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## REFLECTIONS ON VISUAL PERSUASION

STUART EWEN\*

About 100 years ago, in 1895, the French sociologist Gustave Le Bon published a book called *The Crowd: A Study of the Popular Mind*.<sup>1</sup> This book turned Le Bon into an internationally renowned thinker almost instantaneously. Within a year after publication, *The Crowd* was available in nineteen different languages, and within two decades Le Bon's ideas had influenced the thoughts of a whole new battery of what might be called compliance professionals: professionals who were concerned with reaching and shaping the public mind, and who were also interested in shaping public behavior. That is what courtrooms are about as well.

This book, like Le Bon himself, is largely unknown today except among European intellectuals and within historical accounts, but Le Bon's thoughts left an indelible imprint on the contours of our present day world. Although he is invisible and unknown, his footprints are virtually everywhere in our world. The book basically represented the anxious diatribe of a middle-class French intellectual, an academic who was particularly terrified by the rise of working class militancy.

This fear was accelerated by the Paris Commune in 1871.<sup>2</sup> Le Bon was, in general, mostly agitated by unruly democratic attacks on traditional European patterns of social distinction and deference. Le Bon, the social scientist, craved order. He warned that a knowledge of the psychology of crowds was the last resource of statesmen. His book *The Crowd* was nothing less than his urgent attempt to scientifically analyze the workings of what he called the mass mind, so as to better influence and hopefully control it. Le Bon rejected a central idea that had shaped liberal political thought and legal practice since the eighteenth century: the notion that people were intrinsically rational beings, and that a well constructed argument—which at that time determined what was used as

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1. GUSTAVE LE BON, *PSYCHOLOGIE DES FOULES* [THE CROWD: A STUDY OF THE POPULAR MIND] (Transaction Publishers 1995) (1895) [hereinafter THE CROWD].

2. See generally ROBERT A. NYE, *THE ORIGINS OF CROWD PSYCHOLOGY: GUSTAVE LE BON AND THE CRISIS OF MASS DEMOCRACY IN THE THIRD REPUBLIC* (1975).

rhetoric—was capable of propelling reason in those who heard the argument. That idea inspired the Declaration of Independence, the legal rights brief explaining that the overthrow of government is a rational act of rational men.

Le Bon still maintained that middle class people like himself were capable of reasoned critical reflection. But he saw what he termed “the crowd” as a lower life form. If middle class individuals were capable of acting and thinking rationally, then the crowd was driven by dark and irrational forces. He put it straightforwardly: the crowd is driven by its “spinal cord,” the mob is driven by impulsiveness, irritability, an incapacity to reason, the absence of judgment.

In *The Crowd*, Le Bon saw a collective embodiment of the mental process of what he perceived to be lower forms of individuals—savages, women, children. Le Bon and a number of men who followed his lead—Gabriel Tarde; Graham Wallas, the political scientist; and Wilfred Trotter, who in 1916 wrote a book called *Instincts of the Herd in Peace and War*<sup>3</sup>—were the founders of the modern science of social psychology. They invented a field that grew as the 20th century proceeded.

According to their outlook, the capacity to analyze and play to the irrational represented the key to social stability in the modern era. Graham Wallas wrote a book in 1908 called *Human Nature in Politics*.<sup>4</sup> Wallas is interesting because he was the teacher and mentor of probably the most influential American thinker on issues of public opinion, Walter Lippmann, at Harvard. In 1908 he said to a political science audience, “The imperial art of politics consists largely in the creation of opinion but the deliberate exploitation of subconscious non-rational instincts.”<sup>5</sup> In the United States, where working class militancy and a contentious middle-class reform movement sometimes known as “The Progressive Movement” troubled the sleep of elites during the first two decades of this century, Le Bon and his ideas found a fairly receptive audience. Robert Park, one of the founders of the Chicago School of Sociology, wrote his doctoral dissertation<sup>6</sup> on Le Bon to a favorable review. President Theodore Roosevelt kept a copy of Le Bon’s writing at his bedside.

