

Defining the Undefinable:
Rhetorics of Democratic Torture Interrogation

by

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Abstract

Over the past decade and a half, public debate on the issue of torture has increased dramatically, with legal, political, and cultural discourses offering many, often conflicting, perspectives on the meaning and function of torture in contemporary democracy. This dissertation investigates the influence of audience beliefs, values, and attitudes in shaping both social and formal definitions of torture. Rhetoricians have often understood public knowledge of torture by assessing the positions either advocating or condemning its use. I argue that the relationship between representation and audience interpretation is more dynamic, and can be better understood by applying a rhetorical analysis to definitions of torture to demonstrate how the engagement of multiple meanings can construct new interpretations. My dissertation builds on existing research by analyzing the meaning-making function of audience interpretation and using it to critique representations of torture in a series of artefacts: torture in the Athenian orators, legal definitions of torture in the U.S. “Torture Memos,” popular television and film, the technique “acoustic bombardment,” the first-person narrative of Guantánamo detainee Mohamedou Ould Slahi, and Banksy’s guerilla art. In each of these examples, I argue that a rhetorical understanding of definition reveals the dynamics of the formation of social knowledge about torture. I conclude with a discussion of the biopolitical implications of contemporary torture, applying rhetorical definition to the articulation of a common human vulnerability. If the best defense against torture is an community who refuses to accept its practice, then a better understanding of how audiences define and interpret torture is needed to prevent its continued practice.

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INTRODUCTION

In response to criticism that her 2012 docudrama *Zero Dark Thirty* inaccurately depicted torture as useful for obtaining intelligence, director Kathryn Bigelow defended her film on the strength of its facticity. It was her obligation as a filmmaker, Bigelow stated in a letter to the *LA Times*, to represent events accurately in order to “shine a light on dark deeds, especially when those deeds are cloaked in layers of secrecy and government obfuscations.” Two years later, the credibility of her film was again challenged when a U.S. Senate Committee report concluded that the CIA’s Interrogation Program had failed to produce reliable intelligence. In an open letter, Senator Dianne Feinstein, chair of the Senate Committee, denounced the film as in a public letter as “grossly inaccurate and misleading in its suggestion that torture resulted in information.”¹ Confronted with evidence that directly countered her film’s findings, Bigelow reiterated her defense of the film’s portrayal of torture. The film’s conclusions were the result of good journalistic research, Bigelow stated in an interview on *The Daily Show*, and were thus faithful to actual events: “[w]e made the movie based on the reporting that we did” (“December 14, 2014”).

These viewpoints offering contradictory perspectives on the efficacy of torture are a dominant feature of representations of torture today. Over the past decade and a half (the years following 9/11), public debate on the issue of torture has increased dramatically, with legal, political, and cultural discourses offering many, often conflicting, perspectives. The practices in question are the techniques (including “waterboarding” and “sensory deprivation”) initiated by legal memoranda (the “torture memos”), variously condemned as torture and legalized by the U.S. as “coercive interrogation” (Bybee; Yoo). Whereas human rights advocates condemn these

¹ The letter was written by Senate Intelligence Committee Chairman Dianne Feinstein (D-Calif.), Senate Armed Services Committee Chairman Carl Levin (D-Mich.) and Senate Armed Services Committee Ranking Member John McCain (R-Ariz.)

techniques as torture and prohibit their use under any circumstances, proponents of the techniques present them as viable political tools, effective for use when deemed necessary. Countless examples in television and film (such as *Zero Dark Thirty*) dramatize the acceptable conditions for the use of “interrogation” techniques, and, by presenting torture as a logical course of action, rationalize their use. Previous research has established that speakers use a variety of discourses to influence public opinion in favour of torture, particularly audiences who would otherwise reject torture on principle. While much has been written about how torture comes to be legitimated as political violence, less is known about the role the audience’s judgement and interpretation of these representations play in constructing public opinion, or about how this knowledge becomes mobilized in arguments advocating or condemning the practice of torture.

The aim of this dissertation is to investigate how representations of torture in a variety of texts—ranging across the Attic forensic speeches, the “Torture Memos,” legal discourse, popular culture, and first-person detainee accounts of torture—constitute a social definition of torture shaped by audience beliefs, values, and attitudes. Whereas human rights groups strive to define torture in terms of its prohibition, thus removing it from the domain of persuasion, rhetoric has become central to examinations of torture in recent years. Highlighting the role of rhetoric in the process of defining torture accounts for the culture of debate surrounding the topic of torture today, and also addresses the significance of emergent knowledge and a lexicon used to legitimize its practice. The current moment represents a shift in context for understanding torture, traceable through the emergence of elaborate legal documents that, in addition to legitimizing techniques, has introduced these terms into public discussion. Much of the current literature examining the rhetorical significance of the multitude of documents pertaining to contemporary torture focus on the motivated use of language by speakers to justify the act of

torture (and other human rights infractions) as necessary within the current paradigm (i.e., “the War on Terror”) (Ignatieff; McCoy; Rejali; Danner). The particularity of the social context within which audiences interpret these documents—the media environment and cultural context, for example—contribute an important dimension to understanding the phenomenon of torture today.

This dissertation contends that representations of torture in both official (such as in government and legal documents) and unofficial (such as in popular culture and public opinion) contexts offer authoritative forms of knowledge, both of which crucially alter, often simultaneously, our understanding of torture through the construction of public opinion. Senator Dianne Feinstein, for example, criticizes Bigelow’s *Zero Dark Thirty* for “misleading” audiences, while at the same time deploying politically motivated language in the Senate Report by avoiding the word “torture” to describe the now-illegal techniques, presumably in an attempt to avoid legal culpability. Other representations of torture, such as first-person detainee accounts and artefacts in popular culture discussed in the following pages, contradict and complicate formal definitions of torture through descriptions of personal experiences, offering a significant yet under-acknowledged contribution to understanding contemporary torture.

“Words that Work”: Definitions of Torture

At first glance, rhetorical theory and criticism may appear to be an unsuitable method for analyzing definitions of torture. To date, the literature examining torture through the lens of rhetorical criticism identifies the arguments used by speakers to either condemn or advocate torture to an audience (Cedillo; Ballengee; Wolfendale; Hron). In investigations of instances where torture has been permitted, scholars typically re-examine the efficacy of national and

international legal definitions of torture to articulate and uphold human rights objectives (Parry; Sussman; Harper; Miller; Cullen). These studies suggest that the prevalence of practices of torture today (by the U.S., U.K. and Israel, for example) are a consequence of inconsistency between international and domestic law (Carter; Lim; Hathaway). Together, these studies identify domestic interpretation—most recently, by the U.S.—of international human rights law as the source of the current moral and social ambiguity of definitions of torture in western society.

Generally, laws establish order, put into place mechanisms to maintain order, and are institutionalized as an agreed-upon way for society to function. In addition to their use for achieving their specific legal objectives, laws are a political dimension in that they regulate behaviour and conduct in society. Language used to define these laws, therefore, not only prohibits or permits certain behaviour, but also influences how human action is perceived in society; it presents a worldview through which to understand phenomena. In his work analyzing this political dimension of formal definitions, Edward Schiappa writes that definitions, especially ones that appear to be most proscriptive, can be analyzed for their persuasive function: “[e]ven statements intended by a speaker to represent a ‘realistic’ assessment of some event or phenomenon are efforts to persuade us about the ‘reality’ as the speaker understands it” (*Defining* 170). According to Schiappa, definitions can be analyzed to reveal a speaker’s motivations, and therefore do not represent a unitary truth or set of facts about a particular situation; instead, they present a single perspective on the world. Framing devices in language persuade audiences to accept the values that will compel the action in the world required by the definition. These formal definitions are additionally persuasive, Schiappa adds, because they are accepted, often without question, as authoritative.

The legalization of torture by the U.S. in the years following 9/11 (2001–2008) presents a primary example of the manipulation of the authority of legal definitions to further political objectives. During this time, U.S. foreign policy initiatives introduced a new lexicon to the public through the release of formerly “declassified” legal documents into the public sphere. The term “War on Terror” provided the overarching metaphor for understanding many of the terms, including those of torture, such as “coercive interrogation techniques,” “waterboarding,” and “sensory deprivation” (among others) (Bybee; Yoo). My focus, therefore, is on contemporary, primarily U.S. torture in order investigate how the undefinable, unimaginable act of torture became definable and intelligible to the public through narratives establishing its acceptability in the years during and following the “War on Terror.” It was under the auspices of the “the new paradigm” that proposed “new thinking” about American commitment to international human rights norms, I argue, that “torture” became acceptable as it was introduced through the so-called “torture memos,” a series of legal memoranda written by the Department of Justice. The purpose of the torture memos was to establish the legality of the interrogation techniques within U.S. domestic law on torture, and also within international human rights law. The memos found that the “coercive interrogation techniques” used by U.S. officials did not meet the requirements to be defined as torture; instead, the memos opined, these techniques were a justifiable and effective—and above all, legal—means to pursue national objectives. However, although these legal interpretations were later deemed unlawful, the terms, definitions, knowledge, and arguments supporting the continued use of these techniques form the basis of public opinion of torture today.

Legal scholars who approach torture from a human rights context have vigorously rejected the validity of the U.S. torture memos, arguing that legalization was a consequence of

the politically motivated interpretation of international human rights law. Article 1 of the 1984 United Nations *Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment* (CAT), signed by 159 nation-states, defines torture as follows:

the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions.

Although torture is one of the most condemned practices under international law (as a crime against humanity), the law prohibiting its practice lacks a clear definition of what acts and practices constitute torture and fails to clearly indicate how torture can be distinguished from other forms of coercion (Mueller; Miller). Since signatory states are charged with implementing the CAT, they also must interpret it into domestic law, and therefore have ample latitude in their interpretation. Viewed thusly, scholars conclude, the torture memos—as a re-definition of a re-definition of torture—essentially manipulate legal language according to the objectives of the framers.

One response to the U.S. deviation from international standards reported by legal scholars has been to call for stricter regulations concerning domestic interpretation. A more exacting international definition of torture would limit the opportunity for domestic actors to ratify the laws for their own objectives. Nation states, when ratifying torture, will often choose to narrow

the definition of torture to avoid prosecution for torture. Strengthening the force of the CAT, scholars argue, would require definitional consistency: a single definition, clearly defined and adopted by all nations, will produce fewer interpretations and thus reduce the possibility of legalization of crimes against humanity. For example, if all definitions specified torture according to its techniques (such as “waterboarding”) rather than as a broad practice, the act of defining torture would immediately expose a nation-state’s congruence (or incongruence) with appropriate treatment under human rights law (Carter 9). Defining torture by its techniques would have the additional benefit, moreover, of disclosing the lesser-known and perhaps seemingly innocuous techniques by adding them to the roster of dehumanizing action (Carter 9). Overall, scholars suggest that a consistent definition of torture would also deter the expansion of torture as a global enterprise, an outgrowth of the War on Terror that included extraordinary rendition, the illegal transportation of prisoners to nations who torture, as well as the creation of black-sites, U.S. off-shore torture prisons in nation-states amenable to torture or on U.S. ships in international waters (“torture-ships”) (Carter 10).

Many legal scholars have blamed the recent escalation of the use of torture by democratic nations on political actors’ motivated disregard for the protection of individuals. Expressing his contempt for the manipulation of the law that resulted in the legalization of torture, David Mueller writes that “[s]uch willful tolerance of torture can only be construed as acquiescence, by government officials at the highest level, to the very type of torture contemplated under UNCAT” (577). Collectively, many legal scholars juxtapose the institution of law with how it is put into practice, suggesting (as Mueller does) that political agents employ the law as a political tool. Mobilizing their work as a platform for protesting the previous administration’s

engagement in torture, scholars oppose the ways in which law was appropriated for legitimizing crimes against humanity.

Joining the outcry from many in the legal community, cultural critics have also launched a counterassault on the powerful public narratives operating alongside legal discourse that serve to justify torture. The legalization of torture was rationalized to the public within a powerful, overarching political reality put forth by the architects and proponents of the “War on Terror.” Like the phrase “War on Drugs,” “War on Terror” publicly declares an enemy of the state. The term “war,” suggesting an event that occurs within a finite amount of time against an enemy that can be defeated, contrasts with the term “terror,” an intangible, primal feeling of fear and dread, a nebulous referent with the potential to apply to any context. In *At War With Metaphor*, Deborah Wills and Erin Steuter suggest that the ambiguity structured within the discourse on war encourages audiences to personally identify with political objectives through the appeal to a citizen’s emotions. The war on terror, they argue, “offers us a model that is reactive: our retaliation is right, and indeed, inevitable” (12). By implying a lack of choice in going to war (that 9/11 provided no other option), the model suggests that we enter the war not as aggressors, but as defenders of our way of life: as victims of others’ aggression, therefore, we go to war “because others have declared a war on us” (12). The context of war dramatizes the atrocities of war (including torture) as defensive tactics implemented for security purposes, thus personalizing the war within frameworks of justification.

Ensclosed in the language of war, torture was constructed as necessary, a key characteristic of its representation today. The paradigm of “terror” that established the origins of today’s public perception of torture originated with a rhetorical campaign. A 2004 memo distributed to the Republicans entitled *Communicating the Principles of Prevention & Protection*

in the War on Terror supplied the Bush administration with on language to use when publicly discussing the war in Iraq. In a section called “Words that Work,” (also the title of his *New York Times* bestselling self-help book), Frank Luntz laid out the rhetorical architecture for the Bush administration to deploy when publicly discussing the war in Iraq:

Make the case for PREVENTION here at home before the need for action abroad.

After explaining the context of 9/11, it’s equally important to paint a vivid—but not too *graphic*—picture of what you hope to prevent in the future. *Prevention* is a positive, optimistic, hopeful concept, but terrorism also requires that you communicate your concern of what *may* but hopefully *never* will occur. It’s not just a “*we want our kids to have opportunities in the future*” message, like most political issues. It’s also a “*we want our children to have a future, period*” message. (2)

Luntz advises speakers to appeal to their audience through shared credibility. Positioning oneself on common ground with an audience (through the use of pronouns such as “we,” “our”) implies the credible character of the speaker by implying they share objectives and with the audience. A ‘we’re in this together’ attitude personalizes the war as a duty one must carry out, an action one must partake in to protect their interests and world (defined comprehensively as family, America, and abroad). Fighting terror, the message implies, requires sacrifice from citizens to do their part in protecting American interests. It is against the backdrop of this threat that the administration seeks the public’s acceptance of expansive measures to prevent and protect citizens. In this context, torture, styled as “interrogation,” appears to be one of the sacrifices the country must make if it is to be safe from future attacks.

During this time, photographic evidence of torture from Abu Ghraib confirmed that the U.S. was carrying out torture in prisons abroad. The reality of torture presented a potential for

public support for the war effort to diminish. While a public may accept torture as an abstract action, the visceral image of the tortured body may counteract the war message. Across culture and society, the sight of the tortured body compels identification on the basis of a shared vulnerability to bodily and mental pain and suffering. The phenomenological knowledge associated with having a body in the world establishes the body as common medium for communication requiring a low degree of interpretation or judgement. Viewing a body distorted and wracked by unimaginable and incommunicable pain can elicit a reaction of horror and pity in an audience, who may compare their own state of relative well-being to that of the degraded and destitute semblance of the human being that the body in pain communicates. According to Julia Kristeva, the reflection and judgement of the tortured body evokes an experience of abjection, an immediate human reaction to a loss or threat of loss communicated in the exclusion of the body in pain from society; it is “what disturbs identity, system, order. What does not respect borders, positions, rules” (4). This concrete image of the body in pain, as well as the sense of horror it evokes, communicates pain and suffering as profound loss, both by the individual and society. In this sense, the shared sense of vulnerability embodied in the image of the tortured body offers a powerful counter-narrative to the arguments advocating for expansive measures to fight the war on terror.

To counteract the power of the image of the tortured body, the public officials provided ways of reading the photographs that would diminish their force. In viewing the photographs, public officials advocated what Justice Jeremy Waldron characterized as the “puke test,” the notion that torture can be defined according to an audience’s visceral reaction to it. Vaguely categorizing torture under a metric of personal ethics, the logic of “you know it when you see it” (the same logic the Supreme Court has used to identify pornography), wrongly suggests that

torture is easily recognizable to all audiences, even without clearly defined parameters for its assessment (Luban 234). Promoted as a test to determine whether an individual had undergone “interrogation” or “torture,” former U.S. Deputy Assistant Attorney General Mark Richard proposed limiting the word torture to apply only to actions that could be easily identified as “barbaric cruelty,” and also only to audience reactions, or to “conduct the mere mention of which sends chills down one’s spine” (qtd. in Parry, *Understanding* 67). By contrast, interrogation—the effects of which, Richard claims, *cannot* be seen—would not induce chill-inducing reactions from audiences. In a similar comparison, former CIA instructor Malcolm Nance stated that the “acts and calamities that comprise torture” “force us to look away for a moment,” conveying the implication that interrogation would not induce the same reactions of abject horror (qtd. in McDonnell, Nordgren, and Loewenstein 93). Inviting the public to define torture misunderstands the experience of pain and suffering as something that is always visible. Pain and suffering, experienced by the victim subjectively, therefore, cannot be assessed within to criteria other than the sufferer’s.

The fact that the image of torture is far from universal, and that bodily identification is influenced by the way it is interpreted by a viewing audience is addressed by Susan Sontag in her appeal to the public to view the photographs from Abu Ghraib as images of torture. In her expository essay, “Regarding the Torture of Others,” Sontag appeals to audiences to identify with prisoners in the photos on the basis of a common body in order to suggest that the images constituted proof of the severity of treatment amounting to torture. Sontag is responding to what she saw as the public’s ambivalent response to the now-infamous pictures of detainees in Abu Ghraib prison in Iraq who were tortured by the U.S. Army and the CIA. Human rights organizations expressed outrage at the treatment of prisoners, citing the pictures as examples of

ongoing abuse at the prison. Government officials, on the other hand, claimed the abuses were isolated incidences and not endemic in U.S. prisons abroad. Writing out of concern that the rhetoric of the war on terror could result in a rejection of the pictures as evidence of torture, Sontag urges audiences not to dismiss or reject the pictures. Instead, she urges the public to include these pictures among their (society's) images of suffering, what Sontag calls the "memory museum," a collection that archives images as well as the collective response to them, both of which are embodied in the act of regarding the images (1). Including these images among other iconic representations of suffering, according to Sontag, constitutes recognition of shared bodily vulnerability, and, in doing so, constitutes an admission of the wrongness of torture. Sontag's petition to the public to regarding Abu Ghraib was warranted, as evidence shows a concerted effort by officials to dismiss images as of suffering as not reaching the threshold of torture.

I focus on social definitions of torture in this dissertation, therefore, to explore the ways in which public opinion condones the use of torture under certain circumstances, even despite widespread condemnation of the general practice of torture. As has become clear in countless historical examples, public opinion has the power to override seemingly impenetrable moral and legal prohibitions against human rights abuses. Work examining representations of torture in prominent examples such as Latin America, European colonialism, and WWII, explicated rationalization for torture as patriotic, seen as the preservation of society against potential outside threat (Fanon; Galletely and Stoltzfus). In these instances, torture has been promoted as an effective tool in dehumanizing narratives used to exclude and repress the Other (as a potential threat) in society. What these historical examples demonstrate is that when torture is justified as necessary political violence, that is, when it is rationalized for its perceived consequences,

neither members of the state nor the torturers themselves identify as torturers or even as complicit to the act of torture (Fanon). Without any apparent connection to the tortured individuals—neither body nor society—tortured individuals become tortureable because they are thought of as unworthy of protection.

As I have suggested, audience interpretation creates the acceptability of torture by defining inviolable human rights according to specific circumstances in which they occur. Despite the appearance of formality and rigidity, national and international human rights law is contingent upon individually held notions of subjectivity, values, and beliefs. Legal definitions of torture, including those in the torture memos and CAT (and elsewhere), are subject to change according to the perspective of the audience within the situation and for the purpose of the speaker. Definitions of torture can therefore be thought of as persuasive; that is, as serving the motivations of the speaker by appealing to the beliefs of an audience. Definitions acquire meaning within the context of their application; crucially, definitions can also ascribe meaning to circumstances, categorizing a series of events within an overarching framework, as Schiappa argues: “a class of objects . . . is profoundly influenced by the language we use to make sense of that class . . . how we define situations can give meaning to a complex set of phenomena, practices, and experiences” (*Defining* 170). This dissertation argues that definitions of torture can therefore be considered as motivated by the varied interests of the audience members and speakers. And, moreover, applying Schiappa’s concept of rhetorical definition, I argue that definitions in the torture memos that legalize “waterboarding” as “coercive interrogation” do so by excluding it from classification as torture. Together, these rhetorical strategies, along with the discursive frameworks advocating the war on terror, create the circumstances for audience judgement and interpretation to play a key role in constructing social knowledge on torture.

The rhetorical potential of contextual representation of torture in discourses disseminated through various channels—legal discourse, popular culture, torture techniques (among others)—thus advances the study of the rhetorics of democratic torture a fertile ground for analysis. Representations of torture in texts do more than proscribe definitions or reflect an existing ideology; they present a worldview of torture—its arguments outlining its purpose, uses, and properties—for acceptance by audiences. With this in mind, this dissertation investigates the manner in which torture is presented, encompassing a range of vastly differentiated discourses, genres, and fields of study. As they form the social knowledge that creates the reality of torture in contemporary society, the examination of a varied range of texts in this dissertation speaks to the disparate influence of discourse on definitions of torture. Thus, the following chapters explore examples of definitions of torture held by the public, and assert that these social attitudes serve as a powerful force in advocating or condemning the practice of torture. Rhetorical analysis, with its focus on audience interpretation in the construction of meaning, serves as a viable tool for surfacing and critiquing motivated expression. In this dissertation, ancient Athenian forensic oratory, U.S. legal definitions of torture, the technique of “acoustic bombardment,” and Mohamedou Ould Slahi’s first person account of torture, *Guantánamo Diary*, all establish a critical framework for understanding torture according to an audience’s nuanced and individual interpretations. Each text, in its depiction of torture, poses some conflict or contradiction between the formal definition of torture and its operation in practice. Social definitions of torture form at the site of the convergence of definition and practice, as I argue, situating frameworks of torture within social contexts.

Audience and Public Opinion

In arguing for the importance of audience opinion in definitions of torture, this dissertation begins from an understanding of definitions as rhetorical in the way that they are always addressed to someone, a characteristic that situates them as motivated and persuasive. The personal appeals to the hearts and minds of the American public to accept the conditions for the use of torture expose the political motivations of speakers who, in a number of ways, address their audience according to the action they wish to invoke. Audiences who are engaged and receptive to this discourse judge such appeals according to their own subject position and context. Definitions of torture form as an effect of such rhetorical exchange between speaker and audience; insofar as the audience plays a definitive role in producing meaning, they also come to act as an authorizing force in the construction of definitions of torture.

Methodologically, then, my research builds upon existing scholarship in rhetorical criticism and theory that posits the importance of the audience's modes of judgement and interpretation of persuasive speech. A primary focus of rhetorical criticism is the composition of the audience in the construction of arguments. The questions concerning the rhetorical force of audiences raised in this dissertation can be instructively answered through an understanding of an audience as an engaged public. In this dissertation, I draw on Gerard Hauser's reading of Habermas's definition of an audience as an engaged public: shared ways of thinking articulated among a mobilized group of people, or in Hauser's words,

a shared awareness by an active segment of society, a "public," sensitized to and influential on a "general climate," an aura of attitude and belief, if you will, that invites certain perceptions and expressions to the surface while offering menacing signals to keep others under wraps. (*Vernacular* 3)

As Hauser writes, a “public” constitutes an engaged group that generates opinion through the act of judgement, an action involving the prioritization of values, beliefs, and attitudes over others. In the context of this dissertation, the audience constitutes a group of people who determine (in the parlance of Luntz) whether “the words work,” that is, a group of individuals who have the ability can be persuaded and can be compelled to action as a result of judgement. A rhetorical “public” is therefore a powerful force, worthy of extensive consideration. Operating within the structures of democratic power, an engaged audience can effect change in the world through direct actions such as voting, discourse, and protest, and also through access to institutional channels to develop policy and laws. It is to this motivated action that speakers must appeal.

The role of audiences in influencing public discourse can be found in the history and theory of rhetoric, particularly in the role of rhetoric in the law courts in ancient Athens in the fifth and fourth centuries B.C.E. The ancient legal context serves as the starting point of this dissertation in Chapter One. In the absence of an evidence-based legal apparatus (as in modern courts), Athenians pursued their moral, political, legal and social goals through rhetorical speech by appealing to their audience through the credibility of shared values and beliefs, characterized as the “means of persuasion” and commonplaces by Aristotle in *Rhetoric* (1354b). Everyday beliefs and values constituted the consensus of the community at large, and became authorized through their continual engagement in the citizen’s speech. Speech, for the Athenians, however, was no mild encounter; especially in the law courts and the democratic assembly, speakers and audiences held their fellow citizens accountable for all actions, speech, and behaviour, assessing whether it met the criteria of a “good” citizen (Roisman, *Manhood* 199). The authority of the ideals and values Athenians venerated, in other words, were formed from contest and conflict and exemplified through everyday action, not from imposed institutional law (Hawhee).

Hauser finds a parallel authority generated in the production of public opinion today, arguing that debate in the public dimension legitimizes shared ideals and values. When topics are highly contested in society (as the topic of torture certainly is), the result of such conflict is the creation of “political meaning” as the effect of putting opinions and values to the test against others (Hauser, *Vernacular* 33). Such action is symbolic in that it forms knowledge on the subject and also establishes the criteria for the assessment of future information. Engaging in continual interpretation, public opinion takes form through “collective participation in rhetorical processes” (Hauser, *Vernacular* 34). Similar to the classical use of rhetorical commonplaces as persuasive devices that relied on audience opinion for validity, public opinion is also a rhetorical technique for speakers to draw on in their construction of arguments. Speakers may draw on this social, contingent knowledge to create connections between individuals by calling attention to their inclusion within (and responsibility to) a community. Arguments that define torture as necessary in the context of war, for example, evoke the security of the community as justification for its use, an argument that prioritizes political efficacy over human rights imperatives.

Situating the meaning of torture within the highly contestable realm of public opinion and individual actors, as I do in this dissertation, may elicit some skepticism from legal scholars. Historically, jurists venerate the stability and objectivity legal institutions and practices offer. However, the recent exploitation of these very principles by political actors has illuminated some of the vulnerabilities of the legal system (particularly in terms of interpretation), prompting some scholars to suggest alternative routes for protection and prevention. Christopher Shaw, a jurist who was also deployed in Iraq, cites the difference between law and practice as the space of “discrepancy,” declaring that

definitions and proscriptions, by themselves, cannot stop torture—only leadership and policy can. I experienced this reality firsthand as a Marine lawyer deployed to Iraq.

There, although the definition and the ban created a framework, it was leadership and practical policies that effectively combated torture. (289)

Shaw’s direct experience suggests that policies can be effective when they are put into practice for the purpose of achieving a pre-determined outcome. Whereas formal definitions can clarify aims and objectives, individual decisions and actions also clearly designate authority in the judgement and response of the actors involved. An important theme that emerges in the application of legal and political policy is the role individual action contributes to formal definitions.

Drawing on the momentum of ongoing legal scholarship, this dissertation contributes to the field of rhetorical criticism through analysis of representations of torture as social definitions of torture. Starting from Hauser’s claim that the “public sphere lies at the very heart of public life,” I argue that audience engagement with messages in the public sphere creates definitions of torture (*Vernacular* 80). My discussion in the previous section offers a demonstration of the variety of texts constructing both formal and social definitions of torture I examine in this project. The two major themes I have outlined in this dissertation form the basis for my textual choices. First, I emphasize social definitions by distinguishing them from legal definitions; and second, I highlight first person narratives of individuals from torture as the primary objects of analysis. I have chosen texts that underscore the features of democratic torture: the exploitation of institutions, the contradiction inherent in the act of appropriating democratic organizations to inflict torture, and the rhetorical manipulation of terms to avoid blame or prosecution. In the first two chapters, I focus on the ways social opinion and practice shape the definition of torture in

society; and in the second two chapters, I focus on the application of torture in democracy to investigate how a social context changes the circumstances, but not the force, of dehumanizing practices.

Chapter 1, “Torture and Rhetoric in Attic Oratory,” foregrounds my investigation of the function of social definitions of torture in democracy in an analysis of the Attic orators’ use of torture as testimony (*basanos*) in their forensic speeches in Ancient Athens. If a speaker required a slave’s testimony to support his case, legal procedure in Athens required that he torture the slave in a pre-trial event called a challenge procedure. Much historical and legal scholarship has explored the value attributed to the testimony of slaves (duBois). However, orators in the forensic speeches equate torture with credibility of character, identifying the act of torture as commensurate with the characteristics of a good citizenship. To leverage the rhetorical power of torture in their favour, orators manipulated the legal challenge, I suggest, to place their credibility in contest with that of their opponent. A citizen’s definition of torture extolling the credibility of the Athenian citizen as a valuable member of the community emerges from this agonistic encounter. Rhetorical analysis of the forensic speeches lends important insight to the difference between testimony and its social function by pointing to the rhetoricity of the act of speaking. Addressed by a motivated citizen to his audience of citizens signifies, I argue, a citizen’s relationship to torture as an act of power, a perspective that brings the social dimension of definitions of torture to the forefront in ways that become relevant in discussions of torture today.

Similar to my investigation of the exploitation of forensic proof by the orators, the second chapter of this dissertation, “Euphemisms and Interrogation in Contemporary Torture,” analyzes the exploitation of language in the U.S. “torture memos” as a means to legalize techniques of

torture as “coercive interrogation.” Through a close reading of international human rights law and its interpretation by U.S. domestic law, I show precisely how terms are narrowed in scope to exclude a range of actions from the definition of torture. Next, drawing on rhetorical criticism’s understanding of definitions as symbolic acts, I extend this analysis of legal definitions to suggest the construction of definitions was motivated through acceptance by an audience. Through rhetorical analysis of the terms “interrogation techniques” and “waterboarding,” I suggest that these terms are invoked specifically to present torture as justified and necessary to audiences. In addition to the legal manipulation of language to construct these terms as suitable for political purposes, from the viewpoint of human rights discourse, these terms constitute a call for action from audiences to reject the terms outright. From the viewpoint that prohibition of torture relies not only on law but on a community that refuses to accept its practice, euphemisms can also function symbolically as part of what Hauser characterizes as a “moral vernacular,” as part of a rhetorical opposition to human rights abuses (“Moral Vernacular”). In proposing that the inventive potential of discourse may serve an emancipatory function, or panacea, for the prevention of torture through the support of human rights definitions, Chapter 2 offers a counterpart to the first chapter’s analysis that identifies speech as a source of exclusion.

The third chapter, “A Captive Audience: Rhetoric and Acoustic Bombardment in Contemporary Torture,” investigates the under-acknowledged force of sound as an instrument of contemporary torture. Of the “coercive interrogation techniques,” detainees report sound—in the form of white noise or music, blasting in small spaces for hours, days, and sometimes weeks—as the most frequently employed, also reporting the most adverse reactions to “acoustic bombardment.” Yet the deployment of sound remains the sole technique that is still legal in U.S. interrogation manuals (as well as U.S. PSYOP), where its deployment is left up to the discretion

of the interrogator. Through an analysis of sound and music as persuasive affect in current communication research in the field of Sound Studies, I elucidate the ways torturers manipulate the conditions of reception of sound in order to intensify its effects. Typically considered the least distressing of the techniques in interrogation manuals, a rhetorical analysis of sound as a communicative act addressed to an audience emphasizes the destructive potential of sound in the torture situation.

Chapter 4 of this dissertation identifies irony as a definitive trait of contemporary torture. Through a close reading of Mohamedou Oulu Slahi's first-person narrative, "Laughter in the Ocean of Tears: Irony and Torture in Slahi's *Guantánamo Diary*," the chapter examines irony as an index of the contradictions at the heart of the practice of democratic torture. Irony functions as a narrative strategy for the narrator, who does not explicitly describe his torture; rhetorical modes of laughter and irony, I argue, instead signify Slahi's intense, individualized experience of pain and suffering. In detailing his detention, the author constructs his torture through a framework of the incompatibility of his personal values with the treatment he is forced to endure. The predominance of irony as the primary rhetorical mode of telling reveals the fundamental contradiction the experience of pain and suffering of torture inflicts. Such contrasts in the text, moreover, point to the inconsistencies of his circumstances of torture; as a (now released) political prisoner, the narrator provides insight into the institutions that allow such atrocities to occur under the guise of legality and protection. In our current state of media inundation of torture, Slahi's text—which avoids direct discussion of torture—presents a poignant reminder of the challenges in contemporary definitions of torture.

CHAPTER ONE

Torture and Rhetoric in Attic Oratory

In the Athenian forensic speech, *On The Estate of Ciron*, the speaker states that he had requested his opponent's slaves be tortured "to obtain proof" to support his case (Isaeus 8.10). In doing so, the speaker references a well-known legal rule in Athenian law that requires litigants to use a slave's testimony as evidence only if it had been obtained by torturing the slave in a pre-trial event called the "challenge" (Gagarin; Mirhady; Thür). Yet the evidence never materializes: the speaker states that his request for evidence had been denied by his opponent who had "refused so decisive a method of testing" (Isaeus 8.11). Despite the lack of evidence, however, the speaker goes on to praise the veracity of the evidence that would have been obtained had the torture been carried out:

[y]ou Athenians hold the opinion that both in public and in private matters examination under torture is the most searching test; and so, when you have slaves and free men before you and it is necessary that some contested point should be cleared up, you do not employ the evidence of free men but seek to establish the truth about the facts by putting the slaves to torture. This is a perfectly reasonable course; for you are well aware that before now witnesses have appeared not to be giving true evidence, whereas no one who has been examined under torture has ever been convicted of giving false evidence as the result of being tortured. (Isaeus 8.12)

This sequence, with almost identical phrasing, appears throughout the extant speeches: first, the speaker proposes torture; second, his opponent refuses to submit his slaves for questioning; and third, the speaker praises evidence that would have been obtained from the torture (Dem. 30.37; Lycurg. 1.29; Isoc.17.54).

The question as to why speakers present an unsuccessful challenge procedure to audiences, and then go on to praise evidence that was not obtained, has been the subject of much debate in philological and classical scholarship. A starting point for this research has been the recognition of the Athenian's unique use of torture. Different from other slave societies, Athenians extended the use of torture to legal procedure, leading some critics to conclude that the speaker's praise of torture served an ideological purpose (duBois; MacDowell; Harrison). Other scholars approach the speeches from a legal context to suggest that the subjective system of proof in Athenian law courts in the fifth and fourth centuries B.C.E. provides the key to understanding the importance of the references to torture in the speeches (Gagarin; Mirhady; Thür; Carey). Litigants won cases in the courts by competing against their opponents for votes from large juries of citizens would assess speakers according to their character. In this competitive context, an orator's proposal and praise of torture functioned as evidence of the speaker's adherence to laws that would gain him "a moral advantage in court" over his opponent (Carey, "Artless" 231).

Yet the considerable rhetorical finesse speakers expend on contextualizing torture within the details of their legal suits suggests that they also appealed to their audience's shared values about torture. In Demosthenes's speech, *Against Onetor*, for example, the speaker applies the commonplace of the proposal, refusal, and praise of torture in three separate attempts to acquire evidence for his case, an integral and comprehensive use that implies that torture signified more than a speaker's lawfulness to audiences. In fact, torture features prominently as a marker of Athenian political identity in myth, literature, and political discourse. Accounting especially for the ways in which audience's shared principles function as the validation of proof requires a focus analyzing the function of rhetorical argumentation in the law courts. As a mode of

criticism, rhetorical analysis considers how speakers persuade audiences to action; applied to Attic oratory, George Kennedy writes, it considers how “the features of an effective speech” implementing “argument, arrangement, style, and delivery” can persuade audiences of a speaker’s credibility (*History* 1). Although, as David Mirhady observes in “Torture and Rhetoric in Athens,” “rhetoric is an essential part of ancient legal discourse and . . . an appreciation of it can be extremely helpful, even essential, for dealing with legal questions,” little is known about the argumentative use of torture in the Athenian forensic speeches (“Torture” 128).

In its application of rhetorical analysis to the forensic speeches, this chapter examines the orators’ use of torture as a means of persuasion in instances of testimony from torture in the orators. I argue that orators exploit the challenge legal procedure in order to appeal to audience’s opinions regarding the act of torture. More than representing their differences from slaves, or than signalling a speaker’s obedience to the law, I suggest, torture constituted a symbolic act, unifying citizens within a larger community within a shared set of beliefs. Whereas proposing to torture signalled an individual’s adherence to community values, the refusal to torture signified a citizen’s rejection of communal character, thus serving as a rhetorical technique for speakers to vilify opponents. This crucial social definition of torture held by Athenians (reinforced through the act of oratory) values torture as a function of citizenship, and as an act that reinforces community. The exploration of the paradoxical coexistence of democracy and torture in Athens, moreover, invites comparisons with contemporary torture by underscoring the importance of audience and speaker in understanding torture—the primary argument of this dissertation.

I proceed as follows. First, I provide a critical review of the Athenian legal procedure of the challenge to torture and outline the legal context of the requirements of proof in the Athenian courts. The current debate over the function of torture as proof in Athens foregrounds my close

reading of the competitive forensic speeches in the Attic orators. As I argue, torture functions argumentatively within the speeches within enthymemic reasoning as a demonstration of the speaker's character. In the third section, I contextualize my findings with Aristotle's *Rhetoric*, suggesting that later revisions to his text, as well as omissions in the original version, contribute to a reading of torture that neglects to adequately address the political significance of torture as a function of citizen identity. Accordingly, this rhetorical analysis, in its focus on how orators appeal to complex beliefs held by audiences, aims to provide insight into how social definitions function to sustain the practice of torture.

I: Torture and Proof

In a sequence similar to *On The Estate of Ciron*, the speaker in *Against Onetor* outlines his proposal and his opponents' refusal for his audience, and then praises the evidence he would have obtained had the torture been carried out. In his initial challenge, the speaker emphasizes the veracity of this evidence, stating that:

I therefore demanded of Onetor three female slaves, who knew that the woman was living with Aphobus and that the effects were in the hands of these men, in order that we might not have mere statements but that the matters might be established by proof from the torture. (30.35)

In the second installment of the sequence, the speaker informs the audience that the proof torture would have obtained is unavailable due to his opponents' refusal to submit his slaves for questioning:

[b]ut Onetor, when I made this challenge to him, and all those present declared that my proposal was just, refused to have recourse to this certain test. But as though there were

other and surer proofs regarding such matters than torture and testimony, he produced no witnesses to prove that he had paid the dowry, nor would he give up for torture the female slaves who knew the fact, to prove that his sister was not living with Aphobus; and, because I made this demand of him, he in an outrageous and insulting manner refused to let me talk to him. Could there be a man more impossible to deal with than he, or more ready to pretend ignorance of what is right? Take the challenge itself and read it. “Challenge.” (30.36)

In relating the events, the speaker uses his opponent’s refusal as an opportunity to comment on the character of his opponent as “outrageous” and “insulting.” Then, in the final stage of the sequence, the speaker goes on to praise torture:

[y]ou on your part hold that in both private and public matters the torture is the most certain of all methods of proof, and when slaves and freemen are both available, and the truth of a matter is to be sought out, you make no use of the testimony of the freemen, but seek to ascertain the truth by torturing the slaves; and very properly, men of the jury. For of witnesses who have given testimony there have been some ere now who have been thought not to tell the truth; but of slaves put to the torture no one has ever been convicted of giving false testimony. (30.37)

Completing the sequence of events with praise for the practice and proof it obtains bookends his discussion of torture with his support for the legal procedure.

