THE RIGHT IN A PERSON'S OWN LIKENESS

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1. INTRODUCTION

The French jurist Fougerol tells of an Italian artist, living some centuries ago, who painted a picture of the Last Judgment showing his friends in paradise and his enemies banished to hell. Among the latter was a man from Florence, who had been active in the confiscation of the artist's property. We see a demon jabbing the unfortunate man with his trident, and, on either side, a pair of local officials who were responsible for the order of seizure.[1] It seems most unlikely that the artist had obtained the permission of his enemies to make the portraits which have thus preserved their faces for posterity. Since time immemorial, indeed, it has been the custom of painters, sculptors and other artists to take their models from real life, without special leave from the individuals concerned; obviously, the intention to inflict harm upon the persons thus represented was not the most frequent motive for the portrayal. It is only a short step, however, from the Italian artist's use of his models to ancient ideas about magical powers connected with representations of human beings, such as that a man who possesses somebody's likeness has that person to some extent in his power,[2] and that a portrait brings death to the person portrayed.[3] In this connection it may be recalled that more or less severe restrictions have often been imposed on portrait painting for religious reasons, e.g. in the Islamic faith. Ideas of this kind express the belief that human personality can be symbolized through representation. It is by no means clear to what extent the legal questions to be dealt with in the present paper are connected with such ideas, but it would be of interest

[1] See Fougerol, *La figure humaine et le droit*, Paris 1913, p. 35.

[2] E.g. in such a way that if the possessor of the portrait strikes the picture, the person portrayed is injured. A similar theme was used by Somerset Maugham in his short story "Honolulu", from the collection entitled *The Trembling of a Leaf*. A woman kills a man by violently striking his image reflected in the water.

[3] See Landwehr, *Das Recht am eigenen Bild*, Winterthur 1955, p. 22.

to know what is at the root of the highly coloured emotional arguments often put forward nowadays in favour of a more or less extensive right in one's own likeness.

2. A COMPARATIVE SURVEY

It is only fairly recently that attention has been paid, in the Western world, to the question whether individuals should be granted a special right in their own likeness.[4] The swift development of photography and of the press during the 19th century apparently played an important if not decisive part in the birth of that question. The foundation had already been laid by the ideas of the French Revolution concerning the importance of the rights of the individual. It can be stated, in fact, that at a fairly early date French law acknowledged a proprietary right in one's own likeness. This protection was not the result of legislation. Nor, in this period of change and development, did France introduce any legislative provisions on a general protection of human personality, unless art. 1382 of the *Code civil* could be thought of as such. That enactment runs: *Tout fait quelconque de l'homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé, à le réparer.*[5] This provision is generally held to provide support for damages also for non-physical injury, and is considered to imply a protection in civil law for the individual's honour. The best way of putting the case, however, is simply to state that it has become the established usage of French courts—and thus a general rule of French law—to recognize the right of people in general to prohibit any publication of their own likeness.[6] Often, however, tacit agreement is presumed to exist, e.g. in the case of pictures of public characters, groups of people in the street, etc. In addition, caricatures seem to be held lawful on the grounds of the general freedom of speech (though

[4] Much valuable comparative material has been taken from the comprehensive survey concerning protection of personality and honour, compiled by the German Max-Planck-Institut für ausländisches und internationales Privatrecht under the title *Der zivilrechtliche Persönlichkeits- und Ehrenschutz in Frankreich, der Schweiz, England und den Vereinigten Staaten von Amerika*, Tübingen 1960.

[5] Cf. art. 6.

[6] As to this usage, see for example Vaunois in *Le droit d'auteur* 1933, pp. 103 f.

not if they are defamatory). Mention should also be made, in this context, of the *Loi* of July 29, 1881, on the freedom of the press, which has been modified several times. This statute contains criminal-law provisions on libel, which do not apply only to the press but have a general application. In a report drafted by "la Commission de Réforme du Code civil" in 1953,[7] on "the rights protecting human personality" (*droits de la personnalité*), a special right in one's own likeness is included in art. 162, which forbids the publication, exhibition, or use of a picture without the permission of the person portrayed. After that person's death, a similar right devolves upon his widow and certain close relatives, if the publication, exhibition or use occurs in circumstances calculated to affect adversely the deceased's honour or reputation. The proposed art. 165 contains a general provision on the protection of human personality: *Toute atteinte illicite à la personnalité donne à celui qui la subit le droit de demander qu'il y soit mis fin, sans préjudice de la responsabilité qui peut en résulter pour son auteur.* However, new legislation on the basis of the 1953 report cannot be expected in the near future.

German developments in the field under discussion are particularly interesting. In Germany, both legislators and writers have given much attention to the question of a proprietary right in one's own likeness; the courts have frequently dealt with the problem. The Acts of 1876 concerning works of art and photography gave no protection on this point; however, they did in fact protect persons who had commissioned portraits. The statute enacted in 1907 concerning *Urheberrecht an Werken der bildenden Künste und der Photographie* included the following provision: *Bildnisse dürfen nur mit Einwilligung des Abgebildeten verbreitet oder öffentlich zur Schau gestellt werden.*[8] An incident which probably played a certain part in the passing of this legislation was the well-known case of the photographing of Bismarck's body.[9] Bismarck died on July 30, 1898. The night after his death, two photographers succeeded in gaining entry to the room where the body was lying by bribing the person who was on guard there. They took a picture of the dead chancellor on his bed. However,

[7] A non-parliamentary commission.

[8] "Portraits must not be distributed or exhibited in public without permission of the subject."

[9] See 45 *Entscheidungen des Reichsgerichts in Zivilsachen* 170. See also Andenæs, "Privatlivets fred", *T.f.R.* 1958, pp. 369 and 371, and Landwehr, *op. cit.*, p. 28, note 9.

a French correspondent who had been less successful in his attempt to bribe the guard denounced the photographers to Bismarck's family, who brought the case to court. The action was decided by the Reichsgericht on November 28, 1899. The B.G.B. was not yet in force, and the applicable law was the Roman "common law" of Germany, which contained a *condictio ob injustam causam*; according to that principle, an offended party should be granted the recovery of an object which another had unlawfully taken from him. This rule was applied by analogy in the Bismarck case. The Court ordered the photographic plate to be destroyed.

