

Dehumanisation and the Decent Society

The Case of Hooding

Introduction

The permissibility of torture is a prevailing issue in current world affairs. Hooding – the covering of the head with a bag – is a controversial method used upon prisoners and is often considered to be a form of torture. In this essay the case of hooding will be examined in the light of Margalit's book *The Decent Society*. It will be assumed that hooding is not only a technique that is used for legitimate purposes such as prevention of harm but is rather used for illegitimate purposes. This includes not only direct torture itself (such as sensory deprivation) but also an instrumental use of dehumanization which facilitates and promotes inhuman treatment. The face, the eyes and speech are essential ways of expressing ones humanity. Likewise they are also essential for an observer to recognise someone's humanity. Hooding therefore impedes both expression and recognition of humanity. Systematical and institutional use (for example by law enforcement) of hooding in a society is a practice that should therefore be judged as a humiliating practice. This claim will be reviewed in the context of Margalit's book and especially the chapter 'Being Beastly to Humans'.

This essay will start with a short introduction to Margalit's book, a summary of the chapter 'Being Beastly to Humans' and a short discussion of it. Following this the practice and goals of hooding will be explained and illustrated by recent events and related legal judgment. In a third part hooding will be discussed on the basis of Margalit's claims. This essay will be finished with some concluding remarks on the topic.

Being Beastly to Humans

In his book *The Decent Society* Avishai Margalit presents a framework for society not following the ideal of a just society as depicted for example by Rawls, but following the ideal of a decent society; a society without institutional humiliation.¹ Margalit defines humiliation as "[...] any sort of behavior or condition that constitutes a sound reason for a person to consider his or her self-respect injured" (Margalit 1998, 9). The notion of humiliation is to be understood in a normative sense and not in a psychological sense.² He defends his idea of institutional humiliation against the anarchist position – namely the position that every kind of state with its institutions is humiliating – and against the stoic position, which claims that no institutional action can be humiliating. So what kind of behaviour or condition constitutes a sound reason for humiliation? One kind of humiliating behaviour that Margalit mentions is treating human beings as nonhuman. This

¹ "A decent society is one whose institutions do not humiliate people. [...] A civilized society is one whose members do not humiliate one another" (Margalit 1998, 1)

² "[...] the normative sense does not entail that the person who has been provided with a sound reason for feeling humiliated actually feels that way. On the other hand, the psychological sense of humiliation does not entail that the person who feels humiliated has a sound reason for this feeling." (Margalit 1998, 9)

essay will mainly revolve around this kind of humiliation and the book's corresponding chapter *Being Beastly to Humans*. In this chapter Margalit asks: "[...] what does it mean to treat a human as nonhuman? Is this actually possible?" (Margalit 1998, 89) He starts with different ways of nonhuman treatment³ and goes on with the distinction between treating someone *as* nonhuman (objects, animals, etc.) or *as if* they were nonhuman. He mentions the distinction to make clear that humans can only treat others *as if* they were nonhuman, "but they cannot – except in pathological cases – actually treat them *as* objects, [...]" (Margalit 1998, 91). It can also be the case that not only the observer has a pathological condition that leads him to see and treat a person as nonhuman, it can also be that the observed has a condition⁴ which causes healthy observers to see and treat them like an object. The question arises what it means to see the human aspect in a human being. Margalit answers this question:

"Seeing a human being as human means seeing the body as expressing the soul, as Wittgenstein put it. In other words, it means seeing the human body and its parts in the mental terms they nonliterally exemplify [...] We see persons as human when we see their expressions in human terms: this person has a friendly or a thoughtful face, a worried or a happy expression." (Margalit 1998, 94)

However even persons with a pathological condition, which hinders them from seeing people in human terms, are not necessarily inhuman towards others, Margalit writes. Apart from the pathological cases humans can't do otherwise than to see others as human. So how can those persons humiliate others? Margalit mentions ignoring humans and seeing humans as subhuman. Ignoring humans he describes as: "Overlooking human beings means, among other things, not paying attention to them: looking without seeing. Seeing humans as ground rather than figure is a way of ignoring them." (Margalit 1998, 101) And to distinguish it from the pathological cases, Margalit continues: "Overlooking humans thus does not strictly mean seeing them as things, but rather not seeing them fully or precisely" (Margalit 1998, 103). But not only can people ignore others, they often see them as subhuman. They see them "as stigmatized – that is, to see some physical 'anomaly' of theirs as a sign of a defect in their humanity" (Margalit 1998, 103). And to be seen as subhuman constitutes a sound reason for feeling humiliated.