Detailed examination of this use of torture in the speeches was undertaken by Michael Gagarin, who calls this legal procedure “evidentiary torture” to distinguish it from torture used for judicial or penal purposes (1). Speakers who wished to obtain evidence from slaves (usually the slaves of their opponents) would issue a “challenge to torture” (*proklesis*), a term used by

speaker to refer to the initiation of the intent of the speaker to torture the slaves, as well as the yes or no questions that the litigant would ask and the circumstances of the interrogation (Gagarin 3). The litigant's opponent could accept, reject, or modify the challenge, but the entirety of the procedure—the questions, acceptance or refusal, as well as modifications to the questions and the slave's answers—would be documented and written down, sealed in clay pots (*echinoi*), and then read aloud by the clerk in trial when the speaker directed him to “Read the Challenge” (Gagarin 3).

The need for the testimony of slaves was a consequence of the burgeoning democracy in Athens during the period of the speeches (420–320 B.C.E) (Gagarin 2). Citizens (Athenian-born males over eighteen) forced a large slave population (comprised mostly of non-Greeks) to carry out many of the household, labour, and civic duties while they pursued deliberative duties, such as participation in the democratic Assembly (*demos*) and in the law courts (*dikestērion*) (Hansen, *Athenian*). This arrangement often made slaves the only witnesses to everyday events, and thus privy to knowledge that citizens required as evidence to support their legal suits. Due to their status as chattel, however, a slave (called a “living tool” by Aristotle) could not testify as a witness in court (*Pol.* 1253b). Without legal status, slaves could not perjure themselves, and therefore “were not competent to testify as witnesses in court” (Hunter, “Introduction” 6–7). Torturing slaves to obtain their testimony provided a solution: it provided litigants with the evidence they needed, and it also aligned with the slave's subjugated social status. Perceiving slaves as motivated by bodily desire (instead of reason), Athenians believed torture elicited truthful testimony because only pain could “ensure that no considerations affected the slave's thoughts other than the directive to tell the truth” (Mirhady, “Rationale” 67). The challenge to

torture thus provided a “device for turning a slave’s evidence into legal testimony” (Hunter, “Introduction” 7; Gagarin 3).

According to the details of the legal procedure and rationale for its use, incorporating torture into the legal system seems to have provided a pragmatic solution to the unique problem of obtaining proof faced by Athenian litigants. However, if the purpose of the challenge to torture was to present the court with the slave’s testimony, then, in practice, the procedure fails in its primary objective: a litigant’s challenge to torture was, in every instance in the speeches, refused by his opponent. In the forty-two instances of the challenge to torture in the extant speeches, Stephen Todd reports: “we find the challenge, either ‘torture my slaves for evidence’ or ‘let me torture yours.’ Forty times this challenge was flatly rejected; twice . . . it was accepted but not carried through” (33–34). Instead of the evidence—hailed by orators “as most certain of all methods of proof”—the procedure was designed to retrieve, only the proposal and refusal are present in extant examples (Dem. 30.37). While it is possible that examples of the acceptance of the challenge did not survive, the question as to why speakers manipulated the challenge in the way they did in the surviving speeches from the period continues to puzzle scholars.

In her important investigation of the orators’ speeches in the context of literature of the period, *Torture and Truth*, Page duBois examines the praise of testimony from torture by the orators. Maintaining that evidentiary torture was carried out (despite lack of examples), duBois traces the etymology of testimony from torture, called *basanos* by the Greeks, to its original meaning as “touchstone,” where it referred to a process of testing the purity of metal, and also to a metaphorical meaning as “a test or trial to determine whether someone or something is real or genuine” (7). The belief that truth can be obtained through rigorous testing or interrogation served as a justification for torture as a valid method of obtaining truth (*alêtheia*) that was of a

higher value than a citizen's reasoned speech (*logos*) (duBois 39). Based on the belief that torture produced truth, duBois argues, the Greeks privileged testimony from torture as an *a priori*, unitary truth; testimony from torture is "evidence from elsewhere, from another place, another body . . . it is evidence from outside the community of citizens . . . it is temporarily estranged, institutionally, conventionally, marked as evidence of another order" (49). Athenians perceived truth as residing in the body of the slave, duBois argues, and thus citizens employed evidentiary torture in ways similar to punitive or judicial torture: as an ideological tool to naturalize differences between citizens and slaves for the purpose of sustaining their slave society.²

One drawback of investigating evidentiary torture as a function of ideology is that it does not consider the circumstances of the speech's delivery, an aspect that philological and classical scholars maintain is crucial to understanding its significance (Gagarin; Mirhady; Carey; Thür). Athenian law courts operated according to a system of subjective proof; speakers appealed to audiences on the basis of their character, conjoining legal matters with political ideals to form a standard for acceptable behaviour, as Gerhard Thür explains:

[w]e cannot take the various methods of finding truth in modern law as a natural given . . . In Athenian law, the principle of determining the truth is not primary, but rather the principle of equal opportunity: both prosecutors and defendants should have fair

² A further influential aspect of duBois' argument is that Athenian use of torture as an effective tool for reinforcing citizen superiority dismantles the idealized Athens as the first democracy. Evidentiary torture has earned reproach from a number of critics, in fact, because it was inflicted by a community that also supported equality among citizens. Douglas MacDowell, for example, writes, "[t]o torture a person as a punishment for an offence is logical, even if undesirable; to torture a person to make him confess an offence of his own or of an accomplice is understandable, though deplorable; but to torture an innocent man or woman in order to check the truth of information about someone else's offence appears to us an act of wanton and purposeless barbarity. It conflicts with the humanity we are accustomed to regard as characteristic of the Athenians (246). Reviewers of these texts, however, suggest that in considering torture comprehensively without considering the challenge fails to contribute to an understanding of testimony from torture. As Edith Hall states, these texts ignore the "seriousness with which we ought to take references to the torture of slaves in classical Athenian forensic speeches" (125).

opportunity to present their positions to a body of fellow citizens selected objectively and not influenced by bribery or pressure. (146)

In addition to some codified laws, principles of equality and fairness were also safeguarded in the administration of the law courts by non-professionals (Carey, *Trials* 5). Neither the litigants nor the jury had any formal legal training; rather, two citizens (the litigant and his opponent) were allotted equal speaking time to deliver their speech to a group of fellow citizens (numbering between 200 to 1500) who then voted for one of the speakers immediately following the speech (Carey, *Trials* 6).

In this politically motivated law court, speakers addressed their audiences on the basis of shared social concerns and concerns. Athenian speakers attempted to win favour with their audiences by establishing their trustworthy character with the understanding that a credible citizen would have behaved correctly in all his dealings (Kennedy, *History* 67).³ According to David Cohen, speakers framed their forensic speeches within the beliefs, values, and opinions widely held by citizens. In the expectation of being judged according to an audience's assessment of his actions, Cohen explains, the litigant presented the facts of the case to his audience against a "background of social values"; then audiences employed "assessments of character, reputation, and probability, cast in terms which appealed to the knowledge and values which the judges, as ordinary citizens, possessed" to assess the case (61). Athenian jurors' votes were motivated by whether a litigant's narrative of his disposition, acts, and practices demonstrated character befitting of an ideal citizen. In this social context, therefore, a speaker's

³ Athenians apparently viewed speaking occasions as an opportunity to express their political identity as citizens. The law courts provided a space to reaffirm these individual and shared character. Referencing the famous instruction from Peleus to Phoenix, tutor of Achilles, Hannah Arendt writes in *The Human Condition* that the community (*polis*) was structured so as to engender opportunities for a citizen to publicly demonstrate his citizenship, that it "was supposed to multiply the chances for everyone to distinguish himself, to show in word and deed who he was in his unique distinctness" (197).

representation of his own actions functioned as the evidence a jury would assess and then vote upon.

Speakers competed against each other to present their own character as more credible than their opponent's. According to Joseph Roisman, speakers sought to represent their credible character in descriptions of recognizably trustworthy actions, for example, in everyday interactions with other citizens and individuals in the home and marketplace.⁴ Through these depictions, a speaker portrayed himself as embodying the characteristics of a "good citizen": a litigant who showed himself to be "loyal and useful"; someone who was "willing to rank public interest over personal needs"; and generally moderate in his actions towards others (*Manhood* 199). While presenting themselves as "model[s] of normative conduct and excellence," they also represented their opponent as acting selfishly in opposition to public interest, constructing their character within a framework of "deviancy and villainy" (Roisman, *Manhood* 7). Since subjective values shared by citizens comprised the standard for assessing arguments, audiences compared the conduct as it was presented by competing citizens.

Together, these studies support a reading of praise of torture by the speaker in *Against Onetor* that accounts for the specific subjective context of the Athenian courts. For audiences attuned to examples of a speaker's character, the praise of torture may have been interpreted as adherence to the legal system respected by citizens. Framing the proposal to torture as a "just proposal" and as a "certain test," the speaker represents himself as sharing similar motivations to a lawful resolution of the conflict before him (Dem. 30.36). Moreover, equating the proposal to torture with the desire to discover the truth of the matter positions the speaker as possessing a

⁴ According to Debra Hawhee, citizens formed their opinions of other citizens by observing their actions: "identities did not precede actions One could not just 'be' manly (*andreios*) and all that entails without displaying his 'manliness' through manly acts of courage" (187–188). In the context of the law courts, performing an action would constitute a 'display' or expression of an act that an audience would interpret as proof of character.

mindset similar to his audience: eager to discover the truth to resolve the issue that occasioned the trial.⁵ Proposing to torture therefore established the lawful character of the speaker in two ways: first, by showing his adherence and respect for legal procedure; and second, by displaying the speaker's commitment to transparency in his dealings with others.

The speaker's praise of torture in *Against Onetor* thus also serves the purpose of condemning his opponent's comparative neglect of the laws. Refusing to torture demonstrates an unwillingness to present the "truth" torture would yield, and it also, significantly, signified a citizen's disregard for the rule of law (Dem. 30.36). Athenians distinguished themselves as citizens (and as Greeks) by their respect for a system of law; refusing to follow established legal procedure disgraced the credibility of a citizen and also implied other misconduct (Carey, *Nomos* 45). The speaker's depiction of his opponent's refusal as "outrageous and insulting," as "impossible to deal with," and his opponent as one who is "ready to pretend ignorance of what is right," represents his opponent as corrupt, as someone who knows the laws but refuses to follow them (Dem. 30.36).⁶ Because Athenian understanding of law as *nomos*—as "not just about legality but about justice and reasonableness"—refusing to follow laws implies more than willful ignorance, but an intentional exploitation of laws for the personal advantage of the opponent (Carey, "*Nomos*" 45). The praise lavished on torture functions argumentatively, then, both to

⁵ In its social function in the political law courts, the role of Athenian law, *nomos*, Christopher Carey explains in "*Nomos* in Attic Rhetoric and Oratory," is to provide broad guidelines for action befitting Athenian citizens, not to resolve specific legal problems (39). Legal procedure (such as the challenge) established an authorized means of "regulating conduct" of citizens by governing codes of appropriate action for citizens. Adherence to law, moreover, expressed the ideal characteristics of Athenian citizenship, and also of a general "Greek" respect for laws. One of the common strands among the city-states was an understanding of law as *nomos*—a standard for action—as that which differentiated Greeks from their slaves, or from non-Greeks. It is therefore common, Carey notes, for litigants to "associate themselves with the laws" as a means to express similar motivations as their audiences who also, as jurors, would presumably also be operating according to best legal practices (45).

⁶ But in the context of the law courts, Carey notes, "[t]here is an equally strong tendency to associate the opponent with the breach of the laws" in order to position an opponent as "someone who despises the laws" ("*Nomos*" 45).

highlight the speaker's own adherence to the law and, simultaneously, to emphasize his opponent's inability to fulfill the most basic responsibility of citizenship.

The sequence of proposal, refusal, and praise, moreover, offers further proof of credibility by framing behaviour within a consistent pattern of behaviour. In his examination of Athenian law courts, Simon Goldhill stresses that audiences assessed speakers not only by evaluating their individual traits, but also how these traits fit into established patterns of acceptable patterns of citizen action. According to Goldhill, decisions were "based on [the] competitive performance" of speakers whose "bodies, voices, behaviour and gestures of orators [were] the subject of scrutiny and contest in the law-courts" (25). Performances followed unspoken yet rigorously enforced social regulations (by voting or social ostracizing), what Vincent Farenga characterizes as the "rules of engagement" Athenians followed, a "script" in which democratic citizenship involved strict adherence to norms through everyday action (7). Signifying knowledge and adherence to legal procedure, proposing to torture contributes to a narrative of a law-abiding citizen, one who follows the law in everyday action and then also upholds its credibility by praising its outcome. The sequence of proposing, refusing, and then praise of torture found in the orators represents the importance citizens placed on consistent action of a citizen who not only follows the law but also embodies these principles as part of his political identity.

There is some debate among scholars as to whether speakers intentionally manipulated the legal procedure to produce a refusal that would give a speaker a competitive edge over his opponent. On one hand, Mirhady argues that speakers attempted to use the legal procedure as it was intended, as it offered speakers the opportunity to resolve a dispute according to "certain proof," whereas judges could only ever offer "opinion and conjecture, at best, second-hand

information” (“Torture” 127). Contrasting this view, Carey and Gagarin suggest that speakers, influenced by the competitive speaking context, exploited the legal procedure for their own purposes by intentionally constructing a challenge to torture that would be refused. The orators took advantage of the opportunity the refusal to torture offered to pit his own good character against his opponent’s, Carey argues, and thus “always issued the challenge in the confident expectation that the opponent will refuse it” (“Artless” 232). Speakers would perceive the proof of character the challenge supplied, Gagarin argues, as “rational and effective” evidence to support the claims they make in their speeches (17). Although offering differing perspectives as to the speaker’s intentions, collectively, the studies reviewed here highlight the social context of speaking (rather than the veracity of proof), as the prevailing influence on the speaker’s incorporation of the challenge to torture in their speeches.

So far this chapter has considered, in detail, the two major explanations of the orators’ puzzling use of the legal challenge to torture in the Attic speeches. One approach suggests that citizens use evidentiary torture alongside judicial and punitive torture as a means to reinforce their superior social status in comparison to slaves (duBois; MacDowell). Other studies concentrate on the legal circumstances, arguing that orators used the sequence of the proposal, refusal, praise of torture within speeches designed to promote their credibility as citizens. In Athenian law courts that operated according to a subjective system of proof, the act of torture spoke to a citizen’s law-abiding nature that the jury—an audience of fellow citizens—would find trustworthy (Gagarin, Mirhady, Carey, Thür). The following section will discuss the complex influence the audience, and its beliefs, values, and opinion to which the speaker appeals, had on how the orators used the challenge procedure.

II: Torture and the Audience

The Greek word for the legal audience who heard the litigants' speeches is *dikastes*, usually translated as juror. Given that this audience also performed the more demanding duties of interpreting and applying the law (and sometimes punishment), Carey argues, a more apt translation may be "judge" (*Trials* 6). In order to qualify as a judge, citizens were required to meet certain standards: they had to be over thirty years of age, were usually independently wealthy (to be able to afford the time for trials), and they were also required to take an oath swearing that they would carry out the law, and if there was no existing law, they would apply their opinion of what was just (*gnomei tei dikaiotatei*) (Carey, *Trials* 6). Much research has examined the legal function and status of the audience, however, less is known about the ways in which the audience influenced the speech presented by the litigant. Particularly in the Athenian context, where the livelihoods of speakers depended upon winning an audience's votes, the opinions, beliefs, and values of the judges were of paramount concern for litigants constructing their speeches.

Rhetorical analysis, in its focus on the means of persuasion, focuses on the role of audience opinion in the construction of arguments. Aristotle's handbook *Rhetoric* (representative of the work of the period), outlines two major ways audiences shape a litigant's speech. First, the expectations of the jury structures how a speaker presents his case: they will judge past events, they direct the purpose of the speaker to accuse and defend, and they also determine the major topic under discussion—"The end of the forensic speaker is the just or the unjust" (1358b). The second way audiences influence speech is through their collective opinion that forms the content for the speaker's appeal. Aristotle describes the rhetorical means of persuasion as appeals to the audience's reason, character, and emotion (1356a). It is up to the litigant to calculate the

composition of his audience in order to direct his appeal to them, which he can do by “establish[ing] the true, or apparently true,” presenting himself as “worthy of confidence,” and “persuad[ing] by means of his hearers, when they are roused to emotion by his speech” (1356a). Persuading an audience, according to the handbook, involves adhering to the conventions of the occasion of speaking expected by the audience, and also by direct appeals to their beliefs.

In addition to providing proof of law abiding character to meet audience expectations (proving that one was “just”), audience opinion of torture reflected widespread complex beliefs and values about torture that influenced a citizen’s own political identity, and it was to these audience opinions that the orators also appealed. Among citizens, the act of torture was additional significant as an act which demonstrated the political identity of citizens, imagining themselves as Promethean in relation to torture. Ancient Greeks drew on myths for morals and even for identity; the Homeric poems, “venerated as the bibles of the culture,” strongly influenced Greek values in society (Kennedy, *Classical* 6). Prometheus’ capacity to endure torture indicates that Greeks perceived physical torture as an experience that they, due to their political superiority, could overcome. In the myth, Zeus’s torture of Prometheus is ultimately unsuccessful; Prometheus does not reveal his information, and more importantly, he engages his visitors in conversation, which he is able to maintain, even in his tormented state.

Acknowledging his suffering, he abides it with the knowledge that it will pass: “[t]he future was fated to come to pass . . . not by brute strength nor through violence, but by guile that those who should gain the upper hand were destined to prevail” (Aesch. PB 196). Prometheus’ own intrinsic sense of honour prevents him from the full experience of the pain, framing a citizen’s relationship to torture with a symbol of strength rather than suffering.

Moving from myth to comedy, Aristophanes' comedy, *The Frogs*, satirizes the citizen's resistance to torture. In the play, Dionysus (a god) and Xanthias (a slave) travel to Hades to retrieve Euripides (the poet). Along the way, Dionysus trades clothes with Xanthias to avoid a case of mistaken identity, a plan that later backfires when Xanthias, enjoying his newfound status, denies that he is a slave and asserts Dionysus' subordinate status (Aristoph. *Frogs* 605). Keeping up the charade, Xanthias suggests to Aeacus that he torture the two of them to determine identity, stating that he (masquerading as a god) would not feel its effects while Dionysus (masquerading as a slave) would be overcome with pain: "[a] fair offer! whichever of us two/You first see cry or noticing at all/being beaten, be sure he's not the God" (Aristoph. *Frogs* 605). In the ensuing torture scene, both are whipped and their reactions assessed ("blow for blow"), yet, like Prometheus, neither are overwhelmed: they feel the pain, but keep up rational banter, each pretending that they do not feel the lashes. The comedic success of this parody relies on the audience's recognition of the scene of torture and its function to differentiate identity. The act of Athenians joining together in comedic appreciation of the event reflects a common knowledge of torture shared among the audience members.

In addition to its literary and mythic connotations, torture also signified cohesion among citizens in their shared protection from its infliction: all citizens had the right not to be tortured (Hansen, *Athenian* 176).⁷ A decree (*psēphisma*) passed in c. 510/509 B.C.E. forbade citizens

⁷ The right not to be tortured differentiated citizens from slaves (or other non-citizens), and constituted the freedom of the Athenian citizen, as expressed by Aristotle's description of democratic freedom: "[a] basic principle of the democratic form of government is freedom (or liberty) (*eleutheria*). That is commonly said, and those who say it imply that only in this constitution do men share in liberty; for that, they say, is what every democracy aims at. Now one aspect of liberty is ruling and being ruled in turn . . . Another element is to live as you like. For this, they say, is a function of being free, since living not as you like is the function of the slave. So this is the second defining principle of democracy, and from it has come the ideal of not being ruled, not by anybody at all if possible, or at least only in turn" (*Pol.* 1317a–b). As a negative right, torture was important to citizens in the way that it formally defined a citizen's status as free by protecting him from torture and structured his right to democratic participation. If liberty is defined as "ruling and being ruled in turn," then torture, as a mechanism of rule over those enslaved, symbolized the enactment of this freedom.

from being tortured, or from physical violence inflicted on them in general (Harrison 150; Hunter, “Policing” 154; Hansen, *Athenian* 176; And. 1.43). Being free from torture constituted a negative right in contrast to the positive right of equal participation and free access to democratic venues (Hansen, “Ancient” 172–175). Establishing a parallel between a citizen’s negative right to be free from torture with his positive right to participate in the political life of Athens connected the abstract idea of freedom to a citizen’s very real physical freedom. “A free man” in Athens, Paul Cartledge writes, “is by definition one who freely controls his own body; corporal punishment of a free man, especially a citizen, must therefore be forbidden by law” (175). Thus torture helps to establish the citizen’s significant political status by being protected from it, and, following Aristotle, elevates and privileges his political nature as a necessary principle for democracy. Torture is thus symbolic not only of the citizen’s general superior political status but of specific aspects of that status, including his freedom, civic responsibilities, and faculties for independent reasoning. Moreover, as a principle of democracy, torture places these capacities as equal among other citizens within a community defined by consensus, participation, and discourse.⁸

For citizens then, the image of the tortured slave body in Athens would symbolize both their superior status (in relation to the slave), as well as their own natural right to freedom and democratic participation. The potential for the tortured body to serve seemingly contradictory purposes—represent both the degraded slave as well as serve as a constant, visible reminder of the legitimacy of citizen’s freedom—is an effect of the “polysemy of the image” that Jennifer

⁸ The Attic speeches show evidence of this view, stating that citizens were free from torture as a result of their status, as in Lys. 13.27: “they were Athenians, and so were not in fear of being tortured.” Consistent with the polarized ideologies in Athens, moreover, this edict appears to be rigorously upheld: in Isocrates 17.14, a torture is prevented against a witness claiming to be a free; here, being free meant, in its most basic sense, the freedom from the impunity and indignity of torture.

Ballengue suggests characterizes the tortured body; an image imbued with certainty because of its association with the body but acquiring its value according to its context (9). The image of the tortured body, Ballengee argues, “gives torture its unique rhetorical potential: the audience’s response—illogical, empathetic, immediate . . . feels certain, yet that certainty or authority can be guided in a number of directions” since the body itself resists signification (9). The tortured body simultaneously signifies both destitution and freedom; both senses emerge in references to torture in the Attic speeches.

Although it seems illogical that citizens could organize their society based on contradictory concepts, classical Athenian citizens found no contradiction in organizing their model of participatory democracy though both consensus and violence. Athenians reconciled these opposite ways of thinking by categorizing them within distinct dimensions of action, a way of thinking Cartledge describes as “polarized logic”: “[c]lassical Greek thought inherited and developed to the limit the Archaic habit of seeing the world in terms of polarized antitheses” (169). It was through this “habit of thought” that Greeks resolved social issues such as gender and political identity by categorizing them “into mutually exclusive and jointly comprehensive binary oppositions—Greeks and Barbarians, Men and Women, Citizens and Aliens, Free and Slave” (Cartledge 169). This way of thinking structured the relationship between citizens and slaves, so that citizens could routinely subject their slaves to torture as well as operate as a political, democratic citizen who valued reason and discourse, without seeing the contradiction. This dualist logic organizing Athenian society meant that for citizens, torture operated not only as physical, violent compulsion against slaves but also in terms of social compulsion, where torturing (or proposing to torture) signalled inclusion and consonance with their fellow citizens.

Analyzing references to proof in the orators through close reading of the speech and the social conditions for the speech, I suggest that orators featured the challenge sequence (proposal, refusal, and praise) as a means of persuasion. Incorporating these segments of torture into the speech appeals to speakers on the basis of their adherence to *nomos* (as current scholarship points out), but it also functions as a means of persuasion that effectively attempts to exclude the opponent from the shared character of the community. As I show in the following close reading of Demosthenes' *Against Onetor*, the speaker's proof is effective through argumentation, in which the speaker sets up the premises for the audience to come to their own conclusion as to the true character of his opponents in the speeches. This reading will help to foreground how torture functions persuasively within the argument of the speaker. As I will show, the salient features of the challenge to torture can be found in the way that speakers incorporate the sequence of the challenge (proposal, refusal, and praise) within the argumentation of the speaker. While the proposal and refusal to torture are demonstrative of character, their situation within the speech designates its specific appeal to character, determining on what grounds the speaker can motivate the audience to the action of condemning his opponent, and thus, voting for the speaker. In addition to its significance as a display of legal competence, torture, I suggest, speakers also used torture to signify their inclusion among citizens through appeals to character, reason, and emotion.

III: Conspiring Citizens

Against Onetor is one of five inheritance speeches presented to the law courts by Demosthenes in an attempt to retrieve his sizeable inheritance from his dishonest guardians (Aphobus and Onetor, who are both mentioned in the speech). Delivered in 361 B.C.E., the

wording of the speech imitates previous instances of torture in the orators (Isaeus 8.12; Isoc. 17.54), and represents a typical example of the challenge to torture (Mirhady, "Private" 198). Moreover, it represents one of the most impactful uses of the sequence; the speaker issues the challenge to obtain evidence three times, and closes his speech with its praise. The consistent use of torture constructs political identity within the acts of proposing and refusing torture.

Intertwining identity with torture in this way provides the opportunity for the speaker to frame the opponent's refusal to torture as evidence of consistent duplicitous behaviour in order to induce feelings of fear and anger in the audience that would compel them to vote for the speaker.

To raise the issue of his stolen inheritance to a matter of import for his 200 (or more) jury audience members, the speaker warns the jury that they may be potential victims of Aphobus and Onetor's most recent maleficence. Cautioning his audience that his opponents may present the appearance of trustworthiness, the speaker claims that, in reality, they act according to their own calculated self-interest both in their everyday dealings, including their current actions in the courtroom toward the jury. In their interactions, they are incapable of "reasonable action"; they have "concocted" their methods of proof; they acted "in the most outrageous manner"; they have "arguments craftily prepared"; and they are "without your knowing it, the basest and most unrighteous of men" (Dem. 30.1–4). Alerting the jury not to be fooled (as he was) by their false outward manner, the speaker paints a portrait of his opponents as duplicitous character, in which they attempt to obscure their unacceptable nature (as "base" and "unrighteous") with socially accepted actions. As we will see, the "proof" his opponents' refusal to torture offers the corresponding proof to support the speaker's narrative of his opponent's deceptive character.

The speaker leaves the audience to determine the significance of these pronouncements, as he neither explicitly outlines his own trustworthiness or many of the actual details of the case.

Presenting his case as a cautionary tale directed to fellow citizens as a warning of devious fellow citizens on the loose draws on existing narratives of conspiracy prevalent in Athens at the time. The terms of deceit attributed to the opponents' refusal to torture is further significant in its symbolic referencing of Athenians' deeply held fear of conspirators. In *The Rhetoric of Conspiracy in Ancient Athens*, Roisman suggests that during the time of the orators, citizens irrationally feared hidden treachery in their own ranks. These fears manifested in orators' speeches, where speakers associated their opponents with the "conspiratorial activity" "maligned an opponent's aims, methods, and character and presents him as a threat to individuals, to the state, and to the community and its values" (Roisman 5). Identifying the speakers as duplicitous, as hiding their true character beneath a varnished exterior, speakers played on the audience's established fears of betrayal by constructing his opponents as possessing the same qualities that Athenians feared most.

Positioning the final challenge to torture at the end of the speech, the speaker, after enumerating many instances of deceitfulness and treachery, employs the refused challenge to torture as the profound exposure of his opponents' duplicity. Only individuals who are 'hiding in plain sight' would avoid the same laws that other citizens believed they were privileged to obey; and only individuals who have something to hide would avoid torturing (the proper duty of a citizen) to avoid having the truth of their transactions come to light. The refused challenge to torture frames opponents within a tone of audacity that is perhaps intended to emulate the incredulity of an audience who also questions such obvious rejection of basic Athenian values. The fact that Onetor "refused to have recourse to this certain test," and that he "in an outrageous and insulting manner refused to let me talk to [the slave]," thus compels the audience to question, "[c]ould there be a man more impossible to deal with than he, or more ready to pretend

ignorance of what is right?” (Dem. 30.36). Addressing the audience with a leading question effectively directs the audience into agreeing with the speaker, as the speaker provides no other information that could lead the audience to disagree with the speaker’s denunciation of his opponents’ action and character. Here, the speaker connects refusing to torture with “outrageous” conduct to enact a mental judgement on their character to pre-empt the actual vote.

Against the backdrop of this damning portrait of his opponents, the speaker’s proposal to torture, as well as his praise of torture, functions as an appeal to a shared character of his audience. Presenting his case from the vantage point of having knowledge of his opponents’ conniving activity, the speaker appeals to the audience using the most basic form of appeal to character—that he, as a trustworthy citizen, is one of them, and like them, has the same proclivity and vulnerability they have. Speaking to them on intimate terms as the victim of his own mistake in trusting his opponents, the speaker, framing his praise of torture as knowledge that is already known by the audience, beginning with “You on your part” (addressing the audience) before detailing its attributes, resolves the question he asks by correlating the trait of hubris with his opponents who do not understand the value of torture. Such a connection creates an identification between the speaker and his audience as citizens who are reasonable and rational because they *do* recognize the value of torture. Praising torture, therefore, applauds the audience for their knowledge of the significance of torture, castigates his opponent for his lack of knowledge of the value of torture (and thus his inability to act like a citizen), and positions the speaker as equal in character to the audience.

It is in this context that the speaker employs the challenge to torture as the proof of his opponents’ disingenuous nature. Using the same terms (and their significance) to describe his opponent’s refusal to torture as he used in the introduction to describe their criminal activity, the

speaker places these two actions in direct comparison, thus compelling the audience to connect the speaker's criminal activity with his refusal to torture. By presenting the two events as equal according to the same principles of character, Demosthenes correlates conduct he *alleges* to be untrustworthy with conduct that the audience *knows* to be untrustworthy (refusing to torture) to persuade the audience that the same character traits associated with refusing to torture were also responsible for the crimes they have committed. Appropriating the negative value of torture, then, refusing to torture functions as demonstrative proof to create a link between past crimes and present infractions to show a trajectory of poor behaviour on the part of his opponent.

Refusing to torture connects with the “arguments craftily prepared” and provides further proof of his opponents' duplicity by raising the audience's suspicions with charges of rhetorical professionalism. As the primary medium of communication in Athens, rhetoric—public persuasive speech—defined the everyday operation and functions of Athenian citizens (Wohl 168). Only citizens could speak; and a certain degree of rhetorical skill was required, but Athenian audiences were suspicious of those who spoke too well, creating a precarious context, as Stephen Halliwell points out, in which “an appetite for an appreciation of the spoken word sat uneasily alongside a suspicion of its possible artifices, snares, and partialities” (121). Exploiting their insecurities about being misled by a too-clever speaker, many speakers differentiate between their opponents as skilled and deceitful orators and themselves as mere speakers.⁹ In the context of an opponent who had already manipulated language by refusing to torture (to admit evidence into court), charges of unscrupulous rhetoric raise the stakes of the opponent's

⁹ In Dem. 58.61 for example, the speaker advises the jury to be wary of skilled speakers: “[t]he honorable course for you, men of the jury, is, not to put the laws or your own selves in the power of those who speak, but to keep the speakers in your power, and to make a distinction between those who speak well and lucidly, and those who speak what is just; for it is concerning justice that you have sworn to cast your votes.” As well, Josiah Ober presents a comprehensive discussion of the Athenian suspicion of rhetoric in *Mass and Elite in Democratic Athens*.

extensive duplicity by constructing him as the embodiment of the dreaded persona of the “clever speaker” who deviously wielded power through clever speech.¹⁰ The speaker encapsulates this fear and suspicion in his final assessment of his opponent: “for such simpletons he does take you,” a double meaning pointing to both the opponent’s trickery as well as the concrete material loss of character of the community lost if such deceitfulness prevails (30.38).

If the audience concludes that Aphobus and Onetor are conspiring citizens whose very existence places the legitimacy of the community at risk, they do so through a process of reasoning established by the speaker. The refusal to torture only symbolizes the speaker’s conspiratorial activity; it does not does not state it outright. The audience arrives at their own conclusion by accepting the premises under which the speaker suggests that this is true, which the speaker does by using the refusal to torture as the premise of his deductive reasoning:

Stated premise: Onetor and Aphobus did not torture

Assumed premise: Onetor and Aphobus pose a serious threat to the community of Athens; they are hubristic; they are not good citizens

Conclusion: Onetor and Aphobus exhibit the traits of duplicitous citizens

The audience supplies the missing premise, that the opponents pose a threat to the community, one that is never supplied to the audience. Instead, the assumed premise is implied both by the terms the speaker uses to describe the refusal to torture, as well as the symbolism of refusing to torture as the denial of truth to the jurors.

The probabilistic premises of the enthymeme, sometimes called a “rhetorical syllogism,” correspond well with the subjective criteria for proof in Athens. Aristotle refers to the

¹⁰ In Plato’s *Apology*, Socrates states that he will speak truthfully and without stylized phrases in order to defend himself against accusations that he is a “clever speaker” (δαινός λέγειν) (sometimes translated as “formidable speaker”) (17b).

enthymeme as “the body of persuasion,” (1354a) which is distinct from the syllogism in its “truncated” structure, in which it omits one premise to require the audience to fill in the gap, thus requiring persuasion to occur as a symbolic action on the part of the audience¹¹ (1357a). The second, missing (assumed) premise (what Lloyd Bitzer calls a “suppressed” premise), is contingent, supplied from the audience’s “stock of opinion and knowledge” (Bitzer 407). Proof, therefore, in addition to its legal significance (discussed above), also functions symbolically as a set of shared values a speaker can draw on to appeal to his audience. In the way that I have discussed it here, proof functions demonstratively as rhetorical action of the audience who supplies the missing premise.

The structure of proposal and rejection of torture, moreover, reflects familiar structures of agonistic relations in Athenian narrative. Attacking opponents using proscriptive discourse further signified the orator’s good character by drawing on generic models within which his Athenian audience would positively recognize and identify. In their speeches orators aimed to emulate mythic works, classicist Nancy Worman observes, in order to identify themselves with “the fabricating and slandering techniques of Odysseus and his sophistic descendants,” who then “pillories his enemy as a Thersites” with the aim of isolating and silencing his opponent (41). By presenting the framework for orators to perform mythic ambitions through rhetorical battle, the challenge to torture also derived significance from its context of the hero (Odysseus) quelling a minor yet threatening character. As a citizen who acts according to his own internal sense of justice to suppress potential threats, the speaker positions himself as the exemplar of internal

¹¹ Michael Leff and Dean Hewes suggest that one premise of the enthymeme provide its “material base” for the conclusion, and the other provides the inference that the audience must reach on their own (773–774). Stephen Toulmin describes the inference of the second term as argumentative, as “general hypothetical statements which can act as bridges” (98).

justice respected as an ideal characteristic of citizens, communicated to an audience by the wish to avoid a trial: “I held that his controversy with me should be settled among our friends, and not come to trial before you” (30.2). Portrayed as a panacea for small threats, torture was the tool of the good citizen who operated according to his personal imperative of respect for the community, to quell minor problems through heroic action.

The orator is not merely posturing, however. If the audiences are angered by the speaker’s claims, it is because the speaker contextualizes the actions taken by himself and his opponent in ways that would have mattered to an audience. The various arenas through which citizens concretized character through speech established both a sense of individual as well as community character. Michael Halloran recognizes this dynamic aspect of character in his definition of ethos as “a habitual gathering place”; “to have ethos is to manifest the virtues most valued by the culture to and for which one speaks” (60). The notion of character to which speakers appeal in their arguments, in other words, is not individual but communal and is only as strong as the unity of its components. Athenian citizens would view those who did not embody similar opinions, and then act on them, both as potential threats to the community and also to their way of life. With this knowledge of their audience, orators construct their opponent’s relationship to torture in such a way that it would offend their personal values, and thus strike fear and anger in an audience to compel their vote. The audience belief that refusing to torture signalled a potential threat to undermine the status of the citizen compelled speakers to orient their speeches to depict their opponents as the embodiment of political instability.

IV: Torture and Justice

The political significance audience's attributed to torture provided an effective argumentative technique for speakers who sought to demarcate their opponents as threats to the community. Refusing to torture is a sign of a citizen's self interested nature that directly opposes the community-centred ethos shared by an Athenian public. Speakers will often use this broad line of argumentation as a baseline for more specific claims pertaining to his opponent's dangerous character. One common example is the accusation that his opponent's refusal to torture is indicative of his opponent's legal incompetence, a claim that audiences would register as seriously as claims of political incompetence. The lack of formal and extrinsic legal structures—including police, and an objective based system of proof—required citizens to regulate their own behaviour according to their standards of justice. Certain social norms, such as the imperative to have important events witnessed by friends and family, helped to monitor appropriate behaviour (Mirhady, “Witnesses”). Ultimately, individuals were expected to rely on their own intrinsic sense of justice in their every day actions, and thus to resolve their disputes among themselves; the courts were intended as a last resort.¹²

Framing their opponent's refusal to torture as their failure to take the opportunity to resolve the dispute outside of the courtroom, orators sought to establish their opponent's inability to act autonomously according to reason. In *Against the Stepmother for Poisoning* (which predates *Against Onetor*), the speaker connects the refusal of the challenge with the absence of an intrinsically motivated sense of justice, accusing their opponent of “refusing to decide their case for themselves by handing over their slaves for torture” (Antiph.1.12). According to the

¹² The social regulation of behaviour seems to mirror the legal regulation of judging mentioned above. Judges were required to take an oath swearing that they would carry out the law, and if there was no existing law, they would apply their opinion of what was just (*gnomei tei dikaiotatei*) (Carey, *Trials* 6).

speaker's depiction, not only does his opponent refuse to adhere to political conventions, but his lack of initiative to resolve the dispute himself suggests that he does not possess this imperative ability, and thus denotes a selfish demeanour as a citizen who irrationally wastes resources. The speaker expects to gain an advantage both by depicting his opponent's actions as self-interested, and also by implying simplicity of the case that can be resolved easily, even without hearing the opponent's version of events.

Orators continue to exploit features of the challenge procedure as proof of their opponent's immoderate actions. In the same speech, the speaker then employs the other elements of the sequence of the challenge to extend his argument of his opponent's compromised internal sense of justice. Even if the speaker wished to torture, the speaker declares, his own inability to conform to the standards of justice in the community would mean that he would have to be supervised during the task of torture: "I told the defence to conduct the examination themselves in my presence, so that the slave might not give forced answers" (Antiph.1.10). In addition to exposing their opponent's potential treachery, speakers also use the challenge procedure as an opportunity to suggest the inability of their opponents to fulfill their duties as citizens. As a commonly recognized 'wrong' among Athenians, it appears that the orators uniquely employ the challenge to torture to extend common lines of argumentation as proof of these untrustworthy character threatening the community and its institutions.

Antiphon uses a similar tactic in a different speech when he accuses his opponent of ineptly torturing his slave. Antiphon states that his opponent's torture was useless, since "the slave was doubtless promised his freedom" (Antiph. 5.31). And again, to disparage the evidence adduced by inept torture, he writes, "[w]hy, moreover, should the evidence of the attendant be allowed any weight? . . . [I]t was likely enough that he would obediently confirm any

suggestions made to him by his masters” (Antiph. 2.2.7). Although typically these passages (and ones similar to them) have been interpreted as indictments against torture, in the context of the agonistic law courts these passages are further significant in showing the incompetence failing to torture well would symbolize for Athenian citizens. Given the force of torture as one of the foundations of a democratic Athens and Athenian citizenship, it seems that speakers equate competence in torture with political competence (and incompetence).

Speakers will also extend the trustworthiness connoted by the refusal to torture to apply to the entirety of their speeches and character. Speakers propose to torture, and even offer their slaves for torture, to project their trustworthiness and desire for transparency to appeal to judges who, presumably, are similarly motivated.¹³ Setting their own behaviour as the standard, speakers accuse their opponents of avoiding torture and thus avoiding the truth that it will produce, equating their reluctance to torture with individual, hidden motivations. Refusing to torture demonstrates self-interested hubris so complete, as the speaker in *Against Onetor* frames it, that it nullifies all of his other claims: “he has declined the absolutely sure test by torture, and does not wish to have the truth brought to light; on the contrary he has recourse to trickery, brings forth false witnesses, and by his own words distorts the truth” (Dem. 29.5). Although somewhat hyperbolic, the underlying social order torture imposes on Athenian identity is clear: ideal citizens torture, and those who do not display untrustworthy character.

