

Marx at the Movies

Revisiting History, Theory and Practice

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The Work and the Rights of the Documentary Protagonist

Silke Panse

Searching for a distant land,
Kant and Fichte into the ether soar,
While I simply want to understand,
That – which in the street I saw.

(Marx 1966 [1837]: 28)

Introduction

This chapter looks at the work of the documentary protagonist as the raw material of images taken and owned by others. It develops thought by Marx and post-Marxists on the relation between the material, the worker and the capitalist in order to explore the work of the documentary protagonist. The chapter takes the stance that affective immaterial labour is also material, since it requires physical presence. The material in question is that of the documentary protagonist in the image. The work of the protagonist for the documentary image cannot be acknowledged as work since this would threaten the status of the image as documentary; so the protagonist is denied any appreciation of her contribution as either artistic knowledge work or affective labour and generally cannot claim any rights to the image of herself if it has been taken by others. The images are the property of those who took them and who, in a reading of documentary through Marx, can be regarded as capitalists appropriating the wealth that the documentary protagonist produces. The lack of rights of the documentary protagonist, in contrast to who took her image, is comparable to the lack of rights of the worker whom Marx observed in comparison to the capitalist. In order to emphasise the potential exploitation of the material, affective and creative contribution of the human and non-human protagonists to

their image, those who take the product of the work of the documentary protagonists are referred to as image-takers. Further counting against the documentary protagonist is that, according to human rights law, the protagonist has no right to her image if she is working in the image. In addition, this skews the balance towards the image-takers who are privileged in art and law.

Depictions of work in documentary have tended to centre on the representation of manual labour. But situating work strongly in the realm of material labour for an employer other than the filmmaker sets up the work of the protagonist as separate from her work for the documentary. The implication that the worker works for someone other than the documentarian entrenches as well as distracts from the division between the protagonist's work for employment as observed in the documentary and their work for the documentary.

The absence of documentary images of workers working has frequently been criticised (Comolli 1996; O'Shaughnessy 2012), most notably by Harun Farocki in his film *Workers Leaving the Factory* (1995) and his installation *Workers Leaving the Factory in Eleven Decades* (2006). For Jean-Louis Comolli, the focus on the outside of the factory served to distract from the workers' manual labour inside (2005): 'work itself has still tended to remain invisible, not least because the employer controls entry to the workplace and can exclude cameras from it' (O'Shaughnessy 2012: 156). By contrast, theorists of immaterial labour have argued that the emphasis on 'material production had "hidden" that labour produces not only commodities' (Lazzarato 1996: 138), but relations. This applies to documentary film too: the emphasis on the processes of material production as the labour for someone other than the filmmaker has hidden the work of the protagonist for the documentary. The focus on manual labour producing goods for the owner of the means of production distracts from any immaterial labour for the owner of the images. Documentary is positioned as external to the work of its protagonists. But workers in a documentary also provide the material for the work of the filmmaker. The working protagonist is materially immanent to the documentary image.

For Marx, in the 19th century, the worker was 'at home, when he is not working, and not at home when he is working' (1975: 326). The worker knew when she was in or out of the factory, if she was at work or in life. Today, many workers cannot leave the factory because the workplace is everywhere (Hardt and Negri 2000: 332). We are not workers any more, even though we work most of the time.¹ Life has become inseparable from work (Lazzarato 1996: 138) and the factory diffuse (136). The dissolving boundaries between work and life are further permeated by the

commanding of space and behaviour through a proliferation of digital image-takers everywhere. It is nearly impossible to resist the imposed work of being oneself in other people's images. To refuse to have one's image taken is often presented as a sign of the protagonist's guilt and is exhibited as part of the documentary. While the material index of the documentary protagonist is infinitely multiplied, she usually has no rights to her image. When work cannot be separated from leisure and the product of the work cannot easily be distinguished from the worker – what is the work of the documentary protagonist?

Documentary relies on the premise that the protagonist is not supposed to work for it, since that would be acting. Because the protagonists in documentary are not meant to act – for which they would have to be paid and acknowledged like in a fiction film – their work is much less clarified. The question of labour thus directly affects the question of documentary: if the protagonists were paid for a change in their behaviour, this work would make the film a fiction: 'the lack of payment to the participant is, in some way, a mark of news or documentary difference from fiction' (Winston 2008: 238). Therefore, to call the documentary protagonist a 'social actor' (Nichols 1991: 42) also distracts from the fact that her affective labour, by definition, cannot be acknowledged as such. The documentary protagonist is supposed to go about what she does anyway. But if we know that a camera is looking right at us, we often act differently than if we were not being filmed. Even continuing with what we thought we would be doing anyway, in the face of a film team staring at us, is an effort. That some documentary protagonists get paid is a moot point. If a protagonist performs the affective labour of acting for a wage, the film is not a documentary. Most often she does not have any rights to her material image, which is ostensibly produced without any labour on her part. The documentary protagonist is hence doubly exploited since she has to work, often without pay, in a situation which is not seen as work, not even as immaterial labour, and without acknowledgment of authorship or rights. Because documentary protagonists by definition do not work, they cannot form a union. This might also be the reason why documentary and what is called 'factual' television have become so prevalent as a cheap mode of production (Hearn 2010: 63). Perhaps, then, less highly regarded documentary formats, such as scripted reality shows, are less exploitative, since the protagonists voluntarily enter into a contract for playing 'themselves'.² But in unscripted documentary images, the involuntary protagonist still changes whatever they are doing for somebody else's camera in someone else's decisive moment.

Is this change (or continuation) of behaviour work? Professional actors would think so.