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3. W. TROTTER, *INSTINCTS OF THE HERD IN PEACE AND WAR* (R.W. Chapman ed., Oxford Univ. Press 1953) (1916-1919).

4. GRAHAM WALLAS, *HUMAN NATURE IN POLITICS* (1908).

5. *Id.* at 18.

6. *Reprinted in* ROBERT E. PARK, *THE CROWD AND THE PUBLIC AND OTHER ESSAYS* (1972).

Walter Lippmann became, in many ways, the American interpreter of Gustave Le Bon. Early public relations pioneers like I.D. Lee and Everett Bernays found in Le Bon's *The Crowd* a basic handbook to persuasion in the modern era.

From World War I onwards, social psychology furnished the intellectual underpinnings to an emerging American persuasion industry. This was the moment when survey research became entrenched as a diagnostic fixture of American life. Statistical and anecdotal studies of popular emotions were designed to arrive at strategies for forging an identification between the crowd and its worthy leaders. These were the roots of focus group techniques that are today used to predict the likely responses of customers, citizens, and, increasingly, jurists; and at the end of the 19th century, it was Gustave Le Bon who laid the way for these schemes.

"To know the art of impressing the imagination of the crowds," he said, "is to know at the same time the art of governing."<sup>7</sup>

Crowds have always undergone the influence of illusions; whoever can supply them with illusions is easily their master. In the middle of Le Bon's revelry on the life of crowds, the mental life of crowds to be more precise, there is an insight which is especially pertinent to today's conference and more generally, to modern practices of persuasion and the pivotal roles that images play within modern persuasion strategies.

"When studying the imagination of crowds," Le Bon wrote in 1895, "we saw that it is particularly open to the impressions produced by images."<sup>8</sup> A crowd thinks in images. The image itself immediately calls up a series of other images having no logical connection with the first. Given this pension for collective hallucinations, Le Bon argued that those who were interested in managing the emotions of crowds could not rely on rational argument. He wrote that ideas must assume a "very absolute, uncompromising, and simple shape. They present themselves then in the guise of images, and are only accessible to the masses under this form."<sup>9</sup> Crowds, being only capable of thinking in images, are only to be impressed by images. It is not the facts themselves that restrict the popular imagination, but the ways in which they take place in a broad under notice. "It is necessary that by their condensation, if I may thus express myself, they should produce a startling image which fills and

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7. LE BON, *supra* note 1, at 92.

8. LE BON, *supra* note 1, at 124.

9. LE BON, *supra* note 1, at 82.

besets the mind."<sup>10</sup> Although Le Bon was writing at a moment when motion pictures were only just being born in France—a time of people like the Lumiere Brothers and Georges Méliès—he did talk about the way in which the combination of image and theatrical representation was a particularly potent tool for influencing the outlook of the crowd.

As social psychology matured, Le Bon's ideas about the mental life of the crowd, which were initially descriptions of the urban working class, gave way to the supposition that all people, high or low, at whatever station—unless they were scientifically trained as a social scientist—were motivated by unconsciously instinctual baggage. This collapsing of what started out as an attack on the urban mob into a general description of human consciousness and perception received the stamp of approval in 1922, when Sigmund Freud published a book called *Group Psychology and the Analysis of the Ego*.<sup>11</sup> Freud's book addressed Gustave Le Bon's work directly, and paid tribute to his insights regarding the irrationality of crowd behavior. Where Freud differed with Le Bon, however, was in terms of individual psychology. The irritability and impresibility of the crowd, Freud argued, is not something limited to the behavior of groups, as Le Bon had maintained, it was a fundamental element of individual perceptions, the individual psyche, as well.

