Regarding Representations and Responsibility:

A Study of Torture's Situation and Reception in post-9/11 U.S. Culture

by

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For victims of torture and illegal rendition around the world,

and for those who stand up against inhumanity and injustice—

that they not be forgotten.

Acknowledgments

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things) could never have been.

Abstract

       This thesis is an attempt to answer the ostensibly "simple" question of why the United States citizenry did not collectively confront or oppose the use of torture by U.S. operatives in the War on Terror. Considering representations of torture as both culturally informed and culture-informing vehicles for understanding the normative context and political framework that facilitated and sanctioned torture's use in the War—and as mediums by which citizens know and form judgments about the act—I examine the theoretical representations of torture in liberal humanism and utilitarianism, the seemingly mimetic photographic images taken at Abu Ghraib prison in Iraq, and the fantastically premised epic productions of network television's *24* and the blockbuster films *Casino Royale* and *The Dark Knight*. After tracing the ways in which torture functions in these cultural forms, I reflect on the relationship between civic participation and culture formation in the post-9/11 era in attempt to position citizens vis-à-vis responsibility.

       In the first chapter, I locate an "expected and appropriate" response to torture within the human rights and liberal democratic mores of the United States and the international legal regime to which it belongs: a response understood as aversion to the act and public disavowal of its use via civic participation. After examining the theoretical tenets on which this response is premised, I demonstrate how contradictions within the system of liberal humanism governing the United States facilitated claims of a state of exception after September 11th, thereby undermining the legitimacy of dissent and expectation of political accountability.

       In the second chapter, I consider the photographs of torture and abuse taken at Abu Ghraib and various factors governing their production and public reception. My analysis highlights the photographic medium's capacity for becoming a site of violence, the attitudes of pain falsification depicted in the Abu Ghraib images, and the parallel between the photographs and violent iconography in Western art. I argue that atrocity images demand careful attention from viewers to the contextual narratives and invisible power structures in which they are situated. Though such images are anticipated by liberal humanism to elicit feelings of outrage that spur political change, I contend that this expectation disregards the distance the photographic medium instills between viewers and victims. The chapter concludes with a comment on the significance of mediatization and panopticism to U.S. culture.

       In the third chapter, I examine three epic film productions that respond to the milieu of fear and disillusionment permeating the U.S. post-9/11 by offering heroes who effectively assuage audiences' anxieties: the television program *24*, the James Bond film *Casino Royale*, and the Batman film *The Dark Knight*. These productions are underwritten by fantastic premises that are often obscured by the films' topical relevancy and formal realism. I consider how this phenomenon enables the fantastically premised torture scenes and hero figures in these productions to intervene into reality. To highlight the ease with which underlying premises can be overlooked, my discussion of epics is prefaced with analysis of the ticking time bomb scenario as a fantastically premised theoretical representation of torture that is treated as a realistic possibility by post-9/11 culture.

       In the final chapter, I argue that considering their enmeshment in relational power networks and participation in socio-political normative contexts, U.S. citizens are mutually responsible for the use of torture in the War on Terror. I advocate public encouragement of comprehensive inquiry into the Bush administration's illicit policies to deter violations of law by future administrations, and conclude by urging increased attention to the means by which our culture production and consumption govern the nation—and thereby influence the world.

CONTENTS

Short Titles

24: *24.* Seasons 1-7, broadcasted by Fox Network. Directed by John Cassari.

CR: *Casino Royale*. DVD. Directed by Martin Campbell. 2006; Sony Pictures, 2007.

DK: *The Dark Knight*. DVD. Directed by Christopher Nolan. 2008; Warner Home Video, 2008.

Introduction

It all started with what seemed a simple enough question: why, upon learning of torture use by United States operatives in the War on Terror, why did the American public not cry out for a comprehensive investigation?—in 2004, when the news broke about Abu Ghraib, or at any other juncture over the past five years, when circumstantial evidence pointed toward an executive-level sanction of systematic torture use in the War. Why did the American people never clamor to Congress or the Bush administration for a public disclosure of the origins, extent, and frequency of torture use? Why did not I?

When I saw the photographs of U.S. military police officers abusing and torturing their prisoners at Abu Ghraib, I was appalled and angry. I was embarrassed, for belonging to a political community capable of acting in such a way. I strongly believed that the photographs depicted injustice. And I felt guilty—because despite my fierce aversion to the events depicted in the photographs, I did not write my Congressman, join Amnesty International, or write a letter to the editor of the local newspaper. I felt guilty because, despite my disgust, I did not take political action.