As an easily recognizable marker of character to audiences, torture was also used by orators to suggest that his opponent exhibited other traits that posed an immediate threat to the community. The speaker’s aim of proving his own exemplary behaviour by identifying with the judges is part of a larger strategy to establish an ideal standard against which the speaker, along

¹³ Aeschin. 2.126; Antiph. 1.64; Antiph 2.4.8

with the judges, will evaluate his opponent. Pitting their opponent's character against their own, speakers frame their opponent's handling of the challenge as displaying the character of a citizen who possesses (but does not exercise) an internal sense of correct behaviour. The action of the refusal is portrayed as burdening the court by showing selfish behaviour by not providing the slaves that would provide the truth and forgo the need for a trial. Through the refusal, speakers frame their opponents as self-involved individuals, concerned only with themselves by proving that their behaviour and habits contravene commonly held beliefs concerning torture and law.

Orators use the refusal to torture to draw attention to their opponent's lack of self-discipline in accusations that an opponent too easily relied on the others for his sense of right. An intrinsic aspect of Athenian self-identity as a citizen was that their morals and values were internally compelled by an intrinsic sense of order that manifested in outward signs of one's self-discipline and control (Roisman, *Manhood*). Traits such as self-restraint, moderation, respect, and proper conduct maintained the ethos of the community of citizens by demonstrating the difference of the demeanour of citizens from those of other social statuses (Roisman, *Manhood* 14). In the law courts, speakers frequently demonstrated their opponents' actions as hubristic by offering proof of their lack of intrinsic sense of justice. Speakers aimed to show that while they adhered to written and unwritten laws, their opponents did not, and thus they neglected to display appropriate respect for laws through uncompelled action. It was therefore a commonplace in the speeches that citizens always presented themselves as appearing reluctantly before juries, and that they had hoped to settle the matter themselves but their opponent's hubristic and self-interested character prevented him from exemplifying his own internal moral character. Orators associate their opponent's refusal to torture with an unwillingness to comply with a legal action that would have prevented trial.

As it is employed by the orators as part of the larger argumentation within the speech, testimony from torture functions less as a static phrase, or commonplace, and more broadly as a dynamic heuristic for orators to adopt according to the needs of their audience. This argumentative use of testimony from torture speaks to a rhetorical view of commonplaces, which function within the dynamic dimension of human action. Although Aristotle's topics—among which testimony from torture is included—are often considered as static commonplaces, Kenneth Burke argues for their rhetoricity, suggesting that Aristotle's topics as constitute “the kinds of opinions you should draw on if you wanted to recommend a policy or turn people against it”:

Aristotle reviews the purposes, acts, things, conditions, states of mind, personal characteristics, and the like, which people consider promising or formidable, good or evil, useful or dangerous, admirable or loathsome, and so on. All of these opinions or assumptions (perhaps today they would be treated under the head of “attitudes” or “values”) are catalogued as available means of persuasion . . . they are but a survey of the things that people generally consider persuasive, and of methods that have persuasive effects. (*Rhetoric* 56)

Consideration of the special topics within the inventive possibilities of rhetorical criticism in the context of situations as ultimately rhetorical, that is, formed within the dimension of human action, opinion, and knowledge.

Rhetorical criticism acknowledges the ways that meaning is produced by context, locating the extrinsic principles that are accepted and authorized as legitimate fact within the dimension of social values. Michael Leff describes Aristotle's special topics as “an inventory of propositions expressing abstract beliefs and values generally accepted by the public” (“Topical”

220–221). While the common topics identify common lines of argument, Leff argues, special topics are “propositions that express . . . generally accepted beliefs and values” (“Topics” 26). Speakers draw on lines of argument familiar to audiences, the topics, to show his similarity to an audience. As Kennedy explains, topics are

ethical or political premises on which an argument can be built or are logical strategies, such as arguing from cause to effect. A speaker can also use topics, many of which became traditional, to gain the trust or the interest of the audience. The importance of the case can be stressed, not only for the speaker, but as a precedent of future decisions or for its effect on society. (*New* 5)

Broadly, Kennedy explains, a rhetorical topic refers to “commonplaces on human life and experience, stock descriptions, and also lists of possible things a speaker might discuss” (*New* 61). By contrast to understanding the truth that is conventionally associated with the acceptance of the testimony from torture as truth prior to argument, topics also refer to premises that are socially and culturally constructed through general acceptance of them.

From this perspective the challenge to torture is not only the repetition of the use of the challenge in certain terms; it also denotes something specific about the audience to whom the speaker appeals. Orators employ testimony from torture to appeal to the social knowledge of their audience (*doxa*), defined by Aristotle in *Topics* as “accepted by everyone or by the majority or by the wise—that is, by all, or by the majority, or by the most notable and reputable among them” (100b). Although often naturalized as truth, social knowledge is contingent, probabilistic, and changes according to the audience. Athenian attitudes toward torture may better be considered in rhetorical terms, as its authority relies on an accepting audience. As persuasive knowledge, or conventional wisdom, Athenian orators are able to use the challenge to torture to

appeal to their audiences by establishing their credibility as the occasion warrants, within the common-sense of the day, in the moment of speaking (*kairos*). In short, understanding the social dimension of torture, as it is understood by citizens, necessitates a re-evaluation of the rhetoricity of the testimony from torture as a dynamic and as part of the demonstrative proof of citizens in Athens.

V. Aristotle and Torture

In their appeal to the social, legal, political, and cultural opinions held by audiences about torture, it is clear that orators use torture as a technique of persuasion in their arguments. Although speakers refer to the truth torture can obtain, the relationship of torture to objective proof is counterbalanced by the social dynamics of Athenian law courts that pursued equality and justice through its competitive structure. The complexity of the body of social knowledge the orators engage in order to persuade their audiences of their good character highlights the important role rhetorical language plays in the Athenian law courts with respect to the use of torture as proof. Until now, torture has not been considered in terms of its persuasive aspect due to its relegation by Aristotle as an atechnic proof (*pistis*), that is, one that is removed from the art of rhetoric. Scholarship re-evaluating the notion of proof, however, has agreed that Athenian proof has inventive, argumentative characteristics, and cannot be relegated solely to the dimension of objective fact.¹⁴ Such research requires a reconsideration of torture as a means of

¹⁴ The rhetoricity of evidence of torture is evident in the analytical work in this body of scholarship that shows that its meaning is determined by its ability to persuade an audience (not according to a separate, objective definition usually attributed to the legal proof). Proof is not a hierarchical value or pre-existing value, Thür states: “evidence, *pisteis*, in the rhetorical sense is a general means of persuasion, not of legal proof” (150). In their persuasive function in speeches, Gagarin maintains, atechnic proofs are neither “automatically decisive” nor “logically or historically prior to the artistic *pisteis*” (24–25). The context of the rhetorical and legal use of proof in Athenian courts of *basanos* allows for a broader interpretation of what Aristotle classifies as “means of persuasion,” thus demonstrating the possibility for *basanos* to be understood not only for its premises as truth, but also for a general means of persuasion within argument.

persuasion invented by the orator at the time of speaking, and concerned primarily with motivating an audience to action. While these areas overlap in terms of persuasive appeals, these scholars do not address the specific ways in which evidence of torture is rhetorical: specifically, how orators employ torture as a mode of appeal to audience, why torture specifically appeals to audiences, and moreover, the intricate forms of argumentation speakers use in order to appeal to audiences.

One of the main obstacles in viewing the challenge to torture as persuasive is Aristotle's apparent exclusion of it in his art (*technē*) of rhetoric in his handbook *Rhetoric* (1354a). Aristotle's categorization of evidence of torture as an atechnic proof rather than as a rhetorical means of persuasion suggests that the value of evidence of torture derives from an authority other than the speech. Whereas speaker's employ entechnic proofs to appeal to the audience through character (*ethos*), reason (*logos*), and emotion (*pathos*) to create believability in the speaker in the moment of speaking, Aristotle sees the authority evidence of torture is not "invented" by the speaker, but with the legitimacy of the proof "already in existence," the speaker need only make use of the evidence in his speech (1354b). Accordingly, Aristotle defines torture in terms of the pre-existing Athenian opinion accepting evidence from torturing slaves as legitimate proof. Torture is defined in the *Rhetoric* as "a kind of evidence, which appears trustworthy, because a sort of compulsion is attached to it," where "compulsion" appears to refer to the violence inflicted on the slave to produce testimony (1376b). Since the audience's acceptance of the evidence lies in their acceptance of the social values attached to torture, the arguments Aristotle offers to speakers who use evidence from torture (or whose opponents do) focus on its factuality. Thus, if a speaker wishes to use evidence from torture, Aristotle advises, he can bolster its acceptability by "exaggerate[ing] its importance by asserting that it is the only

true kind of evidence” (1377a). Alternatively, if his opponent uses evidence from torture, a speaker may downplay its veracity by arguing that torture is ineffective in producing truthful evidence: “we can destroy its value by telling the truth about all kinds of torture generally; for those under compulsion are as likely to give false evidence as true” (1377a). Apart from providing evidence adduced from the well-established legal procedure in the challenge to torture, torture itself appears to not be persuasive.

A number of differences between Aristotle’s text and actual practice in the context of the Athenian law courts, however, repudiates such a reductive reading of references to torture as strictly non-rhetorical. One difference frequently identified as misleading modern readers’ understanding of torture is Aristotle’s omission of the challenge procedure in his instructions. Scholars suggest that the pre-trial challenge procedure was so well established in practice that Aristotle deviated from the list of formal evidence that appears in the Athenian Constitution (*Athenaion Politeia*), with the understanding that his audience would know to “replace challenges with *basanoi*” (Mirhady, “Torture” 129). This substitution occurs throughout Aristotle (as well as in Anaximenes’ handbook), and in the orators, Gagarin suggests, who replace ‘the challenge to torture’ with just ‘torture,’ and an ancient audience would know that “βάσανος [*basanos*] [was] equivalent to ‘challenge to βάσανος’” (12). Another explanation for Aristotle’s omission of the challenge may be his inclusion of it in the oath-challenge: since Aristotle describes the challenge in his instructions regarding the oath, the replacement may have “resulted perhaps from the economy of not having to deal with the challenge twice, first in terms of the *basanos* and then of the oath” (Mirhady, “Torture” 129). Aristotle’s divergence from common practice may also be an effect of what Kennedy has described as the “inconsistency”

that is characteristic of the *Rhetoric*: parts appear to be partially revised, written at different times, and many key terms are not explained satisfactorily (*Rhetoric* 55).

Aristotle furnishes readers with common arguments (*topoi*) to use when they present proof from torture to an audience, an inclusion in his instruction manual which further demonstrates the rhetorical use to which torture of evidence was put by the orators. Aristotle advises orators to argue against the validity of the institution of torture more generally, stating that “it is necessary to say that tortures are not reliable; for many slow-witted and thick-skinned persons and those strong in soul nobly hold out under force, while cowards and those who are cautious will denounce someone before seeing the instruments of torture, so that there is nothing credible in tortures” (1377a). Aristotle’s advice to criticize the institution of torture stands in stark contrast to the examples of praise of torture in the orators, appearing to contradict reference of testimony from torture as the “most democratic” and “certain test” (Lycurg. 1.29; Dem. 30.36). However, these comments about the reliability of torture have been discredited as being part of the original text. Kennedy notes that these comments were added by a later author, and an editor’s note from John Freese in the Loeb edition of the text states that the passage “is now generally rejected, mainly as being linguistically un-Aristotelian” (*Rhetoric* 108; *Rhetoric* 162). Later editors moralized torture, Mirhady suggests, in their attempts to make “Aristotle’s view seem more humane,” adding that “[t]here is no reason to think that Aristotle would inject his own opinion into this discussion by taking sides He does not commit himself anywhere else in the chapter in this way” (“Non-Technical” 19).

Rather than precluding the persuasiveness of the challenge to torture in its use by the orators, the differences between *Rhetoric* and actual practice can be seen as illuminating the extremely high regard to which Athenians held torture amongst themselves. An example of this

can be seen in the absence of arguments against torture: no speakers take Aristotle's advice and argue against the veracity of evidence obtained by torture. Aristotle's advice concerning torture appears to provide a common sense means of approaching torture: if a speaker employs torture, praise the evidence; if an opponent employs torture as evidence, challenge its veracity. While there are numerous examples of orators praising torture, orators nowhere criticize torture. Carey notes a similar occurrence in the case of *nomos*, where speakers refrain from following Aristotle's advice:

To judge from surviving oratory, there seems to have been a fundamental inhibition against frontal assaults on the authority of the law In this context, the speaker cannot afford to present an *ethos* of which disregard for *nomos* is a salient characteristic Accordingly, it is actually difficult to exemplify in oratorical practice the advice which Aristotle gives. ("*Nomos*" 36–37)

Following Aristotle's instructions to criticize torture and the proof it obtains, Carey shows, would devalue a speaker's character in the minds of the audience, who would interpret the questioning of procedure as an attack on the values their institutions represent to them. The appearance of torture only as a refusal further demonstrates the influence of the audience, therefore, as their expectations of character determined how speakers referred to torture in the speeches.

Overall, these studies highlight the need for a re-evaluation of the rigid categorization of proof put forth by Aristotle. In practice, proof is measured against a social metric, through qualifications of character, not undifferentiated fact, or proof, Carey maintains:

Aristotle's description of 'artless' proofs as something which 'was there at the outset' (*proupērchen*) fails to take note of the fact that from the outset, when considering the

use of such evidence, the litigant had a number of choices to make: to draft or not to draft, how to formulate documents which may be used in the trial, how to deploy them within the speech. Even ‘artless’ proofs allow scope for ingenuity, and we find this scope exploited in practice in Greek oratory in the fifth and fourth centuries, even if it is not enshrined in theory. (“Artless” 231)

Deployed to appeal to the opinions of the audience, the significance of instances of torture in the orators is determined by the audience at the time of listening. Oriented to audience opinion (*doxa*), and not to extrinsic legal fact or philosophical truth, the knowledge associated with torture—its capacities and place in society—is shaped by an audience who will accept or reject its viability as an argument according to their beliefs and values. Shifting focus to the audience as the source of meaning of torture, therefore, can aid in understanding the phenomenon of torture, particularly democratic torture.

VI: Compulsion to Torture

In Aristotle’s description of evidence from torture as “trustworthy because of a sort of compulsion that is attached to it” (1376b), “compulsion” is typically interpreted by modern readers to physical torture inflicted on the bodies of slaves (duBois 67; Ballangee 7). However, both the influence of social factors on the reception of instances of torture in the orators, as well as the “numerous specific problems of interpretation” Kennedy points out, suggest a separate interpretation of the term as rhetorical force exercised by the speaker to appeal to audiences on the basis of their credibility (*New* 55). In the social context of the law courts, audiences may consider the use of testimony from torture as trustworthy both because of the common knowledge that torture elicited truthful testimony from a slave, and also because the act of

issuing the challenge to torture signified credibility of the speaker. From the perspective of the rhetorical use of torture as proof of character, trustworthiness and compulsion has the possibility to refer to both the actual testimony from torture (which the Athenians clearly respected even if they did not use it), as well as the rhetorical force of character associated with the act of torture.

A closer examination of the term compulsion and its use in Athenian law courts supports the broader interpretation of Aristotle's instructions with respect to the validity of evidence from torture. The Greek word Aristotle uses for compulsion, (*ananke* [ἀνάγκη]), can be translated as necessity, force, and compulsion, words which are not frequently used to refer to the physical violence inflicted on slaves (LSJ). In its use in texts in classical Athens, *ananke* refers to non-violent constraints placed on one's actions or body by one's self or by one's community. In his full-length examination of *ananke* (ἀνάγκη) in Thucydides, Martin Ostwald translates *ananke* as "necessity," broadly defined as a force one is powerless to resist (7). Despite the violence of Thucydides' topic of Greek war in his writings, nowhere in his reading of Thucydides does Ostwald translate force as either physical or overwhelming. Instead, Ostwald determines the force associated with *ananke* as experientially connected with the phenomenon of war: the factors one must overcome for survival are external (climate or geographical forces), historical (previous military decisions), basic (food rations), discursive (the necessity of response), military necessity (skillful deployment), leadership, treaty obligations, diplomacy, and internal politics (among others) (7–19). The term, *ananke*, Ostwald concludes, seeks to delineate the force of the non-violent, yet significantly impactful, factors of war. From Ostwald's reading of Thucydides, Aristotle's instructions may also be read as recognition of the mythic, political, literary, cultural, and legal significance of testimony from torture in Athenian society.

Additionally, a comparison of Aristotle's instructions for dealing with torture with his instructions for using the oath challenge provide further indication that Aristotle accounts for a persuasive use of torture in his handbook. Like the torture-challenge, the oath-challenge also symbolized a citizen's internal sense of justice, especially because the oath itself was also sworn by the judges in his trial. However, it appears that the legitimacy of oaths was somewhat undermined by the bribery that accompanied them. Thus, if a speaker refused the challenge it was because his "moral excellence" did not want to be associated with the bribery traditionally associated with the act of oath taking in general (1377a). But if a speaker did swear an oath, then he could argue that it was "an act of piety to be willing to leave the matter to the gods," thus identifying himself with his judges who were bound by the same divine oath (1377a). Aristotle advises a speaker, in other words, to employ the refusal or acceptance of the challenge as a means of painting his own portrait as a virtuous citizen, while slashing the credibility of his opponent, advice which is consistent with the agonistic context and the challenge to torture discussed above.

The secondary meaning of the term compulsion in reference to the trustworthiness projected by the speaker at the time of speaking suggests that citizens may have regarded torture as a significant act in ways that are similar to the oath-challenge. The oath challenge also symbolized an important social institution; for example, the Heliastic Oath, sworn to Zeus, Demeter, and Apollo, had significant credibility that was never in question (Mirhady, "Oath" 28). Briefly, the oath was sworn by all jurors who were bound to honour the oath by way of a curse.¹⁵ Since all votes were secret, no one would technically know, but the terms of the oath

¹⁵ Mogens Hansen cites a reconstructed version of the oath (taken from Demosthenes): "I will cast my vote in consonance with the laws and with the decrees passed by the Assembly and by the Council. But if there is no law, in consonance with my sense of what is most just, without favour or enmity. I will vote only on the matters raised in the charge, and I will listen impartially to accusers and defenders alike" (*Athenian* 182).

would subject him to punishment in the afterlife (Hansen, *Athenian* 183). But the binding function of the oath—of the jurors to each other, to the authority of the law courts, and to a divinely inspired sense of justice—attributed the Athenians law courts with extra-judicial legitimacy. In their speeches, the orators emphasize the superiority of decisions made in the law courts in comparison to decisions made in the Assembly (who have sworn no oath) (Hansen, *Athenian* 183; Dem. 24.78). Speculating on the social importance of the oath in Athenian society, Hansen suggests that “it can be argued that the oath was one of the very factors that caused the decisions of the People’s Court to prevail over the decrees of the Assembly” (*Athenian* 183). In this brief outline, it appears that the use and respect for the oath was due to its social value for citizens, as well as its actual legal function, which socially and divinely compelled participants to act in ways consistent with the judicial aims of the court.

In this section, I have examined references to torture in the forensic orators—particularly Demosthenes and Antiphon—to suggest that the challenge to torture persuades through complex frameworks of identity significant to Athenians. By contextualizing the challenge to torture within the arguments in the speeches, I aim to contribute to existing scholarship by offering specific rhetorical details of how employing the challenge provides the speaker with the “moral advantage” suggested by Carey. In this examination of the rhetoricity of the challenge to torture alongside Aristotle’s instructions for the atechnic means of persuasion, I have also attempted to illuminate the persuasive aspects of legal proof. Bringing together important conclusions in historical, legal, philological, classical, and rhetorical scholarship provides the opportunity to address the rhetorical importance of references to torture in the forensic speeches.

VII. Democracy and Torture

Analysis of the Attic speeches presents special demands for modern readers. In “The Purpose of Evidence in Athenian Courts,” Todd identifies the primary challenge as that of “assimilation” (19). The fact of translation involved in any act of reading is especially transformative, Todd argues, and risks incorporating Athenian courts, from their constitution, structure, and function, to their format of presenting evidence and arguments, into modern paradigms of thinking (20). Modern assumptions have influenced interpretations of the Attic speeches through their unproblematic application of modern theories of subjectivity and ethics to Athenian contexts. Analysis of the extant texts for the purpose of counteracting the issues that inevitably arise from modern analysis emphasize issues important for Athenians, and their particular context of speaking. Later editors’ revisions of Aristotle’s arguments concerning torture (discussed above) designed to frame Aristotle in enlightened terms demonstrate the immediate translation problems modern audiences confront in their reading of torture in the ancient world. Today’s moral prohibition against torture permits audiences to categorize references to torture, often without reservation, to past instances of barbarity or uncivilized behaviour.

Yet investigation of historical instances of torture past can lend important insight to contemporary practices beyond reminding us of our human capacity for cruelty. A rhetorical analysis comparing two distinct time periods through the common methodology of language as rhetorical, as symbolic action that *does* something in the world, can contribute to a broader understanding of the subject at hand. In the case of torture, a topic essentially human yet entrenched in ethical and political frameworks, the tools of rhetoric focussed on identifying the ways in which language acts according to the subjective dimension of human action can provide

a valuable means through which to understand torture. In its most basic function, torture is an act of violence; it is the cruel infliction of pain and suffering against another human being. At the same time, as the above analysis has shown, torture is a symbolic act bound up with frameworks of subjectivity and communal values. In Athens, as today, torturing—or not torturing—is a political act (rather than a moral given) because its symbolic action shapes and structures society and intersubjective action among its members.

From the view of rhetorical speech as the symbolic action of the citizen and community, the consistent refusal to torture by speakers' opponents is thus further distinctive in the fact that it constitutes an exclusion of the voice of the slave in the law courts. If the law courts provide the opportunity for individuation, slaves are excluded from accessing the authority of the citizen. Although technically allowed by law, the social exclusion of the slave's speech (even under torture) from the courts speaks to a higher authority of the Athenian community of citizens who refused to recognize the slave as equal in political standing. Rhetorical speech, specifically the right to address and be heard by an engaged audience, thus functions as a marker of equality among citizens but also distinguishes citizens from slaves in ways that are not as obvious as other forms of subjugation (for example, torture) but which dehumanize nonetheless by restricting individuals from accessing social practices.

Although an opponent's refusal to torture prevented the slave from being tortured, as a means of excluding the slave from rhetorical power, the use of the challenge to torture reinforced status distinctions allowing torture. For example, in one reference to torture in Antiphon, the speaker denounces the validity of the slave's evidence:

Why, moreover, should the evidence of the attendant [the slave] be allowed any weight?

In his terror at the peril in which he stood, there was no likelihood of his recognizing the

murderers. On the other hand, it was likely enough that he would obediently confirm any suggestions made by his masters. We distrust the evidence of slaves in general, or we should not torture them; so what justification have you for putting me to death on the evidence of this one? (Antiph. 2.2.7)

Perhaps in response to his opponent's praise of torture (as a consequence of the speaker's refusal), the speaker redirects the praise of torture to the question of the reliability of a slave's evidence—the very reason for the existence of the legal procedure in the first place. If the speaker is defending his reason not to torture his slaves, the speaker points to social sensibilities to call the value of the slaves' speech (his opponent's evidence) into question. In doing so, Thür observes, the speaker reminds his audience that “masters and slaves lived in different worlds. It was unworthy for an Athenian citizen to rely on the answer of a slave in an important matter” (134).¹⁶

While the speaker's denunciation of the slave's speech offers a potential defence against an opponent's attack on his credibility it also—through the rhetorical speech of the speaker—reinforced the status of slaves as inferior to citizens and reduced them to a marginal status in comparison to the citizen. The speaker's characterization of the slave occurs in three parts: the slave is irrational, he is too terrified to recollect the events of the situation; he is apolitical,

¹⁶ Because it criticizes the slave's speech, this section from Antiphon may seem to contradict my argument that Athenians believed in the validity of torture, and therefore were ready to accept the refusal to torture as 'proof' of poor character. However, there are two reasons why it may not. First, the speaker's statement does not contradict my argument because he denounces the speech of the slave, not the institution of torture, or the legal procedure itself. By carefully limiting his comments to apply only to the slave, the speaker avoids raising the ire of an audience who (as I have argued) venerates torture as an Athenian institution. Second, although it is the only instance of such a reference to torture, the speaker's dismissal in Antiphon of torture on these grounds may be a commonplace in response to the praise of torture in the challenge to torture. This seems like a possibility, since the speaker rejects torture on three grounds (1) that the slaves were not in the right place to know the truth; (2) that slaves would obey their masters even under torture; and (3) that slaves' speech was untrustworthy, generally. As individual points, these points are made by the orators elsewhere in other speeches. Unfortunately, because this section of Antiphon does not deal with the challenge to torture directly (just torture), (except for Thür), no scholarship I have encountered considers its significance with respect to the challenge to torture.

inclined to lie to suit his own self-interest instead of acting in the best interest of the community; and he is incompetent in general, otherwise he would not require arbitrary violence to motivate him toward the good. This characterization of the slave corresponds with the attitudes of citizens more generally towards slaves, ones which were upheld to sustain the slave society which, ironically, was necessary for the citizen's democracy. Citizens excluded slaves from society on the basis of their political difference. As a "political animal," a citizen possessed the capacity for deliberation, to reason between "the advantageous and the harmful, and therefore also the right and the wrong" (Aristotle, *Pol.* 1353a). A slave (*doulos*), by contrast, was designated as chattel, "a live article of property" (*Pol.* 1253b), an "instrument of action" (*Pol.* 1253b) who possessed no individual capacity for reason and was compelled solely by bodily desires (*Pol.* 1254b). Since the community was defined by the political capacity of citizens, slaves were excluded because of their inherent inabilities. The exclusion of the citizen's speech from the trial is more significant, therefore, in the way it also marks a larger exclusion of the slave from the rights and privileges afforded to Athenian citizens. Considered competent and political, citizens enjoy freedom from torture and the right to a fair trial; considered irrational and inhuman, slaves are subject to violence and the absence of discourse.

The connection I am making between one's access to discursive channels of power and the denial of rights and freedoms in Athens illuminates some similar disturbing trends of exclusion in contemporary society. The extant Attic speeches present a depiction of society in Athens that, as fragmentary and incomplete, is unreliable as a total portrait. Nonetheless, the Athenians' unilateral approach to acquiring rhetorical power by suppressing the voices of others is instructive for analysis of contemporary contexts in which similar exclusions of persons occur. The contemporary proliferation of representations of torture in legal documents and scholarship,

military doctrine, discourse, popular media, popular culture, and news media debate and discuss torture, with one important omission: the voice of the individual actually tortured is rarely recognized or included in discussion. Instead, first-person accounts are often pushed to the periphery, and are thus predominantly found in secondary media sources. In this way, the contemporary media landscape can be imagined in ways similar to an Athenian courtroom, in which the topics for debate and consideration function as extension of power for those with access to discursive channels.

In ancient Athens, the diminished value of the slave's speech results in a corresponding increase in the legitimacy of the citizen's speech, as we see in the speaker in Antiphon who questions the grounds on which a slave's speech could punish him, a citizen. References to torture today reflect a similar absence of the voices of those who have been tortured, and in many cases community debates and discussions of torture take place without the voices of individuals most affected. Many of the "torture memos" and government doctrine, for example, have been released heavily redacted, and do not follow the precedent of international human rights law to define torture broadly and inclusively (a phenomenon discussed in the next chapter). In addition, detainees forced to sign non-disclosure agreements before their release from detention facilities prevent them from telling their stories (Cusick, "You" 20). The first person account of torture from Mohamedou Ould Slahi (the subject of my fourth chapter) illustrates control of the discourse of the speaker by the Dept. of Justice, as well as an editor, excluding his unadulterated point of view from the debate on torture. Heavily redacted discourse prevents the diary from providing a true account of his tale, or from corroborating instances of torture revealed by other former detainees.

First person accounts from former (and present) detainees are further suppressed by charges against their veracity by ex-interrogators or military personnel who have come forward to deny allegations of torture. Although detainees often offer their names along with detailed, personal descriptions of their accounts—some even describing their torture in YouTube videos—many ex-interrogators counteract allegations anonymously through interviews conducted by writers who refer to them only by a first name. An example illustrative of this is in Jonathan Pieslak’s investigation of the current and historical function of sound as a weapon of war and torture, *Sound Targets*. In his interviews with former interrogators, which constitute the objects for Pieslak’s analysis, the author finds that most soldiers do not consider music as torture but as interrogation, because they would not inflict anything they could not endure themselves. Music, according to one soldier, was “a way to get on these people’s nerves so that they will break down their resistance,” but interrogators could not inflict too much because they were also inflicting it on themselves (88). “We can’t treat these guys any worse than we treat ourselves We had to sit there for hours listening to babies crying, but we know the purpose of this is, so it doesn’t really get [on] our nerves as much and we can tune it out” (88). Statements such as these negate the voices of detainees who discuss their ordeals in terms of torture. Similar to the construction of the citizen as Promethean, Pieslak implies that soldiers are strong enough to endure the effects of sound while detainees are not, a logic that mitigates the harm of sound torture.

In a similar, more candid interview with David Piesner, writing for *Spin* magazine, another ex-interrogator (“Tom”) accuses former detainees of dissembling, alleging that the former detainees understand how to “exploit the media,” even going so far as to call Shafiq Rasul, a former detainee who came forward with allegations of acoustic torture (and whom “Tom” interrogated), a “lying sack of shit.” In a move that appears reminiscent of the rhetorical

battles of the orators I discuss above, “Tom” questions the veracity of Rasul’s allegations by suggesting he is motivated by self-interest rather than the truth of the matter. Rasul’s marginalized status precludes the terms of recognition that would recognize both voices as equal. Instead, the exchange bears more resemblance to the orators’ castigation of slaves as unworthy possessors of speech, as the speaker in Dem. 37.41 declares: “. . . for how could it be fair that it should depend upon the body and life of a slave, whether I should be condemned to pay two talents, or the bringer of this malicious suit get off scot-free?” In the social context of redaction of the former detainees’ speech, “Tom” does not so much as defend himself against possible counterarguments as question the authority of the speaker to ask why he should be subject to such an unreliable voice.¹⁷

VIII: Conclusion

In this chapter I have undertaken to investigate the rhetorical significance of the challenge to torture in the Attic forensic speeches. Drawing on assessments in current scholarship of the Attic forensic speeches as motivated arguments delivered for the purpose of persuading an audience, I performed a close rhetorical analysis on references to torture to determine how orators employ them within the speeches as rhetorical “means of persuasion.” In

¹⁷ The claim that the authority of speech—the capacity for rhetorical speech—resides in a society that recognizes its authority as a feature of discourse. Excluding and restricting the speech through publication methods or through public discourse prevents the opportunity for discourse or debate by eliminating the agency of one side of the debate. For an individual’s speech to be significant, it must be recognized by a community, Emile Benveniste explains in his definition of discourse: “[d]iscourse must be understood in its widest sense: every utterance assuming a speaker and a hearer, and in the speaker, the intention of influencing the other in some way It is every variety of oral discourse of every nature from trivial conversation to the most elaborate oration . . . but it is also the mass of writing that reproduces oral discourse or that borrows its manner of expression and its purposes: correspondence, memoirs, plays, didactic works, in short, all genres in which someone addresses himself as the speaker, and organizes what he says in the category of person” (208). All acts of communication become tangible in their reception, granting audiences the power to categorize and define identity by authorizing the speech. Discourse empowers audiences, therefore, both to sustain the cohesion of citizens through recognition of their speech, and, at the same time, the exclusion of others by refusing recognition.

addition to using the challenge to torture to bolster their character as a demonstration of adherence to legal practices, orators employ the challenge procedure to position their opponent as a threat to the way of life in Athens. Refusing to torture threatens the cohesive structure of values and beliefs Athenian citizens hold of themselves and their community, and it is to the faceless fear of the unravelling of their way of life held by the audience to which the speakers direct their speeches. Although Aristotle's rhetoric—and rhetorical criticism of the atechnic proofs (*pisteis*)—categorize testimony from torture (*basanos*), as well as the other forensic proof, as non-inventive, its practice use in action establishes torture as an important signifier of values and beliefs held by Athenians.

Processes of exclusion manifested through and by contemporary and ancient discourse on torture also cultivate a false dichotomy between dominant discourses and counter-discourses by implicitly granting authority and legitimacy to attitudes and values of the speaker by situating contravening voices on the margins of dominant discourse. Non-dominant media—accounts of torture not published in formal legal discourse or political documents, but through self-published books, YouTube videos, and interviews with journalists in non-traditional media outlets—demarcates detainees (and their torture) as unauthorized, yet powerful, narratives. Though operating in much different contexts, a rhetorical comparison of Attic speeches with contemporary popular discourse illustrates the extent to which the discourse on torture participates in the models of dehumanization and subjection endemic in the actual practice of torture. The rhetorical analysis of references to torture in the orators that illuminates the discursive aspects of the current debate on torture therefore foregrounds the purpose of this dissertation: to explore how language shapes social attitudes about torture.

CHAPTER TWO

Euphemisms and Interrogation in Contemporary Torture

In the previous chapter, I argued that references to torture in the orators worked alongside its physical practices by Athenians against their slaves, and also influenced and sustained the practice of torture through the citizen's construction of a definition of torture. In the subjective context of the Athenian law courts, proposing or refusing to torture functioned rhetorically as an assertion of the speaker's authority in the community, and, correspondingly, maintained the superior status in relation to the slave necessary to sustain Athenian slave society. In addition to formal laws allowing torture, citizens viewed torture as demonstrative of their political identity, inventing a common mythology for its practice. Audiences accepted torture as proof of character on the grounds of these shared values and beliefs, I argue, reinforcing the acceptance of the physical practice of torture, and also further exploited slaves by excluding them from rhetorical channels of power. Understanding the power of an audience to sustain violent and exclusive practices serves as an important parallel for analysis of contemporary torture, and the cultural, social, legal, and political influences on the formation of public opinion on torture.

My examination of the operation of two different equally powerful definitions of torture in Athens foregrounds my discussion of the importance of understanding definitions in contemporary torture. A 2008 U.S. Senate Judiciary Committee hearing outlines two of the arguments prevalent in discussions on contemporary torture. With the purpose of reviewing the use of torture during the Bush administration, then-Senator Biden challenged then-Attorney General Mukasey to explain why he defined "waterboarding" as a "coercive interrogation technique," and not as torture. Biden claims that Mukasey's explanation suggests that waterboarding is less harmful, not because it is not, but because it does not seem as harmful

when it is compared to other, more recognizably brutal techniques, such as “whether or not you hung someone by their limbs.” Mukasey objected to Biden’s assessment, responding that he did not consider waterboarding a “relative issue”; instead, Mukasey argued that deciding whether waterboarding should be used could be considered as “essentially a balancing test of the value of doing something, as against the cost of doing it.” Pushing Mukasey further, Biden asks Mukasey to further explain what he meant by “cost,” whether “that might occur in human life? . . . Do you mean the cost in terms of our sensibilities, in what we think is appropriate and inappropriate behaviour as a civilized society?” Mukasey amends his statement, stating that he “chose the wrong word I meant the heinousness of doing it, the cruelty of it balanced against the value . . . the value of the information you might get” (qtd. in Kanstroom 9).

This exchange presents the two prominent lines of argumentation used by advocates and opponents of contemporary torture today. First, Biden’s framing of waterboarding constitutes in terms of cost to human life and society orients his condemnation of the act from a human rights perspective that protects against torture in all circumstances. Biden questions the possible relativizing of torture, and the cost of such actions. Mukasey’s interpretation of waterboarding, on the other hand, discusses torture in terms of its efficacy, suggesting that its function as a tool to achieve political objectives supersedes the cruelty it may inflict on an individual. Both sides present arguments concerning the legality, efficacy, and morality of waterboarding, yet the primary issue at stake is definition: if waterboarding is defined as torture, then it is illegal in all cases and its use cannot be framed in terms of efficacy; if waterboarding is defined as interrogation, then it is acceptable under certain conditions, and discussions can determine the conditions of its use.

Despite the prohibition on torture, arguments advocating the use of torture to achieve political objectives persist in contemporary society. News media and popular culture consistently dramatize the circumstances under which the use of torture can be balanced against its benefits. Presenting “waterboarding” and “sensory deprivation” as “interrogation”—now illegal as torture—techniques designed to achieve a purpose, many of these artefacts invigorate abstract legal terms originating in legal memoranda dated between 2001–2005 (the “torture memos”) by contextualizing them within already existing narratives. Presenting torture as justifiable not only legitimizes these actions, it also introduces knowledge about torture, creating popular beliefs against which a public can judge and assess the validity of torture for themselves. Polls as recent as 2016 show that a majority of Americans believe that torture is justified when used “against suspected terrorists to obtain information” (Kahn). While previous studies have focussed on the narratives of justifiability in popular culture, little work has been accomplished on the ways in which these representations produce knowledge about the subject of torture, or the role of the audience in this knowledge production.

This chapter examines the persuasive aspects of definitions of torture in contemporary society. I contend that the public definition of torture as justified suggests a rhetorical investment required to supply the public and media to accept and assess “waterboarding,” styled as an “interrogation technique.” Convincing an audience that torture techniques are interrogation defines the scope of contemporary public debate on torture which, as the polls show (and despite conclusive evidence to the contrary), leans toward justification and acceptance of such tactics. The definitional campaign launched to depict “coercive interrogation techniques” in legal and political discourse, as well as in public media, as an acceptable alternative to torture is a phenomenon unique to contemporary democratic torture that, by virtue of its exercise within

democratic power, receives a measure of public approval to legitimize its use. This chapter begins the discussion of contemporary torture in this dissertation, the fundamental premise of which is that the words that we use to define torture—understood as the destruction of personhood—in any society establishes a metric of the treatment of human beings.

While definitions of torture are commonly seen as legal technicalities that narrow the scope of human rights, they may also be productively viewed as persuasive, as influencing social frameworks through the production of meaning. Viewed as argumentative, definitions of torture and of “coercive interrogation techniques” can be viewed in terms of interpretive frameworks that create symbolic meaning in the world. In comparison to the absolute prohibition on torture, the “coercive interrogation techniques” appeal to an audience by establishing an authoritative lens through which to view the world. Because of their power to influence and change the meaning of torture in both policy and in public discourse, the rhetorical analysis of legal definitions of torture merits critical attention.

I: The Letter of the Law: Narrowing the Definition of Torture

The central argument of this chapter extends and contributes to the increased attention rhetoricians and communication scholars have devoted to charting definitions as a key discursive strategy in the formation of political culture. The apparent cohesion and durability of definitions suggests that they are somehow absolute or unchangeable. Shifting meanings over time and context, however, suggest that definitions, while giving the *façade* of universality (or of “common sense”), become dominant by restraining alternative perspectives (Perelman and Olbrechts-Tyteca). Examined as part of a process of naturalization, through which people are persuaded to adopt and use certain definitions to the exclusion of others, definitions can be seen

as rhetorical: they define a political reality (Schiappa). Rhetoric, as the use of symbols to persuade, and analysis of that persuasion, can designate how definition shapes the opinions, values, beliefs, and behaviour of public audience. Definitions influence, as rhetorician David Zarefsky asserts: “[n]aming a situation provides the basis for understanding it and determining the appropriate response” (229). Those granted with the authority to “name” therefore wield significant power—they determine how people see themselves and their world and how they share knowledge and use language (Schiappa; Zarefsky). Accordingly, dominant social values can be understood as the consequence of the motivated use of symbols to influence an audience. The “characterization that prevails” as a result of these dynamics, Zarefsky contends, “will depend on choices made by political actors” (229). Choices made by political actors, as well as the strategies of definition and redefinition in which they engage in order to introduce, contest, and accept ways of thinking, therefore provide the starting point for analysis of definitions of torture.