The materiality of immaterial labour

The term 'immaterial labour' is elusive since it still requires the materiality of the worker. Immaterial labour can be abstract knowledge work (Hardt and Negri 2000: 292), or affective labour, such as acting. 'The creation and manipulation of affect', such as in the entertainment industry, Michael Hardt and Antonio Negri maintain, is still 'immaterial, even if it is corporeal and affective, in the sense that its products are intangible, a feeling of ease, well-being, satisfaction, excitement, or passion' (292–293). Passion, for Hardt and Negri, is intangible: 'the affects it [immaterial labour] produces are immaterial' (293). The most salient example of affective labour is the smile of the coffee shop employee towards the customer. Since the product has to be separate from the worker, the smile cannot be a material product. The barrista is physically disconnected from the coffee, but not from her smile – so the reasoning goes. Because this kind of immaterial labour cannot exist outside of the materiality of the protagonist, it cannot be singled out as a product, and is therefore paradoxically classified as immaterial. While affective changes are expected as a part of labour, they are not distinct as a product. The terminology of immateriality makes it harder to acknowledge that work is actually done, which many employers use to their advantage. Immaterial labour is often taken for granted and financially not well rewarded, if at all, in part because it is not easy to determine what is work and what is not. Being enthusiastic frequently is part of a job, but we do not get paid more for producing more units of passion. The statements that 'immaterial labour almost always mixes with material forms of labour' (Hardt and Negri 2004: 109) and that 'instances of affective production too involve material products' (Hardt 2009: 24) rely on the materiality of the making of the coffee and the immateriality of smiling being fundamentally different. This division between immaterial and material labour externalises materiality in objects, and separates material products from the apparent immateriality of protagonists. Affect is regarded as immaterial, as though it is separate from a material, physical body.

But the apparently immaterial smile still needs the materiality of the face. There is no smile without a protagonist. Affective labour is immanent and material. With respect to the authenticity of affective labour demanded, for example, by fast food chain managers (Myerscough

2013), the product that is *being* constitutes a material change of affect. The material affect of the protagonist is a product immanent to the worker. While today 'there is no more outside' (Hardt and Negri 2000: 186), for the early Marx the problem was that the product of labour was external and therefore alienating. The worker is estranged because 'labour is *external* to the worker' (Marx 1975: 326). Marx's smile would have been outside the face:

What the product of his labour is, he is not. Therefore, the greater this product, the less is he himself. The externalization of the worker in his product means not only that his labour becomes an object, an *external* existence, but that it exists *outside him*, independently of him and alien to him, and begins to confront him as an autonomous power. (324)

Marx described how the feudal aristocratic landowner related to the land as an extension of his body. In feudalism, land was regarded 'as the inorganic body of its lord' (318). After feudalism, the relation between the land and its owner became abstract and reduced to 'the economic relationship between exploiter and exploited' (319). The feudal landowners, who regarded their land as if it was their body, then became capitalists who dealt in abstract relations. Land and man, wrote Marx, then sank 'to the level of a venal object' (319). Even though Marx distinguished his historical materialism from Feuerbach's idealistic materialism and determined that change has to be generated materially through practice (1969), he found that capital is material and 'dead matter' (1975: 319): 'Capital is dead labour, that, vampire-like, only lives by sucking living labour, and lives the more, the more labour it sucks' (1999: 149). Property is 'purely material wealth' (Marx 1975: 319) and 'the material process of private property' (322) is abstract. In this understanding of materiality as external, albeit being kept alive through living human labour, lies the difference between Marx's reading of materialism as capitalist abstraction and conceptions of vital materialism as living matter (Bennett 2010). While the emphasis of vital materialism on every *thing*, including workers, as vibrant matter leads beyond abstractions of ownership, for Marx, capital was material, and what is material is external to the worker: 'the object that labour produces, its product, stands opposed to it as something alien, as a power independent of the producer' (Marx 1975: 324). Raw material is the object of labour and the 'objectification of living labour' (360). But this raw material is still external and not immanent to the labourer even

though, according to later Marx, the worker shapes the raw material (1973: 360) in a dialectic relationship to it. Living labour is realised in the material (360). The product of labour is preserved by 'making it into the raw material of new labour' (362). The worker reanimates dead form through living labour. Raw material is kept from being a dead form by 'the simple process of coming into contact with labour' (360). The use value of the unfinished product is refreshed by becoming the material object of living labour, for instance, the 'raw material' of yarn is kept alive through the living labour of weaving (362):

It is living labour which preserves the use value of the incomplete product of labour by making it the material of further labour. It preserves it, however, i.e. protects it from uselessness and decay by making it the object of new living labour. (362)

The way Marx uses 'object' and 'material' interchangeably in this passage indicates the living, albeit still external, nature of what would be a dead object were it not kept alive by living labour. Because of the invested labour, the externalised object 'ceases to exist in a one-sided, objective form, in which as a mere thing, it is at the prey of processes of chemical decay etc.' (360). Positing human labour against non-human material objects, Marx equates form with decay and in effect maintains that living labour halts entropy. In contrast to vital materialists, who find that *objects* are made by human subjects, and *things* are what, or who, escapes human direction (Bennett 2010: 2; Mitchell 2005: 156–157), Marx equates *things* with formal objects. For Marx, an object-thing decomposes 'in a one-sided, objective form, in which, as a mere thing, it is at the prey of processes of chemical decay etc.' (Marx 1973: 360). Its substance is only kept alive through human labour. Despite Marx finding that it is human activity that changes 'the thing, reality', not just 'in the form of the object of contemplation' (Marx 1969: 13), 'reality' is still external to the worker.

According to Marx, the 'shaping of the raw material, adds to the value of the raw material' (1973: 360), but the value of documentary images is supposed to lie in the fact that their protagonists do *not* shape themselves, since they are not supposed to work as such. Marx could at least write about the worker that 'the time during which the labourer works, is the time during which the capitalist consumes the labour-power he has purchased of him' (1999: 149). About the documentary protagonist as worker it can only be said that the time during which the protagonist

is in the image is the time during which the image-taker consumes the power of life he has not purchased of her. With respect to the production process 'in each of these subsequent processes, the material has obtained a more useful form, a form making it more appropriate to consumption' (361). There is of course not the same difference of easier consumption between the documentary protagonist and the actor, nor indeed between the object and the art object. The documentary protagonist counts neither as the artistic worker nor as raw material. Living labour would be working with the material *of* the image, a work that is then accredited to the filmmaker. But the material of who or what is *in* the image is not an object.