Over two hundred years worth of human rights and liberal humanist discourse had convinced me that when a citizen dissents with the state's actions or witnesses injustice, the appropriate response is civic action; and that the generation of enough dissent eventually would lead to policy change. Thus, widespread dissent and subsequent policy change were the response and effect that I expected to follow the scandal at Abu Ghraib and a number of other illicit power

abuses in the War on Terror.[1] Yet the state was confronted with no such collective public

response.

Of course, some individuals *did* respond. There are courageous stories of prosecutors at

Guantanamo Bay who symbolically resigned their posts, Department of Justice attorneys

dismissed for objecting to the Bush administration's policies, and average citizens who

religiously wrote their legislators and called the White House. I do not mean to disregard these

individuals nor minimize their integrity and highly commendable actions. Rather, what I want to

make explicit is that there has never been concerted public engagement with the issue of torture

in the War on Terror, despite torture's continuous presence in the media. This thesis is thus an

attempt to better understand the absence of a collective response—as well as an inquiry into both

my personal reaction to the Abu Ghraib scandal and the dearth of robust anti-torture initiatives at

the policy level, which widespread public outcry would presumably provoke. Though months of

critical attention to the question have not produced a certain answer, I offer the following four

chapters as a reflection on civic participation and culture formation in the post-9/11 era.

In this thesis, I have drawn upon many methodologies and cultural forms, for the question

of why the U.S. citizenry did not actively confront or oppose the use of torture concerns issues

ranging from problems of political disengagement to the nature of the mediums by which we

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[1] Momentum for policy change regarding social and civil rights issues requires a broad base of social and electoral support. During the civil rights movement, for example, this support began with the acts of a few individuals and the progressive Supreme Court ruling in *Brown v. Board of Education*. It took over a decade, however, for the movement to gain the necessary social momentum to precipitate substantial policy changes, which came in the form of the 1964 Civil Rights Act; only after Congress passed this act was change enforceable or supported by the government in a manner that could reconstitute social relations. Because legislative politics are so often governed by micro-level attempts to garner constituent, national party, and peer support, legislative policymakers have little incentive to involve themselves in controversial policy changes, such as those involving human rights issues, without a widespread public clamor for change. Even with such support, it is difficult to garner enough votes to pass these initiatives.

receive cultural messages. Torture itself is innately an unrepresentable act. No medium could

possibly impart to audiences or viewers the utter immediacy of the pain inflicted upon the torture

victim, the ways in which the victim's very subjectivity is destroyed, nor the subtle

consequences, for the torturer, of exacting such pain. Yet because torture is something which

fortunately few U.S. citizens have experienced, we are nonetheless dependent on representations

of the act to provide the information necessary for us to imagine, understand, and form

judgments about it. For this reason, bearing unrepresentability always in mind, I have made

representations of torture the nucleus of my study—arguing that such representations are

mutually constitutive with cultural attitudes about the act, and serve as sites that comment on

social perceptions and consciousness of it.

After organizing several well-known representations of torture in post-9/11 U.S. culture

into the loose categories of "theoretical," "mimetic," and "fantastic," this thesis gives careful

consideration to the theoretical representations of torture in liberal humanism and utilitarianism,[2]

the seemingly mimetic photographic images taken at Abu Ghraib prison in Iraq, and the

fantastically premised epic productions of network television's *24* and the blockbuster films

Casino Royale and *The Dark Knight*. The representations under scrutiny are either highly

popular or ubiquitous in U.S. culture, and, consequently, have been broadcast in various

capacities across the globe. In considering these works, it should not be forgotten that American

culture is unquestionably hegemonic: the images, television programs, and films we distribute

internationally are a type of "soft power" that projects and thereby maintains our attitudes and

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[2] To preclude confusion, I should make it clear that these two traditions are discussed in different
chapters: liberal humanist representations in chapter one and utilitarian ones in chapter three.

values—convincing other publics that prestige results from voluntarily embracing our mores.[3]

The United States' capacity to produce and disseminate ideas, images, and films that permeate

and are esteemed around the globe is thus a tacit statement about the nation's position on the

world stage (121).

    To preclude confusion, I want to clarify my definitions and classifications of

representations. By "theoretical representation," I mean a philosophic tradition's consideration

of the act of torture in relation to its definitions of human nature, civic participation, and political

action; my study is concerned chiefly with torture's situation within both the liberal humanist

tradition governing the United States' foundational documents and a utilitarian system of

thought. The label "mimetic representation" refers to a medium that seemingly imitates or

replicates the torture act, and my focus is primarily photography. "Fantastic representation" I

understand to signify an imaginatively constructed narrative not entirely rooted in reality; in

particular, I am interested in television and film productions premised on fanciful or implausible

assumptions.