The case is interesting, *inter alia,* because it shows what roundabout methods had to be used, in the absence of legislation, in order to arrive at a result found satisfactory by the court. It seems to have been difficult from a theoretical point of view also to fit the idea of a protection of a person's picture into the legal system. The subject was vividly discussed in Germany, particularly during the latter part of the 19th century. Some experts, including the pioneer Keyssner, seem to have looked upon the right in one's own likeness as an offshoot of copyright. Others tried to link the protection of a person's own likeness with other "recognized" fields of law. Thus, some writers regarded the question as one aspect of the protection of bodily integrity or tried to associate it with the right in family names granted by B.G.B., sec. 12. Others, again, chose to regard it as a part of the larger problem of a general right of privacy. The right in one's own likeness was also frequently described as an expression of the right to defend one's honour. Nowadays, the most frequently adopted attitude is to regard the right in one's own likeness as a part of the general protection of human personality granted by German law since 1945.

This kind of discussion concerning the classification of a right may appear rather futile; but at least it may give some indication about the fields of law which are most useful when legal protection of one's own likeness is claimed in the absence of any explicit statutory rules.

The expression *Bildnisse* used in the legislation from 1907 seems to have been intended to cover the widest possible range of meaning and includes every sort of representation of a particular person. However, legal writers do not agree whether caricatures should be included. Originally, protection was only designed to cover still pictures, but courts and writers agree that

moving pictures are also included. The protection lasts for the lifetime of the person concerned and for ten years after his death. Exceptions are made in the case of certain categories. One of these concerns pictures *aus dem Bereich der Zeitgeschichte* (from the field of contemporary history). The concept *Zeitgeschichte* is meant to be taken in a very wide sense, including not only a nation's political life but also its social, cultural and business life. A portrait may fall under the exception because of the subject's prominent position in society or some particularly notable achievement associated with him. Among those who have been included here are reigning monarchs and their families, statesmen, diplomats and high-ranking officials, members of the legislature, scholars, research workers, writers, artists, actors, celebrated doctors, lawyers, engineers, inventors and captains of industry. In certain cases a person's place in "contemporary history" is held to be lost when the event which made the individual known is no longer in the news. It should not be taken for granted that such events as crimes, accidents, family scandals, etc., imply *per se* that the individuals involved belong to "contemporary history", even though the event has attracted much public attention. A certain vagueness seems inherent in the concept, and each case has to be decided on its own merits.

Another exception is made for pictures of individuals who are included in a landscape as "living interest", or people who happen to be present when a photograph is taken and cannot be excluded from the picture.

A third exception applies to pictures representing private and public meetings, street scenes, crowds at festivities, parades, accidents and so forth.

A fourth group consists of pictures which have not been commissioned, when serious artistic interests demand that they be published or exhibited.[10] This rule is not held applicable to photographs. Such exceptions are intended to facilitate artistic pictorial studies in cases where the circumstances make it impossible to obtain the permission of the person portrayed.

An exception is also made in the interests of law and order, particularly to enable the authorities to find an individual's picture in criminal records and, in the case of persons wanted by the police, to publish such pictures.

[10] In the 1959 Bill, which will be mentioned later, there is reference to "a serious artistic or scientific interest" (*ein ernsthaftes Interesse der Kunst oder Wissenschaft*).

Even in the case of these exceptions, the distribution and public exhibition of a picture can be forbidden, where these acts would encroach upon a "legitimate interest" for the person represented or his family. This is the case, e.g., when the subject is shown in situations which are not suitable for publication, such as a statesman in fancy dress or bathing costume, or in other *Vorgänge des persönlichen, häuslichen oder Familienlebens* (scenes pertaining to personal, domestic or family life). On this point certain writers propose a distinction between the so-called *Geheimsphäre*—the sphere of secrecy or intimacy—and other sectors of private life. A rightful interest can also be violated, e.g., when the picture in question is published together with one or more other pictures, especially where these represent individuals of dubious reputation. It is interesting to note that in 1953 a bill was put before the Bundestag concerning the representation in feature films of living or dead persons. This was the far-reaching "Böhm" bill, which, however, was rejected by the Bundestag.

It should be added that the relatively precise rules concerning the protection of a person's likeness are supplemented by various other provisions, such as those concerning libel, the provisions in B.G.B., sec. 826, concerning *sittenwidrige Schadenzufügung* (immoral inflicting of harm) and in sec. 847 concerning compensation for non-physical (moral) injuries and some general principles laid down in the 1949 Constitution, which contains provisions intended to safeguard "human dignity" and "the free development of the personality". These provisions have been used by courts and writers as the statutory bases of what is called a "general right of freedom and respect for the individual" (*allgemeines Persönlichkeitsrecht;* in this paper, the expression "personality right" will be used as a shorthand translation for this term), a subjective right which many writers have claimed to find in German law early in this century but which is really, as an institution of positive law, the creation of a number of postwar precedents from the West German Supreme Court. In the report on copyright law reform submitted by a group of experts in 1954 the right in a person's own likeness is defined as a personality right; the report adopted provisions identical with those in force, subject to certain minor changes. In 1959, however, the Government put before the Bundestag a bill containing new private-law provisions on the protection of "personality rights" and honour. It included, *inter alia,* a provision which offered, in general terms, protection against any unlawful infliction of injury

on another's "personality" as well as a section on the right in a person's own likeness. The bill was, however, subjected to severe criticism from the press and was never passed. A new copyright bill was enacted on September 9, 1965, but the right in a person's picture is still governed by the old legislation of 1907. A court decision is particularly worthy of mention here, the so-called *Herrenreiter* case.[1] A picture of a gentleman on horseback had been used without his permission in an advertisement for a pharmaceutical product which was widely regarded as a means of increasing sexual potency. The gentleman thus portrayed was awarded damages for mental suffering.

In Italian law, copyright law includes provisions on the right in a person's own likeness. These are in many ways similar to the corresponding German rules. The main rule is that permission must be obtained from the person portrayed before his picture is published, but there are various exceptions. Thus a reproduction is allowed without permission if the person concerned holds a prominent or official position, or if the representation occurs in the course of the work of the law courts or the police. It is also permitted if the publication occurs for scientific, pedagogical or cultural reasons, or if it is connected with events which are public or of public interest. The right of reproduction, which is thus free by statute in certain cases, is restricted to a certain degree with a view to protecting the honour, reputation or dignity of the subject.