The definition of torture in international human rights law is among the most proscriptive, imposing an absolute ban on its practice in all circumstances. The 1984 *UN Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment* (CAT) has almost universal status, as it has been ratified—confirmed into domestic law—by signatories of the convention. Article 1 defines torture as the following:

For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on

discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

The recognized status of this definition, moreover, is strengthened by its similarity to definitions in other conventions that also stipulate the prohibition of torture.¹⁸

In agreeing to a universal definition of torture, signatories of the CAT also accept its unqualified status as absolutely prohibited. Article 2 of the CAT binds signatory states to both ratify the law as well as accept its pre-emptory status, with the resolution that “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.” Signing the treaty therefore also indicates agreement on how the law will be enforced in practice. As *jus cogens* (L. compelling law), which refers to its status as a pre-emptory norm in international law, torture is non-derogable; its force supersedes all other laws. Alongside other human rights atrocities (such as slavery and genocide), prohibition against torture holds “the highest hierarchical position among all other norms and principles”; it cannot be amended or ratified (Bassiouni 65).

In reference to its use in international law, torture is defined by its prohibition and also within a universally recognized framework of wrongness that applies to all contexts. The almost unanimous agreement of torture’s illegal status is reflected politically in the 159 signatories of the CAT and its ratification into domestic law by most of these states. Under these terms and

¹⁸ Similar constraints are imposed in the 1948 *Declaration of Human Rights*, the 1948 *American Declaration of the Rights and Duties of Man*, the 1953 *European Convention for the Protection of Human Rights and Fundamental Freedoms*, the 1966 *International Covenant on Civil and Political Rights*, the 1978 *American Convention on Human Rights*, and the 1986 *African Charter on Human and Peoples’ Rights*.

conditions, states agree that the reprehensible harm inflicted by torture undermines individual rights and freedoms guaranteed to members of a human rights community. In this sense, the current ban on torture is the exemplar of modern society in its shift from legalized violence to a focus on human rights. In a context of protection of the dignity of the human being is paramount, torture represents the infliction of destructive pain and suffering antithetical to the aims of the community. In short, use of the word torture evokes the justification of its prohibition in any context. On the basis of its concretization in both law, and acceptance of the prohibition in practice, the wide acceptance of the CAT appears to demonstrate the commitment of nations to shared human rights values.

Despite the apparent strictness of definitions of torture, this rigor is not inherent to the definition, and does not apply when the definition becomes ratified by signatory nation-states. Although nation-states may sign the CAT into law, they rarely adopt the definition of torture in its complete form. In ratifying international law, a nation-state performs two actions: at the international level, the ratifying nation-state “consent[s] to be bound to a treaty”; and at the domestic level, ratifying “confirms” the law into domestic statute (*UN Glossary; Black’s Dictionary*). It is the former action of confirming the definition that contains the possibility for re-definition. Of course, in the best-case scenario—in which nation-states wish to comply without reservation with international human rights law—nation-states would ratify the law as close to the exact wording of the definition of torture as possible to retain its scope for criminal prosecution. But this rarely happens, as jurist Gail Miller observes: many states “have tinkered with the CAT’s definition of torture, redefining the term through slight alteration” (6). The institution of ratification undercuts the definitional strength of the international human rights law

on torture, which, on its own, provides a seemingly stable legal definition of torture in its wide applicability to all humans.

Ratification, although it compromises the integrity of the definition of torture, is necessary because torture is only legally criminal at the domestic level: international courts are not capable of prosecuting torture. As Linda Carter observes, there “is no specialized international court for torture prosecutions . . . [and] the international criminal tribunals can prosecute torture only in the context of crimes against humanity and war crimes, each of which carry additional and more complicated elements than the basic crime of torture” (2). Instead, under international law, the signatories of treaties—the individual states—are charged with the responsibility of meeting these obligations *erga omnes* (towards all)—that is, as “an obligation that every state owes to all other members of the international community” (Goldman 2). This prohibition is enforced by article two of the CAT that requires signatories to legislate torture into their domestic laws.¹⁹ The relative weakness of the international courts mandates the legal system’s enforcement of the independent nation-states. In other words: nation-states are expected to hold their political counterparts responsible for torture, a situation that rarely happens. Definitions of torture in international human rights law are therefore not as absolute as they appear, but instead provide guidelines for best practice. It is up to individual nation-states to determine whether and how the ban against torture will be enforced through their treatment of it according to domestic law.

As a consequence, human rights definitions are not as stable as they seem because of the ratification process. One of the consequences of authorizing nation-states as the arbiters of human rights is that that political interests often supersede international commitments. The

¹⁹ Article two of the UNCAT states that “[e]ach State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”

potential of human rights law to be ratified leaves it vulnerable to be interpreted, applied, and put to use for purposes unintended or unexpected by the original framers. Because of its connection to the aims of democracies, moreover, human rights treaties will often receive signatories who agree to their terms in order to establish trade relations, but have no intention of putting the law into practice. Signing a treaty thus has more to do with reputation than with upholding the values it proposes: “states join treaties like the *Convention Against Torture* in no small part to make themselves look good. In doing so, they may hope to attract more foreign investment, aid donations, international trade, and other tangible benefits” (Hathaway 207). Adopting the definition of torture in its entirety, therefore, does not guarantee its stability as a definition. Political motivations by state actors will determine how or whether the prohibition on torture is enforced.

The ratification process exposes and illuminates the rhetoricity of the definition of torture by placing it within the interests of nation-states as political actors. Domestic re-definition of international law functions as the guiding legal, political, and moral definition of how a nation-state perceives torture. The process of adopting international law into domestic law re-defines law according to domestic interests, and this represents the mindset of a particular state. Rhetoricians recognize these persuasive aspects of law that, in practice, serve the interests of the definer. Austin Sarat and Thomas R. Kearns claim that law is a “profession of rhetoric” in the way that its linguistic dimension continually creates new contexts for its effects to be understood. Recognizing the role of rhetoric in law, they propose, entails more than understanding authority imbued in legal language. Law can be considered persuasive, they argue, in the way that it advances and dramatizes the motivations of the framers of laws as action in the world: law “celebrates, and dogmatically insists on the proper and precise formulation of human desires in

words. It calls on us to keep in mind the dramatic consequences that often accompany law's peculiar linguistic formations Law, then, is a stage for the display of verbal skill, linguistic virtuosity, and persuasive argument in which words take on a seriousness virtually unparalleled in any other domain of human experience" (Sarat and Kearns 2). From the point of view of argumentation and persuasion as applied to texts, this understanding of law as rhetorical (rather than as axiomatic, scientific, or self-evident) views legal definition as the site of production of meaning with great potential for action.

Redefining Torture

Of the signatories of the CAT, the U.S. interpretation may present the most extreme example of motivated interpretation of the law on torture. Over the course of the "War on Terror," the U.S. imprisoned potentially thousands of foreign nationals, or "detainees," in U.S. "detention facilities" in Iraq, Afghanistan, and Cuba, or in "black sites"—off-grid prisons—around the world (including "torture-ships"). As extrajudicial prisoners, detainees were denied legal rights to a speedy trial or access to legal representation. During their indefinite detention, detainees were (and potentially still are) subjected to brutal torture techniques ("coercive interrogation techniques") such as sensory deprivation, environmental manipulation, waterboarding, confinement boxes, intense heat, cold, light, and dark, as well as sound torture (among others). The total number of prisoners tortured is impossible to precisely state, as imprisonment has occurred in many different prisons, the locations of which are classified and may yet prove to imprison more individuals.²⁰ Of the prisons of which we are aware, Guantánamo Bay Detention Facility remains open, with 60 (at the time of writing) individuals

²⁰ A *Washington Post* article from 2005, "Wrongful Imprisonment: Anatomy of a CIA Mistake," estimates 3 000 prisoners, with the caveat, that "it is impossible to know" the total number.

still imprisoned. These consequences detail the crucial importance the U.S. redefinition of international torture law continues to have today.

The U.S. ratification of torture law in 1994 into U.S. Code 18 §2340 set the stage for today's human rights atrocities. Most legal experts agree that, in the process of adopting the CAT into domestic law, the U.S. engaged in a comprehensive reinterpretation of human rights law that resulted in a politically motivated definition (Lim; Carter; Miller; Jalil and Mustafa). Through a strategy called "narrowing," the U.S. effectively limited the legal scope under which torture could be prosecuted by restricting the elements of the definition (Lim; Carter). Linguistic maneuvering at the level of ratification was a deliberate strategy motivated by a desire to avoid potential liability of governments, scholars suggest, who tend to narrowly define torture in such a way as to preserve their agents' ability to engage in coercive interrogation methods without running afoul of international law prohibitions against torture (Posner and Vermeule 9). The process of narrowing that reflects U.S. interests increases the difficulty of prosecuting torture by constraining the cases in which the law would apply. A full analysis of all of the limitations the U.S. places on the CAT is beyond the scope of this study; however, the restriction that is of most significance to this discussion of contemporary techniques is the restriction of the definition of "severe mental pain and suffering" to constitute torture.

The original CAT prohibits the infliction of "severe psychological pain and suffering" in an explicit attempt to broadly define the broad application of torture. By contrast, the U.S. redefinition in U.S.C. limits the actions that can meet the requirement of torture by defining "mental pain and suffering," a definition that did not exist in the original document. According to U.S.C. 18 §2340 (A):

“severe mental pain or suffering” means the prolonged mental harm caused by or resulting from—

- (A) the intentional infliction or threatened infliction of severe physical pain or suffering;
- (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
- (C) the threat of imminent death; or
- (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality

Limiting the actions that could be considered “severe pain and suffering” exemplifies the narrowing of the definition of torture by creating a category of action that does not meet the standard for torture.²¹

The redefinition of torture by the U.S. shifts the application of the law from protection of the human being to the construction of a defense for torture. Narrowing the term “severe” to a more limited meaning as “prolonged” constitutes pain as measurable by time; a defense is built into this logic, if treatment does not exceed a certain amount of time, then it is not torture. Measuring torture is antithetical to the spirit of human rights law that offers broad protection for all pain and suffering. Implicit in the CAT definition is the definition of torture as the violation of the human being as an autonomous agent; the infliction of pain and suffering, by virtue of our

²¹ David Luban and Henry Shue observe that the special definition of mental torture is specific to the U.S.: “[s]ignificantly, no other states-parties to CAT have adopted any similar narrowing definition of mental torture,” and that both the Netherlands and Sweden (in 1996) lodged complaints that “the U.S. understanding was to restrict the scope of the definition of torture” and not, as the U.S. had previously claimed, as protection from domestic claims of police brutality as torture (22–23).

vulnerable bodies, constitutes the destruction of this sense of personhood. Adopting the term “prolonged” over “severe,” or setting the limits of “mental pain and suffering,” undermines the premise of human rights law by replacing human experience with the torturer’s observation as the criteria through which to assess, and ultimately defend actions as either torture, or not torture.

Redefinition, more than avoiding prosecution, marks a shift in values toward torture. Defining torture according to the criteria set by the torturer removes the standard for assessing torture away from victim experience, and places it instead within extrinsic standards of the torturer. Perhaps a more significant issue posed by this redefinition, therefore, is that it formally shifts the power of defining torture to the torturer, so that in both law and in the torture cell, torture is defined by the torturer.

II: Interrogation: A New Paradigm for Torture

Readers may now question why the construction of a new legal category through the manipulation of international human rights law is important to contemporary considerations of torture, other than to legalize it. The answer to this question may be found in the results from a 2014 Pew Research Center poll, which reported that 51 percent of Americans believe that the use of “CIA interrogation methods” to obtain information from “terror suspects” at sites like the Guantánamo Bay detention facility can be “justified” (Drake). In a similar poll that asked American audiences “[d]o you think it is sometimes justified to use waterboarding and other aggressive interrogation tactics to get information from a suspected terrorist, or are these tactics never justified?” 49 percent of respondents replied that they were “sometimes justified”; 36 percent said “never justified”; 4 percent said “depends”; and 10 percent replied that they were “unsure” or gave no answer (Dutton et al.).

Had these polls been carried out before 2001, they would have raised more questions than answers. The specialized discourse introduced during the U.S. war on terror supplied a new lexicon to the public to represent the torture undertaken by U.S. officials against prisoners in Iraq, Afghanistan, and Cuba. In their use of terms such as “waterboarding,” “detention facility,” and “black sites” (even the neologism “War on Terror”), officials resorted to the use of euphemism to obscure actual activities—torture, illegal detention, and ongoing war—a discursive strategy recognized by an observant public, as a 2015 Tweet comments that “[w]aterboarding at Guantánamo Bay sounds super rad if you don’t know what either of those things are” (jgam7).

But how does an audience know what “aggressive interrogation tactics” are or how to assess their efficacy? What are the criteria for judging these aggressive interrogation tactics? While the poll presumes knowledge on the part of the audience to accept or reject these tactics, unlike other government policies, no established use of their practice formally exists. The only source of information for “interrogation” tactics are in legal documents such as the torture memos, redacted documents, news media, and popular culture. Despite the lack of comprehensive information on the subject, “coercive interrogation” is not merely a euphemism for torture but has become part of legitimate social knowledge with certain clearly defined criteria. My contention is that our conventional knowledge of contemporary terms of torture has been formed through these public documents as a moral, non-criminal alternative to torture. The narrowing of the definition of torture has a second purpose other than avoiding prosecution; it is a rhetorical strategy that defines interrogation by negation, as a catch-all category for acts that do not meet the high threshold set for torture in order to legitimize acts that would otherwise actually be torture. Next to the destructive “moral wrongness” of torture, terms such as

“waterboarding” and “coercive interrogation techniques” become part of public knowledge as acceptable.

Public acceptance of both the definitions as well as the frameworks of knowledge surrounding them points to the rhetoricity of such definitions, the notion that imposing new definitions constructs or invents the reality surrounding them. Acceptance of the contemporary terms of torture therefore is also the acceptance of interrogation techniques as mitigated forms, as “torture-lite.” Representing the horrific and terrible aspects of torture in pallid terms whitewashes over the worst parts of torture, making it appear to be more benign than it actually is, a rhetorical strategy that Schiappa describes as “domestication” (*Defining* 132). Using everyday language to define extraordinary events can trivialize acts and practices in order to persuade a public to support acts and practices they would normally find abhorrent (*Defining* 132). Often used to discuss military strategy and war, domestication operates through metaphor, in which ordinary language ordinary language allows a “high degree of flexibility” as it “embodies the common sense of a community of language users, which includes the judgements, attitudes and feelings associated with certain words” (*Defining* 132). The acceptance of such words, Schiappa maintains, leads to the acceptance of policies that a public would not ordinarily support, had they been presented in less camouflaged language. Legal narrowing of definitions, and their acceptance in society, contributes to the naturalization of the acts of torture.

Coercive Interrogation Techniques

The introduction of the “torture memos”—three legal memoranda drafted by the U.S. Department of Justice in August 2002—further narrowed the definition of torture. Then-U.S. Assistant Attorney General Jay Bybee prepared two memos, *Interrogation of al Qaeda*

Operative and Standards for Conduct for Interrogation under 18 U.S.C. §§ 2340–2. The latter document (herein, “the Bybee memo”), represented the formal legal opinion of the Office of Legal Counsel (OLC) (which Bybee headed) is most pertinent to this discussion, as it provided a reinterpretation of the CAT and U.S. law: it contained information “regarding the standards of conduct under the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment as implemented by sections 2340–2340A of title 18 of the United States Code” (Bybee1). The “standards of conduct” opined by the OLC are the, now illegal, “coercive interrogation techniques,” including the sensory deprivation techniques, waterboarding, and other practices related to the indefinite detention of prisoners (such as extraordinary rendition and suspension of legal rights) (Bybee).

With the purpose of providing further interpretation of the application of the U.S. Code, the Bybee Memo limits the definition of pain and suffering even further. The U.S. Code separates “mental pain or suffering” from the broad definition in the CAT to define it specifically in terms of “drugs or [other] procedures” which would “disrupt profoundly the senses or personality.” The memo further narrows this definition using the term “disrupt,”²² ultimately concluding that the “disruption of the senses or personality alone is insufficient to fall within the scope of this subsection; instead, that disruption must be profound” and then provides a lengthy discussion of the term “profound”²³ (10). Associating torture with terms not in the CAT (and

²² The memo defines disrupt as “to break asunder; to part forcibly; rend,” imbuing the verb with a connotation of violence,” “Webster’s New International Dictionary 753 (2d ed. 1935); see Webster’s Third New International Dictionary 656 (1986) (defining disrupt as ‘to break apart: Rupture’ or ‘destroy the unity or wholeness of’); IV The Oxford English Dictionary 832 (1989) (defining disrupt as ‘[t]o break or burst asunder; to break in pieces; to separate forcibly’)” (10).

²³ The memo defines profound as the following: “[t]he word ‘profound’ has a number of meanings, all of which convey a significant depth. *Webster’s New International Dictionary* 1977 (2d ed. 1935) defines profound as: ‘Of very great depth; extending far below the surface or top; unfathomable [;] . . . [c]oming from, reaching to, or situated at a depth or more than ordinary depth; not superficial; deep-seated; chiefly with reference to the body; as a *profound* sigh, wound, or pain [;] . . . [c]haracterized by intensity, as feeling or quality; deeply felt or realized; as, *profound* respect, fear, or melancholy; hence, encompassing; throughgoing; complete; as, *profound* sleep, silence, or

therefore with no established history of protection)²⁴ has the effect of defining torture as “unfathomable,” “encompassing,” “originating in or penetrating to the depths of one’s being,” superlative modifiers that make torture so abstract that it becomes impossible to prove (10). Based on these definitions, the memo concludes that to constitute torture, “acts must penetrate to the core of an individual’s ability to perceive the world around him, substantially interfering with his cognitive abilities, or fundamentally alter his personality” (11). “In short,” the Bybee memo concludes, “reading the definition of torture as a whole, it is plain that the term encompasses only extreme acts” (13).

In severely narrowing the scope of acts that would constitute the immoral and illegal torture to only those which are “extreme,” the memo correspondingly broadens the definition of the less criminal category of Cruel, Inhuman, or Degrading Treatment (CIDT). The memo finds that “certain acts may be cruel, inhuman, or degrading, but still not produce pain and suffering of the requisite intensity to fall within §2340(A)’s proscription against torture” (55). The memos therefore expose the CIDT as a default category to subsume acts which do not fall under the rubric of torture. Following international precedent set by the U.K. in their categorization of certain techniques as CIDT but not torture, the memos establish CIDT as an abstract catch-all category for techniques and treatment of peoples that do not meet the definition of torture.

Whereas the definition of torture insures that no act can be torture, memo defines CIDT broadly in order to classify acts within this non-criminal category (even if they otherwise meet

ignorance.’ See *Webster’s Third New International Dictionary* 1812 (1986) (‘having very great depth: extending far below the surface . . . not superficial’). *Random House Webster’s Unabridged Dictionary* 1545 (2d. 1999) also defines profound as ‘originating in or penetrating to the depths of one’s being’ or ‘pervasive or intense; thorough; complete’ or ‘extending, situated, or originating far down, or far beneath the surface.’” (10–11).

²⁴ The Bybee Memo states that “the phrase ‘disrupt profoundly the senses or personality’ is not used in mental health literature nor is it derived from elsewhere in U.S. law” (11).

international requirements for torture), stating directly that it exploits the fact that, unlike torture, CIDT has no formal legal definition:

The drafters of CAT expressly recognized the absence of any consensus as to what kind of treatment or punishment rose to the level of “cruel, inhuman, or degrading treatment or punishment.” It is precisely because this term had no coherent meaning under international law that the drafters chose not to require the criminalization of such conduct. (60)

Next to the definition of torture that is impossible to meet, the criteria for CIDT can always be met because it does not exist anywhere else; everything can be included. Separated from torture and established as a relative category, CIDT creates the possibility for defining any behaviour that does not meet the requirement of “extreme acts,” becoming the category for defining any action, as jurist Elizabeth Wilson observes:

the moral and intellectual offenses of the Torture Memo lay in its legalistic manipulation of the distinctions between torture and cruel, inhuman, or degrading treatment or punishment. Simply put, the Torture Memo sought to make the torture part of the continuum as narrow as possible, and the cruel, inhuman, or degrading treatment or punishment part as wide as possible. (42)

In creating an impossible standard to meet in torture, a possible one is created by default, or by negation.

Narrowing the definition of torture avoids prosecution by creating an impossible legal requirement, but in the context of the narrative of the prohibition on torture it is also a definitional strategy employed to extend the category of “not torture” to apply to certain actions that would normally be considered torture, as John Parry argues:

Put briefly, for anyone who believes there is an exception to every legal rule, creating a law of torture will almost inevitably lead to exceptions. Resolving this tension by prohibiting exceptions does more than make definition rather than exception the central legal issue. Governments will interpret the legal definition of torture to permit specific forms of coercion because they are “not torture,” a move which allows formal adherence to an absolute ban on a shrinking category of conduct. (“Shape” 520)

Defining torture in such detail and in such abstract terms thus serves the purpose of additionally constructing a separate definitional category of action that does not meet the requirement for torture.

These semantic and linguistic processes of narrowing and redefinition produce the possibility for a new definition of actions: the “coercive interrogation techniques.” Various called “aggressive” and “enhanced” interrogation techniques, or “torture-lite,” the notion of techniques that did not constitute torture yet were extreme enough to be justified under certain conditions came into existence through the continual maneuvering of human rights law. The Bybee memo classifies the “coercive interrogation techniques” as CIDT, and therefore do not meet the standard for torture:

While many of these techniques may amount to cruel, inhuman, or degrading treatment, they do not produce pain or suffering of the necessary intensity to meet the definition of torture. From these decisions we conclude that there is a wide range of techniques that will not rise to the level of torture. (2).

Acts such as waterboarding, sensory deprivation, environmental manipulation, confinement boxes (among others) that do not meet the standards to constitute torture, do fall into the category of CIDT. This is a calculated admission of harm; as techniques that are not torture, they

are also not not-torture: they are deserving of their title as “coercive” techniques, that is, above the status of regular interrogation yet below the extreme measures of torture.

The U.S. redefinition of torture that grants greater authority to the discretionary CIDT draws on precedent in international law. The original case in which CIDT was defined in terms of judicial discretion is *Ireland v. United Kingdom* (1978), in which the European Court of Human Rights separated torture from CIDT in their final ruling, finding that the so-called “five techniques” (sleep deprivation, wall standing, hooding, subjection to noise, and food deprivation) used by the Royal Ulster Constabulary (RUC) against suspected IRA members did not constitute torture but did constitute CIDT.

Although the five techniques, as applied in combination, undoubtedly amounted to inhuman and degrading treatment, although their object was the extraction of confessions, the naming of others and/or information and although they were used systematically, they did not occasion suffering of the particular intensity and cruelty implied by the word torture as so understood. (art. 167)

Rather than draw on the discretionary power that its own judgement granted the CIDT, the ruling instead cited the difference in status as a point of departure to avoid prosecuting the U.K. In this case, judges found that the “intensity” did not meet the “minimum” requirement and used this as the basis to rule against Ireland and in favour of the RUC (art. 167). The ruling stands as legal due to the formal hierarchy that finds the legal requirement for torture higher than CIDT. In the context of the precedent it set in human rights law, however, most commentators agree that the ruling was politically motivated.

Legal scholars agree that the 1978 redefinition of the five techniques was arbitrary, a way to remove liability from the RUC. This position of the Court has been widely criticized for the

narrowness of its application of Article 3. In distinguishing the treatment of prisoners as “inhuman and degrading treatment” but not torture because of its intensity, the Court set aside the unanimous decision of the European Commission on Human Rights that Article 3 is violated by the application of the five techniques as form of torture. According to the Commission, the concept of torture contained in the *Ireland v. United Kingdom* judgment is one that requires extreme intensity of pain or suffering. It is significant in this regard that a subjective test, assessing the ill-treatment from the point of view of the victim, was not applied by the Court who chose not to call witnesses. This further underlines the arbitrary basis for the Court's decision. By not engaging with the victims’ point of view, the Court overlooked a fundamental aspect of how to assess the severity of mistreatment. It also merits attention that by defining torture primarily in terms of its physical intensity the practice of torture is narrowly conceived by the Court so that it does not include acts that are not exceptionally brutal. Reacting to the Court’s decision, a report from Amnesty International stated that “our organisation must continue to combat torture anywhere in the world and that task makes it impossible for us to follow the restrictive standard set by the Court” (Amnesty). An implication of the Court's judgement is that the concept of torture can only be conceived in terms of particularly barbaric behaviour.

More than just exonerating the RUC from the charge of torture, the 1978 ruling that separated “the word, torture” from its twin term, CIDT, established a welcome precedent for nations seeking to legalize their interrogation techniques. Separating torture from CIDT—an otherwise cohesive concept—created a rationale for recognizing CIDT as legal and torture as illegal. Because of the public status of its documents, the U.S. presents the most accessible example of how these terms become separated in practice. The U.S. follows the precedent set by the U.K. by viewing torture and CIDT as different, an interpretation of human rights law that, as

Manfred Nowak explains, “adopted a legal position . . . that put the absolute nature of the prohibition on CIDT in question” (676). However, since the U.K. ruling is one of the only Western examples of interpretation of human rights law that establishes this pattern of reasoning, there is no history of defining torture in this way. The separation or association of these terms is based on social practice in previous trials, in which the connection of the terms prevents harm and, conversely, the separation of the terms promotes harm. Most legal precedent is formed by protection, giving the U.S. *carte blanche* for defining these terms according to its own purposes, which did *not* include protection. Under this new rubric for assessing actions as potential human rights violations, torture and CIDT become opposite categories.

Because the abstraction caused by separating these terms prevents torture from being prosecuted, human rights law scholars oppose these definitions on the grounds that they are radically inconsistent with other domestic applications of laws on torture. The relation between torture and CIDT is meant to be viewed as concomitant; splitting them, as Christian de Vos declares, is “legally untenable” (1). With the exception of the U.K. and U.S. cases, judges typically offset the lack of formal power of CIDT with judicial power that can be applied as circumstances allow, usually to emphasize the extreme nature of the crime committed in order to prosecute both CIDT and torture as human rights offences.²⁵ Such a ruling, de Vos maintains, exploits “the gap between torture and CIDT,” an approach that “ignores important jurisprudential developments emphasizing the prohibited purposes behind torture as the principle element distinguishing it from other forms of ill-treatment” (1). For most commentators, separating

²⁵ For example, the Inter-American Court, in *Luis Lizardo Cabrera v. Dominican Republic*, found that Cabrera, a political activist, had endured human rights abuses when he was illegally detained by the Dominican Republic. In this example (and many others, in Turkey, Austria, Greece, and so forth), human rights courts have prosecuted both CIDT and torture as offences constituting similar, if not equal elements of abuse.

torture from CIDT is viewed as an attempt to hide human rights abuses by weakening the authority of the definitions through the manipulation of the rigidity of the letter of the law.

The intended consequences of narrowing the scope of torture was the broadening of the definition of CIDT. The prohibition observed and exercised in human rights law to both torture and CIDT does not formally extend to CIDT, a situation which, Goldman explains, leaves the legal status of CIDT ambiguous. “Although cruel, degrading, or inhuman treatment is also clearly prohibited by customary law, its status as *jus cogens* remains unclear” (1). The term “torture” retains its status as prohibited under any circumstances and as criminal in domestic law, therefore, and anything that does not fit the scope of torture—i.e., meets the requirements as laid out in the definition of torture by the U.S., becomes CIDT, and therefore not prosecutable.

The difference between CIDT and torture (and interrogation with the former) quickly became adopted as the lexicon of the justification of torture by the Bush administration. When the Abu Ghraib pictures became public, President Bush maintained that the abuse captured in the Abu Ghraib photographs, though “disgraceful” and “a terrible disappointment,” did not amount to torture under U.S. or international law (Ward). As early as 2002, the Bush Administration adopted a narrow definition of torture, propounded in detail through a series of legal memoranda from the Departments of Justice and Defense. Relying on this narrow definition, President Bush maintained throughout his presidency that, while “aggressive interrogation tactics” were fully justified in combating terror, he “had never” ordered torture and he “never authorized torture,” reaffirmed through the infamous phrase, “America does not torture.” In a 2006 interview, Bush made a distinction between interrogation and torture identical to the one we see in the memos, stating that “we have to have the capacity to interrogate—not torture, but interrogate people to learn information” (McNamara).

Equally disturbing as the justification of these acts is the narrative of necessity and exceptionalism in these justifications. In a statement issued five days after 9/11, then Vice-President Dick Cheney cited the dangerous enemy as justification the tactics to follow:

[w]e also have to work, through, sort of the dark side if you will. We've got to spend time in the shadows of the intelligence world. A lot of what needs to be done here will have to be done quietly, without any discussion, using sources and methods that are available to our intelligence agencies . . . That's the world these folks operate in, and so its going to be vital for us to use any means at our disposal, basically to achieve our objectives. (Russert)

Underpinning these sorts of statements speaks to a mentality that justifies trespassing on fundamental human rights, and to perspective that warrants such action. Moreover, framing the throwing out of the moral compass as the “good” who must walk on the “dark side” trivializes such action by associating such obvious infringements as some sort of make-believe game rooted in popular culture, one with no real consequences. Remarks such as these, as I will show, present the narrative that continues to frame public perception of torture.

Defining a situation as “interrogation,” on the other hand, links its existence with an everyday reality. In its most general terms, “interrogation” refers to rigorous questioning used to extract information and may involve tactics ranging from simple questioning to torture. In its use to extract information from unwilling participants, interrogation occupies a prominent place as a mechanism of the law in many justice systems. In our evidence-based courts, the confession obtained by interrogation is proof *par excellence*; a successful interrogation that reveals previously concealed information that can be used to construct a convincing truth of the matter is equated with a healthy functioning society, while not speaking is associated with hiding the truth.

Whether or not physical duress is used, therefore, interrogations always have a coercive element because of the narrative underlying the dialectic of the confession in the justice system (Brooks). The notion that confession serves justice by making truth transparent and is restorative in this sense elevates the value of interrogation as intrinsic to a healthy society.

Torture and Television: Watching 24

Although most of us have never seen the inside of an interrogation room, the conventions of interrogation are among those most well established in popular culture. Since the advent television, criminal procedure series are the most prevalent and longest running shows, with the elements of the genre in *Dragnet* applied in *Law & Order* and modified in *The Wire* and *True Detective* (among others). Television has given us an understanding of interrogation as generally a white-hat procedure, led by a tough but benevolent detective who outsmarts criminals who underestimate his cleverness. The interrogation itself is conducted by an all-knowing yet unassuming interrogator who restores society to a normal state by wrangling the truth from a reluctant criminal. Interrogation may be coercive and harsh, but it is not inherently violent; ultimately, through discursive strategies, the detective convinces the suspect to tell the truth, and then justice is served. In this sense, the interrogation in popular culture replays a paradigm that continually equates freedom with truth and justice with transparency.

Redefining torture as interrogation connects practices engaged in the CIA “Interrogation Program” with the positive attributes in popular culture. There might be some doubt that the films and television in popular culture supply the kinds of general knowledge that would influence the acceptance of policy. But the relationship between film and the military industrial complex has been well established in scholarship; both Hollywood and the military industrial

complex have an interest in perpetuating and shaping a particular “cultural imagination of war” (Westwell). This is “the common ground upon which a collective, shared sense of war is worked out . . . [and] this collected sense of war becomes a pattern of thought, a hardwired set of expectations and desires that constrain the very ways we think about war” (Westwell 5).

Crucial to the construction of this narrative is the “symbiotic relationship” between film producers and the military industrial complex in the form of the U.S. Dept. of Defense Film Liaison Unit (Westwell 3). In exchange for equipment and knowledge of processes and technology, directors give the Pentagon access to scripts to promote a positive image of the military for recruitment and retention; military recruiters set up enlistment booths outside theatres showing *Top Gun*, for example (Westwell 3). More than garnering support, these films are also used to sway public opinion in a certain direction. Ridley Scott’s 2001 film *Blackhawk Down*, for example, was intended to gain support for the American military after 9/11; the fact that it depicted an American defeat in Somalia made it all the more compelling as it garnered increased support to restore the balance of power upset by Somalia. Support was not distributed arbitrarily, however; films that rejected the military narrative, such as *Platoon* and *Apocalypse Now*, were denied military support. With considerable influence on content, the Pentagon shapes consistent messages to produce and reinforce a mythology about the military, the government’s role in war, and foreign affairs.

The cooperative relationship between Hollywood and popular culture animates the abstract and obscuring legal discourse in the “torture memos.” The television series *24* provides one primary example of how a discerning public comes to understand what “interrogation” entails in a new-world torture paradigm. *24* is the prototype of judicious questioning meted out by a tough-but-fair interrogator whose deployment of interrogation tactics never exceed

excessive force. The protagonist, Jack Bauer, illustrates perhaps the best example of the naturalization of interrogation techniques. Set against a backdrop of the usual genre of procedural crime drama, Bauer employs electrocution, drugs, suffocation, and other forms of torture, who risks everything to obtain intelligence that will save innocent lives as time slowly ticks down over the course of an episode. Bauer's tragic hero status allows him to perform the actions no other individual is legally or morally capable of inflicting without sacrificing their own humanity. This rogue characterization extends to Bauer's tactics, which, when viewed through the lens of Bauer's extreme patriotism, appear as well-intentioned interrogation. Motivated by a search for the truth, Bauer is not a sadist; instead, as his name denotes, Bauer is the rogue, trump card of humanity; as both master and outlier, he alone possesses the expertise and wherewithal to know when torture will be effective, attributing a sensibility and rationality to his action.²⁶ Exemplifying the necessity and utility—as well as the morality—of “coercive” tactics, Bauer's actions perform the reality of the legal “coercive interrogation techniques” now implanted in the cultural imagination of audiences.

The paradigm that *24* dramatizes, moreover, also presents its own basis for rationalization by audiences by structuring episodes within a familiar rationalization for torture as a necessary measure against plotting terrorists. The clock continually marking the seconds left to act before time runs out is based on a political rationalization for torture, called the “ticking-bomb” argument. The standard example is provided by Henry Shue in “Torture”:

suppose a fanatic, perfectly willing to die rather than collaborate in the thwarting of his own scheme, had set a hidden nuclear device to explode in the heart of Paris. There is no time to evacuate the innocent people or even the moveable art treasures - the only

²⁶ Bauer is etymologically similar to bower, the top trump card (the Jack) in the game euchre.

hope of preventing tragedy is to torture the perpetrator, find the device, and deactivate it. (141)

The ticking time-bomb scenario that forms the premise for the television show *24*, epitomizes the debate on the efficacy of torture in contemporary society: as Bauer inflicts it, interrogation causes no permanent damage to the lone terrorist who planted the bomb, and who will only give up the information under duress. When it is presented as the only solution to a set of established circumstances, it is easier to justify “coercive interrogation techniques” as a rational course of action: “the proposed victim of our torture is not someone we suspect of planting the device: he is the perpetrator. He is not some pitiful psychotic making one last play for attention: he did plant the device. The wiring is not backwards, the mechanism is not jammed: the device will destroy the city if not deactivated” (Shue 142). Torture for interrogation is permissible under these circumstances because failure to act would be analogous to permitting the destruction of lives and property.

The cohesiveness of the narrative plotlines in *24* eliminates the uncertainty in the actual event the use of interrogation tactics. Normalizing torture, this expanded application of torture as a narrative device poses the added problem in producing a positive image of torture, leading audiences to believe that torture is justified and effective in certain circumstances. Many commentators have drawn a connection the increase of the depiction of torture in popular media and acceptance of torture in U.S. polls. Plot lines demonstrating a political “rightward tilt” correspond with weak borders of appropriate of military and government conduct toward detainees abroad (Green). Problematically, these depictions of “interrogation” provide audiences with confidence that they know what interrogation entails, and are therefore equipped with the competence to judge the context under which interrogation can be administered. In polls,

Americans responders routinely answer “yes” instead of “don’t know” to the question of whether “the use of torture against suspected terrorists in order to gain important information” can be “often” or “sometimes” justified demonstrate both the increase of public tolerance for torture, as well as the entry of the specifics of interrogation into common knowledge as a set of criteria for individuals to draw on in making political decisions.

Waterboarding

The technique most often associated with contemporary interrogation techniques is “waterboarding,” a term that, although a recent invention, has origins of practice dating at least back to European judicial torture. Known as “water torture” or the “water cure,” where water torture was used to coerce confessions by inducing a state of fear and panic through simulated drowning. The experience of drowning is induced through a variety of ways. The victim is tied to, or held down, and water is poured over their nose and into their mouth. The experience of drowning is induced by (a) by fabric, where a thin strip of fabric is either forced down their throat, or held over their nose and mouth, to intensify the feeling of being suffocated by water; or (b) by the sheer volume of water that, when poured down into the mouth and throat, makes breathing difficult, and also painfully extends the stomach past its capacity; or (c) by a combination of both, with in addition of a board that tilts the victim to one end (like a seesaw), using gravity to intensify the experience of drowning.

Water torture was used by the Spanish Inquisition, where it was known as *toca* (Lea xxv). One surviving example of its use is a record of imprisonment of Maria Gonzalez by the Inquisition from April 18, 1494. On suspicion of being a “relapsed heretic,” she is stripped, hooded, and tied to a rack, where the inquisitor poured

water down her nose and throat. Having poured up to a pint, lord inquisitor Mazuecos asked her if she had done anything; she said no. They continued to give her water, and told her to speak the truth; she said nothing. They gave her more water and asked if she would speak the truth, they would not give her any more; she said nothing. His reverence ordered her to be given water until the three-pint jar ran out; she never said a word. (Lea 45–46)

After they refilled the jar, and began again, she asked that they stop, and “for Holy Mary’s sake, she would tell everything . . . They gave her more water, and she said she would tell everything, for Holy Mary’s sake” (Lea 45–46).

The American version of water torture, or “waterboarding,” is defined by the Bybee Memo as a combination of methods:

the individual is bound securely to an inclined bench, which is approximately four feet by seven feet. The individual's feet are generally elevated. A cloth is placed over the forehead and eyes. Water is then applied to the cloth in a controlled manner. As this is done, the cloth is lowered until it covers both the nose and mouth. Once the cloth is saturated and completely covers the mouth and nose, air flow is slightly restricted for 20 to 40 seconds due to the presence of the cloth. (3)

In answer to the question posed as to whether waterboarding “would violate the prohibition against torture found at Section 2340A of title 18 of the United States Code,” the Bybee memo found that that it would not (1). Drawing from their narrowed legal definition of torture, the memo opines that waterboarding is not an act “specifically intended to inflict severe physical or mental pain or suffering” (1). Two of the reasons (among others) are: that (a) drowning cannot be described as “physical pain” and therefore does not cause “pain and suffering” (11); and (b)

“Suffering” only occurs for “a protracted period of time,” and the duration of waterboarding is not “protracted” enough (Bybee 11).

Despite its designation as “interrogation,” former detainees of U.S. detention centres describe the experience of “waterboarding” (as differentiated from torture) in similar terms as the victims of the Spanish Inquisition. In a Human Rights Watch report, former detainee Mohammed Shoroeyia described being tied to a wood board with 360-degree rotation. The interrogators placed a hood over his nose and mouth, and, lowering the board so his head was lower than his feet, “they would pour buckets of extremely cold water over his mouth and nose to the point that he felt he was going to suffocate” (“Delivered” 48). In Shoroeyia’s words, “[t]hey start to pour water to the point where you feel like you are suffocating . . . They wouldn’t stop until they got some kind of answer from me” (“Delivered” 48–49). Similar to 15th century water torture, contemporary torture also simulates a state of drowning with the belief that it will force the victim to provide information. Though there is little difference between the technique used by U.S. officials and the Inquisition, waterboarding is often defined as inflicting less suffering than its medieval counterpart: whereas *toca* is barbaric “torture,” waterboarding is often defined as rational “interrogation.”