In the United States, by the 1920's, the dissection of the irrational, and the assumption of the irrational as the underpins of human perception and human decision-making, had a dramatic and institutionalized impact. The eloquence of images was being employed as the favorite instrument in all kinds of public address. The strategic wisdom of the day was to sell products to consumers, to link public loyalties to big business, to lead populations into war. The optical realm was in particular service. The most eloquent exponent of this perspective—somebody told me fifteen years ago that there was a component of some rational ideas of participatory democracy—was Walter Lippmann. Walter Lippmann had encouraged Woodrow Wilson in 1917, as the United States entered into the first World War, that the most pivotal piece of the war machinery must be the development of a propaganda apparatus to sell the war at home and abroad. Lippmann's instruction gave way to the development of something called the Committee on Public Information, which was the first major national modern mass-mediated propaganda apparatus in

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10. LE BON, *supra* note 1, at 92.

11. SIGMUND FREUD, *GROUP PSYCHOLOGY AND THE ANALYSIS OF THE EGO* (James Strachey ed. & trans., 1975) (1922).

world history.

The Nazis took particular lessons from *The Crowd*. Hitler alluded to it in *Mein Kampf*.<sup>12</sup> Walter Lippmann offered a chilling endorsement of visual rhetoric as the most efficient instrument for mass persuasion. "People," he wrote in the beginning section of his 1922 classic<sup>13</sup>—a book that is still available and worth reading for anybody at this conference today and for anybody involved with public opinion—"are propelled primarily by pictures in their heads. The job of effective leadership is to paint those pictures for them, to create the kind of mental scenery which will propel certain kinds of responses."<sup>14</sup> His instructions were remarkably direct. I am quoting now from a book he wrote in 1927 called *The Phantom Public*,<sup>15</sup> which was a sequel to *Public Opinion*:

The making of one general will out of a multitude of general issues is an art that is well known to leaders and politicians and steering committees. It consists essentially in the use of symbols which assemble the motions after they have been detached from their ideas. Because feelings are much lesser specific than ideas, yet more poignant, leaders are able to make a homogeneous will out of a heterogeneous mask of desires.<sup>16</sup>

We need twelve votes in a jury, right? The process therefore by which general opinions are brought into cooperation consists of an intensification of feeling and the degradation of significance. Simply put, the power of images permits leaders to harness irrational energies of a population by provoking their passions while at the same time marginalizing the meaning of what is actually being said.

One of the things that is amazing about Lippmann's book was the extent to which Hollywood film is providing a kind of template for persuasion strategies. Genre and stereotype are capable of instructing an audience who the hero is, who the villain is, and what the storyline will

12. See, e.g., ADOLPH HITLER, *Political Reflections Arising Out of My Sojourn in Vienna*, in *MEIN KAMPF* (Ralph Manheim ed., Houghton Mifflin 1971) (1925-1927).

13. WALTER LIPPMANN, *PUBLIC OPINION* (Macmillan 1960) (1922) [hereinafter *PUBLIC OPINION*].

14. *Id.*

15. WALTER LIPPMANN, *THE PHANTOM PUBLIC* (Transaction Publishers 1993) (1927) [hereinafter *PHANTOM PUBLIC*].

16. See *PHANTOM PUBLIC*, *supra* note 15.

be through the use of very simple visual cues. Lippmann talks about movies providing audiences with handles for identification. Movies are capable of linking what are called public fictions through a sense of private urgency. In certain ways, one of the most fascinating aspects of public opinion is the extent to which political theory had censured a fugitive from thinking about public dialogue and Hollywood film techniques had become basic textbook persuasion.<sup>17</sup>

Of course, a pivotal question remains. What is it about images that made men like Le Bon and Lippmann see them as powerful keys for opening the public mind? To some extent, it must be acknowledged that their outlook, their insight, was an unavoidable result of the time in which they were born and in which they lived. Anybody in 1895 or 1922 would have had first-hand observations during their lifetimes of powerful new media technologies. New esthetic outlooks were not only transforming the physics, perceptions, and relationships between the physical world and how people understood reality, but were also stunning examples of the kind of mental stupor which audiences in the face of modern media technologies fell into. Within early descriptions of first and second generation movie audiences, it is quite interesting how often commentators refer to the dreamlike, hypnotic and/or suggestible state that people fall into during the process of a tale unfolding on screen.<sup>18</sup> Photography and motion pictures in particular signal changes in ways that both objective truth and subjective experience were popularly understood and communicated.