In Swiss law, there is a provision (art. 28 of the Civil Code) which is of interest for present purposes, in spite of the very general terms in which it is worded: "Wer in seinen persönlichen Verhältnissen unbefugterweise verletzt wird, kann auf Beseitigung der Störung klagen. Eine Klage auf Schadenersatz oder auf Leistung einer Geldsumme als Genugtuung ist nur in den vom Gesetz bestimmten Fällen zulässig". (If a person is unlawfully injured in personal respects, he is entitled to bring an action for an injunction. An action for damages or for the payment of money by means of satisfaction lies only in the cases determined by statute.) There is, however, a special provision facilitating pecuniary compensation in case of a serious injury inflicted by *Verschulden* (fault). According to the Swiss writer Landwehr, the enactment quoted above indicates that a general "personality

[1] Bundesgerichtshof, judgment of February 14, 1958. See *Archiv für Urheber-, Film-, Funk- und Theaterrecht (Ufita)*, vol. 23, 1958, pp. 452 ff.

right" is recognized in Switzerland.[2] In the case of commissioned portraits, there is a special provision in sec. 35 of the 1922 Copyright Act according to which copies of these can neither be sold nor be made public without the consent of the person portrayed. If the latter is dead or otherwise inaccessible, permission must be granted by his wife or parents, children or siblings. The exclusive right is inapplicable where the authorities need the portrait *im Interesse der Rechtspflege* (for the purpose of the administration of justice). In addition there is a protection against libel and invasion of privacy (*Beeinträchtigung der Privat- oder Geheimsphäre*). It is not clear to what extent Swiss courts recognize a right in a person's own likeness on the basis of the general "personality right". However, relief has been granted against the use of portraits for advertising purposes; in one case, where the picture was of a famous film star, the use made of the picture was held to be disparaging to him, because the general public might believe that he had permitted publication in return for payment.[3] In one case, a picture of a person which had been taken from a group photo representing a baptism ceremony and used in a book was held to belong to the subject's sphere of privacy (*Geheimsphäre*); its use without permission was unlawful.[4] As stated above, it is submitted in Swiss legal writing that a general right in one's own likeness is part of Swiss law. However, writers contend that certain categories of persons cannot claim such protection, e.g. persons who have a place in contemporary history or who take part in public events. Those who belong to contemporary history are covered in so far as pictures from their sphere of privacy or intimacy (*Privat- oder Geheimsphäre*) are concerned, provided such pictures have no connection with their part in public life. When it comes to details, Swiss rules seem to be based on German law, where more precise principles have been developed in legislation and by courts and writers.

Turning to English law, it hardly seems justifiable to speak of a general "personality right". Certain actions, however, offer some protection for those private interests which, in Continental theory, are brought together under the name of "personality". A person's rights in his own picture are protected particularly by the law of libel. The concept of "defamation" appears to have been given a broad interpretation by the courts. Thus it is often sufficient that

[2] See Landwehr, *op. cit.*, p. 20.
[3] Obergericht Zürich 1924.
[4] Obergericht Zürich 1944.

a person has been made to appear ridiculous because of the context in which his picture has been used. This principle has assumed considerable importance, e.g. in the case of pictures used for advertising without the subject's consent.[5] How far the courts have gone towards the protection of rights in one's own picture is illustrated by the case *Tolley* v. *Fry and Sons, Limited*.[6] The action concerned a caricature of a well-known amateur golfer, which had, without his consent, been used as an advertisement for chocolate. He had been represented playing golf with a piece of the chocolate in question showing in his pocket. A caddy, who also had a piece of chocolate, was comparing the excellence of the chocolate to that of the player's drive. The House of Lords, reversing the judgment of the Court of Appeal, held this to be libel. In the U.S.A., it has been claimed that this case implies the recognition of a right of privacy[7] in English law. However, the English committee which prepared the report which led to the Defamation Act, 1952, maintained that the law of libel should not be extended so as to cover what is generally referred to as "privacy". It should be pointed out that in this field English law, also, recognizes that it is important to determine to what extent a person can be said to belong to "contemporary history"; representations of individuals belonging to this category may be allowed in many cases where a picture of an ordinary citizen might have been actionable.

In 1961, a private member's bill on a "right of privacy" was supported by a substantial majority in the House of Lords. It failed, however, to reach the statute book, apparently because it did not find favour with the Government. In the bill an exception from the proposed right had been made for information of general interest and the opponents of the bill pointed out the difficulty of deciding what was to be classified as such, and expressed their fear that an act based on the bill would bring an

[5] A few examples: In one case the picture of a policeman had been used in an advertisement for an anti-perspirant for the feet. In a second an advertisement montage had combined one woman's head and shoulders with the legs of another under the title "Leg appeal". A third case concerned an advertisement of a dentist which had used the photograph of an actress in such a way that she appeared to have no teeth. In this context it may be mentioned that the rules concerning passing off can imply a certain protection for one's own picture. They could serve, for example, if someone used the picture of another as a trade mark in such a way that there could be a danger of confusion and subsequent damage.

[6] [1931] A. C. 333.

[7] Cf. *infra*.

unprecedented flood of legal actions. Recently, however, demands for the enactment of this measure have been renewed, mainly as a reaction against the publication of unauthorized photographs taken of the Queen and her sister.[7a]

It should be noted that, according to the Copyright Act, 1956, any person who has ordered and paid for a photograph of himself is the holder of copyright therein.

American legal principles in the field of libel are in many ways similar to those of English law and thus imply a certain protection for one's own likeness. For present purposes, the right of privacy, which has only become established during the last few decades, is entitled to particular interest. Two pioneers in this field were Samuel D. Warren and Louis D. Brandeis; in an article in the *Harvard Law Review* 1890, they proposed the introduction of a general protection of private life, giving as their reason, among others, the hitherto undreamed-of possibilities, resulting from the technical advances in communications, of causing damage to a person's private life through undesired publicity. Peace and privacy had become more important for the individual. The question attracted general attention in 1902 as a result of a case in the State of New York. The plaintiff was a handsome young woman, whose portrait had been used without her permission in an advertisement on packets of flour. She claimed that this had disturbed her peace of mind and asked for an injunction to prevent further distribution of the picture; in addition she demanded compensation. She lost the case in all instances, though only with a narrow majority in the last court. The minority opinion was based on the article by Warren and Brandeis and claimed recognition for a right of "privacy". The judgment attracted considerable attention and was much criticized. It led as early as the following year (1903) to the introduction of an act in the State of New York, according to which the likeness of a person was, with certain exceptions, not to be used without his written permission "for advertising purposes or for the purposes of trade". Several other American States have also put limits on the commercial use of portraits. The right to privacy now seems to be recognized in one form or another in a large number of the States; it is completely rejected in only a few of them. Even in the absence of statutory provisions, American courts seem to be willing, to a large extent, to grant relief in the

[7a] See *Le droit d'auteur* 1966, pp. 144 f.

form of damages and injunctions against further use, particularly in cases where portraits have been used without the subject's permission for commercial purposes and especially advertising. It should be noted that much attention has been given to the "right of privacy" owing to numerous cases concerning the use of incidents in a person's life made by the press or by artists and writers of fiction. An important limitation on the right of privacy comes from the freedom to publish what is thought to be of public or general interest. In particular, the exception made for "public figures" is very widespread in American case law, though even such persons are held to have a certain right to privacy.