The torture memos that both define and legalize waterboarding as a “coercive interrogation technique” provides one reason for the perceived difference between the two practices. Using painstakingly precise language, the Bybee memo maneuvers through the intricacies of international and domestic legal definitions of pain and suffering to exclude waterboarding from the definition of torture. According to the memo, waterboarding does not meet the requisite standard for either physical or mental torture as they are ratified in the U.S. Code. Waterboarding does not constitute physical torture, the memo concludes, because it “does

not inflict actual physical harm . . . although the subject may experience the fear or panic associated with the feeling of drowning, the waterboard does not inflict physical pain” (Bybee 9). Even if the terrifying experience of drowning causes mental suffering, moreover, the length of its infliction prevents its classification as torture. Waterboarding is a “controlled acute episode”; it does not occur for a “prolonged” period of time and therefore cannot be considered suffering (Bybee 10). Nor can waterboarding be considered mental pain under various “predicate acts” listed in the U.S. Code (Bybee 11). While it does elicit “a threat of imminent death,” that threat must produce prolonged mental harm lasting months or years; Bybee thus does not “anticipate that prolonged mental harm would result from use of the waterboard” (16). The conclusion of the memo allows waterboarding on the grounds that it does not meet the legal threshold of torture as defined by U.S. ratification of the CAT.

As well as legalizing waterboarding, a known torture technique, the language in the memos also generated the rhetorical space within which waterboarding can be differentiated from torture by audiences. Historical sources identify numerous instances of “water torture” or “the water cure” (*toca tormenta*) in documents and art in pre-Enlightenment judicial torture in Europe, but the entry point of “waterboarding” into public discourse is uncertain. Political scientist Darius Rejali suggests that the term appeared out of practice:

There is a special vocabulary for torture. When people use tortures that are old, they rename them and alter them a wee bit. They invent slightly new words to mask their similarities. This creates an inside club, especially important in work where secrecy matters. Waterboarding is clearly a jailhouse joke. It refers to surfboarding . . . they are attached somebody to a board and helping them surf. Torturers create names that are funny to them. (qtd. in Safire)

Alternatively, Alan Dershowitz suggests that the term was a mistake made by someone describing the complicated procedure (Safire). The absence of association of “waterboarding” with pain and suffering seems to confirm Rejali’s hypothesis that waterboarding emerged from political motivations seeking to avoid associations with torture. The uncertain origins of the term provide the opportunity for semantic reinvention of water torture. The term “waterboard,” as Rejali points out, does not itself have pejorative meaning, and bears little resemblance to other instruments of torture, suggesting that it does not inflict overwhelming pain and suffering.

Definitions that contextualize torture within the familiar paradigm of interrogation trivialize it as something endurable. Defining torture using familiar language contributes to the integration of torture into everyday experience in its continued potential presented in public discourse as a viable political tool, and also, as an infliction of pain and suffering not severe enough to be considered torture. Public opinion can shift to accept actions that they would normally consider heinous when extraordinary events are framed using ordinary terms (Schiappa). The authority of establishing such meaning, as we see today, never leaves public memory. How we define torture, and understanding the implications of these definitions, therefore matters due to the power of social attitudes and values to shape perception of torture through audience interpretation of them.

Defining waterboarding as ‘not’ torture contributes to a powerful narrative of justification and necessity that audiences attribute to effective government. Dramatizing waterboarding as an acceptable response to meet an urgent situation extends to an undeniable comparison to its use as a reliable, rational technique. A 2007 report by Human Rights Watch attributes the positive attitude toward torture to their representation on U.S. prime-time television and film. The group’s spokesperson, David Danzig, concluded that the connection between torture on

television was part of the influx of torture on the cultural imagination, stating that “I think there is no question [it is having an effect]. We have spoke to soldiers with experience in Iraq who say, for young soldiers, there is a direct relationship between what they are doing in their jobs and what they see on TV . . . it’s the same abroad” (Buncombe). The effective use of the techniques become attributed to current events and are implanted as part of the narrative of how the public perceives torture as useful and as justified in certain situations.

Instead of seeking to resolve the inconsistency in policy at the governmental level, commentators instead assert the primacy of the broad protection in the original international human rights law to resolve the inconsistency at the level of political policy. As I will show, this strategy has two effects: first, it reinstates a worldview that privileges the authority of a community of protection over political motivations; and second, it engages and empowers an audience to act to change the world according to these morals and values.

III: “Moral Vernacular”: Human Rights Rhetoric

It is impossible to overstate the impact the U.S. manipulation of international human rights law has had on public definitions of torture. Creating a separate legal category of action created the possibility of generating ways of considering action that would ordinarily be considered torture to be considered instead as “interrogation”: as “cruel” and “inhuman” yet necessary and justified. Inventing a rubric with an outcome that constructs torture as a rational course of action has led to an increase in the representation of torture in contemporary media and public discourse. Today, torture appears as a commonplace occurrence in media and is widely debated and discussed as part of deliberative debate.

Yet the status of torture as “interrogation,” as a viable method for dealing with others, contravenes human rights guaranteeing the protection of the dignity of all human beings. For human rights advocates, differing definitions of torture expose the inherent inconsistency in the relation between the individual and society. Liberal democratic values privilege the consensus of individuals as autonomous agents as central to the social contract and the liberty, equality, and justice it insures. Torture, the violent infliction of asymmetrical power relations and exploitation of human vulnerability to pain and suffering, destroys the individual, and as such remains “anathema to liberal democracy” (Ignatieff, *Lesser* 143). Following post-enlightenment ethics, human rights discourse offers broad protection of individuals in its imperative to preserve the rights of the individual.

This fundamental incompatibility of torture and democracy is central to any discussion of definition and torture. The violence of torture undermines and threatens consensual, intersubjective relations by destroying the individual, the nucleus of political life. Regarding the current state of affairs as a distortion of the social contract, those who oppose torture denounce the claim that “America does not torture” as factually incorrect (Reichmann). By this logic, the term “contemporary torture” is an oxymoron in the way it equates a human-rights based society with archaic violence. Yet overcoming this inconsistency between torture and its role in society is precisely what motivates definitions in contemporary torture. The use of the term “interrogation” obscures the appearance of “torture,” thus resolving the apparent paradox between the two terms. It is from this perspective that we can see “coercive interrogation techniques” not merely as a definition, but as part of more elaborate argumentative strategies. Examining definitions as rhetorical has far-reaching consequences because it exposes the patterns of thinking in the United States that then legalize and rationalize torture in other nations.

Human rights rhetoric therefore advances both the central concerns of international human rights—the dignity of all individuals as possessors of reason and consciousness—but also a specialized approach that empowers and addresses individual needs within that community. The opposition to torture draws on basic human rights principles that protect individuals by seeing them as part of a community. Significantly, the power of this protection comes not from universal definitions but from the force of a community that engages in recognition as a common act, so that individual rights are a social prerogative. It is the act of doing, Michael Ignatieff argues in *Human Rights and Politics as Idolatry*, that installs human rights as a viable mechanism of action in the world:

human rights is the only universally available moral vernacular . . . that enables dependent persons to perceive themselves as moral agents and to act against practices . . . that are ratified by the weight and authority of their cultures. These agents seek out human rights precisely because it legitimizes their protests against oppression. (68)

A human rights rhetoric that appeals to individuals grants agency to members of the community so that each person has his or her own personal, specific reason for civic action in a particular time and place.

Gerard Hauser expands on Ignatieff's comments to argue that the notion of a "moral vernacular" need not refer to an *a priori* moral universalism, but asserts instead a moral "particularism" that is powerful in the moment of speaking. Understanding human rights as rhetorical, Hauser argues,

transforms human rights into a discourse that occurs at both the general level, where types of practices are under review, and the specific level, where a specific person's treatment is a matter of public deliberation in the reticulate public sphere of human rights

talk. Human rights provide a language that transcends national borders and adjudicates practices and treatments of persons to whom agency and justice lay claim. (“Moral” 452) By appealing to actual people who live out their own personal relationship to their rights, Hauser argues, a human rights rhetoric elevates every-day, material reality to a powerful force in the world. Although experienced differently and individually, the shared embodiment of these values in everyday practice functions as a kind of common denominator—the knowledge criteria—for judging action.

The insistence on a common human knowledge that refuses torture as reasoned approach to terrorism is represented in Ignatieff’s response to the paradigm of the “ticking bomb” scenario. Ignatieff’s response to this “logic” of torture (a logic that mirrors the narrowing in the torture memoranda) is to suggest that any pragmatic approach to torture represents the failure of an ethical community. Even in times of war (perhaps *especially* in times of war), torture is never logical, justified, effective, or necessary, despite representations and opinions that would present torture as a remedy. Charting a course between polarized political theories of libertarianism (maximizing free choice) and consequentialism (“the end justifies the means”) to produce his own ethical approach to “lesser-evil,” Ignatieff contends that we fight unconventional enemies by restricting technological capacity (through trade embargos, sanctions, free exchange of ideas, and so forth). Torture is never an option. Regardless of another state’s actions, the prohibition on torture stands: it must never be “regulated, countenanced, or overtly accepted” (Ignatieff, *Lesser* 143). Violence may be required in the face of force and to defend civil liberties, but only as a measured response, and torture does not fit these criteria.

Torture is always a violation of the “foundational commitments” of American democracy to “justice and dignity” (Ignatieff, *Lesser* viii). Ignatieff defeats the necessity and efficacy

arguments for torture by asserting the commonly shared principles of justice and individual dignity that place the autonomous agent as primary to a shared existence. While torture may initially appear to be a good idea, he argues, it ultimately cripples our credibility on the world stage; once we go down the road of undermining our own principles, we cannot then go out into the world to denounce the action of others. Ignatieff's political pragmatics demonstrate a more acute awareness of the effects of public policy: since the moral stigma of torture cannot be avoided, it is not an effective tool in the political long game.

In his discussion examining how democracies possess both the resources to torture and the ability to hide torture, Darius Rejali contends that passive opposition is not an adequate response to contemporary torture. Because it relies on its obscurity for its power, democratic torture can only be crippled by an active engagement dedicated to investigating policies and practices (5). The best ammunition against torture is to provide citizens with knowledge of it and a language to discuss it. "Being able to talk intelligently about these techniques . . . [is] a necessary civic skill. Citizens who cannot speak competently about cruelty are unable to protect themselves" (3). Exposing torture therefore provides citizens with the tools needed to oppose torture empowers citizens to counter the unique threat posed by contemporary torture.

Rejali's civic approach to torture exemplifies the aim of politically motivated criticism to define torture against a broad definition of protection provided in human rights law. Responses of this sort actively resist and oppose torture by attempting to bridge the gap between international and domestic law, a gap that prevents torture from being anything more than idealized human rights law (De Vos). Human rights law exercises force equal to that of domestic law, with procedures and protocols that are as effective. Whereas this approach gains force from

the somewhat amorphous “spirit” of the law, it is not an approach without an established history of use or authority.

More than “pain and fear,” torture also inflicts the shock and horror of a relationship predicated on violence, as David Sussman points out: “the fact that the pain is administered by another person, that it serves some purpose or point of another, and that the victim cannot effectively evade, retaliate, or shield himself against these assaults” (30). The inclusion of the term “infliction” in the CAT definition signifies torture as a violent upheaval of personal and social values. The shift from intersubjective relations to unequal ones is a shift from equality to slavery, from a human state of affairs to an inhuman state in which an individual’s self-reliance, dignity, or conscience is no longer recognized. Although it only comprises one aspect of the definition of torture, infliction denotes the significant threat torture, as the imposition of a state of violence, torture poses to society.

In insisting that the opposition to torture involves a constant state of judging, assessing, and examining public policy on torture, commentators encourage audiences to refuse public policy’s unilateral authority as the final word on torture. Especially in the context of torture outlined above, the constant judgement of authority asserts the primacy of a humanitarian ethos as the criterion for assessing the treatment of humans as a way of devaluing arguments that narrow the human experience of life to arguments of efficacy. These arguments insert ethics back into political engagement through the act of questioning, as Arabella Lyon contends in *Deliberative Acts: Democracy, Rhetoric, and Rights*. She begins her book by asking two questions: “[s]hall we speak of Abu Ghraib and torture; shall we educate the children of illegal immigrants? (1). Lyon suggests that “performative deliberation” is an act of questioning official discourse, an act that realizes the potential of language to assert a counter-discourse. All

discourse requires “examinations of both being and situated knowledge for the many coming to action, an action potentially transformative of being and knowledge” (4). Audience judgement advances a different kind of knowledge, a social knowledge, of human beings possessing authority. Even the act of phrasing torture as a question rather than as a statement places its determinacy in doubt, questions its universality by placing it as a social question, and, in doing so, makes room for an equal counter-response to replace it.

Questioning the legitimacy of domestic policies therefore produces a humanitarian, social element that provides a counter-response to policies that, entrenched in domestic law, seem infallible in their logic. Ignatieff’s assessment of the pragmatics of a shared sense of justice establishes an alternative perspective and the lexicon to advocate a personal opinion with respect to the institutionalization of torture. Invoking the persuasive elements of discourse to produce an alternative worldview establishes equal criteria through which to assess torture as a matter of policy. Contemporary responses oppose torture on the grounds that torture is wrong, while at the same time advancing a human rights discourse that legitimizes the claim of its wrongness. The civic tools—arguments, a lexicon—provided to audiences to question the arguments supporting the use of torture thus form a discursive resistance to torture. Terms and their definition are scrutinized and reviewed for adherence to community values, a process that creates the possibility to prioritize human rights perspectives and to reject solely political objectives.

CHAPTER THREE

A Captive Audience: Sound and Persuasion in Contemporary Torture

In August 1971, twelve suspected IRA members were illegally detained by the British Army and subjected to interrogation methods known as the five techniques, which included hooding, prolonged stress positions, white noise, sleep deprivation, and deprivation of food and water. Of these methods, prisoners found the experience of white noise to be the most disturbing. One prisoner, Jim Auld, recalls his experience of white noise, described as a “hissing” sound, as a minor irritation that, over the course of his imprisonment, caused disorientation: “[a]t one stage [the noise] was just noise in the far corner of the room, and now, at this stage, it was sitting beside me. And I just started getting more and more confused” (qtd. in McCoy 6). Other prisoners report that white noise caused acoustic and auditory hallucinations of their death: Paddy Joe McClean “heard funeral hymns, saw his own casket and a firing squad” (McCoy 8). And Kevin Hannaway, believing his death was imminent, sang the Irish folk song “Four Green Fields” and asked for a priest to perform his last rites (McCoy 8).

Despite first-hand reports from torture victims describing the effects of sound as overwhelming, sound, inflicted either as music or as white noise, remains legal as an interrogation technique. Recent evidence suggests that the assumption that sound functions as a fairly innocuous “softening up” tool for interrogators excludes it from constituting the harm of torture. This is certainly evident in the 2014 U.S. Senate Select Committee on Intelligence’s *Committee Study of the CIA’s Detention and Interrogation Program*, the result of an exhaustive examination of the methods used in the U.S. interrogation program. Although the report cites 275 instances of infliction (more than any other technique)—including “loud continuous music,” “constant white noise”, and “loud noise”—sound receives scant attention (67; 60; 429). Instead,

sound is depicted, and often regarded by the public, as a backdrop to highlight the other, more “brutal” techniques such as “waterboarding” (*Senate Report 3*). Failure to recognize the harm of sound may result in the continuation of torture, therefore counteracting the current mandate by the U.S. (put forth by the Senate report) to “never again allow for secret indefinite detention and the use of coercive interrogations” (*Senate Report 3*).²⁷

One of the greatest challenges in distinguishing sound as a technique of torture is the fact that its potential for harm, paradoxically, lies in its benign appearance. Since sound’s harm is inflicted over time, through constant and persistent sound occurring and recurring (as former victims describe), sound tortures through continued exposure. In its investigation of the power of sound, this chapter aims to contribute to this ongoing critical work that seeks to understand the role of sound in torture. It examines the force of sound as a strategic exploitation of a listening environment to induce disorientation. Drawing on the prominence the discipline of “sound studies” places on the embodied affective reception of sound in an acoustic environment or “soundscape,” I suggest that acoustic torture creates an overwhelming sonic environment that profoundly harms individuals. Modulating detainees’ responses to sound through manipulation of perception (employing other techniques such as light and shackling) as well as sound technology (headphones and speakers), acoustic torture situates the detainees’ response to their inhospitable environment—the “condition of detention”—as the source of their suffering. Much discussion has emerged in recent years delineating the “self-inflicted” aspects of contemporary

²⁷ Alan Clarke suggests that the focus on waterboarding, and corresponding lack of attention to other techniques, is an effect of legal narrowing (discussed in detail in Chapter Two): “[a] too narrow focus on waterboarding may distract from other harsh interrogation techniques. Many of these other ‘alternative interrogation techniques’ have equally profound effects on their victims and justly deserve the name ‘torture’” (“Creating” 3) Clarke goes on to suggest, that “[w]hile waterboarding may be the most obvious example of a practice clearly constituting torture, it is not the sole technique, as torture encompasses a range of physically and mentally debilitating practices. Many of the authorized alternative interrogation techniques are ill-disguised by the euphemisms currently in vogue” (“Creating” 3).

torture techniques; more scholarly work is required to understand the role the communication of sound plays in controlling human behaviour.

This chapter proceeds as follows. First, I provide a critical survey of current definitions of acoustic torture as a “softening up” tool for interrogators, as a form of “soft power.” Challenges to this designation situate the violence of sound in its psychological and cultural, material force as “futility music,” suggesting that the forced participation in cultural practices strips the basis for identity to induce experiences of helplessness in detainees. This research emphasizes audience reception as the primary target of contemporary sound in torture and thus opens up conceptual room to understand the regulating force of sound. Focussing on the notion of the soundscape as the paradigm for regulating identity, I identify the manipulation of the acoustic environment as the site of the violence of torture. Deprivation techniques and sound technology, I suggest, impose an alienating environment to induce disembodied experiences of fear and dread. The conditions of infliction of sound—including environmental factors and its use with other techniques—influence a detainee’s perception of the experience of sound. Rhetoric, in its identification of the significance of audience communicative act, both implicitly and explicitly informs this analysis, as I discuss in the third section. Providing the conceptual tools and framework to understand sound as social, symbolic action in the world through the perceptual soundscape provides a theoretical framework through which to reconsider the categorization of sound as merely a backdrop to torture.

It is first important to acknowledge the issues of veracity that arise in any analysis of first-person evidence. In this case, the details of their torture provided by former detainees are unverifiable as well as highly contested. First, access to evidence is limited and mediated. Many detainees do not wish to disclose their abuse, either for personal reasons or fear of reprisal, since

most detainees held by U.S. forces were forced to sign Non-Disclosure Agreements upon their release. A second point to consider is that many military personnel maintain that former detainees misrepresent their treatment to the press. An ex-interrogator warns the public against believing former detainees, claiming that they “exploit the media” (Peisner). One proponent of this view is Jonathan Pieslak, whose sustained study of the interrelation of sound and military operations in *Sound Targets* argues that the U.S. military deployed music only for interrogational purposes—to demoralize, influence, or disorient—and that detainees never endured music for long periods of time (88). Pieslak represents a military perspective: since U.S. military practice is shaped by international policy that contravenes torture, soldiers’ training does not include the use of music; therefore, music was never used (89). This chapter accounts for such issues and challenges in two ways. First, where possible, I contextualize U.S. examples within other instances of sound as used in the U.K. and Israel, using their commonality as the basis for assessing their relative veracity. And second, I contextualize claims by detainees within media reports, official documents, and other credible sources. As a final note, among the narratives from detainees now available (approximately a hundred), many of them are consistent in their depiction of torture, even despite different circumstances of detention.

I. Sound Effects: Defining Sound and Torture

This section provides a critical review of the literature examining the use of sound as a method of torture. In its documented use in first-person accounts of victims of sound torture, and much secondary criticism, maintains the power of sound to inflict pain and suffering consistent with torture. Whereas sound has been regarded as the background to other, more violent methods of torture, recent criticism points to the use of sound as a primary instrument of torture. There is

some debate whether the severity of such techniques amount to torture, or whether they are coercive interrogation techniques, methods that induce a state of compliance, but only temporarily and without causing lasting harm. Despite widespread perception of sound as a “softening up” technique that does not inflict harm severe enough to constitute torture, scholarship from Suzanne Cusick and Christian Grüny maintains that sound constitutes “acoustic torture,” a critical view that is consistent with first-person accounts describing the effects of sound as fundamentally overwhelming.

Long before its use in contemporary torture, former victims of torture have described the use of sound to intensify pain and suffering. The sound of footsteps in a prison, doors opening and closing, and the screams of others in pain, for example, evoke complex reactions of fear (that they are the next to be tortured) and shame and helplessness that it is not happening to them. A description of a survivor of the torture by the Turkish Armed Forces in the 1980 Turkey *coup d'état* narrates details of such an experience:

I mean there was such a feeling, you hear the footsteps, the sound of the keys, so you think he is coming to take me. Naturally you are scared each time they come, but also each time you take the decision to resist by yourself. That is what I think, I mean. The sound of the footsteps, they either take you and hit you brutally, or someone from one of the next cells. Then you think “ohh they did not take me now” you get a bit, like a bit relaxed, later you feel ashamed of that feeling of relaxation. Because they took someone next to you, and you hear his/her screams. I mean, anyway you would feel the same pain, same anxiety whether they take you or others. (qtd. in Karacan 143)

Sound dramatizes the apprehension of a state of torture, limiting one’s existence to either the pain of being tortured, or the fear of waiting to be tortured. In the torture cell, sound signifies

pain (for someone), and may evoke complex feelings of fear, terror, guilt, helplessness, and complicity in the hearer. In this light, individuals may perceive sound as their loss of autonomy and the corresponding gain in power by the torturer whose actions, through sound, exert dominance.

Former victims of torture report that torturers exploit the prisoner's reaction to sound to compel prisoners to comply with their demands. Alexandr Solzhenitsyn's account of his time in a Stalin-era prison in *Gulag Archipelago* describes how interrogators would routinely stage false scenes of torture to force confessions from unyielding prisoners. Positioning a woman screaming in pain next to the cell, interrogators would tell the prisoner that "[y]our wife has already been arrested, but her further fate depends on you. They are questioning her in the next room-just listen!" And through the wall you can actually hear a woman weeping and screaming" (Solzhenitsyn 107). Holding a witness personally responsible for another's pain intensifies feelings of fear, helplessness, and guilt by forcing prisoners into the harrowing decision of either betraying oneself (by signing a false confession) or risking the betrayal of a loved one by prolonging their pain. Interrogators therefore deploy sound with the aim of exploiting a listener's emotional response to a human being in pain to force compliance through self-betrayal.

Other examples of sound torture occur in the weaponizing of the aesthetic pleasures of music production to dehumanize prisoners. Camp guards in WWII concentration camps, for example, forced prisoners to sing pro-Nazi songs, and loudspeakers played Wagner's operas, asserting dominance over prisoners through emphatically pro-German cultural symbols (Gilbert 17). Official orchestras also performed in many of the camps, where amateur and professional musicians played to the preferences of the officers, even creating new compositions and original

arrangements (Gilbert 226).²⁸ Under normal circumstances, engaging in musical creation is pleasurable; conditions of abjection and depravity, however, transform artistic accomplishment into weapons made all the more devastating because of the sense of loss the listener attributes to their prior talents, now used in the service of another. Compulsory composing, singing, and listening forces prisoners to internalize their abjected state by forcing prisoners to perform artistic self-expression as the expression of another's power, in a sort of perverse, self-mockery.

In addition to using sound alongside physical torture to heighten the terror of pain and loss of agency, there is evidence that sound is also used as one of the primary methods of torture, such as in the examples in Ireland and the U.S. that opened this chapter. Although the manuals do not attribute much primacy to sound, of the torture techniques inflicted on them, victims often recall their experience of sound as the most disturbing aspect of their experiences of the techniques. After his extraordinary rendition from Afghanistan to Camp Delta in Guantánamo Bay, Cuba in May 2003, British-born Shafiq Rasul was subjected to the “coercive interrogation techniques,” including sensory deprivation, environmental manipulation, and forced stress positions. Shackled to the floor, Rasul was bombarded him with heavy metal music and strobe lights for twelve hour stretches every day (sometimes twice a day) for three weeks before finally submitting a false confession (Peisner). According to Rasul, it was the effects of the constant exposure to music that pushed him over the edge: “[the music] just starts playing with you Even if you were shouting, the music was too loud—nobody would be able to hear you. You're there for hours and hours, and they're constantly playing the same music. All that builds up. You start hallucinating” (Peisner). Although he was subjected to loud music, Rasul's observations are

²⁸ In Auschwitz, *Mieczyslaw Krzynski* and Henryk Krol's '*Arbeitslagermarsch*' (Concentration camp labour march) (Gilbert 226).

similar to Auld's, McClean's, and Hannaway's on white noise (that opened this chapter). In both instances, victims recall the effects of sound as taking over both their physical and mental space causing pronounced physical distress, including imagining their own deaths in some cases.

In addition to U.K. and U.S. examples, there is evidence of nation-states also inflicting sound purposefully as a prescribed technique. A 1998 report prepared by B'Tselem (The Israeli Information Centre for Human Rights in the Occupied Territories) entitled *Routine Torture: Interrogation Methods of the General Security Service (GSS)* outlined similar tactics used by used by Israeli GSS:

[s]habach is the combination of methods, used for prolonged periods, entailing sensory deprivation, and inflicting pain. Regular *shabach* entails shackling the interrogee's hands and legs to a small chair, angled to slant forward so that the interrogee cannot sit in a stable position. The interrogee's head is covered with an often filthy sack and loud music is played non stop through loudspeakers. Detainees in *shabach* are not authorized to sleep. (11)

Similarly, a 2010 humanitarian report by the French branch of Action for the Abolition of Torture reported the use of these same techniques:

The most commonly used methods are exposure to extreme temperatures, the obligation to remain several hours in painful positions, the prolonged use of handcuffs or ankle chains, exposure to violent noises or to blinding light, the privation of food and water, of sleep, of hygiene, of sensory stimulation (use of blindfolds or hoods, detention in a dark room, isolation for prolonged periods of time that can last several years). (qtd. in Volcler 83)

By contrast to other examples of sound which appear to accompany other forms of violence and domination at the discretion of the torturer, these uses show a pronounced recognition of the harmful effects of sound. Used in nation-states around the globe, therefore, makes understanding how sound inflicts torture a global concern.

While many nation-states inflict sound as part of their torture regime, only the U.S. has publicly released the rationale and instructions for its use. Sound also features as a primary technique the legal documents (the “torture memos”) and military manuals that informed and instructed the use of torture between 2001–2009. Categorized as one of the “coercive interrogation techniques,” the use of noise—music, white noise—was authorized in the “torture memos.” A May 2004 memo, titled *OMS Guidelines on Medical and Psychological Support to Detainee Rendition, Interrogation and Detention*, lists all the “enhanced” measures permitted for use by interrogators. The memo’s purpose is to “offer general references for medical officers supporting the rendition and detention of terrorists captured and turned over” to the CIA for “debriefing” (1). These “legally sanctioned techniques,” the memo states, are “designed to psychologically ‘dislocate’ the detainee, maximize his feeling of vulnerability and helplessness, and reduce or eliminate his will to resist our efforts to obtain critical intelligence” (7). The report classifies “white noise or loud music (at a decibel level that will not damage hearing)” among the “standard measures (i.e. without physical or substantial psychological pressure)” (7). With instructions provided for its use, sound is listed among the techniques that will “dislocate” an individual. Listed in “ascending degree of intensity” among the other measures, sound is considered more intense by the OMS (CIA’s Office of Medical Services) than “shaving, stripping, diapering, hooding, and isolation,” but less so than “continuous light or darkness, uncomfortably cool environment, restricted diet, shackling, or sleep deprivation (under 48

hours)” (7). According to the manual, sound is not an “enhanced measure”; it does not reach the level of “intensity” inflicted by waterboarding or stress positions (7).

Language in this memo categorizing interrogation techniques as impacting the psychological well-being of the inmate is reminiscent of past U.S. torture manuals that also instruct torturers on the use of sound. The 1963 *KUBARK Counterintelligence Manual* and its updated 1983 *Human Resource Exploitation Training Manual* (HRE) inform readers that drastic changes in environment to upset an individual’s sense of space and time would “generat[e] pressure inside the subject without the application of outside force” and “manipulate[e] him psychologically until his resistance is sapped and his urge to yield is fortified” (HRE 17). Over time, the application of techniques would “disrupt radically the familiar emotional and psychological associations of the subject” and induce a state of “psychological shock,” or “regression,” defined as a “loss of autonomy” and a basic incapacity to carry out high-order thinking (HRE 17; HRE 18; HRE 44). The manual instructs interrogators to employ the sound environment to implement this sensibility. The slamming of a cell door, for example, “impresses upon the subject that he is cut off from the rest of the world,” as would “soundproofed” cells (HRE 40; HRE 41). Removing the possibility for control over one’s environment, according to the manuals, has the effect of dissolving identity and inducing a state of compliance.

Other contemporary manuals offer instructions to interrogators on how best to maximize the psychological potential of sound, suggesting that music can inflict a state of disorientation and helplessness. In a program called, “the Music Theme,” U.S. interrogators mandated “futility music” outlined in a report, titled *Army Regulation 15–6: Final Report. Investigation Into FBI Allegations of Detainee Abuse at Guantánamo Bay, Cuba Detention Facility*. Interrogators are instructed to deploy music to “convince the source that resistance to questioning is futile. This

engenders a feeling of hopelessness and helplessness” (8.49). According to reports from victims, the music included rap (2Pac, Dr. Dre, Eminem), hard rock and metal (Metallica, Marilyn Manson, Rage Against the Machine), various popular artists (Britney Spears, Christina Aguilera, David Grey, James Taylor, Queen) as well as eclectic choices (audiobooks, James Taylor, Sesame Street, Barney the Purple Dinosaur).

Although manuals do not provide examples of music, critics have offered various explanations how musical choices can induce states of “hopelessness and helplessness.” Starting from the point of view that music is always political, Suzanne Cusick’s extensive work examining the role musical choice plays in torture suggest that interrogators choose music most aggressively displaying western values as a means of indoctrinating their audience with beliefs their audience would find most detestable. For example, she argues, “[t]he lyrics of Eminem’s ‘Slim Shady,’ played over and over again . . . combined rage, misogyny, and vivid sexual imagery in ways that seem sure to offend—to confirm detainees; defeat by all that they might find loathsome about the culture of ‘the infidel’” (“Music” 8–9). Understanding the audience in its particularity as a group opposed to these values, music in torture serves a purpose opposite to that of music in pleasure by inciting feelings of conflict and difference rather than identification. Similar to the tactics used in concentration camps decades earlier, music forces listeners to engage in cultural practices as a reflection of the power of the torturer, and in this way can be perceived as an extension of existing ideological difference, in which music is “also a component of the U.S.’ symbolic claim to global sovereignty” (Cusick, “Music” 10).

More than exposure to sound, interrogators force detainees to engage in cultural practices, ones which, as Cusick points out, detainees may find so antithetical to their own beliefs that they find them overwhelming: “[d]eriving directly from who they are or have chosen

to be as enculturated human beings—that is as persons, not only as sensate biological organisms—this psychic pain attacks its targets and causes self-betrayal in the intersubjective space that many religious traditions call the soul” (“You” 18). Violation of one’s acoustic environment signals a vicious transition to a state of personal ineffectiveness caused not only by an inability to stop the music but also the inevitable transformation of identity that occurs as a consequence of such cultural participation. As a technique, “futility music” illuminates the potential for domination and coercion underlying music; as Johnson and Cloonan agree, “any imposed music is always an act of violence” (158).

Blasting music at high decibels for long periods of time can also increase a sense of futility by obscuring the ability to make sense of their sound, to attribute context to it. Christian Grüny suggests that music becomes noise—that is, intolerable sound—when it is unwanted or unintelligible to the listener (for whatever reasons). Continuous and extreme exposure to intense music that is inflicted during sound torture decreases one’s “ability to discern structures,” Grüny argues: “[w]hat remains is the impression that the sounds want something that they make a vague demand to which we need to react, be it by directing our attention toward them and keeping them at bay cognitively or resorting to flight” (212). When willingly listening to music for pleasure, the musical tension in themes can be delightful as a willing listener engages in music to find resolution. For an unwilling audience, however, the pleasurable features of music can function as a source of anxiety by compelling an unwanted aesthetic reaction to unresolved musical conflict. The ability for music to shape listeners, therefore, can produce apprehension and anxiety in audiences who experience music as entrapment.

Other critics have categorized the harm sound inflicts as psychological torture, a designation that clearly prohibits it within international human rights in the UN *Convention*

Against Torture that defines torture as “the infliction severe physical or psychological pain and suffering” (art. 1). This categorization, moreover, is compelled by a legacy of research on psychological torture techniques conducted in experiments dating back to the 1960s that investigated the effects of environmental manipulation of light, sound, touch, odor, sleep, and food. This research found that since a “changing sensory environment seems essential for human beings,” there was “direct evidence of a kind of dependence on the environment that has not been previously recognized” (McCoy 36). Psychologists find that subjects perceive deprivation as a profound loss of self through the denigration of familiar surroundings: “variation in the sensory environment . . . would contribute to the breakdown of the organized activity of the central processes in the brain. In short, anyone could produce ‘surprisingly drastic effects on consciousness by simple, nonviolent changes in the environment—heat, sound, sight, and touch’” (McCoy 41).

The vast resources the U.S. has devoted to researching psychological torture has led to some researchers to conclude that the sensory deprivation techniques (including sound) have replaced physical techniques as the dominant mode of torture in the 20th century. In 1981, Gustave Keller equated the emergence of psychological torture techniques with a decrease in physical torture, declaring that “purely physical torture is losing importance. Psychological and psychiatric findings and methods are taking its place, planned and sometimes administered by white-collar torturers” (qtd. in Grüny 207). As psychological torture, the deprivation techniques become the equivalent of physical torture in the way that they emphasize the self-inflicted aspect of torture, the “victim’s fight against himself” (Keller qtd. in Grüny 215). The primary source of pain and suffering comes from the detainee’s own mind; an individual internalizes their own inability to block out sound or maintain a stress position as their own incompetence, and as a

result views their suffering as their own doing. Psychological torture occurs when the degree of harm is entirely self-inflicted, when environmental manipulation forces a change in circumstances so great that personal identity cannot withstand the changed circumstances, a situation that unhinges the victim.²⁹

Yet despite manuals, research, and first person accounts that discuss and list sound as torture, today, sound remains the only interrogation technique that is still legal. The other “coercive” and “deprivation” techniques legalized by the “torture memos” were repealed by the Obama administration in an Executive Order 13491 in 2009 and replaced with the U.S. Army Field Manual FM 2–22.3, *Human Intelligence Collector Operations*, now the current law on ‘torture.’ Sound, however, is included neither among the sensory deprivation techniques nor among the coercive techniques. Instead, sound is included among the permitted techniques in the section discussing “restricted interrogation techniques” involved in “separation” (essentially, isolation) (M–10). Sound is permissible for interrogation, given that “care should be taken to protect the detainee from exposure (in accordance with all appropriate standards addressing excessive or inadequate environmental conditions),” including “excessive noise” (M–10). The manual diminishes sound’s status to “appropriate standards,” including “dampness,” “inadequate

²⁹ It is important to note that many scholars reject classifications of contemporary torture solely as either psychological or physical as reductive. The complexity of these techniques in their felt-experience eludes the binary either physical or psychological, limiting the extent to which their harm can be conceptualized. Pigeonholing torture techniques into binary categories for the sake of legal classification—that is, calling “a clean blow a psychological procedure and a scarring blow a physical one”—is “deeply misleading, if not deceptive” (Rejali 4). Grüny also contests the limitations of such an approach, arguing that it is fallacious to assume that the increase of the deprivation techniques in recent history correlates with a corresponding decrease in physical torture. Rather, he argues, their use should urge questions concerning the harm they inflict: “is the need to sleep psychological or physical?” (207). While subsuming sound and the other sensory deprivation techniques under the category of psychological torture supports claims of its illegality, conceptually the designation itself is ultimately limited. The physical/psychological binary limits a definition of harm to the threshold of these categories and is therefore unproductive in articulating suffering that exceeds these boundaries, i.e., as both/neither empirically physical and/nor and psychological. Understanding the complexity of contemporary techniques necessitates broader dimensions for the articulation of suffering, as Bruce Johnson and Martin Cloonan suggest in *Dark Side of the Tune*: “the potential level of violence increase[s] as these two factors converge: culture and biology, sensibility and sense, psychological and physical” (158).

heat, light, or ventilation,” and “inadequate bedding and blankets” (M-10). Moreover, while all the other extreme forms of these separation techniques are prohibited (“placing hoods or sacks over the heads of detainees” as well as “inducing hypothermia or heat injury” and “depriving the detainee of necessary food, water, or medical care”), the extreme form of sound—blasting music for hours and weeks—is not prohibited (5-21). Sound’s current status as a “standard” to be maintained at the discretion of the torturer maintains its legal status on the basis that it is normal in the context of imprisonment. Seemingly without intention or direct force, sound remains legal as an interrogation tactic, despite reports suggesting otherwise.

In an interview with Branden Joseph, Cusick suggests that the reason why sound is omitted from definitions of torture is because it is not perceived independently from imprisonment. Without concrete markers either of infliction or harm, Cusick argues, officials regard sound as a “condition of detention.” Cusick’s remarks reference a May 10, 2005 Dept. of Justice memorandum written by then Assistant Attorney General Steven Bradbury (the “Bradbury Memo”) refers to the January 5, 2005 memo for Daniel Levin detailing the OMS Guidelines (mentioned above) that notes that “[t]he CIA maintains ‘detention conditions’ at all of its detention facilities,” including “white noise/loud sounds (not to exceed 79 decibels)” (4). Also, a second instance occurs in the 2014 Senate Committee Report that refers to a May 18, 2006 letter from CIA Legal to the Dept. of Justice, concerning “security measures” in secret detention facilities: “some of these conditions provide the additional benefit of setting a detention condition atmosphere conducive to continued intelligence collection from the detainee” (429). The memo also referenced “constant light in the cells, use of white noise, use of shackles, hooding, and shaving/barbering” (429). Next to more obviously physical tortures, sound

occupies the background of imprisonment, an experience that provides a backdrop to pain, but does not inflict pain itself.

Sound's inseparability from the terms of imprisonment by officials, Cusick argues, is a result of its innocuous appearance next to other techniques. Torture differs in its infliction: it involves only the detainee, a set of speakers (or headphones), and a (usually empty) cell; it leaves no marks on the body, nor any evidence consistent with torture; it lacks a direct torturer or obvious apparatus of torture; and pain is not inflicted in sessions, it is continuous in imprisonment. These differences, Cusick maintains, "[remove] it from the usual legal definitions of torture" ("Invisible" 8–9). Social attitudes regarding music (discussed above), as well as its seemingly less harmful means of infliction, mean that, in discussions of torture, sound is "the technique that falls off the list earliest": "[a]s a technique that appears less harmful of the techniques, it appears to be a rhetorical—not actual, but rhetorical— 'weak link,' one of the techniques that is most easily belittled or dismissed" (Cusick, "Invisible" 10). Even in discussions supporting the inclusion of the deprivation and coercive techniques in the definition of torture, sound is excluded. Sound's manner of infliction and difference from the other techniques resist its easy delineation as torture.