Based on his assumption that stigmata lead to seeing people as subhuman, the question arises if people are even able to control what they see. Margalit rightly remarks that this question is not really related to the topic of institutional humiliation but more to individual humiliation and answers it the following way:

"People cannot directly control what they see. They can do so indirectly through a conscious change in their attitude to the things they are seeing. [...] In the case of seeing a person in a humiliating subhuman aspect,

³ "(a) treating them as objects; (b) treating them as machines; (c) treating them as animals; (d) treating them as subhuman (which includes treating adults as children)" (Margalit 1998, 89)

⁴ Margalit mentions the case of a person with irreparable loss of consciousness. (Margalit 1998, 92)

we must take care not only to refuse to believe our eyes but also try not to see [...] the other as subhuman.”
(Margalit 1998, 107)

What Margalit asks for is a different posture or what he calls a framework: “That other human beings have souls – that is are subjects of psychological predicates – is not a hypothesis but the provision of a framework for representing human beings as such” (Margalit 1998, 109). In humiliation he recognises a paradox which he calls the paradox of humiliation and which he later illustrates with different examples:

“My central claim is that humiliation typically presupposes the humanity of the humiliated. Humiliating behavior rejects the other as nonhuman, but the act of rejection presupposes that it is a person that is being rejected.” (Margalit 1998, 109)

This summarises the chapter of the book. In the following paragraph a short discussion will be made and subsequently the case of hooding will be examined.

A big question seems to remain unanswered in the chapter and the whole book. On what grounds should we treat human beings as human? It seems that what Margalit wants to say, is that because of their being – biologically – human, they should be treated as human. But if that is the case then why does he himself bring up the example, which he calls ‘vegetable’ – a being with permanent loss of consciousness – and somehow implies that in some cases it is legitimate or at least adequate to treat a biologically human being as object? As he didn’t explicitly state if these beings should be treated as objects that criticism might be unfounded. But still the question remains and seems to be a central one. It might be that the discussion on moral personhood was not what Margalit was aiming for. Furthermore in defence of Margalit it might be helpful to mention Bernard Williams. In the egalitarianism debate Williams replied to the claim that saying men are men by virtue of being men is trivial in the following way:

“That all men are human is, if a tautology, a useful one, serving as a reminder that those who belong anatomically to the species *homo sapiens*, and can speak a language, [...] are also alike in certain respects more likely to be forgotten. These respects are notably the capacity to feel pain, [...], to feel affection for others, [...]. The assertion that men are alike in the possession of the characteristics is, while indisputable and (it may be) even necessarily true, not trivial. For it is certain that there are political and social arrangements that systemically neglect these characteristics in the case of some groups of men, while being fully aware of them in the case of others [...]” (Williams 1973, 232)

So for the remainder of this essay it will be assumed that all men should be treated as humans in the way Margalit requires.

Torture and Hooding

Hooding is the practice of placing a hood over the head of a person. It is a method that is mainly used for detainees. Different goals are associated with hooding. Officially mentioned goals of hooding are preventing the prisoner from seeing the interrogators and guards in order to avoid later retaliation and restraining the detainee so that he can't harm anyone.⁵ However hooding is also associated with torture. It is used to deprive the detainee from sensory experience, to disorient and isolate him. Often hooding leads to difficulties breathing. It has been used in combination with other torture techniques. For example the so called *Five Techniques* which apart from hooding consist of wall-standing, subjection to noise, deprivation of sleep, and deprivation of nutrition (ECHR 1978). The combination of these methods were considered illegal by the *European Court of Human Rights*.⁶ Hooding was also involved in the scandal surrounding the prison of *Abu Ghraib* and is also a controversial technique used in *Guantanamo Bay*. The British army used the technique during the Iraq war.⁷ Hooding has not only the effects that are primarily disclosed. Other measures could achieve these goals just as effectively. If the goal was to protect the interrogator from retaliation then blacked-out goggles would amount to the same effect. Also if it were about the protection of the detainee and people around him, other methods from psychiatry would suffice. In this paper it will be assumed that hooding is not used for the official reasons neither as a torture tool itself, but mainly instrumentally as a method of dehumanisation. This assumption can also be found in an article by *Amnesty International*:

“Hooding is a practice that gets to the heart of the relationship between the torturer and his – or her – victim. The hooded victim is dehumanized – hooding deprives the victim of a face, of an identity – and dehumanization is almost always a precursor of abuse.” (Parker 2012)⁸