While for Marx, 'the realization of labour is its objectification' and the worker experiences a 'loss of reality' (324), the documentary protagonists are always already realised and objectified in the images of themselves. Their work is appropriated as the object of the image-taker. It is inevitable, writes Marx, that 'the idle enjoyment of the products of the sweat and blood of other people should become a brisk commerce in the same [monopoly]' (319). Whereas today, abstract corporations are legally treated as people (Parramore 2012), in documentary, the sweat and blood of the multitude (Virno 2004), indexed in images, is the product. We are not merely participants in our documentary image; we are vital for it.

If immaterial labour 'results in no material and durable good' and only 'produces an immaterial good, such as a service, a cultural product, knowledge or communication' (Hardt and Negri 2000: 290), then documentary protagonists are not regarded as material. Materiality is determined in objects made by subjects through manual labour. This is not dissimilar to Marx's positioning of materiality as external and separate from – albeit brought to life by – the worker. The notion that affect is immaterial is at odds with a vital materialism that acknowledges agency in all kinds of materials and matter. The new materialist world of matter, which images are a part of, goes beyond the abstract materialist world created by human capitalism. While capital directs some affect, it does not create or control everything in the world. To emphasise the diversity of material agencies, the use of entities such as *things* (Bennett 2010) and *actants* (Latour 2009: 75) raises the question as to how 'authored' our actions are, when we also consist of things that are not human. Forces have traditionally been subsumed under the category of labour (Lazzarato 2002: 130). Forces cannot claim wages or rights. Waged labour is remunerated in symbolic currency and bound to

human discourse. The notion of payment or reward is linked to an individual human or non-human rather than an impersonal actant. Forces, matter, actants and things can be materially rewarded, but they cannot be paid.³ Although this fact needs to be acknowledged as shaping the image, it would not be in the human category of waged labour. The difference between these two kinds of materialisms poses the question, whether work constitutes human labour, which can be for wages, or, for example, non-human energy, which cannot be paid for in symbolic currency. Vital materialism bypasses the individual and does not deal with the issue of human labour. Lazzarato too finds that ‘the “author” must lose its individual dimension’ (1996: 144). But if agency is not attached to a singular protagonist and assigned rights, she cannot be acknowledged through wages and in the law as an agent in the image of her. The human documentary protagonist as material agent is neither accounted for by Marx’s waged human living labour nor by the unpaid things of vital materialism.

Cinema ‘in its incorporation and coordination of bodies in movement’ has been described as ‘a key site of biopolitical production’ and immaterial labour (Goddard and Halligan 2012: 174), since ‘it directly incorporates living processes by means of a technical apparatus that records and then later projects them’ (171). But the concept of immaterial labour cannot be applied to documentary and fiction moving images in the same way, for it involves ‘a series of activities that are not normally recognised as “work”’ (Lazzarato 1996: 134). If ‘capitalism seeks to involve even the worker’s personality and subjectivity within the production of value’ (136), then this is the case much more so for documentary protagonists than for fiction film acting, which is acknowledged as affective labour.

Hardt and Negri praise the actor not only for playing for the amusement of many, but for taking their place: ‘how remarkable is the actor! When he performs, he is acting for at least three sets of people: himself, the author and above all, the public – he is the multitude!’ (2000: 211). But in Hollywood feudalism, it is often the same actors who are paid to embody everybody else: Leonardo DiCaprio as King Louis XIV, as Howard Hughes, as J. Edgar Hoover – more a *multitude* than the multitude. Moreover, with offspring inheriting their ancestors’ jobs, a few actors have become an entitled elite, further reducing the multitude of affects and corporeal materialities to the same features and expressions in a dynasticism of human matter. Given that some chosen few represent and transcend the many, the idea that one transcending actor can be ‘the multitude’ runs counter to

Hardt and Negri's rendering of the multitude in terms of immanence: a feudalism of affect in the land of the face by the landowners of expressions.

It is much more rewarding to be an actor in a fiction film than to be 'yourself' in someone else's images. There is perhaps a reason why the word 'actor' is part of the word 'factory': an actor is acknowledged, credited and remunerated for their affective labour. In capitalism and in fiction film, affective labour is waged and has an exchange value (Hochschild 1983: 7) even though it is distinct from the worker. Because the image of the documentary protagonist is presented as being unrehearsed and unchanged, there naturally cannot have been any immaterial labour or artistic process. Hardt and Negri acknowledge that the term 'immaterial labour' is ambiguous since even abstract knowledge work still needs the material brain, and especially affective labour requires 'labour in the bodily mode' (2000: 293). But even though they find that immaterial production 'remains material – it involves our bodies and brains as all labour does' (Hardt and Negri 2004: 109), they determine that affect is immaterial. The product is immaterial: the worker cannot be the product. This is where it gets complicated for the documentary protagonist, who is vital as the living material for the product that is their image.

When Lazzarato, who introduced the term 'immaterial labour', explains it in sociological terms as an 'interface' activity between different functions, teams or levels (1996: 134), that is, as knowledge work, the work of the documentary protagonist slips through the epistemological gaps since her affective labour does not consist in being an *interface*, but in *being a face* (and body). When Lazzarato writes about film, he sees only the 'matter of images' (2008: 284), or to use a term from art theory, their medium specificity, not the connection to the world they are inscribed by. Counterproductively comparing the electronic image to a painting, he writes that the video image 'is a constantly reshaping profile painted by an electronic paintbrush' (284). The image is a 'result of lines and intertwining' (285) of itself. The 'many vectors of non-human subjectivisation' (284) are the flows of the medium, unconnected to the world. The flows of image-matter override those of the world connected to the image. There are no documentary protagonists, only 'pure oscillations' (285). 'Pure perception as image-matter' (286), a notion Lazzarato takes from Bergson and Deleuze, cannot be about any protagonist-whatever – to appropriate the Deleuzian term 'any-space-whatever', which acknowledges the autonomy and

singularity of a space. The image is merely of the medium, self-reflexive of human-made technology, even if it is an image 'unseen by the human eye' (2008: 286). Lazzarato writes that 'flows cannot be represented' (285), but a documentary image of someone or something is not the same as representing them. If 'the world is always already an image' (286), where is the world in relation to the image? The emphasis on the 'matter of images' (284) and especially the 'pure perception beyond the image' (286) are why Lazzarato cannot see his theory of immaterial labour in terms of the material and immaterial labour of the documentary protagonist. But in documentary images, there is a material link between the raw material of the protagonists and the aesthetics of the image. The image is an effect of the lines of the world, not just of the medium. Documentary images are not merely pure flows, but their singular elements are connected with differences in forces and referential statuses. The documentary image has a material connection to the world, even if the index of the world is translated into code.