It may be added that, in the case of commissioned photographic portraits, copyright is held to be vested in the person ordering the picture or the person portrayed, provided the photographer's work is remunerated.[8]

In Scandinavia, Norway has introduced quite a comprehensive body of legislation, including some detailed provisions on a person's right in his own likeness. The Norwegian Act on copyright in photographs, 1960, contains provisions on this topic; in principle, they are modelled upon the German legislation of 1907. Copyright in commissioned photographs belongs to the person ordering such pictures; however, the right can be exercised only by permission of the person portrayed and thus the pictures cannot be reproduced, exhibited or otherwise made accessible to the general public without his leave. They may, however, be exhibited by the photographer as an advertisement for his work, unless such use is expressly forbidden by the person portrayed. That person's permission is not required if a portrait is of current and general interest, provided the persons portrayed are subordinate in relation to the picture as a whole; the same rule applies to pictures of meetings, etc., if connected with circumstances and events of general interest. It is surprising to find that these provisions, most of which were adopted already in the Act on copyright in photographs, 1909, have not given rise to a body of case law.[9] In so far as commissioned portraits are concerned, the Norwegian Copyright Act, 1961, provides that the author's right can be

[8] See Ball, *The law of copyright and literary property*, Albany 1944, pp. 483 f.

[9] See Andenæs, *op. cit.*, p. 376. Note that, unlike Sweden and England, Norway does not seem to have any general legal ban on taking photographs in a court of law. The judge has the right, however, to forbid such photography if he considers that the proceedings are being disturbed or that the dignity of the court is endangered. See Andenæs, *op. cit.*, p. 374.

exercised only with the permission of the subject as well as of the person who has commissioned the portrait. In this context, it is worth mentioning an enactment in the Norwegian Penal Code, sec. 390, which provides for criminal responsibility for anyone who infringes the right of privacy through publication of facts from the personal or domestic sphere. In addition to the legislation concerning "privacy", the law of libel can also offer protection against the use of a person's picture in certain cases. It is particularly interesting that the Norwegian Supreme Court, in an often cited case concerning the representation of a murder in a film made a long time after the event actually took place,[1] seems to have recognized, on the strength of certain opinions in legal writing, a general "personality right" of a wider scope than is granted by statutory provisions on the topic.[2] The case did not concern the protection of a person's own picture, but of a *Lebensbild,* to use the German term (a representation of a person's life rather than his physical image); such a principle, however, may in fact be of interest for the purpose of protecting against unauthorized representations in the physical sense.

Under the Finnish Act on copyright in photographs, 1960, as well as in the corresponding Swedish statute from 1960, the person who orders a photograph has the copyright in it, unless otherwise agreed upon.[3] In so far as commissioned portrait paintings are concerned, the Finnish Copyright Act, 1961, and the Swedish Copyright Act, 1960, provide that the artist's copyright may be exercised only with the permission of the person who ordered the portrait to be made.[4]

The position of Danish law in this matter has been analysed by Professor Torben Lund.[5] The Danish Act on copyright in photographs, 1961, contains provisions concerning the right of the person commissioning the photograph which are similar to those in the corresponding Swedish Act of 1960. Professor Lund seems

[1] Judgment of December 13, 1952. See *N.Rt.* 1952, p. 1217.

[2] See Andenæs, *op. cit.*, pp. 391 f., Nelson, "Filmmord", *Sv.J.T.* 1954, pp. 21 ff., especially pp. 28 ff., Daehlin, E., "Levende modell", *Ophavsretlige perspektiver. Foredrag og diskussioner i Dansk Selskab for Ophavsret 1954–8,* edited by Torben Lund and Niels Alkil, Copenhagen 1958, pp. 151 ff., and Grönfors, *Personlighetsskyddet och massmedia,* reprinted appendix to *Förhandlingarna vid det 24:e nordiska juristmötet,* Stockholm 1966, pp. 18 f.

[3] See *infra,* p. 226.

[4] See *infra,* pp. 226 f.

[5] See Torben Lund, *Billedkunsten i retlig belysning,* Copenhagen 1944, pp. 302 ff., and "Retsbeskyttelse mod afbildning", *Festskrift til Poul Andersen 12 juni 1950,* pp. 254 ff.

to hold the opinion that the provision in sec. 9 of the Danish Unfair Competition Act also applies to portraits. Provisions against passing off can thus be thought to imply a certain protection of a person's own picture. There seems to be disagreement among Danish legal writers concerning the extent to which there can be said to be a general "personality right" in Denmark providing an additional protection for a person's own likeness. It is also a debatable question whether, in Danish law, it is possible to reach, by means of analogical reasoning on the bases of existing provisions and an analysis of the circumstances of each case, solutions which imply a protection of a person's own likeness more far-reaching than that provided by explicit legislation.[6]

Certain of Professor Lund's opinions *de lege ferenda* are of great interest.[7] He proposes three main situations where a right in a person's own picture should be recognized, while at the same time he acknowledges the possibility of a further elaboration of such definitions:

(a) When the publication of a portrait is carried out in such a way that there is an infringement of the subject's honour or privacy.

(b) When the picture in question gives an obviously misleading impression of the subject's appearance and personality.

(c) When the representation occurs for a particular commercial purpose, e.g. advertising. This is particularly important in the case of unauthorized commercial representation of persons whose work is in fact based upon personal appearances or performances in public, such as actors, mannequins or photo models. On the other hand, Professor Lund holds that a general protection of one's own portrait, as granted e.g. by French courts, is unreasonable.

Apparently, in a case of 1965 the Danish Supreme Court protected a person against the unauthorized use of the "good will value" of his picture; no statutory provision can be found in support of such a decision (see 1965 U.f.R. 126, and Mr. Spleth in *U.f.R.* 1965 B, p. 227).