The emergence of photography in the 1830's and 1840's was represented in ways that we cannot fully appreciate because we have all been born into and lived in a world where photography is just part of the scenery. The development of photography in the 1830's and 1840's really constituted a change in the ability to replicate facts as observable to the human eye. If the artist could only mimic or trace the contents of objective reality, to early observers photography seemed to be able to capture and preserve it almost as one would capture a biological specimen. Even today, in the language that describes photography, we talk about *taking* photographs instead of *making* photographs; the assumption being that a

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17. See PUBLIC OPINION, *supra* note 13, at 61, 105-07.

18. See, e.g., 1 ALBERT A. HOPKINS, THE BOOK OF PROGRESS (1915); see also HUGO MÜNSTERBERG, THE PHOToplay: A PSYCHOLOGICAL STUDY (1916), reprinted as THE FILM: A PSYCHOLOGICAL STUDY (1970) (particularly Part I: *The Psychology of the Photoplay*); PUBLIC OPINION, *supra* note 13, at 61.

photograph is an accurate record of an actual thing, and that in taking a picture one is simply skinning the visible world of its surfaces. It is still part of the unconscious language that we use to describe photographs process. The apparent ability of photography to render a credible visual vernacular, a kind of recreation of the way in which we actually see with our eyes, perhaps explains one of the reasons why photography contributed to ideas about mass persuasion very early on

It is not incidental that by the 1870's and 1880's, in France and in the United States, home countries of Le Bon and Lippmann, photography was being used as a routine tool of police work. Within police investigations, and in the court system, it had become something that bore the imprimatur of evidence. Police departments were collecting huge photo galleries of criminal faces so that you would know your enemy. Crime scenes were being replicated photographically and used in courtrooms. Photography was also being used as a power tool for surveillance.

One extraordinary characteristic of photographs is their ability to claim factuality, even when they have been separated from the material context in which they were taken. Photographs are taken in one place, reproduced and exhibited elsewhere, yet their status as verifiers of fact is increasingly taken for granted. This is the underpinning of what is sometimes referred to as photojournalism, the idea that you see the picture on the front of a paper without asking what lies outside of the frame. The assumption is that you are seeing something that happened yesterday. In the process, the photograph's disembodied objectivity lends credence to what is today called virtual reality, the idea that something could be true even though it was a purely disembodied representation. Virtual reality helps to transform expectance standards and empirical evidence not just in law but in the social sciences, history and popular consciousness. If, however, a photographic image was capable of providing an authoritative scene of objective truth, one of the things early observers also would have noted was the way in which photography simultaneously engaged people on a more visual level of imagination, the dreamlike and the unconscious.

Photographs not only spoke to a concept of measurable truth, they also entered into what the German critic Walter Benjamin called the optical unconscious.<sup>19</sup> A French visitor to the United States in the 1920's looked at a society completely permeated with visual images and said

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19. See generally ROSALIND E. KRAUSS, *THE OPTICAL UNCONSCIOUS* (1993).

that America is a society earmarked by a continual masturbation of the eye, a very interesting use of French but it was pretty hip, because it comprehends both that photographs can be objective truth and that the eye is an erogenous zone. A photograph can speak to people on unconscious levels that are beyond measurable levels.