Although the theorists of immaterial labour see the concept as a move beyond the 'old dichotomy between "mental and manual labour"', and even, curiously, beyond that 'between "material labour and immaterial labour"' (Lazzarato 1996: 134), the term nevertheless suggests a negation of materiality. It still sustains the distinction between the material processes of manual labour with 'raw materials (including labour)' (1996: 141) and the "'aesthetic/ideological" model of production' (144) of 'intellectual activity' (144) in which aesthetics are dematerialised and intellectualised. The notion of immaterial labour relies upon the separation between materials and aesthetics, between body and mind, and between the filmed protagonists as raw material and the directing, thinking artist.

Lazzarato suggests to use 'rather than the "material" model of production, the "aesthetic" model that involves author, reproduction, and reception' (144). But in the division between the 'old' materials *in* the image and the 'new' aesthetics *of* the image, the materiality of who and what constitutes an image is not accounted for. There is only the author, the reproduction, and the reception, but there are no protagonists. The processes of the "'aesthetic/ideological" model of production' are 'characterized by their social form' (144) and are 'within the economy of intellectual activity' (144). Having moved beyond Marx, for whom the worker was not paid to think (1973: 358), when Lazzarato describes immaterial labour as a 'synthesis of different types of know-how: intellectual skills, manual skills and entrepreneurial skills' (1996: 145), this emphasis on the conceptual know-how

is akin to the traditional notion of authorship with the artist as the conceptual creator of the dematerialised or material art work, even if many were involved in the actual making of a painting or a sculpture. The immaterial labour of the idea – the knowledge work of the artist or image-taker – has always been valued more than the material labour of making and being, which could be outsourced. Claire Bishop refers to the delegating of being to the participants in an art work as ‘outsourcing authenticity’ (2012: 91). Symptomatically, the intellectual work of the artist, who can be absent in the production, is valued higher than the material, affective labour of the worker, who has to be present to constitute the work of the artist. So within the category of ‘immaterial labour’, the hierarchy of mind over matter is evident in the relation of immaterial knowledge work to affective labour. But whereas in the difference between ennobling work and physical labour (Arendt 1958: 79–174) usually ‘labour is measurable, most importantly in money, hence can be abstracted, while work does not need to be’ (Mazierska 2013: 4), the material and immaterial labour of the protagonist for the documentary is not accounted for – neither as work nor as labour.

Immaterial labour involves acting, or, rather, even *being* (Noah 2013) with a positive affective disposition as though there is perceivably no labour involved. It ‘is not obviously apparent to the eye, because it is not defined by the four walls of the factory’ (Lazzarato 1996: 137). When immaterial labour is successful, we cannot see it. If the means of production of affective labour become visible as mechanics and the smile appears as forced, the worker has failed to deliver. While material labour can be observed and phenomenologically experienced, the notion that labour is immaterial raises the question of how this invisible work can be documented. Immaterial labour, whether distanced and intellectual or immanent and affective, is difficult to capture merely visually through observation and also hard to describe in language. But what is documentary realism, if we can only see either an alienated and unrealised Marxian subject engrossed in material labour, or if we cannot see the immaterial labour of its protagonists at all?

Unfortunately, Marx’s thoughts about alienation have been adopted by management strategists (Boltanski and Chiapello 2005). *Work Hard, Play Hard* (2012), a dry documentary about management in the German service industry, shows how large companies try to avoid alienating their employees. Workers should not feel alienated, so that they can be more productive and generate more profit. If they are alienated, they are not supposed to show it. The company checks on the psychology of their employees. There is no room or need for resistance since

employers and employees want the same: a happy worker in the flow. Surveillance has become immaterial, but it still controls the materialities of being; or as one management trainer for the Deutsche Post (the German postal service) suggests metaphorically: the leadership vision should be planted in the DNA of each single employee. The language of leadership training is couched in terms of utopian relations: what is good for the company is good for the worker and the world. Hierarchies must be dismantled, cooperation should be optimised and everyone should connect, so that workers can work better and the performance of the company is maximised. It is about 'securing the collaboration of wage-earners in the realization of capitalist profits', as Boltanski and Chiapello describe it (2005: 217). The employee should be an entrepreneur for their company. The stronger the individual worker, the bigger the success of the company, 'concealing the fact that the individual and collective interests of workers and those of the company are not identical' (Lazzarato 1996: 96). This could be rephrased in terms of documentary or participatory art as such: participation conceals the fact that the individual and collective interests of the protagonist or participant and those of the image-taker or artist are not identical.

Even if a documentary observes its protagonists involved in immaterial labour, like *Work Hard, Play Hard* does, the focus is on their immaterial work for their employers, not on their additional immaterial labour for the documentary. Despite the documentary showing, through sanitised and business-like observation with astute ambient sound, the insidious extent to which managers and employees have to adapt themselves to the corporation's ideology and interests, the scope of the observation is confined to the thorough grasp of immaterial labour by the companies depicted in the documentary. Often the leaders come across better than the workers, because the managers are in control and can afford to be human since their posts are secure, while the employees are seen struggling to say the right things and be liked by their superiors in order to keep their jobs. The viewer identifies with the employers and adopts their judging position.

With respect to the worker, the once celebrated ability of the documentary protagonist to performatively subvert the film they are in, or to 'fake it' (Roscoe and Hight 2001), has long become controlled by their employers. The responsibility of subversion cannot just be placed on the unacknowledged, affective labour of the individual working documentary protagonist who has no rights to their image. If work cannot be separated from the worker, it becomes impossible for the realist documentary image to show the work.

