

The aesthetics of torture

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In February 2015, the Norwegian Center for Human Rights (NCHR) and the *Hearts and Minds: The Interrogations Project* were brought together by the Human Rights Human Wrongs film festival in Oslo. NCHR facilitated a debate on the project and the topic of torture named *Interrogating torture*.

The freedom from torture, cruel, inhumane and degrading treatment is a non-derogable human right. In simpler terms this means that it is always wrong and always forbidden according to international law and the domestic law of more than 150 countries that are party to the Convention Against Torture (CAT) worldwide. *Hearts and Minds* is both bold and challenging. By communicating the result of John Tsukuyama's research through an art project, torture enters the realm of the aesthetic. Within the realm of the aesthetic, sense and sensibility intermingle and distinctions between the emotional, political and rational become blurred.

The complexity of the art project became evident during the aforementioned debate in Oslo. One member of the audience remarked that the torturers do not have the right to be diagnosed with Post Traumatic Stress Disorder (PTSD). Although an understandable reaction, this logic goes against the basic tenants of human rights and actually mimics the logic applied by the torturers to their subjects. It evokes a notion that we witness all too frequently within the context of the so-called war on terror, namely that sometimes and to some people human rights do not apply. Such utilitarian reasoning ultimately undermines the principles we consider worth fighting for.

Given that *Hearts and minds* is an art project evoking emotional and political confusion, it is worthwhile seeking guidance from aesthetics. Torture and aesthetics seem like strange bedfellows, but a brief examination of art history shows that depictions of torture have a long history. Witness for instance, the innumerable representations of crucifixions. What is more, aesthetics are not simply about what is ethically good or beautiful in terms of the agreeable. Art is more complex and the aesthetic question of beauty seems to apply also to works of art that on the surface may look downright ugly.

The perhaps easiest aesthetic to apply to a political topic such as torture derives from Marxism. Marxist aesthetics consider all cultural production political in the sense that they relate to class warfare and have a duty to improve what it reflects. However, Marxist aesthetics seem somewhat impoverished since Marx and Engels wrote relatively sparingly about aesthetics. As such, their theories of art seem indistinguishable from Marxist theories on class, religion, and socialist science. This is not to say that later Marxist theorists such as Theodore Adorno, Walter Benjamin, Louis Althusser and Frederic Jameson to name some, have not made significant contributions to aesthetic criticism. However, they invariably concern themselves as much with then modes of production as the question of beauty itself. With regard to *Hearts and Minds* it is perhaps more informative to organize our understanding with the aid of Immanuel Kant.

In the *Critique of Judgment*, Immanuel Kant argues that judging something beautiful constitutes a disinterested act. Beauty, he argues, is not about what we find agreeable and cannot be judged on the basis of what we derive pleasure from. According to Kant beautiful objects appear purposive

without purpose. The disinterested act of judging beauty is considered universal in the sense that we apply reason to our arguments, which makes it possible to agree with the reasoning without necessarily agreeing with the final judgment. This act, Kant argues, is considered a necessary achievement in itself.

Hearts and Minds cannot be considered agreeable. It is purposive, but leaves the audience confused with regard to its ultimate purpose. The subjects we encounter in *Hearts and minds* have committed heinous crimes in the form of torture that they are left to deal with. Their reactions range from PTSD to rationalization and thereby justifications of the use of torture. As an audience we are left to juggle contradictory sets of emotions ranging from fear, anger and repulsion to sympathy and despair. To sympathize with torturers is a particularly difficult exercise since, to many, the idea that we should align our emotions with those of a torturer is alien.

The showing of *Hearts and Minds* and the debate in Oslo brought to the fore two over all perspectives on the utility of torture. The work NCHR undertake with military, police and intelligence personnel in Southeast Asia, has as its starting point that the research available to us proves that torture does not yield reliable and actionable information. In other words it cannot be argued that it aids investigations or intelligence gathering. *Hearts and Minds* confirms this viewpoint, but one of its subjects offers a different utilitarian argument for the use of torture, which is to out-terrorize the terrorists. Whereas torture does not yield reliable information, it is likely to achieve its objective when this is to generate fear and oppression. This latter objective breaches Kantian ethics as it treats humans as instruments; as means to an end. Kant's philosophy on the inherent autonomy and dignity of humans as both means and ends in themselves forms part of the reasoning behind how we seek to understand the evolution of democracy, the rule of law and human rights. The argument for the use of torture to gain information can as such be countered both in terms of utility, law and morals. Torture as an instrument for oppression is deeply troubling because it signifies that we have left our reason, principles and humanity behind.