Professor of English History W.J. T. Mitchell quotes in this context Baudrillard and his idea of the 'acephalic clone':

“[...] headless frogs and mice are being cloned in private laboratories, in preparation for the cloning of headless human bodies that will serve as reservoirs for organ donation. Why bodies without heads? As the

⁵ The latter justification was also given for example by the Swiss Government in the European Court of Human Rights (ECHR) case *Portmann v. Switzerland* (ECHR 2011). Portmann was hooded because of his aggressive behaviour to prevent others from being harmed. He was also presented to the examination judge with hood. The ECHR found no violation of Article 3 (torture ban) of the Convention: “Thus, the wearing of the hood, even combined with the handcuffs and shackles, had been limited to about two hours, had been accompanied by appropriate safety measures and had not sought to humiliate or debase the applicant. It had not therefore attained the level of seriousness required to engage Article 3.” (ECHR 2011)

⁶ In the ECHR court case *Ireland v. UK* the court ruled that the practice and the combination of those five techniques was in breach with Article 3 of the Convention: “The Court concludes that recourse to the five techniques amounted to a practice of inhuman and degrading treatment.” (ECHR 1978)

⁷ Law professor Matthew Happold concluded during the Iraq war that the practice of hooding by the British army is illegal and should not be adopted. (Happold 2003)

⁸ This position has also been held by law professor Happold in an article discussing the use of hooding in the Iraq war: “Hooding also serves to dehumanise the person subjected to it, possibly leading to rougher treatment at the hands of his captor” (Happold 2003)

head is considered the site of consciousness, it is thought that bodies *with heads* would pose ethical and psychological problems.” Baudrillard (2000) in Mitchell (2005, 301)

He goes on writing that a “similar logic governs the practice of hooding prisoners who are to be subjected to torture. The hood has the effect of dehumanizing the victim, making it easier for the torturer to carry out his work without looking into a human face.” (Mitchell 2005, 301-301)

Hooding and the Decent Society

Now how should hooding be judged in the context of Margalit’s Decent Society? In a first step the importance of the face in Margalit’s text will be reviewed. Then the aspect of perception and Margalit’s proposal of conscious change of the perceived will be evaluated and possible conclusions which could be derived for institutions will be presented.

So what does Margalit write regarding the importance of the face? In his chapter ‘Being Beastly to Humans’ he repeatedly makes clear that to see someone as human means to see his physical, bodily expressions in human or mental terms. That Margalit recognises the face as a main component of this expression can be seen in the following part of the chapter:

“A human way of seeing means seeing the other under the descriptions of human psychology. It means seeing the human body, especially the face and the eyes, as expressing psychological states.” (Margalit 1998, 100-101)

This is not very controversial. He also sees that often people are dehumanized – or as Margalit writes, presented as subhuman – intentionally:

“Sometimes directed efforts are made to bring the victims of aggression to a state where they can be seen as nonhuman, [...] A humiliating look thus does not consist in seeing the other as a thing or a machine but in seeing the other as subhuman“ (Margalit 1998, 100-101)

So Margalit does address the issue of institutional measures that lead people to see others as subhuman. Probably Margalit would agree that hooding is one of these ‘directed efforts’. However it is not very clear what requirements follow from that in a decent society. What can be derived from that regarding institutional humiliation? If seeing someone as a human being is based on perception, how can we derive any conclusion for institutions, which do not have a perception in a strict sense? So it seems to be more of an individual and not a societal problem. Margalit seems to have recognized that fact too⁹ and examines the question of perception. In the cases where someone is seen as subhuman, he asks for a conscious change of the

⁹ “This question is disturbing even if it belongs more to the level of humiliation by individuals than to institutional humiliation.” (Margalit 1998, 105)

attitude of the perceiver. However it is not clear if this is a moral demand for individual change or if it is a requirement for institutions to take action in this direction. If it were about institutional requirements, what would that mean? It could mean that education must be adapted, so that individuals are more capable making that conscious change or that every kind of institutional propaganda which leads to seeing some people as subhuman should be forbidden. It seems that it is not clear enough what follows from that for the institutions in a decent society.

But what conclusions for institutional change could be drawn in line with Margalit's claims? I want to argue that every kind of institutional action which leads to dehumanisation by suppression of human expression or preventing others from perceiving these expressions should not be allowed in a decent society.