The rights of the documentary protagonist

We have little to no right to our documentary image. Images are constantly taken from us legally without our knowledge and explicit consent. We do not have a right to privacy and to our image, for instance, when we are in a public space, where our consent is implicitly presumed and no permission is necessary to publish the image: 'In principle, a picture taken of an ordinary person in a public space can be published without that person's permission' (Brüggemeier *et al.* 2010: 282). According to the European Convention of Human Rights Article 8.1. 'everyone has the right to respect for his private and family life, his home and his correspondence' (Human Rights Act 1988) and 'all persons have an exclusive right to their image' (Brüggemeier *et al.* 2010: 284). But whatever exclusive rights to our own image there are in principle for ordinary people – 'The right to one's image ensures protection not only against publication, but also against merely taking that image without the consent of the person portrayed' (284) – these are practically invalid once we enter into a public space. Then we lose our right to privacy to a public we are part of. For instance, our right is lost, if we are in a

landscape, a street scene, a group or some other public event. In such a situation the use of an image is legal even without the consent of the person represented because of the difficulty of obtaining the otherwise necessary consent in practice. (285)

So in any group protest, say, a rally for the rights of the protagonist to their own image, the protagonist would lose any rights *because* they are in a group. While a single individual in a shot will usually be asked for permission, particularly if the documentary might depend on them, once the protagonists are several and add up to a group or a 'crowd', especially if they are in public, the need for a permission is forfeited. Only recently, and reported with much protest by the British press, has the Hungarian Court acknowledged the right for consent of protagonists of an image taken in a public place (Nolan 2014).

In his essay 'People Exposed, People as Extras', Georges Didi-Huberman deliberated whether exposing the workers on film when they were leaving the filmmakers' factory in *Workers Leaving the Factory* (1895) had an alienating or liberating effect on them (2013: 35). But it did not really matter what the workers felt when they left the Lumière factory since they had no choice. Regardless of their disposition, the workers had no say over their images, which were owned by their employers like the factory they

worked in. Didi-Huberman endorses the screening of these images by the employers who owned the footage to their ‘wonderstruck bourgeois spectators’ (35) because this would engender a ‘*political meeting*, created by the image and not cut off from the real’ (35) and thus create a collective ‘social being of cinema’ (36). But this idealistic reading obscures the fact that the workers were safely contained in the images owned by their employers and observed by viewers who were of the same class as the owners. The only material contact was the trace of the workers on the celluloid. Because the workers were *only* in the images in that ‘meeting’, they posed no threat.

Farocki, too, likes to see workers shown as a collective rather than as individuals, a separation that has usually been implemented in fiction film. He makes this point explicit with respect to *Workers Leaving the Factory*:

The appearance of community does not last long. Immediately after the workers hurry past the gate, they disperse to become individual persons, and it is this aspect of their existence which is taken up by most narrative films. If, after leaving the factory the workers don't remain together for a rally, their image as workers disintegrates. (Farocki 2002)

But by being collectively in the image – what Didi-Huberman elusively alludes to as the ‘social being of cinema’ (2013: 36) – the protagonists lose the right to their image.

The right to our private life is dependent on the ownership of the space around us, like a home. If we are homeless and thus have to exist in the public space, our life is not private and we cannot claim any rights to our image. If we own lots of property and move around in transportation we own, we have plenty of private space for which we can claim image rights. The apparent public space in which we lose our right to privacy has become more and more privatised, and the interests of the private owners of the so-called public space overrule the right to privacy of the protagonists who do not own the space they are moving through. And we are not all equal in the public space. Unpaid affective labour is asked especially of women outside of work and in public: ‘Just ask any woman if she's ever been told to “smile” by a strange man on the street’ (Jaffe 2013).

Immaterial production has been defined through relationships and has been attributed the key words of collaboration, community, cooperation and the common. Hardt and Negri cite Marx's observation

that production does not take place in isolation: 'production by an isolated individual outside society [...] is as much as an absurdity as is the development of language without individuals living *together* and talking to each other' (Marx 1973: 84). They define the common as 'communication among singularities' (Hardt and Negri 2004: 204). But by finding that 'our existing affective relationships ground all productions of affect' (148), they undermine the generation and the singularities of new affects, protagonists and images which are not based on the communication of what already exists and is agreed upon. While the reaction of the documentary protagonist to the camera constitutes a relationship, according to Deleuze, affect is exactly that which exceeds communication (1986: 98). Affective labour is not merely communication or language. When Hardt and Negri list abstract ideas, material images and abstract knowledge in the same breath (2004: 147), the difference between the potentially absent image-taker and artistic knowledge worker behind the camera and the material labour in front of the camera is obfuscated. Hardt and Negri find that immaterial production is 'common and shared' in 'our common social image bank': 'A theory of the relation between labor and value today must be based on the common' (2004: 148). The value of the image is arrived at in a common market, but this is not the site of collectivity Hardt and Negri mean. Their suggestion of an appreciation of 'the common' in which value is assigned does not concern the documentary protagonist who provides the raw material of the image since the ownership belongs to the image-taker. The production of the documentary image and the attribution of the image rights to its taker rest on the loss of the rights of the protagonist because she is in a group. The common of the image prevents the right of the protagonist to her image. Perhaps the documentary protagonist in the image could be seen more in terms of the autonomous substances independent of relations of object-oriented philosophy (Bryant 2011: x).

If someone's image is taken in the public space of a market, European law finds that 'the publication of the picture does not necessarily infringe X's privacy. If, for example, the picture is published for the purpose of drawing attention to the opening of the market or that season's fresh produce, X's privacy interests are not violated' (Brüggemeier *et al.* 2010: 277). The protagonist's privacy is said not to be infringed upon by an image of her, because the property she is surrounded by is being advertised – as if that would be of any benefit for the protagonist. The public's right to know and the right of private enterprise to make

known override the rights of the protagonist in the image. The rights of the owners of private property to publicity here take precedence over the privacy right of the protagonist not to be seen. Even though recently the right to be forgotten has been acknowledged by the European Court of Justice, this refers only to search engines, not to media websites (Arthur 2014).

