

Legal Fictions

By Bill Jones

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I once thought photographs could be easily separated from their referents. And so I was often distressed, even angered by theoreticians such as Roland Barthes, Susan Sontag and Rosalind Krauss, who proclaimed photographs laminated to their referents, or indexical “traces,” of prior events. Photographs, they said, were evidence. The unfortunate part of this argument is that strongly differentiating photography from painting severs the newer medium’s roots in the art of misdirection and metaphor. Still, photographs do form a kind of reality contract. And it is through an immersion in the photographic tradition that the essential fictions within the body of photography become apparent.

A photograph is also a rendering, a drawing in black and white, but unlike a drawing, which has beginning, middle and end, a photograph is created all at once, its latent picture done in a fraction of a second. Photography’s alloverness fed back into painting, marking modernism through minimalism. The evidentiary nature of the photographic mark created the sense of post-photographic painting and sculpture as more the sign of the hand than the subject represented, yet rather than revive a defunct pictorialism, the evidentiary, documentary subject within photography extended the hermeneutic of painting with its deficiencies and fallacies. The near accidental discovery, the illusive incomprehensible nature of the light mark from the hand of the Other, simply reinforced the relationship between art and nature lost to painting after the 19th century.

Unwanted metaphoric constructions, generally termed fictions, are scattered throughout the law, often marking major cultural shifts serving “to make lighter the difficulties associated with the assimilation and elaboration of new, more or less revolutionary legal principles...”. Within the reality contract formed by photography lie two legal fictions on which most of photographic theory, art photography and photographic art are based. They are the slice of life and the perfect moment. Each represents a pole in the dichotomy that has informed photographic practice to this point.

These divisions in the canon have made for some unfortunate misrepresentations, especially in American art where a great deal of postmodern photography is considered conventional and therefore overlooked or misunderstood and summarily dismissed as uninformed and subjective. Conversely where the mantle of art is ascribed to the photographer, photography itself is overlooked. In fact there is an art-historically informed, technically astute, traditionally framed photographic practice that has its counterpart in the new photographic interests in Europe. Its practitioners work out of a studied knowledge of photography’s core fictions, the slice of life and the perfect moment.

Susan Sontag, in *On Photography*, distinctly defines the slice of life fiction in terms of pieces of reality, requiring of all photographs a casual objectivity locked into place with its reality trace:

What is written about a person or an event is frankly an interpretation as are handmade visual statements, like paintings and drawings. Photographed images do not seem to be statements about the world so much as pieces of it, miniatures of reality that anyone can make or acquire.

“But at the very boundary of the image the camera frame which crops or cuts the represented element out of reality at large can be seen as another example of spacing.” Here Rosalind Krauss

not only restates the slice-of-life fiction but ties it to the history of European photography between the First and Second World Wars. This is the European model; August Sander, Eric Soloman, the Surrealists and Bauhaus and Russian Constructivists, to Bernd and Hilla Becher and their students. At this level the slice of life stands for objectivity, old and new.

Though drawn from the same essential set of deficiencies and fallacies, the perfect moment has come to stand for the often demeaned subjectivity in photography, because it lacks the authority of the purely evidentiary slice of life. The notion of the perfect moment has European origins, but as an expression of artistic subjectivity has, over time, become associated with the American model; Evans, Lange, White, Steichen and Stieglitz to Weston, to Erwit, Gowan and Friedlander. As such, the perfect moment has become the subjective sign of the artist in the photograph.

Both fictions derive from the sense of capture inherent in photography, slicing and collecting the pieces. And both fictions function through the pathetic fallacy, animating the lifeless images. But the slice of life, with its empirical factoids, is aligned with the notion of objectivity, while the perfect moment has come to represent the subjective.