This survey of the state of law outside Sweden has been intended solely to draw the reader's attention to certain main characteristics of the rules concerning rights in a person's own likeness in the legal systems dealt with. In addition to these main

[6] See Torben Lund, *Retsbeskyttelse*, pp. 267 ff.

[7] See Torben Lund, *Billedkunsten*, p. 310, and *Retsbeskyttelse*, pp. 269 f.

principles there are other provisions of interest, e.g. certain current or proposed rules concerning the protection of performing artists.

3. SWEDISH LAW

It is evident from the foregoing summary that problems related to the right in a person's own likeness have aroused considerable interest in some countries. Yet in Sweden very little attention has been devoted to this question. However, certain scattered provisions in different Swedish statutes can be said to offer some protection against the publication and distribution of a person's portrait. Some of these provisions will be mentioned here.

Sec. 14 of the Act on copyright in photographic pictures has already been mentioned. Since the person who commissions is usually in fact either identical with the subject or closely related to him, this rule actually works, in the majority of cases, as a protection for the subject. The Commission preparing the Copyright Act suggested, in its report of 1956, that in principle the photographer should retain his copyright even in commissioned pictures, subject to the condition that the buyer's permission would be required before further copies could be made or the picture made available to the general public.[8] The photographer would, however, be at liberty to exhibit the picture for advertising purposes in the usual way, unless forbidden to do so by the buyer. In addition, the latter would be free to publish the portrait in newspapers, periodicals or in biographical contexts in other publications. However, in the end the older rules were retained. The photographer has the right to exhibit the picture for advertising purposes in the normal way, if the buyer does not forbid this. Even where the photographer retains his copyright in the picture, the buyer also has some rights in it. He can publish the portrait in newspapers, periodicals or other publications in a biographical context, provided the photographer has not explicitly reserved to himself the right to forbid such use (sec. 14). The right held by the person commissioning a photographic picture is, however, limited, in the same way as is the right in one's own likeness in other legal systems, by a number of exceptions, e.g. in the interests of law and order and public safety.

[8] See *S.O.U.* 1956: 25, pp. 29 and 478.

A provision reminiscent of the rule suggested by the Copyright Commission concerning the right of the person who has commissioned a photographic portrait could be found in sec. 9 of the Artistic Copyright Act, 1919, which had the following tenor: "If the portrait is commissioned, the artist or his legal successors may not reproduce the likeness without the permission of the person who commissioned it, or, after the latter's death, of his surviving spouse and heirs." The word "portrait" was here intended to include busts and other representations in plastic form. There was no corresponding rule in the Copyright Commission's draft, 1956. The Commission was clearly of opinion, however, that in such cases an interpretation of the contract would in general result in the conclusion that permission was needed. The fear was expressed that problems of interpretation might easily arise, and it was considered more natural to oblige the artist to take special steps to secure reproduction rights than to require an explicit proviso from the person giving the commission that the artistic work should remain unique. In the Swedish Copyright Act, 1960, it was laid down that in the case of commissioned portraits the author was not at liberty to exercise his right without the permission of the person who gave the commission, or, after his death, of his surviving spouse and heirs (sec. 27).

The Copyright Commission discussed the extent to which it was justifiable to introduce more general provisions restricting the publication of representations of a person without his permission.[9] The Commission held that such protective rules, if any, should be applicable only to specified cases, e.g. a publication which, in view of the contents of the picture, might be insulting to the subject, or cases where pictures which were not in themselves of this kind were used for political propaganda, commercial advertising and similar purposes. Such a provision, however, was considered to be closely connected with a general "personality right" and it was decided that it should be left out.

The Swedish Trade Marks Act, 1960, is also worth noticing in this context. Sec. 14 includes the following regulation: "A trade mark may not be registered ... (4) if the mark includes something which is liable to be understood as another person's firm or another person's name or portrait, unless it obviously refers to a person who died a long time ago ...". It is evident from the wording of this enactment that it is also intended to

[9] *Ibid.*, pp. 280–2, 479.

apply in the case of caricatures. If the subject gives his consent, however, registration is allowed, providing there is no danger of misleading the general public through that registration. Certain other provisions in this Act are also of interest in this matter.

As Professor Torben Lund points out,[1] there seems to be at least an implied reference to a right in a person's own likeness in sec. 9 of the Swedish Unfair Competition Act, 1931. A picture of a person could in the course of trade be used as a (distinctive) symbol, which could easily be confused with a previously established (distinctive) symbol for another person's trade, offered goods or services. In certain cases, this provision would seem to serve also as an obstacle to the use in trade of pictures of individuals who have been dead for a long time, where likenesses of the persons in question had already been used as (distinctive) symbols of another person's trade.

The rules of Swedish criminal law concerning libel can also be considered to give some statutory protection of a person's likeness. They are, however, very general in form, and the terms give no clue to the problem of libel through representation. Nevertheless it seems obvious that, especially in certain combinations, pictures can be used to fulfil the same function as, e.g., a punishable spoken or written statement. It may be mentioned here that, according to a Swedish expert, Professor Nelson, the legislation on libel which was in force before the new Criminal Code became valid on January 1, 1965, was designed to protect, *inter alia*, roughly the same area as that covered in Norway by the rules of the penal code concerning privacy.[2]

Certain other statutory provisions can be used to provide at least some protection for the subject of a portrait, even though that is not their immediate purpose. Examples are the prohibition against taking photographs in courts of law as laid down in Chap. 5, sec. 9, of the Swedish Code of Procedure; the censorship provisions in an ordinance from 1959 concerning cinema performances etc., and provisions in the Criminal Code, Chap. 16, sec. 11, concerning, *inter alia*, distribution of pictures which offend public

[1] Torben Lund, *Retsbeskyttelse*, p. 267.

[2] See Nelson, *op. cit.*, p. 25. Nelson bases his opinion above all on a statement of Supreme Court Justice Bolin during the Supreme Court's review of the proposed penal law in 1862. Note that one of the reasons for the adoption of the widespread ban on justification in the 1864 penal legislation was that the sanctity of private and family life was held to demand the prevention of public exposure of circumstances connected with the latter. See *S.O.U.* 1953: 14, pp. 183 f.

decency. Mention should also be made here of an Act of 1937 concerning restrictions on the right of access to public documents; this Act contains carefully specified restrictions on the Swedish citizen's constitutionally guaranteed access to all public documents; some of these restrictions are intended to maintain privacy.