Nearly 30 years ago, Brian Winston argued that, by filming the powerless, documentarians avoid looking at those who are in power and are powerful in contrast (1988: 276). Today, there are still professional documentary filmmakers with access to better broadcasting and theatrical distribution of their images, but we also all make documentary images and often distribute them through social media. While Marx found that, ultimately, ‘the whole society must split into the two classes of *property owners* and *propertyless workers*’ (1975: 322), today we all own images we took of others and we all are protagonists in documentary images which are the property of others. We are all image-takers and we are all in images as we increasingly surveil each other and ourselves. It depends on our actions and temporary positions rather than our permanent status. Nearly 40 years ago, Susan Sontag found that ‘the industrialization of camera technology’ would ‘democratize all experiences by turning them into images’ (1977: 7), a sentiment which is repeated more recently in statements such as ‘the participatory camera can be understood as a symbol of the democratization of media production’ (Tarrant 2009: 150). But unless we regard a democracy as being inherently inegalitarian, the reverse is the case today: by being turned into images owned by others, we lose our agency as we become the material of their images of us. On the other hand, through the potentially endless distribution of images, we also lose our agency as image-takers. In the infinite distribution of documentary images by many, the connection to an owner and responsibility for the work vanishes (Brazil and Migliorin 2014).

Merely by us working in the image, we have no rights to it. In Belgian law, if we are ‘photographed as a *professional*, the photograph will be regarded as topical and no consent is necessary’ (Brüggemeier et al. 2010: 279). In most national jurisdictions, the protagonist loses her status as a person *because* she is working: ‘A picture taken of a policeman directing traffic or a bus driver constitutes a photograph of a profession, not of a person’ (279). In Germany, the law presumes consent of ‘a person who is photographed during his or her work’ (288) and also when a protagonist ‘regularly carries out a professional activity’ (289) in a public space. In Austrian law, the more the

protagonist is depicted working in her professional context, the less she can claim the right to privacy, even if she is doing something private. Because we are working, we have no rights to the image of us doing so. Marx observed that in capitalism the worker loses the right to control the value and the product of her labour. This lack of rights extends to the working documentary protagonist in the image. By working materially and immaterially in images, we not only produce a product that we do not own, or generate a smile we would otherwise not have, but our image is also exploitable as a product we do not own. Because we have 'been photographed while exercising a profession' (284) and our image is used to represent a worker, we have no right to our image.

Knowing that we are filmed makes us work more, and more conscientiously. We keep our expressions in check because we are being filmed. If we were to exercise our freedom of expression to make an expression that illustrates the alienation between our being and the work we are employed to do – which would not be possible with affective labour – we have even less right to claim the image of us expressing our alienation than if we were not working. Such images are then available to our employers through social media, even if they did not take them. The legally taken index of the worker working contributes to her being the object of her employer's gaze, and to her surveillance. The working protagonist does not only experience a psychological feeling of *to-be-looked-at-ness*, the term Laura Mulvey coined for the female objects of the male gaze in fiction films (1990: 33). Images of us working are even more likely to be owned by others than if we were not working, so the working documentary protagonist is doubly captured: first by her employer and then by the documentarist.

Marx wrote 'Estranged Labour' (1975: 322–334) in 1844–1845, just before manual labour started to be depicted in French realist paintings in the late 1840s in Millet's *The Haymakers Resting* (1848) and *Harvesters* (1849), and Courbet's *The Stone Breakers* (1849–1850). But if the realist 19th-century paintings of peasants labouring in the landscape would be documentary images, they would not be liberational by showing workers working. The land workers would have no right to their image, first because they are in a landscape and second because they are working. Filming work might 'force hidden oppressions into visibility' (O'Shaughnessy 2012: 155), but it can also draw upon and create invisible and immaterial labour. Farocki understandably laments how 'over the last century virtually none of the communication which took place in factories, whether through words, glances, or gestures, was recorded

on film' (2002). But while it is lamentable that the history of cinema is full of images of workers leaving the factory, and not of them working, workers would have had even less right to their image had they been filmed working, or merely been doing something private in the factory. Their labour is owned by the factory owner and their image by the filmmaker, who are one and the same in the case of the Lumière workers leaving the factory.

Underscoring the visible excludes the invisible processes of work. In documentary, the reification of manual labour *in* the image has distracted from the immaterial labour of the protagonist *for* the documentary. This took place under the banner of realism. While the visibility of material labour constituted the realism of a painting or a film, immaterial labour is imperceptible. The invisibility of the processes of material, as well as immaterial labour is what makes documentary realism insufficient when filming work.

The freedom to express someone else

The assignment of image rights to the image-taker and not to the documentary protagonist is supported by the law. The freedom of speech and expression of the image-taker prevails over the protagonist's image rights for her own expressions. Article 10.1 of the European Convention of Human Rights states that 'everyone has the right to freedom of expression'. But freedom of expression primarily protects the communication of information and already formed opinions and ideas: 'The "expression" protected under Article 10 is not limited to words, written or spoken, but it extends to pictures, images and actions intended to express an idea or to present information' (Macovei 2004: 15). This right is not about the expression of affect and mutable life, but about representing a content that is considered as separate from the forms of its expression. As a representation of what has already been formed, the right to freedom of expression thus falls within the purview of semiotics. An expression registers only if it can also be articulated in language, which is the form of expression of the law. The right to freedom of expression thus reveals its origin in the freedom of speech act, which has been expanded to include symbolic expressions (Winston 2012: 269). Only if expressions are of something that can also be articulated through other semiotic means, such as the refusal to salute the American flag (270), are they deemed in need of protection. Here a speech is seen as a deed and the action makes a statement that could be expressed in another form.

In the US, the power of the speech act, speech as deed (273), is inscribed in law. The US is also where speech act theory initially gained prominence through the notion of performativity and where Judith Butler applied speech act theory to the liberation of biological determined sex through the performative acts of gender. Imported from gender studies, documentary studies have celebrated performativity (Bruzzi 2006, 2013; Nichols 1994, 2001), attributing the power to change the 'body' of the film through performative acts to the documentary protagonist, whose 'agendas exceed and transform those of the filmmaker' (Marks 2000: 68): 'There are many instances in documentary of the physical and spiritual being of a person seemingly to overflow the film that sets out to contain it' (MacDougal 1998: 157). But this overflow does not translate into an acknowledgment of authorship or image rights. Moreover, when Peter Wollen writes that 'protagonists appropriate the places they are "in"' (1980: 25), this appropriation is only in the reading of the scene, not in terms of the law. The notion of performativity masks the actual lack of rights of the documentary protagonist. Despite the material connection, the relationship between the performative act of the documentary protagonist and the images of her is not the same as that between performed gender and biological sex. The film is not the body of the protagonist. The documentary protagonist is in the 'body' of someone else's images. In human rights law, the rights to the images of performativity as deed belong to the image-taker, not to the performative protagonist.