First of all from a consequentialist point of view because it leads to or at least facilitates further humiliating actions.¹⁰ And if a decent society is a society whose institutions do not humiliate its members, then institutions have to abstain from every action that leads – directly or even indirectly – to humiliation. Secondly and importantly because being hooded and every act of inhibiting the expression of one's humanity or influencing the perception of the expression is humiliating. So why is it humiliating?

Apart from the apparent, direct physical effects (sensory deprivation, breathlessness, etc.) there are the indirect, inhibiting effects on the ability to express and feel emotions. In Margalit's terminology this could be seen as an instance of humiliating loss of control:

“It [humiliation] is based on the fact that the perpetrator—especially the institutional humiliator—has power over the victim he assails. It crucially involves the sense of utter helplessness that the bully gives the victim.”

(Margalit 1998, 122)

If one is not able to speak and express his emotional state through facial expression he's deprived of those things which make him human. This is an injury to the person's humanity and is a sound reason for feeling humiliated. Empirical examples for the importance of facially expressing emotions can be found in an article by Joel Krueger on a different topic – the epistemological problem of other minds. The empirical findings that are cited suggest that problems or the inability to facially express emotions lead to difficulties in feeling the associated emotions. Studies were done with people who have bilateral facial paralysis and following observations have been made:

¹⁰ That hooding leads to or facilitates inhuman treatment has been shown at different points in recent history. In addition Margalit's normative requirement for the individual to make conscious change to see others in human terms is not a solution for the institutional problem. Furthermore in the case of hooding and similar practices, it cannot realistically be expected that all those who treat the affected persons can see them in human terms. In the case of hooding this might not be obvious, but if for example a prisoner is put in a cardboard box and then a guard is asked to drown the box without knowing its content – how can it be expected that the guard sees the human aspect in the box? As already mentioned this analogy might not be the fitting one for hooding. In the case of the person in the box, the person is treated as nonhuman, because the person is believed to be nonhuman. In the case of hooding, the observer still knows somehow that he sees a human being, but he treats the person as subhuman.

“Due to their condition, people with Moebius Syndrome are unable to facially express emotion. As a result, many report a diminishment or flattening of their emotional lives. [...] Without the ability to spontaneously express their emotions via the face, part of the emotion appears to be missing, rendering it experientially incomplete.”¹¹ (Krueger forthcoming, 7)

So not being able to express emotions facially seems to influence the associated emotions. Now one might argue that this is not the case with hooding and might say that the person under the hood is still able to facially express emotions. While this is probably true, the expression alone seems not to be the only factor for feeling the associated emotion. As Krueger writes it might also depend on others noticing the expression and reacting to it:

“Since they [emotions] unfold within interpersonal contexts, many emotions likewise emerge from reciprocal feedback loops coupling interactants—that is, sequences of mutually-modulating expressive signals (gestures, facial expressions, vocal cues, etc.) that ground basic levels of emotional coordination.” Krueger (forthcoming, 10)

Krueger writes that this is probably one of the factors why people with facial paralysis are not able to feel emotions fully.¹² So if this is so hooding is not only preventing the perceivable expression of emotions but is also impairing emotional experience and is therefore more dehumanising and humiliating than a first look at the issue suggests. It therefore influences not only the person’s physical freedom but also his emotional freedom which can be seen as a form of rejection:

“Treating someone in a way that denies her capacity to be free is rejecting her as a human being.” Margalit (1998, 118)

Concluding Remarks

Hooding is a method that suppresses the affected person’s ability to express their humanity and influences the environment’s perception of it. It is a humiliating practice on many different levels. Hooding is a form of rejection of the human commonwealth because it leads others to overlook the affected persons or to see them as subhuman. Hooding leads to a humiliating loss of control over the expression and experience of emotions. It is a demonstration of the power of the perpetrator and the helplessness of the victim. Lastly hooding leads to and facilitates further humiliating treatment. In a

¹¹ Similar findings have also been made with subjects who have used Botox injections. Furthermore studies also suggest that regaining the ability for facial expression also leads to a different emotional experience. (Krueger forthcoming, 8)

¹² “While part of their diminished emotional phenomenology may in fact result from an inability to facially or bodily express emotion, it is also likely that these individuals regularly receive diminished social feedback from others.” (Krueger forthcoming, 13)

decent society practices like hooding should be forbidden or at least should not be used systematically by institutions – so it should not be part of standard procedures (for example by law enforcement). If there are legitimate goals, like the prevention of harm, then methods have to be used with a minimal limitation of human expression and its perception while still being effective. Such a requirement would reflect the overall idea of Margalit's Decent Society.

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