In the projects NCHR undertake in Southeast Asia it collaborates with the Norwegian University Police College, Oslo Police District, and the department of Psychology at the University of Oslo. The projects entail cooperation with police, intelligence and military personnel on methods of investigations and interrogation that uphold the fair trial standards as articulated in article 14 of the International Covenant for Civil and Political Rights. When working with practitioners who have as part of their job to gather and extract information it has been crucial to offer alternatives to the use of force or threat of the use of force. The methods offered build upon what is known as *Investigative Interviewing, and the PEACE model*, which were developed in the UK in the 1990s. These methods are research based, and draw on cognitive and forensic psychology, as well as communications theory. The research undertaken since their introduction also indicate that the interviewing method is effective in terms of yielding accurate and reliable information that can be operationalized. In Norway, the method proved invaluable in the investigation and interviewing of Anders Behring Breivik the perpetrator of the July 2011 terror attacks in Oslo and on Utøya. That the police reacted with reason and method and not violence in the aftermath of the attacks facilitated a criminal justice process that proved that Breivik had not succeeded with his objective, which was to subvert the rule of law state and democracy.

The key difference between traditional interrogation and investigative interviewing is that the latter is not confession oriented. The purpose of interviewing a witness or suspect is to gather technical evidence. A confession counts as one piece of evidence that has to be tested along side other evidence. This helps avoid false testimonies and confessions. False confessions seem curious, but are in fact not as rare as one would think. Data from the Innocence Project in the US show that false confessions are one of the main factors leading to wrongful verdicts and convictions.

One of the overall objectives of introducing investigative interviewing to law enforcement has been to avoid cases of errors of justice that erode public confidence in the criminal justice system. When innocent people go to jail there is no justice for the victims, their families or the suspect. Intelligence gathering has different objectives than law enforcement, but accuracy and reliability are equally important when preparing operations. Countries like Vietnam and Indonesia where NCHR works have a long way to go, but practitioners from both countries have responded positively, and continue to build their own expertise in research based law enforcement and intelligence. In Vietnam they introduced the methods and principles of investigative interviewing into the new penal code in 2015. Video recording interviews is one example. Following heated internal debates the experts working with introducing investigative interviewing to the eight police academies in Vietnam were given formal approval to research Vietnamese cases of errors of justice. A report commissioned by the national assembly in Vietnam, and cited in the press, found more than forty cases of wrongful convictions since 2012. Indonesia came to this field more recently, but has responded positively and will include investigative interviewing methods in their teaching for law enforcement officers in 2016. Both law enforcement and intelligence personnel have already experimented with the methods with satisfactory results. It is early days, but the response has exceeded expectations. What is more, colleagues from the UK and Australia do work in the same area in Singapore, Malaysia and Nepal. Research into the field is being conducted in Japan, and several other Southeast Asian countries have expressed interest. It seems possible to make the case that professionals intent on performing according to their mandated purpose are open to methods and arguments that do not involve torture, cruel, inhumane and degrading treatment. The combination of reason, principles and humanity are attractive even in contexts with exceedingly poor track records when it comes to the use of torture.

Hearts and Minds is an important work that fulfills aesthetic criteria that seem less prominent in today's society. Drawing on the Marxist criticism of the aforementioned Frankfurt School, culture today is perhaps too agreeable; our tastes are too concerned with pleasure and instant gratification. We tend to turn our backs on what we deem distasteful, and miss the opportunity that comes with confronting aesthetic objects that confuse us emotionally and politically. *Hearts and minds* offers an opportunity to observe torture from several utilitarian perspectives, achieve mixed emotions with regard to our response to how the torturers we encounter handle their experience, and reflect on the societies and politics of our time. Accordingly, it is possible to argue that it is a work of great beauty.