Within a legal framework that regards expression as translatable into deed and knowledge, being filmed merely pursuing an ordinary activity such as walking does not count as an act the image of which should be protected as private. Only if there is a negative referential meaning attached to it, such as when the supermodel Naomi Campbell is photographed coming out of a Narcotics Anonymous meeting (Winston 2012: 317), can the right of privacy be claimed. Only if the documentary image 'is taken in a public space in humiliating or in awkward circumstances, [can] the photographing [...] constitute a defamatory act' (Brüggemeier *et al.* 2010: 282), and only then does publication constitute a crime. An ordinary person has to be asked for consent for an image taken of them in a public space, only if it constitutes defamation. 'Photographing a drunken, non-famous person sleeping in the street' is 'a possible defamatory act' [...] 'which can lead to sanctions and consequently to damages' (282). We can only claim the right to privacy in a public space by doing acts that are usually done in private. We have to be offensive or offended, despondent, humiliated

or indecent, that is, doing something the publication of which can be interpreted as defamatory, in order to claim the right to our image and to privacy. We need to prove damage on grounds of distress if we want to prevent publication. In this way privacy only registers in terms of a negative semiotics. Even if we were to be upset about images of us, say, being upset, it used to be the case that we could only claim the right to privacy if we had endured great material, that is financial, damage (Kilkelly 2003: 21): 'Non-economic loss is only compensated in cases involving particularly serious intrusions' (Brüggemeier *et al.* 2010: 277), for instance in Austrian law. But whereas in 1995 being upset was not enough – as Winston put it (1995: 224) – more recently the law also takes mental damage into account (Winston 2008: 241).

So, it is not merely the case that because a protagonist is seen as a victim, she is represented in a documentary, as Winston observed in 'The Tradition of the Victim in Griersonian Documentary' (1988), but that because she is in a documentary, she becomes a victim. By making the rights of the documentary protagonist dependent on a negative image, the law reinforces her victim status. The documentary protagonist has to prove that she has suffered defamation with material effects in order to claim any rights to her image. Because the law reads lives in terms of a semiotics of knowledge, it does not protect unstructured, inadvertent and possibly positive expressions of affect that do not refer to something else, thereby allowing for the right to know to overrule the right to privacy. The disclosure of 'non-defamatory details of private life' (Kilkelly 2003: 14) is not protected. The right to shock with 'information or ideas that [...] offend, shock or disturb',⁴ as has frequently been utilised in art and film, is given; the right to just be affective, and not to offend, is not. Expressions that do not refer to anything other than themselves are not protected. Only if our expressions can be isolated as being different from us, like in acting, and if they have been isolated through a discriminate, temporally limited act in what could be called an immaterial object, then the work of production is acknowledged. Immanence of expression prevents image rights and generates affective labour. Instead of expression being based *on* life, expression is set *against* life in the phrasing of the European Convention of Human Rights, as in the stated need for 'balancing the protection of private life *against* [italics added] the freedom of expression.'⁵ Although Article 10 states that 'the freedom to hold opinions includes the negative freedom of not being compelled to communicate one's own opinions',⁶ the right *not* to express is read in terms of communicating the content of an opinion, not as an expression of affect.

The right for the freedom of expression constitutes the condition 'for each individual's self-fulfillment'.⁷ The notion of fulfilment of the self excludes the minor and singular expressions that we have without consciously seeking fulfilment. We cannot then exercise the freedom of expression merely through affect, and, therefore, we cannot claim it in the images someone else takes of us to express themselves. The freedom of expression of the image-takers trumps the freedom of expression of those who are the objects of their expression. The right for freedom of expression belongs to the image-takers, not to the protagonists.

So if you want to have the best shot at the rights to your documentary image, avoid the public space, avoid private property, don't work, don't lend yourself to be an illustration for a topic, don't be in a group, don't be in an event or in a historical situation, don't be incidentally anywhere, and don't know anyone! Instead, humiliate yourself, be drunk and indecent. Engage in intimate activities in a public space unless you work as a prostitute, in which case you probably have no right to privacy even if you are intimate, if prostitution is legally regarded as work. That said, even if we are intimate in a public space and this is not our work, we often have no rights to the image of our affection, as was the case for the couple who wanted to prevent Henri Cartier-Bresson from publishing his photo of their kiss and lost the case.⁸ If you are happy, decent and not intimate in public, you have no rights to the image of you.

It is only when we have been turned into an image or an object, which is to say, into property, that there are rights of ownership. We do not hold the copyright to ourselves since we are not a product. The copy of us is more protected than the original because the copy can be sold as a commodity. Owning something external to oneself is more protected than material being: 'the law looks for property to protect' (Winston 2008: 239). Only if we are a brand and if the image of us is used to economically benefit a publication because we are famous, then we might claim violation of our privacy.

Not only has the factory been replaced by the corporation (Deleuze 1992: 4), we have: 'the company does not exist outside the producers and consumers who express it' (Lazzarato 2004: 188). The corporatisation of the worker is accompanied by the legal anthropomorphisation of the corporation. While especially migrant labour in the global market increasingly operates outside of human rights, corporations appropriate the rights of people when convenient: 'funny how a corporation is a person until it breaks the law', when it is 'too big to jail' (Parramore 2012). Because abstract owning is valued higher than material being, corporations can claim the image rights of people. Public property can

have restrictions on its image being taken, while people generally have no rights to their image if it is taken in a public space.