It is, however, doubtful, to say the least, whether Swedish courts would be willing to admit the existence of a general protection of human personality going beyond existing statutory provisions, as the Norwegian Supreme Court seems to have done in the case mentioned above.[3]

In the copyright legislation, there are also provisions which grant protection for the so-called "neighbouring rights" of performing artists, such as actors, musicians, reciters, etc.; the protection concerns their presentation of "works" in the sense of copyright law (sec. 45). A performing artist's presentation of a work may not, without his permission, be recorded by devices through which the work can be reproduced, e.g. by taking a film. The artist's permission is also required for such a performance of a work to be made available to the public by radio or television broadcasts or by direct transmission. If a performance of a work has been recorded by the devices referred to, the artist has an exclusive reproduction right which lasts for 25 years from the year of recording. Thus the performing artist is protected against unfair use of his achievements. These provisions imply a fairly substantial protection of the right in one's own picture for the not inconsiderable number of people who can be said to have a special interest in this connection. It should be noticed, however, that this protection is subject to important restrictions. As has already been pointed out, it applies only to presentations of "works" in the sense of copyright law. Thus if pictures of a film star were taken without permission otherwise than during an actual performance of a "work" and used for advertising purposes, the provisions referred to would not be applicable.[4] The fact that a presentation of a "work" is required also means that a large number of so-called "artists" and others, whose professional activities imply public appearances—such as circus and music-hall

[3] Cf. Nelson, *op. cit.*, and Grönfors in Coing, Lawson & Grönfors, *Das subjektive Recht und der Rechtsschutz der Persönlichkeit*, Frankfurt am Main 1959, pp. 39 ff.

[4] The performing artist's right in his own likeness is also limited in other respects, e.g. in regard to reproductions of copies of the work for private use, showing of short excerpts from the work in film reviews, etc.

artists, photo models, mannequins, conjurers, etc.—do not normally enjoy the protection granted to "neighbouring rights".

In practice, a certain protection of a person's own picture is often created through the rules adopted by organizations, such as the so-called publication rules of *Publicistklubben* (the Swedish Publicists' Association) or the rules for advertising issued by the International Chamber of Commerce. Thus, according to the rules of the former organization, photographs should not be presented as portraying something different from what was represented at the time of photographing. Horror pictures, and photographic or drawn portraits of juvenile delinquents, are also to be avoided. It is further provided that pictures of individuals whose names have been omitted from newspaper reports should not be published. The following provision is also worth noting: "Publicity which infringes upon the sanctity of private life must be avoided, unless an imperative public interest requires public illustration." According to another special rule the name of a person suspected, detained, arrested or charged with a crime should under no circumstances be published before the case has been decided in court if there is any doubt about his guilt; the press, however, scarcely seems to follow this rule consistently. As for the advertising rules of the International Chamber of Commerce, mention may be made of a provision to the effect that a particular individual should not be mentioned or his picture used in advertising, unless he has given his permission.

4. THE NEED FOR LEGAL PROTECTION

The foregoing survey gives rise to the question to what extent it is justifiable to use legislation in order to extend, or at any rate define more exactly, the right in a person's own likeness. A number of arguments could be put forward against unrestricted protection. Such protection might encroach upon the general freedom of action to a not inconsiderable degree. Furthermore, it might also render it difficult to satisfy the public's legitimate need for information about what is happening in the world. If it is felt to be desirable that the public at large should take a serious interest in, e.g., current political and cultural questions, then an important part must certainly be played by the publication of pictures of the leading personalities in these spheres and of those

participating in important events. Several of the arguments in favour of the freedom of the press are also applicable. One argument is the necessity for painters, sculptors and other artists to use models from real life. There is even a considerable risk that by pure chance a representation in a work of art may resemble a living individual who has not been used as a model; and it has been pointed out—though perhaps mostly in jest—that if protection of one's own likeness were extended, even landscapes could become dangerous for the artist, since clouds and rocks can often be interpreted as resembling some person.[5] Such a widespread protection of a person's own likeness might perhaps be particularly harsh for photographers. In addition, such a right could in certain situations make the work of the police and other judicial authorities more difficult, e.g. in a search for a wanted person. An obligation to obtain the subject's permission can even be a hindrance to the pursuit of learning, since the use of portraits often has an important part to play in medicine, criminology, history and many other fields of research.

It is to be expected that any proposal to extend considerably the protection of a person's own likeness would meet with strong opposition from different quarters, including many representatives of the press. This impression is confirmed by certain statements on the subject by journalists and others in the Swedish publication *Fotografisk årsbok* (Photographic Yearbook), 1959.[6] Amongst other things, it has been said that such legislation would be an attack on the freedom of the press. Another point of view is that it would not be possible to enforce an act concerning a right in a person's own likeness. Several critics point out the difficulty of defining limits; they hold that one cannot legislate in matters which really concern good taste. Some of these critics, however, show a glimmer of sympathy for an increased protection of a person's own likeness, and even more people feel that to a certain extent press photographers abuse the freedom they now enjoy in this matter.

Nevertheless, it seems evident from the foregoing comparative survey that developments in many countries show a tendency towards an increased legal protection of a person's right in his own likeness. It must also be apparent that the need for protection in this field has become highly relevant at the present time,

[5] See a statement by Hans Thomas, reported in Fougerol, *op. cit.*, pp. 38 f.

[6] Pp. 92–108. See also, concerning the fate of the West German Bill of 1959, *supra*, p. 219.

in view of the technical facilities for taking pictures and making them quickly available to a very large public. As has been said, the Swedish Copyright Commission felt that there was a need for a special enquiry into this matter, and indeed the new copyright legislation includes a considerably extended "personality protection" for certain categories. During the 18th and 19th centuries, when copyright legislation first made substantial progress, arguments influenced by the idea of natural rights played a vital part. In our own times the tendency seems to be, at least in Sweden, to recommend increased protection in this field rather on account of the stimulus it would give to literary or artistic contributions and/or from considerations of equity.[7] The "stimulus" argument, however, does not seem to be mentioned so often in support of an extension of the so-called moral right of authors. A comprehensive extension of that right can in some degree be said to express a greater regard for human personality, and thus to imply ideas which are not remote from certain arguments which can be put forward in support of a protection of specifically personal interests in other respects, *inter alia* in so far as a person's own likeness is concerned. In this way it is often claimed that certain uses of portraits may be considered offensive to the subject of the picture, although the offence given is not so grave as to come within the range of the law of libel. Among the personal interests which could be prejudiced in such cases are the subject's peace of mind, his self-esteem, his reputation and/or mental development in general. In view of recent technical developments and of concomitant changes in the basic ideas on the sphere of integrity which can be claimed by the individual, it is no mere academic exercise to discuss an extension of the right in a person's own picture. New legislation in this field could be framed so as to take into account many of the disadvantages mentioned above. It would not, however, be easy to overcome the considerable difficulties involved in drawing the limits. Such legislation would scarcely seem to fulfil any real purpose unless infringements were dealt with severely. One cannot help suspecting that the absence of effective sanctions must have played a considerable part in the development of the present situation, where the rules granting some protection of a person's own likeness seem to have remained, at least in some countries, little more than pious wishes.[8] It is

[7] Cf. Lögdberg, *Auktorrätt och film*, Uppsala 1957, pp. 39 ff.