Unfortunately, the use of sound in "soft war" by U.S. Psychological Operations (PSYOP) supports its exclusion among the other, presumably more nefarious techniques. The physical experiences of sound become the key to its use as a persuasive tool (used alongside other techniques such as cultural propaganda) to induce compliance (or a similar result) without the use of violence. The 1993 FBI siege of the Branch Davidian Compound led by David Koresh in Waco, Texas, for example, blasted sound at a very high volume in an effort to force the sect members to surrender and leave the compound. The objective of this high pressure method of

extraction was to render them mentally unable to concentrate or organize a resistance, according to Alan A. Stone's report into the siege, *Report and Recommendations Concerning the Handling of Incidents Such as the Branch Davidian Standoff in Waco Texas*:

The pressure strategy as we now know it consisted of shutting off the compound's electricity, putting search lights on the compound all night, playing constant loud noise (including Tibetan prayer chants, the screaming sounds of rabbits being slaughtered, etc.), tightening the perimeter into a smaller and smaller circle in an overwhelming show of advancing armored force, and using CS gas. The constant stress overload is intended to lead to sleep-deprivation and psychological disorientation. In predisposed individuals the combination of physiological disruption and psychological stress can also lead to mood disturbances, transient hallucinations and paranoid ideation. If the constant noise exceeds 105 decibels, it can produce nerve deafness in children as well as in adults. Presumably, the tactical intent was to cause disruption and emotional chaos within the compound. The FBI hoped to break Koresh's hold over his followers. (14)

Officials similarly describe the effect of the acoustic bombardment in Fallujah in 2004, a siege so intense that the U.S. Marines nicknamed the city "LalaFallujah." Spokesperson Ben Abel stated that "it's not the music so much as the sound. It's like throwing a smoke bomb. The aim is to disorient and confuse the enemy to gain a tactical advantage" (qtd. in Johnson and Cloonan 187). In these uses in PSYOP, sound does its work without discussion of how it works; interrogators or analysts simply press play and wait for the results. Seemingly without technique or intent, these techniques (especially compared to other techniques) appear to exist as a background annoyance, as something meant to add to the anxiety of other techniques, but not significant in to its own force.

For many, evidence from detainees suggesting that music has the potential to evoke intense experiences of both pleasure and pain constitutes a leap in logic. Torture, by definition, constitutes overwhelming, unbearable force; it is not a case of *if* methods break a detainee but of *when*. But the commonplace function of music in society—everyone has enjoyed it or been annoyed by it at some point—situates the power within the listening faculties of the listeners. As a result, the ability of music to torture is viewed as the fault of an unsophisticated audience. If music is torture, by this logic, it is because of the weakness of the audience, not the method. For example, Bob Singleton’s response in an editorial section of the *LA Times* to news that the children’s song he produced, “Barney the Purple Dinosaur,” was used to torture:

Would it annoy them? Perhaps ... But could it ‘break’ the mental state of an adult? If so, that would say more about their mental state than about the music. It’s absolutely ludicrous. A song that was designed to make little children feel safe and loved was somehow going to threaten the mental state of adults and drive them to the emotional breaking point?

Singleton’s placement of the onus of suffering on the audience’s reception of the music distinguishes between listening audiences: those who can ‘handle’ the music, and those who cannot. Songs that annoy (or by implication, offend) do not torture; and if they do, the implication that they can ‘toughen up’ to relieve their own suffering mitigates the harm of sound. Singleton’s argument (and many like it) therefore presents a viable counterargument to the claim that music tortures through practices of listening.

A consequence of analyzing sound torture within cultural logic, therefore, is that it can also inadvertently validate claims (like Singleton’s) that sound is not torture *because* it is an effect of listening practices. Arguments stemming from the effects of culture are limiting in the

way that they can reduce the power of art to an analysis of audience's own ability to assess music. By this logic, if music torture occurs as a result of unsophisticated listening habits, then music cannot be torture because it can be overcome by cultivating new preferences. The power of music belongs to listeners who attribute it with value, in other words, making claims to its power relative according to practice. In their *Dialectic of Enlightenment*, Adorno and Horkheimer observe that capitalism mobilizes aesthetics in the production of particular cultural subjectivities, cultivating tastes and habits through engagement. If art is always bound up within dialectics of shared value and knowledge, and it is social, then how can it be connected to torture? By definition, torture is exceptional to ordinary experience; it exceeds rationality or intelligibility, presenting a void in human dialectics. As Sartre puts it, torture is Sisyphean in its absolute meaninglessness (xxxix). How can music, as art (arguably the most enlightened mode in both aesthetic and cultural production) be capable of inflicting such suffering? There is nothing productive in destitution or abjection, just destruction or the "unmaking" of human structures.

Despite often being disregarded as less cruel than other techniques, reports show that U.S. interrogation practices with sound have inflicted significant harm on victims. A 2005 Human Rights Watch report includes an email from an FBI agent described Guantánamo detainees being chained in a fetal position to the floor and subjected to extreme heat, cold, and extremely loud rap music, with no chair, food, or water ("Getting"). Left for 18-24 hours, detainees had often urinated or defecated on themselves; the agent witnessed a detainee who "was almost unconscious on the floor, with a pile of hair next to him" The detainee had apparently been "literally pulling his own hair out throughout the night" ("Getting" 73). Former interrogators report seeing detainees "chained hand and foot on the floor in the fetal position, beside a pile of his hair that he had pulled out over the course of the night" (Clarke, *Rendition* 5).

According to psychologists, victims of “interrogation methods” suffer “depression, excessive anxiety, post-traumatic stress disorder and sometimes full-blown psychosis,” suffering that can persist for years following the events and produce symptoms difficult to treat (Clark, *Rendition* 40). Studies have shown that victims subjected to psychological torture do not differ in degrees of suffering than those subjected to physical torture (McCoy 15).

Former interrogators also depict the use of sound in questioning as profoundly detrimental to detainees, and for this reason, useful in interrogations. Blasting music for long periods of time effectively “softens up” prisoners for interrogators, creating a state of compliance for questioners. An example illustrative of this is U.S. Army interrogator Sergeant Mark Hadsell’s explanation of why music is effective: “[t]hese people haven’t heard heavy metal music before. They can’t take it. If you play it for 24 hours, your brain and body functions start to slide, your train of thought slows down, and your will is broken. That’s when we come in to talk to them” (qtd. in Pieslak 86).³⁰ Similar to the detainees, Hadsell portrays the effects of sound in terms of torture, as “breaking” the prisoner. What is also significant about this oft-cited quote, is the limited culpability Hadsell attributes to interrogators. Torture occurs outside the purview and intent of interrogator; he may exploit what happens, but in staging interrogation as a process in time (“then we come in”) he removes himself from responsibility. The implication here is similar to Singleton’s admission above: the interrogator cannot be held responsible what happens when music is left blasting at “these people,” but he will exploit the effects. This official context of sound as a “detention condition” illuminates Hadsell’s depiction of events that remove sound from the question of torture in its depiction of it as a characteristic of a detention environment.

³⁰ In one example, Ethiopian-born Londoner Benyam Mohammad reported that during his detainment in a Moroccan prison, his torturers “cuffed [him] and put earphones on [his] head. They played hip-hop and rock music, very loud . . . they played Meatloaf and Aerosmith over and over. A couple of days later they did the same thing. Same music” (Khan 309).

By this logic, sound is not torture because it is not an extreme measure; instead, it is considered an expected aspect of imprisonment in a U.S. facility.

These challenges to theorizing sound in torture can be seen as summarizing the difficulty in understanding sound as torture by modern audiences who view music as pleasurable. Music (and sound, more generally) is too identifiable, too familiar, in everyday life for many people to consider it torture. And, by definition, torture destroys the ordinary: the pain and suffering inflicted during torture is profound, inflicting a state of unimaginable disorientation by stripping a prisoner of a normal sense of safety and security—the basis for identity—to induce compliance. Yet the use of music as a primary method of torture creates a fallacious identification in public opinion who connect their own familiarity of music with torture, of which they (typically) know little. Our modern, continual exposure to the world of sound, including those that we purposefully seek out—concerts, clubs with sound that is too loud—and those we do not—traffic, a crying child on an airplane—grants a critical public with seemingly appropriate faculties to judge whether sound can inflict the harm former detainees claim it does. Assessing harm through the illusion of control modern western societies exercise over sound, thus, may diminish public perception of the power of sound and its potential for harm. These social and cultural attitudes, moreover, also seem to influence legal and political policy that exclude sound from definitions of torture.

This section began by offering a critical overview of the relationship between sound and torture. It went on to suggest that the shift in the use in sound and its implications in torture have to do with the examination of sound in its transmission. It ended with an analysis of the specificity of sound and the individuated damage it causes. Although sound is not regarded as a torture device, its transmission as a means of communication has illuminated the power of

seemingly invisible and familiar aspects of the social, cultural, and material life to also restrict, dominate, and debilitate an individual. Collectively, these studies establish that capacity for sound to deprive a prisoner of control over their environment through the imposition of sound, and also to force them to listen to western content, constitutes sound as torture. This scholarship focussing on audience reception, as well as consideration of sound in terms of its manipulation of an acoustic environment, opens up room for further investigation of the role of the audience in relation to sound, a perspective I examine in the next section.

II. Surrounded in Sound: Techniques of Amplification and Dominance

The current legality of sound torture, as well as a view of sound as invisible and innocuous as proximal to pain, fuels claims that sound does not have the power to inflict pain and suffering. Scholars refute these views, however, contending the psychological and cultural aspects of sound's transmission as received by a listening audience provide resources for the torturer to wield the cultural resources of music as a weapon. "There is little in the cultural world that cannot be utilized as an instrument of torture," Grüny declares, in which the most highly prized demonstrations of human achievement also double as methods of torture (217). Acoustic torture can debilitate personhood through forced engagement with music to inflict pain and suffering to a degree that corresponds with, if not surpasses, that of physical torture. Evidence from first-person accounts clearly indicate sound is torture; however, current analyses are plagued by the ubiquity of sound in its experience, a perspective that even translates to the condition of the torture cell. Our general exposure to the sound world makes sound seem ordinary, and therefore tolerable, even in the noise of torture.

Sound is extraordinary, however, in its inexplicable experience of closeness. Michael Donnelly, an Irish survivor of the RUC torture in the 1970s describes the experience of white noise in torture as physical contact:

There was this noise. White noise is a fairly apt description. It seemed to come in like ‘fingers’. That is the only way I could describe it. Of course, it affected your ears and that, but the very strange thing was it seemed to go into your head and go out the other side. It seemed to go into your body and go out again. I’ve never heard anything like it. It was 20, 30, 40, 50, 60 different pitches. It was quite a weird sound. A wee bit like a helicopter taking off—whirring and hissing—but nothing really like that. That’s about as close a description I could get. (Deeney)

In his attempt to articulate his experience of sound, Donnelly personifies sound as appendages that penetrate both mind and body. According to Donnelly, sound is both an interior and exterior experience, and violating and invasive on both accounts.

In a similar depiction, Mamdouh Habib, an Egypt-born Australian citizen detained by U.S. forces in the 2000s, also narrates an experience of sound torture. Habib first endured torture when he was transported by U.S. agents to Egypt. “What surprised me is they used English music,” Habib recalled: “[t]hey put headphones on me, then put on the music very loud” (Piesner 89). After months of torture in Egypt, Habib was transported to detention facilities in Cuba, where U.S. forces applied the same methods: “[t]hey were trying to make me crazy,” he says. “They try to take your mind away from you.” To some extent, it worked: “[e]ven today, when I hear any loud noise, I get disturbed” (Peisner 89). Similar to the comparison of sound to “fingers,” Habib depicts sound as a profound violation of himself, and like Donnelly, finds it difficult to articulate the experience in concrete terms.

These examples of victims of sound torture describe a heightened experience of sound compared to all other senses; even though they are subjected to many other deprivation and coercive techniques, prisoners tend to remember sound as the most poignant and disturbing of their experiences. One way to view these experiences is through a consideration of an audience's experience of sound, specifically, the unique, immersive dominative effects of sound in an environment. Different from other senses, sound instantaneously fills a room, affecting those within it without reservation, appropriating listeners as both instruments and recipients. In part, sound's versatility is an effect of the mechanics of hearing: sound waves originating from a vibration of an object are received (heard) when the tiny follicles in the ear stimulated by the vibrations transform them into sound. Unimpeded by traditional barriers to perception, sound moves through vibrations in the world, reverberating in and through objects, coopting listeners as both recipients and instruments of sound, and both source and effect of amplification. Observing its embodying effects, Walter Ong observes that "sound incorporates"; it "pours into the hearer" (72). Without a natural defence to sound, hearers exposed to sound experience it as the embodiment of its materiality and feeling of its interiority, an intimate, intense experience described by Murray Schafer as "touching at a distance" (11).

Scholars attuned to the increased expressivity and immersive aspects of sound (especially in the new noisiness of modernity) have begun to conceptualize a theory of acoustic perception, one that focusses on examining how listening audiences become engaged in acoustic environments. The emergent interdisciplinary field of "sound studies" explores how audience interpretation influences the perception of sound in its vivid and visceral perception. Sound, of course, operates independently of humans; sound studies, Jonathan Sterne notes, takes as its focus the knowledge that is created as a consequence of human engagement with sound. This

mode of analysis “re-describes what sound does in the human world, and what humans do in the sonic world . . . it reaches across registers moments and space” to consider sound as a relation of power (Sterne 2). Whereas more attention has been paid to visuality as the sense connected to knowledge, a broader perspective has been adopted by Sterne who identifies sound’s multi-modal character as fundamental to an audience’s phenomenological perspective. An important aspect of sound to consider is of a listener’s perception of their immersion within a field of sound. Rather than listening as a passive receiver, one must “think across sounds, to consider sonic phenomena in relation to one another—as *types of sonic phenomena rather than as things-in-themselves*—whether they be music, voices, listening, media, buildings, performances, or another other path into sonic life” (Sterne 3). The condition of being surrounded in sound is, for those who are hearing able, a constant, constitutive condition, an acoustic absorption that shapes and reshapes a sense of self in the world. Although it is invisible, sound undeniably orients hearers within their space, and thus performs a vital subjective function.

The soundscape provides a framework for an analysis of sound as a dynamic, providing the tools to understand sound both in terms of its material characteristics (the physical act of hearing) as well its subjective interpretation by a listening audience. In focusing on its reception, the soundscape emphasizes the relationship between sound and space as the site of power, and offers ways through which to understand the listener’s perception of sound. Listeners embody the material acoustic waves of sound according to their own listening practices mediated through the social environment at the time of listening, a space described by Schafer as a “ceaseless” “unfolding” to emphasize the fact of ubiquity of hearing, of an effect of acting both *of* and *within* an acoustic environment (205). Different from sight that dissects or separates the clarity of objects, sound incorporates and permeates objects to create sound. As Ong states, the absence of

perceptual separation from one's acoustic environment positions the listener to experience themselves as the centre of sound: "[w]hen I hear, however, I gather sound simultaneously from every direction at once; I am at the center of my auditory world, which envelopes me, establishing me at a kind of core of sensation and existence . . . You can immerse yourself in hearing, in sound" (Ong 73). Performing the role of both instrument and listener gives a listener a sense of individualized control of space and sound. Yet the material conditions of such an immersion mitigate the façade of mastery, as evidenced when a listener loses control over their acoustic space.

The soundscape, moreover, offers an instructive paradigm through which to conceptualize the harm of sound even if it is regarded as a "condition of detention." Currently, sound is seen as interrogation (not torture) due to its functioning as a constant, ever present state of infliction. Yet first-person accounts (from detainees as well as interrogators) suggest that sound's effects are invasive through material and subjective forces that can inflict pain and suffering consistent with torture. A focus on the power of the acoustic environment, however, reconceptualises the "detention condition" not as the site of diminished power but as the means through which shaping, constitutive power takes place. Examining the places of sound torture illuminates a further dimension of the exploitation of detainees by captors during detention by identifying manipulation of the environment as a key element in imposing suffering on individuals. Focus on the relation between individual to environment, can provide for an analysis of sound as it operates among the other techniques to demonstrate how deprivation of other senses heighten the experience of sound so as to intensify its experience as it is amplified through the use of sound technology. Headphones and speakers structure experience as well as

increase decibels, which, in the environment of amplification in the torture cell, structure time and space through sound.

Torture is Loud: Amplifying Sound in the Soundscape

According to most sources, U.S. officials deliberately begin with the use of sound as a condition of detention from the moment of contact, incessantly bombarding prisoners with sound throughout the process of capturing, rendering, and, finally, detention. During the capture process, detainees are subjected to “black bagging,” a process that involves forcibly blindfolding, stripping, photographing, body searching, shackling, and placing either “headphones or earmuffs are used to deprive them of . . . auditory sensation” (Boon, Huq, Lovelace 490–491). By most accounts, sound seemed to be applied at the discretion of the interrogators, and changes in each instance (Pieslak 88). In one example, a former interrogator at a prison in Iraq described the way newly captured detainees were placed in sea containers (in desert heat, with temperatures up to 145°C), blindfolded, bound, forced to maintain stress positions, deprived of food and sleep, and also subjected to sound torture: interrogators “blared loud music, such as Ozzy or AC\DC, blew air horns, banged on the container, or shouted” (Sharrock). The ability to create sound instantly—by banging on the container or by blasting music—make it a useful tool to assert dominance in the initial stages of capture.

Whether prisoners were transported to countries known to torture (such as Morocco or Egypt), to “black sites” (illegal U.S. prisons in places such as in Thailand, Afghanistan, Morocco, Poland, and Romania), or to U.S. detention facilities (in Iraq, Afghanistan, or Cuba), “transfer procedure was fairly standardized in most cases,” according to a 2007 ICRC report, and involved the following:

The detainee would be made to wear a diaper and dressed in a tracksuit. Earphones would be placed over his ears, through which music would sometimes be played. He would be blindfolded with at least a cloth tied around the head and black goggles. In addition, some detainees alleged that cotton wool was also taped over their eyes prior to the blindfold and goggles being applied. (*Report 6*)

Once in detention, interrogators continue acoustic bombardment. In some cases, the torture is intermittent; in others, sound is inflicted for days and weeks. One detainee recalled his sound torture for an entire year: “music was played for twenty-four hours a day throughout the one-year period he believed he was held in Afghanistan” and in the last month, the sound changed to “wind, waves, and birds” (*ICRC Report 15*). What these examples demonstrate is that interrogators demonstrate a concerted effort to control the detainee’s acoustic environment from the moment of capture through to time of release.

Currently, the act of imposing silence or blasting music are viewed as part of the rendition and processing process, but not torture, and therefore without specific prohibition. Instead, the harm of sound is defined using more general terms, as imposing a state of “dread” (along with other techniques). A 2004 memo sent to Daniel Levin (DOJ) entitled “Background Paper on CIA’s Combined Use of Interrogation Techniques” contains instructions to interrogators to manipulate the environment of the detainee during the rendition process: “the rendition and reception process generally creates significant apprehension in the HVD [High-Value Detainee] because of the enormity and suddenness of the change in environment, the uncertainty of what will happen next, and the potential dread an HVD might have of U.S. custody” (“Background” 2). Sensory deprivation techniques are intended to induce a state of “capture-shock” to maintain the individual in a holding pattern in an unfamiliar context. Without

the resources to orient oneself (i.e., the senses), identity unravels and individuality becomes unhinged, making a more compliant subject. Blasting sound contributes to the disintegration of subjectivity through the “smoke-bomb” effect, similar to the description in PSYOP usage. Blasting sound disorients by blocking out outside noise to contribute to an unfamiliar and disorienting context.

In addition to its disorienting features, loud noise also immerses the prisoner in the experience of sound, an experience that is heightened by deprivation of other senses. Sound’s unique capacity to instantly encompass a room and its objects, combined with a physiological impossibility of escaping such an encroachment, dominates by virtue of its existence. This predominance of sound is intensified by the corresponding minimizing of the other techniques. Sound stands out in comparison to the other techniques as the predominant experience. Minimizing the other senses—light (hooding, or strobe lights); touch (by shackling or a small room); taste and smell (though dietary manipulation)—emphasizes this immersive capacity of sound. Light manipulation, if strobe lights are used, pulse along to the beat of sound (called “the disco” by interrogators), emphasizing the blanket of obscurity loud music casts over space and making clarity of perception difficult, if not impossible. In other words, while the disorienting experience of sound can be viewed purely in terms of deprivation—how it blocks out natural sounds in order to prevent detainees from determining their location—the other techniques accompanying it suggest that it also has the capacity to overwhelm space.

U.S. documentation shows that interrogators exploit the superior efficacy of sound in relation to the other techniques. Of the techniques listed in a 2003 declassified memorandum entitled “Interrogation and Counter-Resistance Policy,” sound (when used with light) is the only recognized sensory deprivation technique that officials demarcate specifically as having long

term effects. By contrast to “environmental manipulation,” defined as creating “mild discomfort,” the technique of “Yelling, Loud Music, and Light Control” is used to “to create fear, disorient detainee and prolong capture-shock” (“Interrogation” 7). Specifically, the use of sound is intended to “prolong” the detainee’s feelings of “apprehension,” “uncertainty,” and “dread,” adjectives that best approximate the report from detainees who were subjected to loud music for long periods of time without reprieve (“Interrogation” 2). The memorandum’s attribution of the effects to sound—used along with light—corresponds to the experiences of former detainees (who have been accused of lying) who claimed to experience a profound terror from its effects. Attributing sound with the power to cause extensive harm, therefore, connects sound with torture despite its deceptive status as a backdrop to torture in public discussion.³¹

Former detainees who underwent acoustic torture at the hands of U.S. officials report effects similar to the “dread” and “apprehension” listed in the memoranda. Most detainees report exposure to extremely loud sound for long periods of time as alienating, an identity-altering ordeal. Former Guantánamo detainee Donald Vance held at Camp Cropper (a U.S. holding facility in Iraq), describes the conditions of his imprisonment: he was “locked in an overcooled 9-foot-by-9-foot cell that had a speaker with a metal grate over it. Two large speakers stood in the hallway outside.” The music “was almost constant, mostly hard rock. There was a lot of *Nine Inch Nails*, including ‘March of the Pigs.’ I couldn’t tell you how many times I heard *Queen*’s ‘We Will Rock You,’” and went on to going on to describe its effects as fundamentally divisive: it “removes you from you. You can no longer formulate your own thoughts when you’re in an environment like that” (qtd. in Volcler 89). The separation of “you from you” described by Vance signifies a separation of the ability to attribute meaning to the self in the world that

³¹ In addition to sound, “isolation” and “sleep deprivation” were also attributed with the capacity to institute “capture-shock” (Bybee 3).

constitutes the production of subjectivity. Without the capacity to rationalize one's existence or place in the world (exemplified in the phenomenological state of 'me' and 'myself') individuals occupy a destitute condition with no capacity for engagement.

The two speakers outside of the tiny torture cell would overwhelm an individual's body through sheer vibration alone. As anyone who has been to a small club with blasting speakers can attest, sound can, quite literally, move a hearer. Functioning as both a receiver and instrument in the service of sound, hearers—by virtue of our physiology—vibrate along with even the slightest of sounds, such as a whisper or the electric lights. Intense, bass-driven music pushed through speakers amplify the sound, and also the body's reception to it, forcing the body to move in ways that the listener cannot control. Julien Henriques describes this as “sonic dominance,” in which the “sheer physical force, volume, weight, and mass” is “hard, extreme, and excessive,” imposes “a super saturation of sound”: “[t]here's no escape, no cut off, no choice but to be there . . . Sonic dominance is visceral stuff and guts . . . the bass line beats on your chest, vibrating the flesh, playing on the bone and resonating the genitals” (451–452). That close to sound, the listener becomes incorporated into the soundscape as an object through which sound moves, changing the reception of sound through their function as an embodied medium of sound.

One possible counterargument to the claim that sound, inflicted in the way described by former detainees, is torture, is the fact that many people seek out this environment for the surreal, and also hyperreal, experience sound dominance offers. Amped up places—small space with loud bass—offer a form of escape resulting from the unique promise of being in the present that music (particularly loud music) can sustain. Club culture pursues these experiences, commodifying the underground experience by suppressing the clarifying function of senses in

favour of promoting the feeling of being removal from reality, exemplified in the tagline, “when the bass drops, so do my problems.” Being both in and surrounded by sound, the embodiment of a sound environment interiorizes closeness as newness, as an experience of instantaneity. Sound that overwhelms bodily response can transcend the material environment that is experienced as being one with the music, an experience that occurs on both bodily and psychic levels of consciousness. The intense, and intentional, interiorization of the sound in the soundscape mesmerizes listeners into a state of oblivion, of forgetting, to allow the experience of sound to predominate and create the illusion of completion in the moment.

However, the use of extremely small cells, as well as confinement boxes, show that these effects of sound are intentionally inflicted in order to intensify suffering through increased immersion of sound. The documented use of confinement boxes in recent examples of torture intensify the experience of the interiorization of sound. A cell inside of a cell, a confinement box diminishes an individual’s world by amplifying the dividing experiences of sound to reinforce the prisoner’s complete lack of control of his body, time, and space. Prisoners report that a “confinement box” was used at the same time as different types of sound. Alleged high-value detainee Abu Zabaydeh describes his sound torture as the following:

I was then placed again in the tall box. While I was inside the box loud music was played again and somebody kept banging repeatedly on the box from the outside. I tried to sit down on the floor, but because of the small space the bucket with urine tipped over and spilt over me I was then taken out and again a towel was wrapped around my neck and I was smashed into the wall with the plywood covering and repeatedly slapped in the face by the same two interrogators as before. (*ICRC*, “Report” 30–31)

Amplifying acoustics by exponential degrees forces the prisoner to experience the sound of sound as it reverberates off the walls of the prison and then off the walls of the box, reverberating through a prisoner's body painfully cramped in a stress position. The smaller box further confines an individual, and the added noise of the banging on the side of the box, as well as the music playing in the background, produces an overwhelming vibration in the body.³²

“In the Dark of the Mind”: Sound Technology and Torture

In many cases, torturers use technology to amplify sound and its effects. Historically, armies would exploit amplification techniques of sound to intimidate the enemy. A classic example is the biblical battle of Jericho. In the story, Joshua marched around the walls of the biblical Jericho blaring trumpets, using the amplifying effects of sound to intimidate the inhabitants into believing his army was enormous. Strategists identify technology as a means of controlling environment as part of military philosophy. According to Lt. Col. Dan Kuehl, the trumpet was the key to Joshua's success: “Joshua's army used horns to strike fear into the hearts of the people of Jericho His men might not have been able to break down literal walls with their trumpets, but the noise eroded the enemy's courage Maybe those psychological walls were what really crumbled” (qtd. in Smith “Welcome to the Disco”). The trumpet evoked fear in an ancient audience, who recognized it as a call to war. In ancient Israel, the trumpet was

³² In *Sonic Warfare*, Steve Goodman examines the relation of vibrations to power to theorize the “ontology of vibrational force” (83). Maintaining that vibrations have acoustic as well as affective impact on listeners, Goodman contends that the experience of vibration exceeds that of either aesthetic tremors of pleasure experienced from music, or the physics of acoustics that forcibly vibrates an entity. In opposition to these traditional perspectives on sound, Goodman posits a “politics of frequency,” the notion that sound “exceeds and precedes the distinctions between subject and object, constituting a mesh of relations” (71). Vibration holds power not only because it is perceived subjectively or objectively but also because it creates an immersive ecology constituted by sound's affective dimension. Exploiting the experience of sound has become a mainstay of contemporary warfare to create feelings of discomfort in listeners, and Goodman locates much of his analysis in explaining how “bad vibes” create and instill fear, terror, and dread in audiences (76).

primarily a wartime instrument used by armies to signal cadence to themselves and to intimidate enemies over long distances. If Canaanites lived in the walled city of Jericho at this time, the sharp sound of the trumpet combined with the sound of an army, amplified by the walls and also by Jericho's position in a valley, would undoubtedly signal imminent invasion as the literal embodiment of an "army outside the gates."

The mobilization of the medium of transmission as the source of fear and disorientation of ancient audiences suggests a strategic choice of technology by PSYOP. As it is discussed in manuals, the use of sound torture is depicted as discretionary; interrogators choose methods at the time of questioning to counteract resistant detainees. To understand how technology amplifies the power of sound, sound studies extends the work by media and communication scholars, identifying the ways in which media technology structures the transmission to an audience. Underlying the modern use of sound technology is the desire to intensify the experience of sound as immersive, to bring the receiver and sound closer by mediating acoustic experience to block external sound. In intensifying the experience of isolation, sound technology heightens the perception of sound as more immediate to an audience (Bull 529). Modern technology, such as speakers, iPods, and portable music intensifies the incorporating and interiorizing effects of sound by replacing the detainee's world with the constructed time and space of the sound media. Frances Dyson describes this phenomenon as the modern condition of having the ability to surround one's self in sound:

sound is the immersive medium par excellence. Three dimensional, interactive and synesthetic, perceived in the here and now of embodied space, sound returns to the listener the very same quality that media mediates: that feeling of being here and now, of experiencing oneself as engulfed, enveloped, enmeshed, in short, immersed in environment. Sound surrounds. (4)

Sound technology amplifies the intensity of its experience, situating listeners as surrounded in sound and its immediacy in ways that can often exceed the limits of everyday life.

Examples show that interrogators exploit the immersive aspects of sound technology in their use of headphones and speakers. In almost all examples, from the very point of capture, interrogators either plug the detainees' ears to block sound or force headphones in ears and speakers in cells to both block sound and re-establish the soundworld of the detainee. In his account, Binyam Mohammed al Habashi describes his acoustic environment in Morocco and in Cuba as the following:

[t]hen they cuffed me and put earphones on my head. They played hip-hop and rock music, very loud. I remember they played Meatloaf and Aerosmith over and over. I hated that. They also played Tupac's "All Eyes Only" all night and all day. A couple of days later they did the same thing. Same music. When I became a Muslim, I had tried to get away from this. I'd canceled all the music out of my head and now they were forcing it back again. I could not take the headphones off as I was cuffed. I had to sleep with the music on and even pray with it. For eighteen months, there was not one night when I could sleep well. Sometimes I would go 48 hours without sleep. At night, they would bang the metal doors, bang the flap on the door, or just come right in. (qtd. in Smith, "Diary")

The closeness of sound made possible by the headphones and speakers impose a continuous sonic environment that al Habashi is unable to tune out, even when motivated by a religious desire to do so. Implanted in the ears of detainees, headphones allow interrogators to impose sound on the ears of the hearer in ways that are impossible without these media technologies.

Detainees describe the loss of control of their sonic environments, as well as the intense amplification, as an experience of extreme disorientation. Ruhai Ahmed recalls his experiences after having music blasted into cell his for weeks: “[i]t makes you feel like you’re going mad. You lose the plot and it’s very scary to think that you might go crazy because of all the music, because of the loud noise, and because after a while you don’t hear the lyrics at all, all you hear is heavy banging” (qtd. in Volcler 88). This intensely disembodied, disorientating acoustic environment contributes to what Ahmed describes as apprehension, the loss of one’s mind—one’s personality and identity—are all a result of such imposition of sound, which removes the possibility for the detainee to stake any sort of claim to existence in the world.

The term “banging” that appears in many the first-person accounts of torture is significant in the fact that it is both the expression of a sound and of an experience. A single bang presents as an immediate and sudden interruption of time and space. As a violent intrusion, a bang can register as both the creation of an event (“the big bang”) and also the destruction, or end of an event (“this is the way the world ends”). In both cases, a bang signals warning or alarm of a change in circumstances that has, or is about to, occur. In the same vein, “banging” refers to continuous noise, extending the trauma and violence into a prolapsed state of being; individuals are forced to inhabit space and time structured through means they cannot control. The flexibility of the medium of sound creates this kind of apprehension because of its transmission, Don Ihde observes: “[s]ounds are frequently thought of as anticipatory clues for ultimate visual

fulfillments” (27). Existing both in apprehension (of alarm) and expectation (of it stopping), individuals are forced to inhabit continuous sound that affectively, physiologically, materially, and perceptively invades and entraps individuals in a perceptual cycle of hearing without understanding. fulfillment. Friedrich Kittler describes this “unimaginable closeness of sound technology and self-awareness” as “a simulacrum of feedback loop relaying sender and receiver” (37). As a kind of perverse metronome, the repetition of the music relinquishes human time from the detainee, resynching the body’s natural rhythms according to the artificial ones of the music, and which are also, therefore, out of control of the detainee.

In the way that it intensifies ordinary minutiae of daily life, transforming it into overwhelming experience, sound technology can be seen as the making real or concretizing what is otherwise ineffable or unintelligible. Sound is prominent in normal life. Our ability to hear before we see makes sound the medium of alarm or panic, a meaning of sound bound up in the etymology of these terms.³³ Existence in a soundscape can be seen in this way, as functioning in anticipation of an interruption of daily life—a phone call, an air raid siren, or a knock on the door. A context in which sound is primary to experience can intensify this state of being, enveloping individuals into a permanent state of listening that can be terrifying, as one waits for the next event to happen without warning. Marshall McLuhan describes this state of expectancy, stating that an “acoustic space” can trap the listener in a space that is “boundless, directionless, horizonless, in the dark of the mind, in the world of emotion, by primordial intuition, terror” (48). A constant state of sound and apprehension—alarm without event—can create the circumstances that provoke imagination to become the means through which the individual

³³ The etymology of the adjective “panic” is related to, or of, the Greek god Pan (πανικός) who was known to emit random shrieks of terror from the wilderness he inhabited, and so “sounds heard or fears experienced in such places came to be attributed to him” (OED).

apprehends the world. Sound creates a situation of living in the moment, therefore, one in which constant sound presents a state of overwhelming disorientation and uncertainty.

The repeated descriptions from detainees stating that music forced first-hand experiences of their own mortality may be explained as a consequence of this cognitive or imaginative reaction to the embodiment of a constant state of alarm and accompanying terror. In the accounts that began this chapter, the former Irish prisoners described hallucinating their death as one reaction to such a state of sound. Perhaps living in the moment, embodying a disembodied state of apprehension, of a constant experience of alarm with no event, means that prisoners, left to their own devices, produce their own worst terror. Former Irish detainees of British torture report terrifying hallucinations during prolonged exposure to white noise:

[a] further factor which played particularly on the mind was the constant presence of a high-pitched hissing sound which seemed to have been “piped” into the place where we were. After a period [*sic*]this really played on the mind and led eventually to a kind of illusion where I thought I heard someone singing familiar tunes. At times I sang along with them. I remember in particular singing “Henry Joy.” Outside of this noise nothing else could be heard, except the groans and squeals of other men, I presume, who were undergoing some sort of physical anguish or mortal torture. (McGuffin)

Confined within a state of sound with no means of controlling it or even knowing when it will end places an individual in almost a purgatorial state of being trapped in one’s own head and of terror that is constructed by one’s imagination.

Sound torture imposes a sense of terror that seems to persist even when the music is turned off. Detainees state that their inability to either prepare or adapt to its constant onslaught distinguishes contemporary torture techniques as much worse than their so-called “physical”

counterparts. As Ahmed states: “I can bear being beaten up, it’s not a problem. Once you accept that you’re going into the interrogation room and be beaten up, it’s fine. You can prepare yourself mentally. But when you’re being psychologically tortured, you can’t” (qtd. in Volcler 88). It appears that the imaginative terror that the experience of intensified sound compels is not only impossible to endure, but also impossible to resist. From first hand-accounts, prisoners show no examples of developing the faculties to adapt to this sensory environment, even after extreme exposures. If music induces a state of futility, therefore, it is not only in the sense of the ideological values it communicates (as conceptions of cultural torture suggest) but also in the sense of having one’s environment dominated to a point beyond comprehension.

Recent evidence from U.S. treatment of prisoners bears out claims that acoustic torture that prioritizes sound through deprivation and technological amplification overwhelms all faculties of detainees. A Physicians for Human Rights (PHR) report recorded that physicians observed that these conditions imposed a constant state of stress on detainees, who suffered as a result from garbled conversation, disorientation, hallucination, irritability, anger, delusions, and sometimes paranoia (3). A similar report describes sound as contributing to a deteriorated sense of well-being resulting in incidents of self-inflicted violence: in 2003 there were 350 acts of self-harm in Guantánamo, including 120 “hanging gestures”; “for at least 50 of those so far as we are aware their behaviour is so disturbed as to show that they are no longer capable of rational thought or behaviour . . . It is like something that only a small child or an animal might behave like” (Iqbal, Rasul, and Ahmed 110).

The focus on sound as it is received by a listening audience, a soundscape, provides a way to theorize the complexity of contemporary sound torture by exposing the potential for violence in the affective dimension of the experience of sound as it is modulated through the

acoustic environment. While they may not show evidence of harm (in the way that more “conventional” tactics may), experiences of pain and suffering that originate from the victim—self-inflicted pain—can be more debilitating than that which can be inflicted by an outside source. The U.S. 1963 *KUBARK Counterintelligence Manual* notes the efficacy of creating the circumstances for self-inflicted pain in interrogations: “It has been plausibly suggested that, whereas pain inflicted on a person from outside himself may actually focus or intensify his will to resist, his resistance is likelier to be sapped by pain which he seems to inflict on himself” (88). In its power as an affective experience, sound epitomizes the unseen effects of the force of self-inflicted harm as an experience that often goes unrecognized as torture.

Understanding the potential for sound to torture therefore contributes to the continuing work to broaden the definition of torture by calling attention to the invisibility of the worst effects of torture. Torture is differentiated from violence by the way that it overwhelms agency in ways that contribute to the experience of loss of personal identity. Torture works by using one’s responses to external stimuli against oneself to produce experiences of loss of control of one’s own body, perceptions, response, or affect. Such experiences of loss, terror, and dread, are interpreted by individuals in intimate, personalized terms, what I have discussed above as the “self-inflicted” aspects of torture. The insatiable activity of a prisoner’s mind is unable to combat the incessant demand arising from the action the prisoner is forced to perform, a condition that forces victims to become “an active participant in his own abuse” in which the prisoner is forced to “serve as the immediate source of his own suffering” as he pushes his body “against itself” (Sussman 22–23). Torturers force their victims to occupy spaces and positions that strip the internal resources an individual would normally draw on in order to overcome conflict or overwhelming conditions.

In this section I have argued that sound can structure subjectivity in ways that induce states of terror and helplessness that amount to torture. Reconceptualizing sound as “touching at a distance” suggests that “no touch” techniques do not imply the automatic categorization of techniques as “not torture” (Schafer 11). Sound, in its overwhelming application and modulation through the acoustic environment, strips the individual of the resources to endure one’s environment, thus placing the detainee in an overwhelming environment and imposes terror and dread through a constant state of alarm and immediacy. These self-inflicted techniques can therefore have the effect of disorienting or breaking an individual by eliminating not only their ability to choose where to situate them self in a space but their ability to choose their own ways of thinking, of perceiving, of judging, or of interpreting that space within an existing phenomenological state. Eliminating the possibility for intersubjectivity, torture forces the victim into the role of object, something to be moved but with no significance.

III. Conclusion: Rhetorical Audiences and Torture

This chapter has argued that examining sound from the point of view of an audience’s experience in an acoustic environment can contribute to an understanding of pain and suffering inflicted in torture. Beginning with the critical literature that codifies sound’s influence on human beings as not forceful enough to constitute torture, the chapter has offered a critical assessment of the persuasive force of sound’s process of subjective embodiment as it is perceived by a listening audience. The goal of this assessment has been to provoke a renewed thinking about the criteria in defining torture within which other approaches may be possible. A view of categorization as an opportunity to expand rather than limit definitions can extend current analysis in a reconsideration of the harm these otherwise “no touch” techniques can

inflict. The importance this chapter has attributed to reception of sound indicates a need for further analysis of the influence of the ways in which audience expectations influence the development of contemporary techniques of torture. The critical and theoretical work developed by rhetoricians, communication theorists, and others working on the persuasive aspects of the senses has much to offer the ongoing debate about the use of sound as a contemporary torture method. In this section, I will offer some ways in which the discipline of rhetoric can offer the tools for such an extended analysis.

Rhetoric is relevant to questions about methods of torture insofar as the rhetorical tradition offers instructive interpretive resources for understanding the role of audience in the construction of messages. In many fields, an audience refers to a concrete entity, the ‘flesh and blood’ listeners exposed to a message. Rhetoricians, on the other hand, view audiences in their particularity, recognizing that the most persuasive communication is situated within cultural and historical contexts and that messages act—they do things. In this light, audiences frame, or re-contextualize, the message according to their own viewpoint; in Kenneth Burke’s words, “[w]e not only interpret the character of events . . . we also interpret our interpretations” (*Permanence* 6). Rhetoric, then, viewed as a set of tools through which to analyze audience interpretation of messages, offers a means of disrupting conventional assumptions about methods of torture that are applied, rather than received, and elevates sound as a site of political and experiential contestation.