How do I mean this? I recall a scene in Orson Welles's film *Citizen Kane*.<sup>20</sup> The movie is about a reporter trying to find out the truth. He goes around, asking lots of people what Charles Foster Kane's dying words mean; as you all know, the critical word is "rosebud." One of the people the reporter visits is Bernstein, who has been Kane's business manager (that's typecasting). Bernstein, now an old man, says, "Well, what do you think rosebud meant?" He continues: "You know, well maybe it's something he lost. You know it's amazing what somebody will remember." Then, luminating on the texture of human memory, Bernstein tells the reporter a story from his own youth:

A fellow will remember a lot of things but you wouldn't think you remember. You take me, one day back in 1896, I was crossing over to Jersey on the ferry. As we pulled out, there was another ferry pulling in. And on it there was a girl waiting to get off. A white dress she had on and she was carrying a white parasol. I saw her only for a second, she didn't see me at all. But you know, I bet a month hasn't gone by since I haven't thought of that girl.<sup>21</sup>

This poignant tale of an old man remembering an instant from his adolescence speaks of the psycho-dynamics of the mind; the power of the incidental, the momentary, to inscribe itself upon a life, to gain a subjective significance that far outweighs the objective magnitude of the moment from which it was drawn. From early on, this was an uncanny capacity of photography, the ability to entrap the evanescent moment, defying the passage of time itself, engraving itself on the future. The photo could capture transient gestures, enshrine the commonplace, the incidental, it could preserve moments that previously survived only as faint glimmers of recollection. Freud wrote extensively of the powers that such ephemeral impressions exerted in our dreams and in the unconscious workings of the psyche. Incidental moments, often forgotten, he

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20. *CITIZEN KANE* (RKO 1941).

21. *CITIZEN KANE*, *supra* note 20.

maintained, stood at the heart of character development. Within each of us, these fragmentary mementos lie concealed, asserting influence, awaiting rediscovery. This, in large measure, was the underlying objective of psychoanalysis, to assist in this rediscovery.

Photographs provided a new visual paragon that was in sync with this perspective. They could preserve the girl in the white dress; mimic the passionate eyes of a young man on a ferry boat; stroke the depths of longing, fear, and other emotions; and therefore at the same time that they replicated objective truth, they could also provide a kind of psychological moment in which something which in fact might be trivial is given great magnitude. This was accentuated by a cinema which now allowed the camera to move in and tell us, silently, what is important—the close-up. With the development of modern film editing techniques—including cross-cutting and montage—the ability to create mental associations between things and occurrences, the capacity to mimic the paradoxical idiom of unconscious life, became an intrinsic element of movie making.

By the 1920's, people working in the emerging compliance professions took the persuasive power of images as a given. In 1925, Harry Overstreet, who taught one of the first courses in New York City on the topic of "influencing human behavior" (at the New School for Social Research), summarized the process with remarkable clarity.<sup>22</sup> He said that the way which you can most efficiently influence human behavior is through the use of what he called "selective picturizing," moving in on those aspects of an image that you want your audience to see. Images, used to emphasize selected ideas, embedded the "power of suggestion" within the dynamics of the communications process, to "induce an imagined experience." "The secret of all true persuasion," he told his students, "is to induce the person to persuade himself. The chief task of the persuader, therefore, is to induce the experience. The rest will take care of itself. . . . The secret of it all . . . is that a person is led to do what he overwhelmingly feels. Practice in getting people to feel themselves in situations is therefore the surest road to persuasiveness."<sup>23</sup> The strategic use of imagery, in short, is the best way to that goal.

There is clearly more to be said, and there are more questions to be raised, about how images work. There is very little about our education,

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22. See generally H.A. OVERSTREET, *INFLUENCING HUMAN BEHAVIOR* (1925).

23. *Id.* at 55, 62-69.

either as lawyers or just as humanoids, which prepares us to even think about visual language, even though we live in a society where the image has become a primary tool of public address, not just in the courtroom, but everywhere. One other need of a responsive educational system is the development of literacy programs for kids from very early on. This teaches not just the ability to be critical viewers of images, but also to speak the language—something that is intrinsically critical to the image. Language is only a problem when one person knows how to use it and other people sort of ingest it as if it were their first experience with it. The implication this presents for legal education seems obvious to me, but I am not going to go into that now because I have a feeling you folks know more about that than I do. Thanks for your time.