[8] See, for example, Andenæs' statement concerning the Norwegian photographic law, *op. cit.*, p. 378.

clear that the question of an extended protection requires thorough examination. What follows is a rough outline of a few possible solutions intended to grant a more comprehensive right in a person's own likeness than is actually offered by most legal systems.

First of all, one should perhaps consider to what extent the introduction of what the Germans call a *"Generalklausel"*—a provision couched in very general terms—on a general "personality protection" would meet the needs of the situation.[9] It seems to me, however, that this method would scarcely produce an improvement in the subject's legal position sufficient to counterbalance the uncertainty that such a proposition might well bring about. In view of the extreme rarity of cases where Swedish courts have needed to pass judgments on and lay down guiding principles concerning the "moral rights" (*droit moral*) of authors —although certain general rules on the subject have long existed —it seems scarcely likely that the courts would be able within a reasonable time to work out, on the basis of such a general provision, any really precise rules concerning the right in one's own likeness. Incidentally, for many decades certain groups of authors have been represented by powerful organizations. The situation is different in countries where actions are often brought concerning questions of this type and a comprehensive case law is thus quickly established. It should be noted that, in spite of this, recent proposals in England, France and Western Germany, which included provisions in general terms on a general "personality right" or protection of privacy, did not result in legislation. But even if such a provision were to be introduced concerning the right in a person's own likeness, it would appear necessary to suggest some general guiding principles for its application in respect of portraits. Such guiding principles might of course also be needed if a provision in general terms were resorted to as a complement to more precise regulations.

Any legislation in this field would seem most likely to be successful if it were based upon one of two basic principles: that the right to use someone else's likeness is free, except in certain situations where there are particularly strong reasons for not doing so, or else that it is forbidden to use someone else's likeness except for private use and in the case of specified exceptions. The adoption of the latter principle would grant protection even in certain

[9] Cf. the legislation in Switzerland.

cases where the need for it does not appear particularly great, but where no particularly strong case could be made for the right of free use either.

Let us first deal briefly with the former principle. The arguments of Professor Torben Lund referred to above merit some attention in this context. Thus, it seems justifiable to except representations for special commercial purposes, e.g. advertising. As has been stated above, it is possible to trace a tendency in this direction in Swedish law, and foreign protective rules have often been applied to these cases. It must be added, however, that it is scarcely desirable to go so far as to forbid every use of another person's picture for commercial purposes without his permission. If, for example, an ordinary newspaper reproduces the photograph of a well-known politician without his permission, this is strictly speaking for commercial purposes, but it is obvious that it is not unlawful.[1] Representation for "commercial purposes" must reasonably be something else, in this context, than merely distributing and selling the picture in question as an integral part of a newspaper, film, television programme, etc. A typical case is where the picture is used in advertisements and on posters for advertising cigarettes, clothes and similar goods in such a way that the public could be led to suppose that the subject is recommending the purchase of a particular commodity and has been remunerated for this. Protection also seems justified, however, where a picture of a famous person is sold separately in large numbers without his permission.

The opinion expressed by Professor Lund, according to which protection is particularly important for persons whose professional activity is based on personal appearances or performances, is probably due to the fact that in these cases we are dealing with "unjust enrichment" and/or to the fact that it would be unfair to deprive these persons, through the inadequacy of legal protection, of a source of income on which they could otherwise often count. It is interesting to note in this context that the Swedish Copyright Commission adopted similar ideas when stating the *ratio* for the introduction of so-called neighbouring rights in respect of gramophone records.[2] It may be recalled that the Swedish Copyright Act, 1960, also granted performing artists protection against the unauthorized use of their presentation of a work.

[1] Cf. Ricard, "Har vi retsbeskyttelse for eget billede?", *Juristen* 1947, p. 215.
[2] See *S.O.U.* 1956: 25, pp. 374 ff., especially p. 376.

For these artists in particular, it might well be justifiable to extend protection so as also to include pictures which do not originate from their performance of a work. There is often little real difference between these two cases. The performance of a circus artist, for example, is mostly not a presentation of a "work". If, however, he carries out exactly the same feat within the framework of a film or a play, which constitutes a "work", then he must presumably be said to have contributed to its presentation. It therefore seems reasonable not to limit protection against use of pictures for advertising purposes to those which refer to a presentation of a work, even if it is admittedly particularly offensive to a subject when pictures from a presentation of one of his "works" are used commercially without his permission. If it seems advisable to extend protection along these lines, it would then also appear reasonable to extend it to cover pictures of persons in general. It is certainly equally offensive to people whose work has nothing to do with public appearances to find their pictures being used in such a manner. The principle of "unjust enrichment" could possibly be quoted in respect of these cases also.

There is yet another field in which protection of a person's own likeness seems to be important. It often happens that pictures are used without the subject's permission in the propagation of various ideas which cannot be said to have a typically commercial purpose, such as propaganda for religious or political ideas, temperance, sports, etc.[3] At times the line between such use and use for direct commercial purposes may of course be vague; but if a basic protection were introduced in this field also, the problem of distinguishing between the two groups would not often arise in practice, and would therefore scarcely prove a stumbling block. One should, however, note that protection against the use of pictures in propaganda for ideas of the kind referred to here can be justified only in rare cases by reference to the principle of "unjust enrichment". It might therefore be appropriate to provide different sanctions in the two types of cases (at any rate when there is a possibility of action for damages). The fact that the argument drawn from the principle of "unjust enrichment" cannot be given much weight in respect of use for propaganda of the non-commercial type also means that there is not so much reason here as with regard to commercial advertising to place in

[3] One may mention here a recent Swedish case: a picture of a deceased person, belonging to a particular political party, was used in the propaganda for another political party.

a special class persons who earn their living by public appearances.