Rhetoric’s preoccupation with audience originates in an oratorical tradition that identified the audience as a crucial factor in discovering the effective means of persuasion. Ancient orators viewed the audience as a resource of the speaker. Aristotle’s instruction to speakers to appeal to the beliefs, attitudes, and values of an audience to compel them to act in favour of the aims of the

speaker sees the audience in their particularity as a means of persuasion to advance the speaker's objectives, discussing "the various types of human character in relation to the emotions and moral states" (*Rhet.* 1395a). Despite his initial prioritizing of rational appeals (through the enthymeme) as central to persuasion, Aristotle ultimately concedes that appeals to emotions and character are more effective. In offering a pragmatic view of persuasion, in which knowing one's audience and studying their specificity, provided the tools for persuasion. Speakers who appealed to this common sense or stereotypes of the character of an audience would have better success in meeting objectives than those who appealed only to reason.

Aristotle's focus on audience as dynamic, engaged citizens strongly influenced subsequent research on audience seen as embodying the motivations of the speaker and the interpretations of the receiver. Rhetoricians develop methods of audience analysis to distinguish between Aristotle's audience, and another, fictionalized audience, the audience who holds the values the speaker wants their audience to hold. An audience who has been invented by an author is conceived in different ways, using messages in different ways to compel the audience not only to believe something but to exemplify it, to embody the characteristics, values, beliefs, thoughts and feelings articulated by the rhetor's message. Various articulated in rhetorical criticism, the basic idea that messages construct audiences suggests that the audience may adapt a set of attitudes, interests, values, conditions of knowledge that were not previously held as a result of the persuasive power of the speaker. An audience may be compelled or invoked to adopt a perspective the speaker entrenches in the message, not one that is already believed by the audience. An understanding of the power of the contextual aspects of discourse engender the distinction between the audience addressed, and the abstract audience. If discourse can be

understood as a means of social action—structured by environment—then audiences can also be understood as shaped as an effect of these discourses.³⁴

Sound's particular power lies in this invisibility, in its commonplaceness that (too often) go unrecognized. As an inherent part of everyday reality for hearing able people, sound is a compelling, and uniquely powerful, communicative act through which audiences constitute themselves through social practice—that is, immersion in sound. In *Ambient Rhetoric*, Thomas Rickert theorizes acoustic engagement as “attunement,” an act of sensation that is “ambient” in the sense that it is frequently unconscious; soundscapes are interactive technologies in which our own bodies, as well as objects in the world, are both objects of sound, and which also perceive the sound as part of it. Through a Heideggerian lens, Rickert views the soundscape in terms of the force its normalizing features play in the shaping of identity, theorizing the soundscape (using the classical definition of *ethos*) as a state of “dwelling,” “way of life conditioned by things in the world,” attended to by the distribution of agency in an immediate field of things, spaces, emotions, and information (222). A state of sound is “ambient dwelling”: it involves feeling, intuition, decision-making, and is bound up in the richness of one's disposition in the world, and is therefore “inseparable from the person in the environment that gives rise to the ambience” (8). Any condition of being (including that of detention), therefore, can also be recognized as a condition of embodiment, of immersion, one which accounts for the material environment, including the technological.

Given the discussion of torture as politically and socially motivated exploitation of the audience's affective dimension, it is important to point out that a general ethics of argumentation

³⁴ Theories of audience reception can be found in, for example, Edwin Black's “The Second Persona”; Maurice Charland's “Constitutive Rhetoric”; Mikhail Bakhtin's *The Dialogic Imagination*; and Douglas Park's “The Meanings of ‘Audience’”

in the rhetorical tradition would object to referring to a detainee as an audience. Appealing to an audience attaches an intrinsic rationality and value to them; it labels them as equal to the sender, and implicitly acknowledges their autonomy. Torture, it goes without saying, is anathema to rationality, equality or democracy, and, as direct force, precludes the consensus necessary for intersubjective action. Burke instructively delineates these opposing poles of significance as the difference between “action” and “motion,” in which one who acts according to their own motivations can issue change in the social dimension, while and one who is moved, cannot (*Grammar* 136). Symbolic action is therefore “in the field of the moral”; motion, like a billiard ball, “is neither moral nor immoral, for it cannot act, it can only move, or be moved” (*Grammar* 136). An ethics of discourse supports this understanding of an audience, in which force posits a direct contrast to reasoned argument; when the audience’s capacity for value and reason are not present, so are the premises for rhetoric (Perelman and Olbrechts-Tyteca 55). Others are not seen as objects to be moved, but as free-thinking, autonomous agents.

One way to interpret the potential objection of designating tortured persons as audience members is to consider the recipient as a discursive subject, as self-made and self-making through acoustic engagement. Michel Foucault’s revision of Jeremy Bentham’s model prison, the panopticon, suggests a way of viewing the senses as a means for social control. Foucault presents the panopticon as a metaphor for the internalization of self-surveillance and policing others that characterize rhetorical forms of power. Internalization of norms perceived as reality—such as those presented as space and time—form the site for the construction of self-knowledge. Although visuality is the dominant trope related to knowledge acquisition, the panopticon can also be considered a prison of sound. We can also see this in the sense of sound, in which imprisonment constitutes a mechanics of listening: practices of sound are controlled through

appropriate sounds through self and social regulation, but also, more importantly, the process of internalizing the characteristics of these modes of regulation become important. We not only internalize sound as message but also the way in which it is produced.

In the way that it provides a model for theorizing the relationship between social power and subjectivity, rhetoric provides tools for recognizing torture. The instructive value of rhetoric in this has been acknowledged. Other research on contemporary torture has also placed the audience's experience of torture as a primary object of analysis. One analysis of U.S. law reports an unprecedented reference to the identity of the tortured person in the contemporary definition of psychological torture. The definition in question is the 1994 U.S. ratification of international law on psychological torture as "the administration or application . . . of mind altering substances or other procedures calculated to disrupt the senses or the personality (U.S.C. 18 § 2340).

Michael Vicaro contends that the emergence of the term "personality" denotes a shift in identifying the victim of torture not as a passive victim but as an individual whose features of identity engender the techniques and how they are used. "Preventative detention and 'no-touch' torture," Vicaro argues, "have thus emerged as tactical responses to the demands of prosecuting a war against individuals in this uniquely personal conflict" (416). Use of the term "personality" to define the audience explicitly identifies techniques as designed to be inflicted in particular circumstances to exploit the individual subjectivities of their prisoners.

Vicaro's suggestion that the particularity of the audience informs definitions of torture aims to untether torture from rigid classifications as either "physical" or "psychological," "interior" or "exterior." Seeking to extend analysis past the body/mind duality perpetuated in contemporary torture studies, Vicaro exposes the reductive and often positivist terms that impedes current studies in torture. Torture transcends these categories: it is both "self-inflicted"

and “inflicted”; it affects the “interior” and “exterior” of a “self”; it is “physical” and “psychological,” “mind” and body.” A broader understanding of the “personhood” that torture is said to “destroy” is needed in order to better articulate the potential harm of torture, Vicaro asserts:

The rhetoric of personhood developed within the liberal philosophical tradition is thus poorly suited to address and effectively prohibit contemporary torture techniques. To the extent that legal discourse is relied upon to provide meaningful protections against state violence, a more robustly rhetorical vocabulary of selfhood and experience is urgently needed. (418)

Vicaro’s contention that definitions of torture employ particular theories of subjectivity imply alternative means for coercive interpellation: overwhelming social forces often falls under the radar; rhetoric exposes these forces, revealing the force of their exercise.

The importance attributed to the audience in current scholarship indicates a need for further analysis of the influence of audience in the development of contemporary techniques of torture. Rhetorical analysis of the persuasive aspects employed in the application of music and sound demonstrates a more concentrated approach to sound than the disorientating and intimidation aspects already established in criticism. Concerned with sound in its transmission, a rhetoricity of sound involves examining the means of persuasion implicated in the demonstration of sound, one that can be applied to understand how we torture. If the best defence against torture is a community who will not stand for it, then entering torture into the public discussion provides a model for a dialogue of resistance against such abuses.

CHAPTER FOUR

“Laughter in the Ocean of Tears”: Rhetorical Irony and Torture in *Guantánamo Diary*

In his record of his ordeal of abuse and torture by the Americans and Jordanians, Mohamedou Ould Slahi recalls feeling reassured that his extraordinary rendition from Jordan (via processing in Bagram, Afghanistan) to Guantánamo Bay Detention facility in Cuba meant the end of his torture. American doctors paid special attention to his care and well-being, treating his malnourished and battered body physically weakened from months of brutal torture at the hands of the Jordanians. American interrogators, moreover, displayed disgust at his treatment in Jordan. “Those countries don’t respect human rights,” he recalls one interrogator stating. “They even torture people” (153). At these comments, Slahi, states, “I was comforted”; if the interrogator “criticized cruel interrogation methods, it means that the Americans wouldn’t do something like that. Yes, they were not exactly following the law in Bagram, but that was in Afghanistan, and now we are in a U.S. controlled territory” (153).

Slahi’s expectation of treatment by the Americans forms the central conflict of his first-person narrative that details his interrogation by the U.S. in the detention facilities at the Guantánamo Bay Naval Base in Cuba. Classified as a “high value detainee,” Slahi was subjected to the U.S. “Special Interrogation” plan, an excruciatingly rigorous program designed for uncooperative detainees before his release in October 2016. During this period, Slahi endured months of extreme isolation, 24 hour mental, physical, and sexual abuse, and also a mock rendition and kidnapping. In this narrative, Slahi details much of this abuse alongside his apt self-awareness of the inherent ironies of his torture, including his expressing his own vital humanity in the face of his dehumanization by his captors. Addressing both the terms of his own pain and suffering as well as his own renegotiation of humanness in the face of his brutal torture,

the narrative lends crucial, first-person insight into the brutal paradoxes of the contemporary phenomenon of torture.

The fact that he is tortured by the U.S. intensifies the conflict between object and human being, leading the narrator to adopt dual narrative strategies. On one hand, the speaker seems to assert a strong sense of identity and individuality throughout the narrative. The persona projected by the narrator demonstrates fortitude and endurance through his ordeal, yet without anger at his situation or his captors. In the worst parts of his torture (which he does not describe), he maintains hope for himself and others around him by injecting humour and laughter into his situation, and he shows sympathy for others, including his torturers. On the other hand, a more in-depth analysis of the narration suggests that his own laughter, and that of his torturers directed at him, serve as the means through which the speaker communicates his abject, tortured state. Employing laughter and humour ironically, the narrator derides the irrationality of his captors and of the excesses of a system that allows such dehumanization. In a narrative that appears to avoid actual descriptions of torture, Slahi's observations offer unique insight into the particular character of dehumanizing practices employed by torturers in detention facilities.

In this chapter, I examine the narrative strategy in Slahi's *Guantánamo Diary* as a representation of his experience of torture in Jordan, Afghanistan, and Cuba. Although the narrator does not explicitly describe his torture—whether these details are omitted by the author or redacted by censors—the rhetorical modes of laughter and irony, I argue, signify his intense, individualized experience of pain and suffering. Using the details of his detention, the author constructs torture as the incompatibility of his personal values with the treatment he is forced to endure, a narrative strategy, I will show, that also represents the nuances of torture's contemporary practice. The predominance of irony as the primary rhetorical mode of telling

provides an introspective look at the fundamental contradiction the experience of pain and suffering of torture inflicts, in which a human being becomes subjected to inhuman treatment. Such contrasts in the text, moreover, point to the broader inconsistencies of his circumstances of torture; as a political prisoner, the narrator provides insight into the institutions that allow such atrocities to occur under the guise of legality and protection. In our current state of media inundation of torture, Slahi's text, which avoids direct discussion of torture, presents a poignant reminder of the challenges in representing torture.³⁵

I. Humiliation and Laughter

When Mohamedou Ould Slahi was unloaded from the plane in Cuba in 2002 at the U.S. Guantánamo Bay Detention Facility after his transport from Jordan, he and the other prisoners were kept sitting in the sun waiting to be processed as incoming detainees. In his recollection of the scene around him, he describes the plight of a prisoner next to him, an

old Afghani who was crying and pleading for help He was speaking in Arabic, 'Sir, how could you do this to me? Please, relieve my pain, Gentlemen!' But nobody even bothered to check on him. The fellow was sick back in Bagram. I saw him in the cell next to ours; he was vomiting all the time. I felt so bad for him. At the same time, I laughed. Can you believe it, I stupidly laughed! Not at him; I laughed at the situation. First he addressed them in Arabic, which no guards understood. Second, he called them Gentlemen, which they certainly were not. (137)

³⁵ A note on the text: since Slahi's first person narrative is technically a declassified document, many of the names, dates, and details of his torture have been redacted in the text (struck out with black bars). I have noted it in my citations as the following: [redacted].

Slahi's laugh was not at the older man's pain, but at the absurdity of the situation. No matter what terms the older man used, he would not receive help from his captors. In this prison, the expectations that one would be treated with respect and dignity is, as Slahi points out, laughable.

Slahi relies on his audience to understand why he laughs, but he does not compel them to join in. Humour is generally perceived when a speaker delivers an outcome that differs from their expectations. The delivery of a joke, for example, relies on its 'punchline' that, by surprising an audience, makes them laugh. Audiences laugh when the events presented differ from their expectations. Humour first appeals to audience on the basis of adherence to a set of conventions, and then violates them in some unexpected way, a structure Cicero outlines in *On the Orator*: "[t]he most common kind of joke is that in which we expect one thing and another is said; here our own disappointed expectation makes us laugh" (chapt. 63). Humour is successful if the audience recognizes a difference between expectation and reality.

In the above scene, humour functions as a marker of violation of accepted norms shared by an audience, not from any inherent amusement. Laughter, as a symbol of humour, also performs a rhetorical function as a signifier of an audience's recognition of a situation as somehow different from what they expected. In the example above, for example, the narrator's laughter indicates not that he is amused but that he finds the fact that his fellow prisoner is refused the dignity afforded to human beings as a profoundly intolerable situation, and is in direct contradiction with his own views. His laughter draws attention to the guard's actions as inherently contradictory to his own worldview and therefore functions as a site of questioning the reasons why such a contradiction exists. How can human beings ignore the humanity of others? Under what authority does the guard presume to assert his own humanity as above that of the prisoner? And, perhaps most importantly, why does the worldview of the narrator differ from

that of the guard, so much so that the narrator views this as a contravention, but that the guard does not?

If an audience identifies the laughter as an inappropriate response to suffering, they recognize his intention of humour as a marker of violation. In deploying laughter as a rhetorical marker, the speaker compels the audience to engage in a critical questioning of his text to question the narrator's laughter, and to identify the violation of convention to which he points. In her 1976 essay, "The Laugh of the Medusa," Hélène Cixous evokes a similar function for laughter. By figuring the ancient monster Medusa—a contemporary symbol of horror and anger—as displaying opposite abilities and sensibilities than those attributed to her by Freud, Cixous evokes laughter—the symbolic action opposite of the monster—to place the authority of meaning under suspicion. For Cixous, the violation communicated in the symbolic action of laughter establishes it as tool for disrupting central narratives taken for granted as social reality, and, in revealing homogeneity and prejudices, exposes this authority as tenuous. As a marker of contention and complexity, the act of laughing is always (already) a call to action for others to also laugh, to engage in critical questioning of reality as a series of contradictory episodes rather than a seamless application of power. Laughing is therefore an act of power because it injects meaning into formerly static symbols, just as Cixous has attributed joy to a Monster. Employed as a narrative device to demarcate contradiction, laughter thus invites an audience to question the conditions that occasioned it.

Similar to Cixous, the narrator's injection of humour calls attention to a critical juncture for audiences to question the uniformity of the text. But the laughter also comes to represent his actual torture—the narrator rarely discusses his torture; if he does, he does not describe his ordeal of pain and suffering he must have experienced. Instead, humour holds a more prominent

place in the narrative: the narrator describes the events occurring at the time of his torture, which almost always include a funny episode. For example, following his severe torture by the Jordanians in 2001, the narrator describes receiving food from his guard:

[w]hen the cook showed up for my plate, he saw that I hardly ate anything. ‘Is that all?’ As much as I liked the food, my throat conspired against me. The depression and fear were just too much. ‘Yes, thanks.’ ‘Well, if you say so!’ The cook quickly collected my plate and off he rolled. In jail, it’s not like at home; in jail if you don’t eat, it’s OK. But at home your parents and your wife do their best to persuade you. ‘Honey, just eat a little more. Or should I prepare you something else? Please, just do it for my sake. Why don’t you tell me what you’d like to eat? In both cases, though you more than likely won’t eat more—in jail because they scare the hell out of you, and at home because you’re spoiled. It’s the same way when you feel sick. I remember a very funny case when I was really hurting; it was either a headache or a stomach ache. ‘I’m in so much pain! Can you please give me some medication?’ ‘Fuck you, crybaby,’ the guard said. I burst into laughter because I remembered how my family would be overreacting if they knew I was sick. (136–137)

The narrator’s association of food with family impels the torture victim to experience a flashback to a time when food, and the eating of it, was an indication of comfort and security. Laughing exposes the extreme polarity of his torture with the care his family has shown him to represent the profound alienation torture inflicts. Elaine Scarry metaphorizes the experience of extreme pain and suffering of torture as a “split” to demonstrate the profound self-separation torture forces, in which the individual perceives their identity as divided “between a self and body, between a ‘me’ and ‘my body’” (49). Suffering, the knowledge that one has pain, is the crisis of

personhood this split brings about. Viewed in terms of a “split” of pain and suffering, the author’s self-described contradictory state is illustrative of his torture. Laughter—laughter signifying personhood-destroying pain and suffering—calls attention to the shattering pain and suffering in torture in terms that an audience can understand.

The narrator’s terrified laugh also functions as a coping mechanism, as a way to maintain his humanity in the face of his dehumanizing treatment. During a break from his torture by the Jordanians, for example, the narrator hears some noises outside his cell and engages the guard outside his cell door in conversation to ask about them:

[a]re you guys training so late? I asked one of the guards. Before he could say a word, another guy appeared, dressed in a Ninja-like suit that covered him from head to toe.

The guard looked at him and turned to me, smiling. ‘Do you know this guy?’ he asked. I forced an official smile. ‘No.’ The new guy took his mask off, and he looked like the devil himself. Out of fear, my smile turned to laughter. ‘Oh, yes! We know each other,’ I said. “[redacted] asks if you guys are training now?’ my guard wryly asked the Ninja. ‘Yes! Do you want to train with us? We have many detainees enjoying PT,” he said sardonically. I knew right away that meant torture. My laughter faded into a smile, and my smiled into fixed lips over my teeth. I didn’t want to reveal my disappointment, fear, and confusion. (385)

Here, laughter marks the shift from the narrator’s attempt at benign normality—ordinary conversation—to violence in order to show the violence that underscores the narrator’s existence as a prisoner. The inequality in the relation between tortured person and torturer circumscribe all discourse, constituting the speaker as object in all cases: the object of torture, and here, the object of humour.

The potential for laughter and humour to shift to cruelty is a result of the fact that laughter is always directed at someone, or something. The objectifying feature of laughter—what Plato viewed as potentially harmful malice—in tandem with its exclusionary tendencies can produce an unequal balance of power, where the individual who is laughing positions themselves as superior in comparison to the object of humour. Hobbes saw humour as epitomizing the daily struggle for power, viewing laughter as the expression of “a sudden glory arising from some conception of some eminency in ourselves, by comparison with the infirmity of others, or with our own formerly” (chap. 6). In its hostility and objectifying action, laughter can create the terms for a new balance of power, in which the individual who laughs claims a superior status over another.

Philosopher Henri Bergson, in his book-length treatment of laughter, takes Hobbes’ and Plato’s criticism of laughter and its potential to harm a step further in his view of laughter as a deliberate form of humiliation. Humiliation occurs as an effect of a power dynamic in which one group or persons instills an intense emotion of futility, of loss of control in a particular social situation, in another group or persons. In its creation of clear subject positions between subject and object, the purpose of laughter is ultimately disciplinary—it corrects behaviour by scorning the victim. “Laughter is, above all, a corrective,” argues Bergson: “[b]eing intended to humiliate, it must make a painful impression on the person against whom it is directed. By laughter, society avenges itself for the liberties taken within it. It would fail in its object if it bore the stamp of sympathy or kindness” (197). In social situations, laughter can perform a transformative function; it shocks a person out of their internal reverie to force them to adapt to the situation at hand. When we laugh to humiliate, Bergson claims, we break an individual from their “mechanical inelasticity,” to “bring out the element of automatism he has allowed to creep into

his person” (10; 33). Laughter, even in social situations, is motivated by the laughter’s intentions toward influencing or changing the behaviour of the object through humiliation.

Mocking him in their amused exchange and “sardonic” tone, the torturers indeed compel the narrator to disguise his emotions to ‘play along’ with his captor. But more significantly, the torturers’ mocking contributes to the continued and constant humiliation and objectification characteristic of torture. His own humiliation—as the butt of the joke—pervades every social situation, such as in the above example where the narrator attempts to retain some partial semblance of his humanity after his brutal physical torture by engaging in general conversation. The guards give him no quarter, however, no relief from his ongoing abjection. The coercive features of laughter, in the hands of the guards, become weaponized alongside their use of torture, deployed to dehumanize him by excluding him from equal interaction. The narrator’s fear and confusion, barely covered up by his attempt at humour, come at his realization that his own abject and destitute state serve as a source of amusement of his guards. Describing the terms of his torture as the game, or as the play of others, therefore, does not diminish either torture or his experience of it. Rather, constructing torture in terms of strategy and calculated measures points to the seriousness of torture as the motivated action of torturers whose aim is humiliation and dehumanization. Since the narrator refrains from providing details of his actual torture (or it is redacted, in the U.S. examples), the instances of his torture are revealed instead through these narrative details of his treatment.

The conflation of laughter and torture as conjoined in the joint effort to humiliate the prisoner can be seen in another example when the narrator is in U.S. custody in Cuba. The U.S. viewed him as a valuable source of intelligence, and subjected Slahi to the “Special Interrogation Plan” (personally approved by then-Secretary of State, Donald Rumsfeld) that inflicted torture—

including sleep and sensory deprivation, questioning, dietary manipulation, environmental manipulation—for weeks between September and December 2003. His torture occurred on a non-stop 24-hour schedule with a guard rotation every eight hours. During these three shifts, the narrator recalls that he “rarely got a break or relief from even one of the shifts” (460). He writes that he found this schedule unendurable, and that he complained to the guard about the duration and extent of this torture:

‘[t]hree shifts! Is it not too much for a human being to be interrogated 24 hours a day, day after day? I asked. The guard answered, ‘We could put on more personnel and make four shifts. We have more people.’ And that’s exactly what happened. The team was reinforced with another [redacted], and instead of a three-shift team I had to deal with four fresh people during a 24-hour period. ‘You fucked up!’ said an escorting guard who by accident had to escort me twice in one day from one building to another. ‘What are you doing here? You’ve been in reservation already!’ ‘I get interrogated for 24 hours.’ The guard laughed loudly and evilly repeated, ‘You fucked up!’ I just looked at him and smiled.³⁶ (461)

Torture and laughter converge when the torturers apply pain and suffering according to the narrator’s vulnerability exposed by the narrator. In his attempt to appeal to the humanity of the guard by questioning the brutality of his torture, the guard’s laughter is demonstrative of the torturers’ extreme cruelty in changing the schedule to increase the degree of his torture.

Importantly, moreover, the guard’s laughter at the extra suffering experienced by the narrator exposes something perhaps worse, that the interrogators appeared to take pleasure in toying with their detainee in their attempts to break him.

³⁶ “Reservation” is the U.S. euphemism for interrogation.

Laughter reveals the torturers' invention of a 'game' out of torture, in which the guards change the rules as they adapt to exploit the narrator's vulnerabilities. It is well-established that the pain and suffering of torture 'destroys' the human being; yet what this means in actual practice is at times unclear. Suffering, the knowledge that one has pain, is the crisis of personhood this split brings about. Pain therefore induces a state of abject alienation, as a personal division as well as a division from society. Laughter, as it is discussed above, widens the experience of profound alienation of both his own sense of self and also his dislocation from society, exemplified by his position as the object of others' mirth.

From the extensive research devoted to investigating the mentality of torturers, one similarity appears among most torturers: their need to somehow desensitize themselves in order to dissociate themselves from their actions. Torturers often rationalize their actions, therefore, through a combination of objectification of the victim and "groupthink" among their co-torturers. In *King Leopold's Ghost*, Adam Hochschild attributes the Belgian's use of the *chicotte* (a type of whip) "unthinkingly" against the Congolese to a mixture of racism that viewed the "victims as less than human" as well as the widespread acceptance of the act as "normal" in the context (102). Rationalizing the act as such shifted torture into the realm of social institution, as a conventional means of dealing with particular people under certain circumstances—i.e., colonialism. Under these circumstances, the meaning for torture for those who engaged in it changed, Hochschild argues, citing a passage from a station chief George's Bircusse's diary entry after observing a hanging he ordered in 1895:

[t]he gallows is set up. The rope is attached, too high. They lift up the nigger and put the noose around him. The rope twists for a few moments, then crack, the man is wriggling on the ground. A shot in the back of the neck and the game is up. It didn't make the

least impression on me this time! And to think that the first time I saw the *chicotte* administered, I was pale with fright. Africa has some uses after all. I could now walk into the fire as if to a wedding. (qtd. in Hochschild 13)

For Bircusse, “getting used to torture” is regarded as a soldier’s duty, as Hochschild points out. Perhaps more significant, however, is the construction of the scene as “game,” as though the victim and the torturer were on equal footing. As this scene indicates, social acceptability, combined with an inferior perception of the victim, creates the conditions under which torture can be participated in as if it were a game.

Laughter and its associated strategies of gameplay constructed by the torturers provide the narrative resources through which the speaker can talk about his torture. The relative incommunicability of pain and suffering make such sophisticated use of rhetorical tools necessary. Pain and suffering are notoriously difficult to communicate. Scarry describes this as the essential “unshareability” of this individual experience: pain “has no referential content. It is not of or for anything . . . [it] resists objectification in language (4; 5). Pain induces a state of suffering when its adverse experience overwhelms all experience, consuming the person in a world of state of loss, despair, exclusion, and hurt. Individuals in this destitute state are unable to comprehend or extend beyond the experience of their own bodies.

By providing a common paradigm that figures objectification and humiliation in terms familiar to readers, the speaker uses humour as a rhetorical device to represent torture to an audience. Moreover, voicing torture in such a way that is understood by a receptive and engaged audience can alleviate pain by giving pain the referential content to reduce its fundamental divisiveness. Scarry instructively theorizes this process as “analogical verification” or “analogical substantiation,” in which she suggests the “felt attributes of pain” can be “attached to

a referent other than the human body”: “[t]he felt-characteristics of pain—one of which is its compelling vibrancy or its incontestable reality or simply its certainty—can be appropriated away from the body and presented as the attributes of something else” (13). Establishing a way of talking about suffering establishes a knowledge of an otherwise subjective experience, making it knowable, and therefore relatable, helping to resolve the crisis of personhood—the realization of the divided nature of the human condition—pain causes. Recognizing the narrator’s laughter can therefore perform a restorative function, as forming a set of values and attitudes for appropriate treatment of human beings.

Forced laughter and play thus also illuminates the indifference for another’s pain and suffering for readers who may not recognize the terrible contradiction of Slahi’s laughter. The guards, failing to recognize their prisoner as human, employ laughter to humiliate their prisoners to maintain an unequal power balance. Humiliation, the forced submission of a person, is one of the ways that torture distinguishes itself from ordinary violence—by sustaining an unequal relationship between the victim and the torturer. The work required on the part of the audience to recognize laughter as rhetorical may also suggest that laughter functions as dark humour. Indeed, the author’s laughter may be seen as a form of dark humour, in which the narrator’s “joke” that the Americans are neither culturally aware enough to understand Arabic nor civil enough to be called gentlemen, incites laughter that can be construed as a commentary on the narrator’s conflicted response to the abject circumstances he is forced to both witness and endure. Taken as humorous, the fact that the narrator’s laughter could symbolize the extreme paradox of emotions—the experience of being sickened and amused at the extreme reversal of values at the same time—is a key trait of dark humour (Winston 169).

However, dark humour differs from the rhetorical function of laughter used by the narrator in the fact of its ambivalence between tragedy and comedy. While the suffering of the narrator prevents us from joining in on the laughter in the text, Matthew Winston argues, dark humour compels laughter: “dark comedy represents a natural ambivalence of tragedy and comedy,” displaying a “tragic emotion” that originates from the “violation of moral norms” in which “some ideal principle is betrayed or destroyed” (169). Dark comedy relies on ambiguity for its effect; in the scenes featuring dark comedy we cannot say, “[t]his is intended *only* to be funny or *only* horrendous” (Winston 37). Laughter in Slahi’s narrative is “*only* horrendous.” Purposeful neglect and harm of such an unequal power dynamic precipitates the destructive force of pain and suffering, causing torturers to act in ways they (and society) may otherwise find intolerable. Recognition of the human being as an agent with equal right to dignity, and of social values as transferable (no matter the context), would thus preclude the possibility of torture that the narrator describes. Laughter exposes the pervasive effects of torture on a human being by dramatizing—within the life of the narrator—the complexity of the harm torture inflicts within social acceptability and cultural conventions. The torturer’s game prevails through dehumanization, rendering the narrator nothing more than an object for exploitation. In the way that it serves both of these functions, humour exposes the fundamental contradiction of torture, as the unrecognized human, a political irony I will explore in the next section.³⁷

³⁷ Another dimension of ironic laughter also important to this discussion is the concept of nervous laughter, the laughter that is an emotional response incongruous to the situation at hand. According to psychologists, dimorphous expression—when an individual expresses an emotion opposite to the situation—can occur when we are at risk of being emotionally overwhelmed (Folkman and Moskowitz; Aragón et al. 260). Nervous laughter has been thought to serve a biological function for us to relieve tension or energy built up during a stressful event, and, consequently, can indicate an individual’s intensely emotional experience (Spencer; Freud; Morreall). For example, in his experiments measuring obedience, psychologist Stanley Milgram reported that some participants who thought they were administering painful electric shocks to others “showed signs of definite nervous laughter and smiling,” and a few experienced laughter causing “full-blown uncontrollable seizures” in response to reaching their “maximum tension” (Milgram 68). This connection psychologists have made between inappropriate laughter and extreme duress can be applied to Slahi’s laughter, which, considered as nervous, may also be significant of the profound

II. Betrayal and Irony

In the narrator's first person account of his torture in Jordan, his rendition from Bagram, Afghanistan, and his "special interrogation" in Cuba by Americans, his unexpected laughter exposes the contradictory subjectivity of his tortured state. On one hand, the narrator's laughter asserts agency in the face of powerlessness; on the other, the politics of humiliation involving the complex and intensely personal relationship between himself and his torturers. As a marker to identify pain and suffering as well as the destructive aspects of personhood, laughter demarcates the text into a series of episodes detailing the humiliation and dehumanization of the narrator in his hands of torturers. Compelling an audience to identify with the text through the common action of laughing, and by situating it in distinctly tragic circumstances, the speaker is able to communicate his experience of torture through circumstances audiences would recognize. The violation inherent in the act of laughing therefore provides a vehicle for understanding the narrator's ordeal that may otherwise be unintelligible.

The positioning of laughter as an index of suffering from torture undergirds the fundamental irony through which the narrator discusses his torture. A sense of irony infuses the entirety of the text, even before it is read. The title of the book, a "diary," refers to the freely written, private invention of 'selfhood'; the publication details of the text—as a heavily redacted, declassified government document—as well its content—torture, as the destruction of personhood—are indicative of the complexity of the contradictory circumstances the narrator seeks to express. According to Wayne Booth, the most reliable appeal to irony is one derived

emotional pain and suffering he experienced as the object of his torturers' hostile humour. Representative of his emotional collapse, Slahi's laughter therefore emphasizes the ontological character of torture: by making manifest the psychological, physiological, and biological dimensions of objectification, nervous laughter demonstrates the extent to which torture can destroy all aspects of personhood. Torture targets the body; as Slahi's powerful narrative illustrates, exploiting a victim's symbolic world as a means to trigger biological processes is one way to accomplish this destruction.

from “an unmistakable conflict between the beliefs expressed and the beliefs we hold and suspect the author of holding” (73). Recognizing irony depends on the audience’s detailed knowledge of the context, the narrator, and the belief system the narrator holds (Booth 120–121; Hutcheon, *Irony* 116). This reading of irony as persuasive on the grounds that it appeals to an audience on the basis of a common human emotion suggests Booth’s understanding of irony as rhetorical action that functions as a means to consolidate readers into communities. The process by which readers detect and interpret irony creates a bond between readers who perform the same action. Shared assumptions of a text create a bond between readers who are invited to share in meaning through what Booth calls as a “stable irony” that constitutes the “assumptions, often unstated, that ironists and readers share” (33). The unifying experience of interpreting a text according to shared judgement also includes readers as part of a wider audience who also possess the knowledge to decode ironic texts: “often the predominant emotion when reading stable irony is that of joining, of finding and communing with kindred spirits” (Booth 28). While Booth warns that irony can contribute to exclusivity and superiority, Slahi’s use of the common human response of laughter attempts instead for inclusivity and invitation (29). In a text on torture, audiences can be fairly certain that laughter connotes secondary significance apart from an expression of humour.

The narrator situates his own perceptions as the central irony of his narrative: that he is tortured by Americans, whose ideological values situate them as the least likely perpetrators of torture. The narrator’s perception of U.S. interrogation as lawful is in fact reinforced by the American interrogators. While Slahi is in Bagram an American interrogator threatened to send him to Egypt or Algeria³⁸ if he did not cooperate, where he will “experience very painful

³⁸ The practice of sending prisoners to nations known to torture is known as “extraordinary rendition.” Although the U.S. has admitted that they employed the practice during the war on terror, other than first person accounts, there are

torture”; or he will send him to Cuba, where “they treat detainees humanely, and they have two Imams. The camp is run by the DOJ, not the military” (116). The difference in treatment the narrator can expect to receive in Egypt compared to Cuba, the interrogator implies, relies on the fact that the Dept. of Justice controls the activities in Guantánamo Bay. The implication here is that the DOJ, a democratic body formed through consensus of elected officials, would not allow torture, even if the military does. Based on the interrogator’s assessment, the narrator resigns himself to his rendition there without questioning other interrogators who tried to “save” him from the trip to Cuba: “[t]o be honest, I preferred to go to Cuba than stay in Bagram” (117).

The tension created by the disparity between the narrator’s knowledge at the time and his present knowledge dramatizes the *naiveté* of pre-9/11 sensibilities. For audiences, evidence (including this narrative) exposes both our own and the narrator’s common sense assumptions as fallacious to evoke a sense of betrayal, the violation of trust between individuals and groups. The disparity between expectations and events as represented by the narrator attests to the particular harm the U.S. has inflicted in their use of torture in the way that it also constitutes a profound transgression of individuals’ expectations of responsible government. Individuals who are tortured often experience their torture as a sense of betrayal of their own bodies, and also of a previously known world of comfort that does not exist. In torture, Scarry argues, “the created world of thought and feeling, all the psychological and mental content that constitutes both one’s self and one’s world, and that gives rise to and is in turn made possible by language, ceases to exist” (30). From the perspective that part of the harm inflicted by torture involves the destruction of one’s sensibilities, the fact that Slahi’s torture (and contemporary torture) is inflicted by the U.S. matters a great deal in terms of the effects it has on an individual. The

few details available. Prisoners have disappeared in this process, either killed or held as “ghost prisoners” without documentation (Sadat 315).

perceived status of the predominance of lawfulness in U.S. action contributes to the corresponding loss suffered by Slahi when he is tortured by them, as he also experiences both betrayal of his perception of the U.S. as bastions of justice, as well as the loss of the hope that he will be rescued by them.

The narrator attributes much of his suffering in the narrative to the fact that it was inflicted by Americans. Still assured by his convictions that he would not endure abuse and torture in Cuba (as he had been subjected to in Jordan and Afghanistan), the narrator recalls that he welcomed his transfer from Jordan (via Bagram Air Base in Afghanistan) to Cuba. After his merciless torture by the Jordanians, he saw his extraordinary rendition as a relief, framing his journey in religious terms as he left the horrors behind him to reach the “promised land,” recalling his arrival in Cuba as a “blessing”: [t]he warm human sun [that] hit me gracefully. It was such a good feeling” (135; 149; 136). Anticipating the moment when his captors would realize they had made a mistake in detaining him, he decides to pursue a strategy of full cooperation with the American interrogators at the Guantánamo Bay detention camp, even advising his friends to follow his reasonable course of action so that they will not “suffer what I suffered in Jordan”: “[s]ince you guys are not involved in crimes, you need to fear nothing. I personally am going to cooperate, since no one is going to torture me” (149–150).

Slahi’s portrayal of his experience of torture as ironic provides an important commentary on the cultural and historical paradox U.S. torture poses. Because it inflicts violence and is an expression of absolute control over another human being, torture opposes the autonomy and freedom of citizens—the basic principles of democracy. The practice of torture, as Michael Ignatieff argues, is contradictory to democracy because torture, when committed by a state, expresses the state’s ultimate view that human beings are expendable (*Lesser* 143). The

instrumentalization of individuals undermines the individual on which democratic institutions—as well as international human rights—are based. Even a single or exceptional act of authorized torture destabilizes democracy through negation of the individual. On this basis, the narrator’s portrayal of his torture also has the political function of commenting on the aberrant actions of a nation in crisis during the so-called “War on Terror”, and assessing their operations according to their deviance from their stated principles of justice and equality.

Depicting American interrogators as motivated by revenge grants the narrator with the opportunity to portray himself as a casualty of this irrationality. This ironic tension dominates the narrative: on one hand, according to his captors, the narrator engages in terrorist activities and holds an irrational hatred of Western values; on the other hand, according to the narrator, the actions of the interrogators in capture, rendition, and interrogation are far more violent, irrational, and personally motivated than any behaviour he exhibits. The narrator fuels the irony of this portraiture in his frequent depictions of his interrogators as unbalanced. When the narrator refuses to talk, the U.S. interrogator threatens the narrator with a list of horrible scenarios if he does not cooperate. The narrator states that

[m]y answer was always, “Do what you got to do! I have done nothing!” and as soon as I spit my words [redacted] went wildly crazy, as if he wanted to devour me alive. So I avoided answering him and let him for the most part do the talking. As I say, [redacted] likes to talk and hates to listen. I sometimes doubted that his ears functioned. (465–466)

This “wildly crazy” interrogator contrasts the image of the fair and balanced American that we see earlier in the narrative. Moreover, considering this event occurred during his intensive torture, the narrator should be the one unhinged, yet he represents himself as constant, giving measured, unemotional answers to his interrogator’s questions. The irony of the contrast the

narrator sets up—that an alleged “terrorist” has more credibility than an American interrogator—constructs the narrator’s credibility, one that lends authority to his critique of his torturers in the narrative.

A basic irony of torture is that, despite its continued justification, it is ineffective for anything except inflicting tremendous amounts of pain and terrorizing a population. Torture fails as an interrogation technique; the overwhelming sensation of pain forces the victim to say whatever necessary to stop the pain. Applying this principle to his own circumstances—and foreshadowing his own signed “confession”—the narrator states that “the only possible way to make me admit to something I haven’t done is to torture me beyond my limit of pain” (426). It is only after his intensive interrogation that torture breaks the narrator and he tells them what they want to hear: “[d]uring this period I wrote more than a thousand pages with false information. I had to wear the suit the U.S. Intel had tailored for me, and that is exactly what I did” (535). Using the metaphor of wearing someone else’s clothes, the narrator states that he fits his information to the model the interrogators provide. His confession presents yet another contradiction of torture: for the narrator, it repeats the information the interrogators have asked him in his questions; for the interrogators, it constitutes intelligence. The purpose of torture, Slahi’s narrative shows, is never anything except for torture.