Conclusions

The indexical documentary image owes its status to the fact that the image 'is the model' (1967: 14), as André Bazin famously phrased it. The documentary image of us is constituted through our index. But while we provide the raw material for the image of us, 'the ownership (as it were) of the thing imaged (e.g. the person photographed) is not legally significant; the ownership of the image is' (Winston 2008: 239). The law follows the dominance of the appropriator, who took the image, over the original, who is in it (238). The expression 'to take one's image' does not imply without reason that something is being taken, as already Sontag questioned: 'to photograph is to appropriate the thing photographed' (1977: 4), and 'it turns people into objects that can be symbolically possessed' (14). But it is not (only) the soul that is stolen. To take an image and thereby acquire ownership is also to take the value generated by who or what is depicted. Authorship, wages and rights are taken in a very materialistic way from the protagonist despite the material dependence of the documentary image upon the world and its protagonists: 'photographed images do not seem to be statements about the world so much as pieces of it' (4). But this dependence of the image on what it shows remains legally unacknowledged: 'physical film exists in the law almost without reference to the pre-existing physical objects captured by the exposure [...] the physical storage medium is what is owned' (Winston 2008: 238). Franco 'Bifo' Berardi finds that it is this separation of 'value production from the physical interaction of things' that fuels capitalism: 'the abstraction process at the core of the capitalist capture (subsumption) of work implies abstraction from the need for the concreteness of products: the referent is erased' (2012). In this vein, the acknowledgment of the contribution of the referent that is the documentary protagonist – the acknowledgment of the contribution of life to the product that is the image – remains likewise wiped out.

Little has changed in terms of the rights of the protagonists, since Winston raised concern that any consideration of the rights of the subjects of documentary to their image is seen as an infringement of the documentarists' freedom of speech (1988: 270). The privileging of the freedom of expression, Article 10, over the right to privacy, Article 8, and the slant of human rights law towards the takers of images, at

the expense of those who make up the material of the images, has again been confirmed in the response to the Leveson report in the UK, the country with the weakest privacy laws in Europe: 'English common law has not yet formally recognised a tort of violation of privacy' (Brüggeheimer *et al.* 2010: 9). When the report criticised the invasive intrusion of the UK press into private lives and recommended more statutory privacy rights, they were opposed by human rights and civil liberties campaigners because it would be in breach of the freedom of expression.⁹ Only image-takers have human rights. The material that the artist uses is regarded as non-human and therefore without rights. Human rights law enshrines the rights of the artist and the filmmaker over their human and non-human materials. The right of others to express themselves through images of us takes precedence over our right *not* to be the material of their freedom of expression. Our lives are the raw material for images, and raw material usually counts less than what has been processed and selected, be that of human or other matter, in art or in law. The human exploitation of resources extends to human resources as the material of other humans' images.

The generative work and the affective labour of the documentary protagonist slip through the gaps of Marx's conception of living labour as working with external materials, of post-Marxist thought that only sees the material of the image, and of human rights which assign the freedom of expression of the worker only to the image-taker. It remains to be the case that the owner of the site of labour controls the generated product, be that with respect to the factory or the image.

Notes

My translation of 'Kant und Fichte gern zum Äther schweifen, suchten dort ein fernes Land, doch ich such nur tüchtig zu begreifen, was ich — auf der Strasse fand!' (Marx 1966 [1837]: 28).

1. Workers are not even employed anymore even though they are available all the time for work on zero-hours contracts in '21st century serfdom' (Milne 2013). Zero-hours contracts are used by universities, cinemas and art institutions. Universities are now the largest providers of zero-hours contracts (Butler 2013).
2. Even though the protagonists in scripted reality shows earn relatively little, due to the serial format, the protagonists often derive additional sources of income as they become celebrities. The cast of scripted reality show *The Only Way is Essex* received a pay rise from £50 a day in 2011 to £120 a day in 2013 (Mediamonkey 2013). The *Daily Mail* reported in 2011 that "they're only making 32p more than the National Minimum Wage hourly rate of £5.93, if their wage is split over an eight hour day" (Daily Mail Reporter 2011).

3. There is a not yet articulated space between the immanent materialism of non-human actants on the one hand and a political analysis with declared demands of equal rights for the human subject of historical materialism on the other. This gap became apparent at the very interesting conference *Matter, Life and Resistance*, which featured proponents from either proclivity (Canterbury: University of Kent, 1 June 2013–2 June 2013).
4. *Handyside v. the United Kingdom*, 1976; *Sunday Times v. the United Kingdom*, 1979; *Lingens v. Austria*, 1986; *Oberschlick v. Austria*, 1991; *Thorgeir Thorgeirson v. Iceland*, 1992; *Jersild v. Denmark*, 1994; *Goodwin v. the United Kingdom*, 1996; *De Haes and Gijssels v. Belgium*, 1997; *Dalban v. Romania*, 1999; *Arslan v. Turkey*, 1999; *Thoma v. Luxembourg*, 2001; *Jerusalem v. Austria*, 2001; *Maronek v. Slovakia*, 2001; *Dichand and Others v. Austria*, 2002, cited in Macovei (2004:6).
5. *Von Hannover v. Germany*, 2005, cited in Winston (2012: 318).
6. *Vogt v. Germany*, 1995, cited in Macovei (2004: 8).
7. *Lingens v. Austria*, 1986; *Sener v. Turkey*, 2000; *Thoma v. Luxembourg*, 2001; *Maronek v. Slovakia*, 2001; *Dichand and Others v. Austria*, 2002, cited in Macovei (2004: 6).
8. *Gill v. Hearst*, 1953, cited in Winston (1988: 280).
9. Shami Chakrabarti from *Liberty* about statutory regulation recommended by the Leveson Enquiry: 'It is this alternative that *Liberty* cannot support and which would in our view, breach article 10 of the ECHR [European Convention on Human Rights] and Human Rights Act' (Wintour 2012). Chakrabarti was herself an assessor who assisted with the Leveson Enquiry. Her defence of the freedom of expression over the right to privacy was then opposed by the UN special rapporteur on human rights, Ben Emmerson: 'Leveson isn't a threat to human rights – not adopting his proposals would be. Comments attributed to Shami Chakrabarti of Liberty are the kind of nonsense that gives human rights a bad name' (2012).

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