher G (ed) The Routledge handbook of philosophy of wellbeing. Routledge, London, pp 113–123
Griffin J (2007) The human right to privacy. San Diego Law Review 44(4):697–721
Heathwood C (2016) Desire-fulfilment. In: Fletcher G (ed) The Routledge handbook of philosophy of wellbeing. Routledge, London, pp 135–147
Koetzle H (2014) Introduction: Beauty is everywhere. Bruce Gilden. Thames and Hudson, New York
Laurent O (2013) Protecting the right to be photographed, or not photographed. https://lensblogs.nytimes.com/2013/04/23/paris-city-of-rights/. Last accessed 23/11/2021
Marmor A(2015) What is the right to privacy? Philosophy and Public Affairs, 43(1), 3–26, https://doi.org/10.1111/papa.12040

17 I would like to thank Ben Bramble, Daniel Star and two anonymous referees for helpful comments.
Matthews S (2008) Privacy, separation and control. The Monist 91(1):130–150
Pepper A (2020) Glass panels and peepholes: Nonhuman animals and the right to privacy. Pac Philos Q 101:628–650. https://doi.org/10.1111/papq.12329
Puppe HW (1979) Walter Benjamin on photography. Colloquia Germanica 12(3):273–291
Scruton R (1981) Photography and representation. Crit Inq 7(3):577–603
Wiley C (2019) The New Yorker November 10
WNYC, New York Public Radio. WNYC street shots: Bruce Gilden. Retrieved June 10 (2020) from https://www.youtube.com/watch?v=kkIWW6vwrvm accessed 14/07/2022
Zeronda ND (2010) Street shootings: Covert photography in public places. Vanderbilt Law Review 63(4):1131–1159

Publisher’s Note Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.