The narrator heightens the disparity between perceived intelligence and coerced confession by emphasizing the inadequacy of his own tortured state of mind to produce any viable information. By the time he arrives in Cuba in 2002, the narrator has endured tortured and detention for almost a year and is mentally and physically drained. During his processing upon his arrival in Cuba, he is asked his wife’s name. But the narrator recalls that “when I arrived in Cuba on August [redacted], 2002 I was so hurt physically and mentally that I literally forgot the

name of my wife and provided a wrong one. [redacted] wanted to prove that I am a liar” (425). Despite widespread evidence that torture does not elicit reliable information, it appears that the interrogators do not consider information compelled by pain as unreliable; in fact, interrogators seem to conclude that if torture does not produce reliable intelligence, then the prisoner must be either lying or withholding information. The narrator also suggests, however, that the interrogators know the information is unreliable. After his intense interrogation, the narrator frames his agreement to tell the interrogators the “truth” in no uncertain terms as a forced confession: “[i]f you’re ready to buy, I am selling. You just tell me what to say” (547). Again, the narrator frames his confession in terms that highlight the imbalance between himself and his captors to show the futility of torture. He has endured the worst torture, as he shows, for no purpose, for no rational outcome. Presenting his own coerced confession as a critique on torture, the irony of torture is clear: in the end, the violation of law, democratic principles, and human rights accomplishes nothing.

The narrator’s condemnation of his confession as intelligence speaks to an irony particular to the recent American application as a reliable means to obtain information, specifically, “actionable intelligence.” The U.S. Dept. of Defense defines “actionable intelligence” as “[i]ntelligence information that is directly useful to customers for immediate exploitation without having to go through the full intelligence production process” (1). Despite the widespread understanding of the methods as torture, and the use of such tactics as wholly inadequate to the task of adducing reliable information, government documentation from the “War on Terror” shows that the U.S. institutions prioritized their use. For example, the 2004 Independent Panel to Review Department of Defence Detention Operations states that the U.S. practice of detaining individuals “serve[s] the key purpose of intelligence gathering,” and these

individuals “yielded significant amounts of actionable intelligence . . . and strategic intelligence value in the Global War on Terror” (18). Here, the process of intelligence gathering contradicts Slahi’s narrative, presenting an alternative interpretation of torture.

Some scholars suggest that the reliance of irony on the audience’s values may pose a problem for its reception. However, the political status of the narrator and narrative, as well as the stylistic elements, foreground rather than detract from the audience’s identification of (and with) the narrator’s laughter as ironic (Booth; Handwerk 6; Perelman and Olbrechts-Tyteca 208). In a text featuring torture, laughter stands out as an unexpected feature, thus functioning as a rhetorical device to orient readers to question its significance. Laughter, especially laughter in a narrative on torture, an emotional, human expression, appears conspicuous against Slahi’s otherwise detail-oriented, matter-of fact writing style. Aside from the few instances of laughter, the text shows little other emotion; even complaints of pain and suffering or anger are modulated as textual elements, so that moments of humour reveal the significant moments ripe for authorial comment. Given the publication conditions of Slahi’s text as recently declassified, as well as his previous status of indefinite detention, audiences would be particularly sensitive to textual markers as indicators of Slahi’s version of events. In this way, irony signifies as an authorial intrusion in the text, one that escapes the redactor’s (ever present) black marker.

Irony and Democratic Torture

Slahi’s critique of the logic of torture through ironic laughter moves beyond discussion of its inefficacy as an interrogation tool to consider torture as a product of the excesses of democracy. In addition to depicting many of his interrogators as exemplifying irrational behaviour without restraint, he draws attention to American interrogators’ attempt to distinguish

their practices or their facilities as superior to other nations, implying (or stating outright) that the detainees ought to be grateful to be detained in U.S. facilities rather than in places that, presumably, would be less hospitable. In one example, Slahi describes the boasting of the Americans that their medical facilities were much better than those of other nations: “[s]till, because we’re Americans we treat you guys according to our high standards. Look at [redacted], we’re offering him the latest medical technology” (185). The narrator responded to these claims critically:

‘You want just to keep him alive because he might have some Intels, and if he dies, they’re gonna die with him!’ I responded. U.S. interrogators always tended to mention free food and medical treatment for detainees. I don’t really understand what other alternatives they have! I personally have been detained in non-Democratic countries, and the medical treatment was the highest priority. Common sense dictates that if a detainee goes badly ill there will be no Intels, and he’ll probably die. (185)

Having endured torture inflicted by the U.S. and the Jordanians, the narrator acts as a sort of Tiresias figure in demonstrating that his experience on both sides situates him as more qualified to judge of the “standards” to which he has been “treated.” In pointing out the wrongness of his captor’s assumptions, the narrator submits a convincing counterargument that rejects, without pretence, the widely-held claim that America’s ‘brand’ of torture (as “interrogation” used to gain “actionable intelligence”) is somehow preferable to other nations’ torture.³⁹

In critical defiance of his torturer’s claims that he is somehow fortunate to be tortured by Americans, the narrator details how the availability of medical personnel has contributed to the variety and cruelty of his torture. At one point during his “special interrogation” the narrator is

³⁹ As I argued in the previous chapter, the fact of American torture as particularly effective and justified is a result of a widespread campaign to present an exceptional version of torture.

taken from his cell and subjected to a mock kidnapping where he was made to believe that he had been taken from the “safety” of his cell by rogue interrogators. Taken on a boat where he believed he was to be killed and thrown overboard, the narrator was beaten severely around the midsection and then packed in ice to prevent bruising: “[t]he beating party would go on for the next three or four hours before they turned me over to another team that was going to use different torture techniques” (484). As he is passing in and out of consciousness, he recalls receiving medical attention to prevent him from passing out for too long: “[d]id I pass out? Maybe not; all I know is that I kept noticing [redacted] several times spraying Ammonia in my nose. The funny thing was that Mr. [redacted] was at the same time my ‘lifesaver,’ as it were all the guards I would be dealing with for the next year, or most of them. All of them were allowed to give me medication and first aid” (485). Far from improving the general well-being of the detainee, the interrogators receive all the benefits of the “latest medical technology” that will prolong his torture.

Slahi’s skepticism of his interrogator’s claim echoes scholars who have, paradoxically, identified medical discourse as the primary source of contemporary torture techniques. Research and experiments on the effects of environmental manipulation and sensory deprivation dating back to the 1960s provides the evidentiary support for contemporary “torture manuals” instructing torturers on “interrogation tactics” (McCoy; Rejali; Wisnewski). Many of the techniques inflicted on Slahi by his U.S. interrogators in his “Special Interrogation” are listed in the “torture memos” as “coercive interrogation techniques.” From a legal standpoint, these memos use medical research to support the claim that the techniques did not meet the severity requirement of torture; in this way, the research justifies torture. Medical staff were present to

prolong his torture, as Slahi claims, but were also present to direct interrogators or to ensure the correct procedure was carried out.⁴⁰

Medical Guidelines for interrogation techniques can be found in the 2004 memo, the *OMS [Office of Medical Services, CIA] Guidelines on Medical and Psychological Support to Detainee Rendition, Interrogation, and Detention*, a document providing a list of the techniques as well as directions for their application. One of the measures, a “restricted diet,” indicates that the medical limitation on this measure is “10% loss of body weight” and the rationale for this limitation is “10% loss indicates significant malnutrition and requires corrective action” (23). The reference provided is “BOP Guidelines” (23). The BOP is the Bureau of Prisons, Dept. of Justice responsible for regulating the health and welfare of prison inmates through the calculation of diet and weight. Interrogators are responsible for insuring the detainee’s body mass does not fall below the prescribed amount and therefore assess the detainee’s diet and weight accordingly.

Medical staff, particularly psychologists, helped to carry out these guidelines with the purpose of inducing a state of “learned helplessness” of their detainees. The term “learned helplessness” was developed by Dr. Martin Seligman, a leading psychologist researching human happiness, and refers to a state of being in which humans might experience depression or respond passively to others in response to adversity or to events out of their control. The U.S. *Senate Intelligence Committee* report on the CIA’s Interrogation Program reported that two psychologists, Jim Mitchell and Bruce Jenson (identified by pseudonyms in the report) “had reviewed research on ‘learned helplessness,’” and “theorized that inducing such a state could encourage a detainee to cooperate and provide information” (21). Proceeding from this

⁴⁰ Many other first-person accounts of torture recall that psychologists or physicians also report the presence of medical present during the torture (McCoy 8).

controversial logic (with which most other interrogation experts disagree; under extreme duress, subjects will say what interrogators want to hear), interrogators worked with psychologists to apply the OMS guidelines in ways that would most effectively bring about a state of “learned helplessness” in detainees. Within the larger aims of the interrogators, a “restricted diet” assumed application in torture as “dietary manipulation,” a way of creating futility (also called “pride and ego down”) by controlling all food and water consumed by the detainee (*Army FM 34-52*). The Senate Committee Intelligence report disclosed interrogators applied the OMS guidelines to detainees through forced feeding, forced rectal feeding, and forced rectal hydration, all of which administer the food necessary to maintain the physical fitness of the detainee while simultaneously denying control over the choice of food (often Ensure, a meal replacement drink) or the method of delivery.

Following the findings of the Senate Intelligence report, few disagree that these methods used to achieve a state of “learned helplessness” in detainees constitute the severe pain and suffering to constitute abuse and torture of detainees. But the ambivalent position of medical professionals in contemporary torture contributes to counterarguments that “interrogation” is not torture because of the presence of doctors—a double purpose shared also by the techniques themselves. For example, Slahi reports that he was prescribed Ensure along with his back pain medication “to compensate the loss of weight I had been suffering since my arrest” (447). But he also points out the contradiction of his situation, stating, “what sense does it make, if the interrogators work on hurting my back and then give me back pain medication, or to give me a bad diet and want me to gain weight?” (447). The purpose of the Ensure is not only nutrition, however, but to exercise control over existence of the prisoner, to eliminate the choice of whether or what to eat. Forced to swallow the bland drink at the times imposed by the

interrogators takes away the small pleasures of eating food (such as texture, taste, smell) and the agency associated with eating (what to eat first, combinations of food, for example). The psychological theories controlling the diet of prisoners, therefore, keep the prisoner alive and well (in relative terms) but constitute torture in how they are put into practice. Combined with other techniques, such as the sensory deprivation techniques and environmental manipulation, these techniques are designed to, in effect, destroy an individual's sense of self by targeting the fundamentals of identity.

The narrator's discussion of water illustrates the extent to which the technique of control over food and water denies autonomy to individuals. Near the end of the narrative, after the narrator has effectively been 'broken' and his "special interrogation" was over, he began to receive small privileges, such as books and films. When a sympathetic interrogator asked him if there was anything in particular he desired, he asked "can I keep my water bottle in my cell, and drink whenever I choose?" (639). Prior to this point, the narrator had been woken every hour to drink a bottle of water, a routine that kept the detainee hydrated and also sleep deprived, but that also denied the narrator the freedom from drinking when he chose, in the quantity of his choice. The narrator is overjoyed when the interrogator granted his request:

[t]o my surprise, [redacted] came the next day and briefed the guards that the water bottle now belonged in my cell. You cannot imagine how happy I was to be able to decide the time and the amount of water I could drink. People who have never been in such a situation really cannot appreciate the freedom of drinking water whenever they want, however much they want. (639–640)

In this poignant scene, the water bottle constitutes a privilege for the small measure of control over his body, which, up until this point, had been denied to him by his interrogators as part of

their aim to maintain his futile, destitute state. Descriptions of experience such as these reveal the actual effect practices have on individuals. Even though control of food and water supported by medical research may not appear to constitute torture, Slahi's narrative identifies the suffering inflicted when it is contextualized within the broader aims of torture.

In democratic torture, the same techniques, research, and institutions—such as medical treatment—used to contribute to the well-being of society are also, according to Slahi, deployed in torture. Documentation and doctors allowed interrogation to maintain the semblance of legality by staying within the legal (at the time) parameters of “interrogation.” Slahi's treatment during his interrogation, including his mock kidnapping, reflected well-executed professional interrogation as schematized by official documentation (a peculiarity of U.S. torture compared to other torturing nations). As I have attempted to show, this narrative situates U.S. torture as a complex practice, bound up within both the excesses of violence and discursive channels. Viewing these practices through Slahi's ironic narrative, Slahi's first-person account reveals a further irony of torture: torture that inflicts pain and suffering through recognizable democratic apparatuses—medical doctors, prison facilities, and bureaucratic organization—that contribute to, rather than mitigate, harm.

III. Silence and Statelessness

The previous two sections analyzed narrative strategies used to communicate pain and suffering in Slahi's first-person account of his torture in *Guantánamo Diary*. Communicating the pain and suffering of torture sets an almost impossible task for a sufferer: an individual must attempt to force terrifying experience into language, a system wholly inadequate for the expression of interior experience. Based on a rationale that communities can aid in the recovery

of pain by offering supportive language, supplying discursive resources to put suffering into language can be considered one of the fundamental imperatives of society. Speaking, or writing, to an engaged audience often has a socializing effect on sufferers and helps to reduce the inherent alienation experienced by torture victims. Employed as rhetorical devices by the narrator, laughter and irony furnish a common means for an audience to understand pain and suffering as it is articulated by the narrator.

Within a community that sees the recognition of pain and suffering as a cornerstone of human rights, the restrictive conditions under which Slahi's account of his torture was published presents another dimension to his oppression. In his introduction to the text, editor Larry Siems outlines the rather remarkable details of the process of publication. Slahi wrote his "diary" (also called a "memoir" by Siems) by hand on 466 pages in English, the fourth language he learned while in custody. The manuscript was submitted to his lawyers, who then sent it to the Department of Justice, where it was held as a classified document until it was released to Siems for final editing in 2014 with more than 2500 redactions. Slahi remained detained in Guantánamo—occupying the same cell in which he was tortured—until October 2016, deemed too valuable to release.⁴¹ Siems notes his difficulty in editing the text: first, that the text is "an incomplete and largely fragmentary draft," "polished" in some sections and reflecting a "first-draft sprawl" in others; second, that he was unable to access Slahi for consultation; and third, the problem of government redactions obscuring the author's words. In attempting to remain faithful to the original text, Siems concludes that "the overall shape of the work is unresolved" (14).

⁴¹ After submitting a *habeas corpus* petition, Slahi was granted release in 2010 ruling by Judge James Robertson, who concluded that the government had not met the burden of proof required for continued detention. The Department of Justice issued an appeal, resulting in an order for a rehearing. ("Timeline" Siems). Slahi remained incarcerated until October 17, 2016, when he was released by the Pentagon (Ryan).

In addition to the challenges the inescapable black bars posed to editing the manuscript, Siems also considers the redactions a continuation of the control asserted over Slahi's freedom in his state of indefinite detention. The bars blacking out Slahi's words, the editor asserts, "impede the sense of narrative, blur the contours of characters, and obscure the open, approachable tone of the author's voice" (16). In identifying the problems of redaction, Siems connects the restriction of the narrator's authority of the text by inhibiting freedom of expression to Slahi's perpetually incarcerated state. The changes made by the redactions, in Siems view, "are changes that have been imposed on the text by the same government that continues to control the author's fate and has used secrecy as an essential tool of that control for more than thirteen years. In this context, the black bars serve as visual reminders to the author's ongoing situation" (15). The text, in the editor's opinion, is as "unresolved" as Slahi's current circumstances; the uncertainty of the authorial intent of the author whose voice has been modified through two stages of editors parallels the author's incarcerated state that continues to restrict his freedom.

The author's "ongoing situation" that Siems observes is reflected of his indefinite detention at the time of publication, a condition made possible by Slahi's legal status. Indefinite detention, the arbitrary imprisonment of individuals without trial, excludes these same persons from legal rights by declaring their legal status outside the protection of laws. Slahi's legal status as a "detainee" is a consequence of this exclusion. Currently, the detainees in Guantánamo Prison have a legal status as "unlawful combatants," persons who are excluded from the rights protecting Prisoners of War (POW). Technically, any person would be protected under the Fourth Geneva Convention under "protected person status," a catch-all article with the purpose of protecting fundamental human rights (including being free from inhumane or degrading treatment), as outlined by the ICRC: "[t]here is no intermediate status; nobody in enemy hands

can be outside the law” (*ICRC Reactions* art. 1). However, the terms of the category “detainee” that also designates them as “terrorists”—as stateless peoples who are threats to the state—invalidates the protection of the Geneva Convention. In a 2004 *Schlesinger Panel Report*, the U.S. cites the Fourth Geneva Convention as “not sufficiently robust and adequate to provide for the appropriate detention of captured terrorists” (1). Denied the rights proffered to legal subjects, “stateless” “detainees” are denied the usual legal protections and therefore vulnerable to the arbitrary violence of human rights violations.

Human rights organizations have identified the issues of statelessness as a primary concern of the protection of vulnerable peoples, particularly in the case of torture. According to the *UN Convention Relating to the Status of Stateless Persons (CRSSP)*, a stateless person is “a person who is not considered as a national by any State under the operation of its law” (art. 1). Persons may be legally designated as stateless for a variety of reasons: lack of identifying documents, not residing in the nation of their origin (for reasons such as climate change, conflict, or employment), the disintegration of a state due to political reasons, or the lack of recognition of their nation-state as legitimate by other states. Individuals lacking citizenship of a recognized politically secure nation are rarely protected by the domestic rights of their originating nation-state (if it exists), and take on secondary status, such as refugee, migrant workers, legal or illegal aliens. Citizens who embody a politically precarious status are politically vulnerable: the current Syrian refugee crisis, the occupied state of Palestine/Israel, and the shift in borders after the Cold War are only some of the many examples of how government decisions can impact political identity. A consequence of political shifts is that many of society’s most vulnerable are the most likely to become excluded, Linda Kerber writes in “A History of Statelessness in America”: “to historicize statelessness is to write a history of the practices of race, gender, labor, and ideology,

a history of extreme otherness and extreme danger” (731). Current contexts of statelessness render individuals vulnerable to exploitation as a result of their lack of authorized affiliation with a recognized state.⁴²

As a result of the legal designation of a “terrorist” or “enemy combatant,” a detainee is excluded from the protection of the law and from the rights and freedoms. An absence of political identity—especially when associated with individuals already excluded—correlates to a corresponding refusal to extend social status as well. In her essay, “Indefinite Detention,” Judith Butler identifies the “restrictiveness” in the “universality” of legal designations as protecting only persons from recognized states “leav[ing] the stateless unprotected” (*Precarious* 86). In this case, the deterritorialized status renders him vulnerable to not being protected under law. Territorialized and dynamic, the detainee is outside the law and is therefore deemed unworthy of being recognized as human. Butler associates these singular legal categories with her argument that what is at stake here is not only that we subject persons to dehumanizing circumstances, but that we do so by deeming them unrecognizable as humans, and therefore cannot be protected from crimes against humanity: “[i]t is not just that some humans are treated as humans, and others are dehumanized; it is rather that dehumanization becomes the condition for the production of the human to the extent that a ‘Western’ civilization defines itself over and over against a population understood as, by definition, illegitimate, if not dubiously human” (*Precarious* 91). In this case, a universal definition of the human does not protect individuals but provides the standard against which others may be deemed inhuman, as stateless, and therefore warrant dehumanization

⁴² Over five million migrant workers from Pakistan and India work in Dubai, United Arab Emirates, for example, under conditions that have been described as modern-day slavery.

Stateless individuals often live in precarious circumstances, in camps or in constant fear of deportation. As Saul Newman and John Lechte point out, stateless peoples “seem to constitute a certain blind spot for nation-states and public opinion” who turn a blind eye to human rights abuses (13). Often these persons are subjected to intrusive examinations, surveillance, fingerprinting, medical examinations, so that “the body of the stateless person becomes the site for state surveillance and control” (14). In many cases, moreover, the stateless person is perceived as a threat to borders, and so constructed as a threatening outsider. According to Newman and Lechte, a stateless body constitutes “the body who may not only pose the threat of contamination in a physical sense through disease, but also weaken the cultural integrity of the nation, spreading the virus of Islam or terrorism,” thus posing a perceived risk to national security (14). The loss of control of the management of bodies within a defined space, therefore, is paralleled with an identity that is determined by their legal designation as being outside the law. By contrast to order and security associated with a state, the stateless are instead defined by their position as a threat to order, by their insecurity, and by their threatening bodies.

In the context of Slahi’s ambiguous legal status, the redactions ‘do’ more than just censor his text; in the way that they prevent his voice: they function as an extension of his dehumanization as a non-legal subject. Redaction signifies Slahi’s continued detained state, and as such, his continued state of dehumanization. In *Precarious Lives*, Butler argues that the discursive constructions of certain humans and cultures as inhuman using certain terminology excludes them from certain “civilized” communities. Prisoners captured by the US have a certain suspended cultural status defined in terms of their reprehensible actions. Rather, they are constructed in the public and political sphere as “killing machines”; reduced to “animal status, where the animal is figured as out of control, in need of total restraint”; and as “pure vessels of

violence” (74; 78; 88). People who commit acts of such a violent nature do not possess the sense faculties to be processed as human citizens, as we do; rather, Butler suggests, detainees are constructed “as not humans with cognitive function entitled to trials, to due process, to knowing and understanding a charge against them. They are something less than human and yet somehow they assume a human form” (73–74). Similar in status to Athenian slaves, detainees are configured as legally and politically incompetents, who, in contrast to the citizen (the “political animal”) do not stand trial not only because they do not deserve to but because they are not qualified for political engagement.

The redactions, therefore, function as a discursive index of Slahi’s continued dehumanization. Dehumanization, according to Butler, occurs when a subject’s acts and practices are not recognized, are barred from performing what is repeatable (normalized practices) as the acts of a human. When a person’s actions in the world do not communicate, they are excluded from social recognition of their identity and thus limited their agency. Dehumanization is not a discourse itself, Butler argues, but rather an exclusion from the structures that would produce the human as human:

[i]t would be too simple to claim that violence simply implements what is already happening in discourse Here the dehumanization emerges at the limits of discursive life, limits established through prohibitions and foreclosure. There is less a dehumanizing discourse at work here than a refusal of discourse that produces dehumanization as a result. (36)

According to Butler, dehumanization occurs when speech acts become “unspeakable,” when their action is excluded from recognition: that is, when one’s speech is disregarded.

Dehumanization, in other words, is comprised of a series of acts of exclusion of a human from

their acts and practices performing the norms of a human, and thus from allowing the individual to benefit from having an effect in the world.

Gorgio Agamben suggests that exception—the exclusion of certain peoples from the designation of human being—is a consequence of the contradictory exercise of violence and consensus operating in modern states. Totalitarian violence (or sovereign) violence can be exercised, Agamben argues, as a condition of the positivist terms of modern power: “the state of exception is neither external nor internal to the judicial order, and the problem of defining it concerns precisely a threshold, or a zone of indifference, where inside and outside do not exclude each other but rather blur with each other” (*State* 23). Legal scholars have argued that this exceptionality defines the condition of modern torture. Torture today specifically operates as an “exception”: as outside conventional legal and social operations of power. Modern torture is “exceptional,” legal scholars argue, in the way that its authority derives from institutional norms that operate within extraordinary interpretations and unusual variances. Modern torture becomes legal as an exception to the norms of governance, Parry explains:

Lawyers know there is an exception to every rule, or at least they are always permitted to argue for an exception and that such arguments will be seen as reasonable and sometimes prevail. What happens in the case of torture is an appeal to a metadiscourse of exception Because the idea of the exception is already part of the law, the claim of exception due to an emergency is also an appeal to law, even when it asks for or demands the suspension of law in some sense. (“Shape” 133–134)

By distinguishing it from the norms of torture set out by the UN, current techniques become legally unrecognizable as torture: modern torture is referred to as “coercive interrogation techniques” rather than torture to avoid the legal implications associated with the term torture.

Slahi's narrative is the result and effect of his exceptional condition, as the life of a non-legal subject. Under the condition that the exception to the rule creates the circumstances under which some humans are rendered "not human," the narrator is defined negatively in relation to autonomy granted to humans. Agamben refers to this state as "bare life" that is "human life . . . included in the juridical order solely in the form of its exclusion," and who can therefore be killed with impunity (*State* 8). Bare life is the human who is not recognized as human and so denied protection as human and is therefore the subject of violent power. This logic explains how contemporary torture becomes rationalized as political violence. Individuals are captured, arrested, and imprisoned, and also have their legal rights terminated on the basis of their status as terrorists. Categorized as threats, terrorists are deemed "less than human," a demarcation that signifies their exclusion from a political identity. A central irony of Slahi's record of his experience of such brutality, therefore, is that his humanity persists within a multitude of dehumanizing forces denying him basic fundamental rights.

CONCLUSION: Political Violence and the Tortured Body

In September 2006, Banksy, a prolific British artist and activist surreptitiously installed life-sized inflated figure of a Guantánamo Bay prison detainee inside Disneyland Park in Anaheim, California. Clothed in the distinctive orange jumpsuit, and hooded and shackled, the piece was positioned kneeling amongst the cacti and Wild West scenery inside the enclosure of the Big Thunder Mountain Railroad roller coaster ride, facing the park-goers as they rode past on an Old-timey train. It took Disney officials more than an hour to discover and remove the piece of art, shutting down the ride to investigate the security breach (Erbland).⁴³

Banksy's exhibition, aptly called "Guantánamo Bay Comes to Disneyland," captures the irreconcilability inherent in practices of contemporary torture. The insertion of the detainee in Disneyland drives home the incomprehensibility of torture that can exist alongside democracy; placing the Guantánamo Bay prison detainee next to the over-idealized caricature of reality, interrupts the seamlessness of the hyper-real vignette the "Small World" of Disney and forces park-goers to face the very reality they are at Disney to escape.

Disneyland, "The Happiest Place on Earth," might be the place least likely to be associated with the harsh truths of torture and illegal imprisonment. Since late 2001, however, torture has interrupted our landscape in ways as jarring as Banksy's installation; images, headlines, and popular culture—and even Banksy's own art—serve as a reminder of the torture carried out by elected officials. Posing the detainee in the idyllic, fantasy-saturated environment, the installation exposes the integration of torture into society, and provokes audiences to question the rationality of their current political sensibilities: is it possible for a modern liberal society (such as the U.S.) to condemn torture and other human rights abuses, and, at the same time,

⁴³ A photograph of the installation can be found on <http://mentalfloss.com/article/53298/banksy%E2%80%99s-11-most-complicated-works>

condone its use under certain circumstances in their own context of necessity? And, if so, what are the consequences of introducing torture as an exception to democracy?

Banksy's use of human figure serves as a visual reminder of what is at stake if torture is permitted to remain a part of political enterprise. Stepping back to view the vignette as a whole, the juxtaposition of the two individuals in this image—the detainee with the park-goer—carries much of the force of Banksy's political commentary. Positioning the detainee face-to-face with the park-goer provokes a direct comparison between the two spheres of experience and perception between the two persons. Visually, only differences are evident: the alarming neon-orange of the jumpsuit worn by the detainee contrasts the lighter natural hues of the Disney set. Additionally, whereas the detainee's senses are deprived by the hood and shackles, the riders' senses are heightened by the thrill of the ride and the excesses of the park; the detainee cannot see or be seen, while the face of each individual can be clearly seen. In fact, if the audience did not know that the figure is a replica, it would be difficult to tell whether the figure under the jumpsuit was an actual person.

Similar to the images of prisoners in Guantánamo Bay Prison—detainees lined up outside in identical orange suits with hoods and shackles—apart from adhering to the shape of human, the prisoner does not exhibit any individuality, any sense of person. Instead, detainees are identifiable by how their humanity is obscured, by their identical orange jumpsuits, their shackles, their absence of human features. These differences Banksy establishes in his face-to-face contrast of the park-goer with the detainee expresses a common defence of torture: by classifying the enemy as less than human, it becomes more acceptable to treat them inhumanely. Placing them side by side, Banksy represents the central paradox of democratic torture: one

human is presented as recognizably human and the other is not recognizable as human at all, even though they are both human.

Historically, dehumanization—constructing an ‘Other’ outside the category of human—has functioned to rationalize the use of torture as a political tool to achieve state objectives. In *Toward the African Revolution: Political Essays*, intellectual Frantz Fanon cites dehumanization as a primary reason of the persistence of the French torture of Algerian rebels in the 1950s, even despite the widespread public condemnation of torture. French people, particularly French soldiers, viewed torture as a viable means to support French colonial enterprise, and therefore rationalized the practice as political violence. As such, the French regarded themselves as agents of the republic and torture as the enactment of patriotic duty: “[b]y torturing, [the police agent] manifests an exemplary loyalty to the system” (71). Conversely, Fanon argues, not torturing signified disloyalty: “[a]nd indeed the French soldiers can hardly do otherwise without condemning French domination” (71). Yet, as Fanon points out, the phenomenon in which the French could both denounce the act of torture as irrational violence while at the same time justifying it in their specific situation constitutes a “major contradiction” (67). Assessing the viability of torture solely by its outcome suggests that the consequences of torture—the end to which it is put—determine its characteristics to a greater extent than the actual event of torture itself, a troubling perspective that undermines agreed upon moral, legal, ethical, and social standards. Defining torture within political narratives, Fanon emphasizes, can never justify or rationalize an action that is unjustifiable and irrational from the outset.

Situating the tortured body against the backdrop of a hyper-real normality complicates the ways in which we compare the tortured body with an untortured body, implying that the two figures have more in common than we would first observe. Placing bodies next to one another

invites analysis of the relationship of the bodies sharing the same space. Although they seem to be located at opposite poles of experience—intense pain and suffering of torture, and heightened state of exhilaration of amusement—the context of these bodies asks viewers of this art exhibit to consider the similarity of their shared vulnerability to the forces that mediate their interactions in the world. The preoccupation with the body and its engagement as the site of political expression displayed in this art installation reflects our present epoch of contemporary power, called biopolitical power. Biopower focusses on how the experiential and vitality of individual life becomes the object of regulation and control, often through dominative, exploitative, and appropriative forms of power. The comparison produced between the individuals in the exhibit suggests a reading of the experiential body in terms of similarity, as a target of common technologies of power. An interpretation of the similarity of the forces regulating both bodies suggests the potentiality of this power; in this paradigm, it is possible for the detainee and ride-goer to exchange places: both Disneyland and Guantánamo Bay Prison fall under the jurisdiction of the U.S. government. The doctors who examine the detainee, for example, are equally as qualified to treat the park-goer. And the same laws which detain the detainee indefinitely also protect the park-goer’s freedom and security. This art exhibit identifies the body as the dominant mode of articulation for this political commentary on dehumanizing practices for Banksy, and also for other guerrilla graffiti artists.⁴⁴ More than a commentary on the contradiction modern torture poses politically, the detainee in Disneyland provokes consideration of a changed relationship of bodies to power in contemporary torture, and invites us to question the nature and potential of power.⁴⁵

⁴⁴ Xavier Prou (Blek le Rat) and Montreal’s Guerilla Girls, for example.

⁴⁵ This conclusion compares the Disneyland park-goer to the Guantánamo Bay Prison detainee in Banksy’s art installation to assert the shared vulnerability of both parties to extrinsic forces. In their works examining Disneyland, Jean Baudrillard and Umberto Eco also emphasize the similarities between Disneyland’s “Fantasy Land” and

As this dissertation has argued, legal edifices currently erected by national courts (such as in the U.K., the U.S., and in Israel), as well as in social and cultural discourses, condone contemporary torture within similar contradictory paradigms of political violence (criticized by Fanon). Despite its non-derogable definition in international human rights law, the continuance of torture ultimately depends on the embodiment of these definitions and their incorporation in day-to-day action by a critical audience. While critical work analyzing contemporary torture strongly refutes claims that torture can function as an effective tool to achieve political objectives (such as nation-building or economic or social development) to claim a deontological status for torture (that it is not permissible under any circumstances), torture persists in spite of these narratives (Conroy; Nowak; Perry; Rejali; Scarry). By definition, torture (including contemporary sensory deprivation techniques) is illegal and thus unacceptable. Yet instances where certain techniques appear acceptable undercut the rigor of the application of torture. This uncertainty of definition allows torture to be rationalized. For example, in ways discussed in the second chapter, waterboarding functions as a deceptive moniker, linguistically implying benign action rather than severe pain and suffering. Praise for the use of waterboarding against terror suspects, among public figures reinforces this perception of waterboarding as useful and

outside “reality.” Rather than focussing on the differences between these spaces, Baudrillard and Eco theorize how the illusory characteristics of Disneyland expose the representational character of the day-to-day operations we often unproblematically accept as objectively real experience. The simulation presented in Disneyland, the authors argue, sheds light on the fact of our current state of hyperreality—the dissolution of the boundary between what we consider the imaginary and the real. Viewing both Disneyland and the world-at-large as hyperreal spaces, Baudrillard argues, reveals “the fact that the real is no longer real” (13) and, as Eco correspondingly contends, that Disneyland is “a fantasy world more real than reality” (45). In their respective arguments, Baudrillard and Eco point out the permeability of seemingly rigid distinctions between the real and the imaginary in order to question their legitimacy. Taking a similar tack by comparing the detainee with park-goer in Banksy’s exhibit, this conclusion attempts to challenge the premises of legal definitions that formally separate the park-goer (as an untorturable legal citizen) from the detainee (as outside the law, and therefore, torturable). In questioning the rationality of definitions that simultaneously deny and allow humans protection, this conclusion emphasizes that without questioning definitional categories that differentiate rather than emphasize common vulnerability, both Disneyland and Guantánamo Bay Prison become a potential reality for all.

necessary, often within a racist and nationalist agenda (Buncombe). In addition, justifying rhetoric also draws on an established legacy of defining waterboarding as a lesser form of torture by drawing on similar past categorizations (as “coercive interrogation”) as a means to rationalize and justify atrocity as political violence.

In addition to categorizing and defining torture, state-sanctioned torture also produces a category of human being whose value is determined by these frames of political necessity and not by their rights as a human being. International human rights law prohibits torture on the force of the pre-existing agency granted to humans as an automatic right and freedom of *being* human (UNDHR). But the positivist nature of these rights also allows for an exception to this application, that is, for human beings to be regarded as inhuman. Building on Foucault’s notion of biopower, Giorgio Agamben metaphorizes the biopolitical status—the reduction of a human being to a political object—within the ancient figure of the *homo sacer*, a figure reduced from political citizen (*zöe*) to bare life (*bios*): a life stripped of legal status within a political order based on exclusion from political life. Law (“the rule”) produces bare life as an exception to itself; thus, Agamben argues, it is upon inclusive exclusion, or “relation of exception,” of the *homo sacer* upon which the modern political community is constituted (*State of Exception* 18; *State of Exception* 28). Banned from the political community and the domain of political beings (as *zöe*), the *homo sacer* is exposed unconditionally to the potential of killing by anyone; he “is in a continuous relationship with the power that banished him precisely insofar as he is at every instant exposed to an unconditional threat of death” (*Homo Sacer* 183). All the population is subject to subjugation, elimination, and extermination to achieve political objectives. As Slahi’s narrative that identifies his object status to his torturers, the state comes to negotiate the

conditions of living so that an individual's vitality, and also his torture, becomes regulated in terms of efficiency to the state.

Agamben's observations regarding the biopolitical exercise of modern power supports a reading of the bodies of the detainee and park-goer in Banksy's art in terms of comparison of similarities rather than only difference. Agamben sees the transformation of sovereign power to the organizational power of the modern state as the occasion of the separation of *zöe* from *bios*, an event that signaled the biopolitical expansion of the state. As bare life moves from the periphery to the centre, the exception increasingly becomes the rule (as Agamben argues, following Schmitt), so that all individuals become exposed by virtue of their common vulnerability. Under modern liberal democracy that is formally defined by our common rights (to dignity and freedom), Agamben argues, "the declaration of the state of exception has gradually been replaced by an unprecedented generalization of the paradigm of security as the normal technique of government" (14). Agamben's reading of vitality of bodies as the new imperative of the modern state allows us to see the similarity between the detainee and the park-goer. The same power that offers protection to individuals, also incarcerates and tortures the detainee indefinitely. The state of exception is not defined by the atrocities that take place, therefore, but by the potential that they may. One's rights may be relinquished, in other words, whether one is a detainee or a park-goer; under this power motivated by vitality (rather than ideology), no one is exempt from exploitation.

Within Agamben's framework, it is not possible, even in the utopic landscape of Disneyland, to see the bodies of the detainee or the park-goers as fundamentally free or unfree; they are both simultaneously subjected to the same potential for political exploitation. The paradigm of modern power, where, as Agamben writes (quoting Hannah Arendt), "everything is

possible,” means that the exploitation of human vulnerability cannot be limited to a historical or geographical space (such as a physical camp); rather, the potential for atrocity must be understood as an ever-present condition existing in potential within the political order. Politics has been transformed, Agamben argues, “into the realm of bare life,” in which the exception has been realized as a permanent and stable condition, in which “all citizens can be said . . . to appear virtually as *homines sacri*” (*State of Exception* 120; *State of Exception* 111). Disneyland, therefore, is not a precondition for recognizing differences between detainees and park-goers; rather, it is a way of expressing similarities.

One of the similarities between the bodies of detainees and the bodies of park-goers is their shared vulnerability. In *Precarious Lives*, Butler argues that loss and vulnerability, the simple condition that we are susceptible to injury, are the ways that human beings are bound to one another through common social ties. Recognition of a shared vulnerability opens up the basis for similarity and mourning and grieving that are community building, rather than exclusion and elimination that are community destroying (90). When differential value is assigned to human beings—that is, when some human beings are considered more valuable than others—the shared potential for exploitation in our common state as bare life constitutes the inescapable fact of our “common human vulnerability.” She argues that “we cannot recover from the source of this vulnerability: it precedes the formation of ‘I.’ This is a condition, a condition of being laid bare from the start and with which we can not argue” (30; 31). Recognition of the fact that we are equally vulnerable is the condition for seeing others as equally human; regarding others as unworthy of classification as human being by seeing them as dangerous terrorists, for example (“smoke them out of their holes”), we rearticulate what it means to be human, Butler argues, and in the same sense redefine human ontology (Knowlton). The power of public discourse is what

relegates individuals to animals, Butler argues. In her examination of the detainee, Butler suggests that the differential allocation of human value to terrorists in liberal democracies make the possibility for the detainment of prisoners in Guantánamo.

In *Horrorism*, Adriana Cavarero identifies torture as a particular kind of subjective violence that particularly targets human vulnerability and in doing so constitutes an ontological crime. A particular model of horror is indispensable for understanding our present state of violence that seems to exceed conventional bounds for understanding violence. Contemporary torture that does not aim to kill but to keep alive, exemplifies this horrorism. The torturer instead seeks to prolong the suffering by exploiting vulnerability: “as every torturer knows, the vulnerable is not the same as the killable. The latter stands poised between death and life, the former between wounding and healing” (32). Horrorism exceeds murder, or homicide; “it is deliberately intended to produce individuals who are no longer vulnerable” (34). It accomplishes this violence through the “killing of uniqueness: an attack on the ontological material” itself, a kind of “radical evil” where (quoting Arendt) “everything is possible” (45). This kind of violence produces extraordinary effects that are unimaginable. Modern violence is the suffering of the defenceless, the bombed city. In contemporary torture, she argues, “the traditional figure of the enemy has been definitively replaced by the defenseless as casual victim” (113). Since no information, no utility, nothing has been obtained, the violence is senseless, devoid of any goal or strategy, and the ‘casualty’ of the victim means that the victim can be anyone, can be accidental.

Defining torture, as I have suggested here, within a shared state of vulnerability poses a powerful counterargument to contemporary definitions that justify torture within narratives of necessity. The persistence of narratives of justification of torture through definitions of torture in

law, popular culture, debate, and discourse discussed in this dissertation, can be seen in the terms Banksy's exhibit suggests: torture becomes more acceptable when audiences view others in terms of difference—when their human qualities are obscured—rather than similarities, such as a shared condition of vulnerability. In addition to its inefficacy, one important consequence, therefore, of the use of torture as a political tool is that also, in addition to inflicting pain and suffering, become an effective technology for reinforcing racial and cultural inequities. Understanding and defining torture within a framework of equal vulnerability (as a common human condition) exposes the fallacies of narratives justifying torture by supporting an expansive definition of the human.

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