Libel should be treated separately. A more exact definition of the contents of those enactments in this field which may provide some protection of a person's own picture seems to be called for. It is not really clear to what extent the Swedish law of libel as it actually stands also provides protection, as Professor Nelson appears to think was the case with the rules in force before the introduction of the new Criminal Code, in situations where, e.g., Norwegian law would make use of the provisions concerning protection of privacy. In the same way there seems to be a need for more explicit rules concerning the protection of pictures belonging to the subject's "private sphere of life" (*Privatsphäre*). In view, however, of the swift changes which are apt to occur in prevailing attitudes on this matter, it would appear impossible to lay down detailed statutory rules on the subject. We are here in the main concerned with pictures of situations which the subject would normally seek to withhold from public attention and would generally succeed in so withholding, e.g. intimate scenes of his private life. It seems reasonable, however, to extend this field of protection to cover such cases as pictures of shocked and/or injured people after a car accident, pictures (possibly enlarged) of certain isolated individuals, their features twisted by emotion, who have been picked out from a crowd scene, etc. An example often cited in legal writing is the publication of pictures representing individuals in fancy dress or bathing costumes; a few decades ago this was probably considered much more insulting than it is now. Pictures belonging to the categories mentioned do not in fact generally have any relation to the subject's real working activity, but of course there may be many exceptions here, where the picture cannot or can only with hesitation be said to belong to the subject's "private sphere of life"—take, for example, the case of a famous racing driver involved in an accident during a race.

The problems which are raised, as Professor Lund points out, by pictures giving a completely misleading impression of the subject's appearance or personality can be solved if, as will often be the case, they fall within one or more of the categories mentioned above as deserving legal protection. In addition, the general definition proposed by the Danish writer is able to bring in a number of heterogeneous situations. As for the notion *appearance*, it must be decided whether it is necessary to differentiate between

photographic pictures (or pictures produced in a similar way) and drawings or paintings. The reason for this is obviously the widespread view that a photographic picture can, to a much greater extent than a painted or drawn portrait, be regarded as a faithful reproduction of the subject's features—one recalls the common saying that "the camera never lies". Drawings or paintings are often caricatures, and are in fact regarded as such by the general public. Thus there is perhaps a greater need for protection in the case of photographs, which can easily be made misleading by various technical devices.

It is more difficult to define the category of "pictures which give a completely misleading impression of the subject's *personality*". These in particular are often likely to be covered by the protection already suggested for certain specific cases. The question is then to what extent additional protection is needed in the case of misleading pictures of this special type. A misleading impression of someone's personality can be created, in particular, by showing him carrying out an activity or figuring in a context wholly foreign to him. This can be done for instance through such technical devices as removing a picture from its context, e.g. by reproducing scenes from an amateur dramatic performance in such a way that the general public could gain the impression that they are looking at pictures from the actor's ordinary life. The problems related to pictures giving a misleading impression of a certain personality are often similar to those connected with what the Germans call *"Lebensbild"* protection.

A special question is to what extent persons who can be said to belong to "contemporary history" should be less entitled to protection than others. It is often said that a man who ventures into public life must be prepared to see his picture published more often than other people do, even in cases where he is not in fact appearing in the capacity to which he owes his place in "contemporary history".

It must also be pointed out that exemptions from protection may be necessary or at any rate desirable where such protection would hamper the work of the police and of judicial authorities, and also where it would stand in the way of scholarship and scientific progress.

The extent to which protection can be justified even after the death of the subject is perhaps more debatable. A protection lasting for a long time or forever does not, however, seem wholly unreasonable, at any rate in so far as libel or violation of privacy

are concerned. Mention should be made here of sec. 51 of the Swedish Copyright Act, 1960, which grants protection of the integrity of literary and artistic works for an unlimited time where general cultural interests are involved. This provision above all concerns so-called classical works.

It hardly seems justifiable to claim that a protection, within the limits now proposed, could in any way threaten the public's legitimate need for information or endanger the freedom of the press. Nor does there seem to be any real necessity for artists, photographers, etc., to use living models in these situations without the consent of the subject. On the other hand, it must be admitted that difficulties may arise over the definition of limits.

The introduction of a basic protection of a person's own likeness, subject to certain specified exceptions, cannot be so easily justified. If it were adopted, the obvious course would be to take as a model the West German, the Norwegian or the Italian system. The West German legislation concerning the right in a person's own likeness seems to be the most detailed, and from that point of view the one to be preferred. If, however, it were decided to adopt the West German system, certain modifications would need to be introduced. Amongst other things, the special exception which it allows for "higher art interests" seems of debatable value. Probably what would happen if such an exception were adopted would either be that it would have no meaning or that the courts, in passing judgment, would be faced with difficulties out of all proportion to the gain to cultural life offered by such a rule. If, notwithstanding this, an exception of this kind were introduced, it would appear desirable to insist at least on a more precise definition. In addition, such pictures of persons as could be freely published, since the persons in question figure as part of a landscape or are taking part in a public meeting, etc., should be subject to special rules intended to prevent their being enlarged and perhaps even isolated from the context of the original picture in order to give a more "individual" impression. A more exact definition, stating what pictures ought to be classified as illustrating "contemporary history", is equally important, and there are even grounds for asking whether it would not also be advisable to establish certain distinctions *within* this category. It is indeed a generally accepted fact that different people regard publicity in wholly different ways. It is well known that some go so far in their desire for notoriety that they consider it of little importance what people say about them,

provided they say something. They seem to have a real horror of being "killed without publicity". Others, however, prefer to work in an atmosphere of silence, and certain individuals seek at all costs to avoid finding themselves in the limelight. The question is then whether it would not be possible to trace some schematic difference between different groups within the German category of "contemporary history". Film stars, for example, can as a group be supposed to have a more developed interest in publicity than have industrialists. If such distinctions could be made to appear reasonable, it might also perhaps be justifiable to formulate different rules concerning the right in one's own likeness for different categories belonging to "contemporary history". Lack of space prevents us from going into detail concerning these ideas, but if this course were chosen, one problem needing thorough consideration would be the desirability of an extended, and possibly lengthy, protection after the subject's death. Another difficult question would be the extent to which people who have been involved in crimes, serious accidents, etc., should be considered to belong to "contemporary history", and also how one should deal with temporary association with it, if indeed those temporarily involved with current events can be considered to belong to "contemporary history". In the case of individuals who have *for a long time* remained outside it, full protection of their picture would seem to be justified, if it is quite clear that the change-over from belonging to "contemporary history" to comparative obscurity has in fact taken place.