    A few additional caveats: this thesis insists that a nation's normative contexts matter; that

a social body with a collective memory, identity, and imagination, exists; and that, as Edward

Said noted, culture is "not merely something to which one belongs but something that one

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[3] Byungju Shin and Gon Namkung, "Films and Cultural Hegemony: American Hegemony 'Outside' and "Inside" The '007' Movie Series," *Asian Perspective* 32, no. 3 (2008): 115, 120. For this reason, there is an inherent symbiosis between the U.S. government and the U.S. television/film industry. As the government helps the film industry to maintain global dominance, the industry projects American values and promotes maintenance of the status quo (139); because Hollywood is chiefly concerned with audience enjoyment and entertainment, it creates films that respond to audience desires—thereby reinforcing the attitudes and values underlying them. Just as most U.S. citizens experience torture via the mediation of representations, many foreign populations experience U.S. culture through the broadcast of American films.

possesses" and uses to differentiate the self from the other.[4] Culture in this thesis refers to a

milieu constructed not only by socio-political elites who propagate messages and attitudes from

Hollywood or Washington D.C., but also by the active, and often unconscious, participation of

individual citizens, as they form preferences, discuss topical events, engage the press, and

establish consumer habits.

Finally, I want to make clear that this thesis is not meant to be an exhortation for readers

to feel personal guilt vis-à-vis the use of torture in the War on Terror. Rather, it is an exhortation

toward more careful consideration of the reasons why citizens think that they are or are not

guilty. As Timothy Kaufman-Osborn has pointed out, gratuitous blanket claims for collective

American guilt only elicit "the cheap gratification that accompanies politically-correct hand

wringing, [and are] a sorry substitute for the work of careful thinking about collective

accountability."[5] Accordingly, the work of the following four chapters should be understood as

an attempt to situate the U.S. public in relation to the act of torture and to trace the complicated

matrixes of agency and responsibility that surround its use.

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[4] Edward W. Said, *The World, the Text, and the Critic* (Cambridge: Harvard University Press, 1983), 9.

[5] Timothy Kaufman-Osborn, "'We are all torturers now': Accountability After Abu Ghraib," *Theory & Event* 11, no. 2 (2008), under "Liberal Legalism and Accountability," http://muse.jhu.edu/journals/theory_and_event/v011/11.2.kaufman-osborn.html.

<u>Chapter One. Theoretical Representation: Torture and the Liberal Humanist Tradition</u>

I would like to begin with closer scrutiny of the response I expected and felt was appropriate to answer the exposure of the use of torture in the War on Terror—a response that could be loosely defined as civic engagement with political institutions via channels constitutionally established for public expression of outrage. From where did such an expectation come? What does it presume? Is it indeed an appropriate and efficacious reaction for U.S. citizens inhabiting a post-9/11 era?

This chapter attempts to address these questions by locating my expectation in the human rights and liberal democratic principles of the liberal humanist, or Enlightenment, tradition. After examining how liberal humanism, as an antecedent to both the United States' foundational documents and the contemporary international legal regime, understands the world, humankind, civic participation, and torture, I will consider the tradition's permutation after September 11th. As will be demonstrated, the tenets of liberal humanism can neither wholly explain the act of torture in the context of the war nor can they be perceived as the system governing the United States post-9/11. Rather, during the period from late 2001 to early 2009, the philosophic tradition's internal contradictions facilitated claims of a state of exception that undermined the legitimacy of dissent and expectation of political accountability.

I. The Origins of Human Rights

The human rights tradition is securely rooted in Enlightenment thought: it emerges from the concept that all human beings share claim on certain immutable necessities for life, liberty, and happiness. This grounding premise that humankind is a "single moral collectivity" has long

been embedded in Western thought—present in both the Christian and classical traditions.[1]

Long before the Enlightenment, the ancient world had already made space for concepts of

universality and uniformity within the normative context of imperialism, which spread Roman

customs across first the Mediterranean basin and then Europe at large (64-67). Later, the Pauline

doctrine, which rose to prominence during the inchoate stages of Christianity, also appealed to a

human commonality that transcended ethnic lines. St. Paul's teachings on evangelism and

universalism subsequently became bedrocks of Christian thought as the religion evolved and

spread.[2]

When Platonic and Christian thought merged during the Renaissance, and universal

absolutes became increasingly acknowledged as compatible with Christian teaching, the concept

of a common humanity simultaneously became more secularized, more accessible to non-

Christian audiences, and thus more capable of actually becoming universal (103). The

Enlightenment generated a system of thought premised on the common nature of rational,

autonomous human beings endowed with immutable dignity and basic equality. Known in

various contexts as liberalism, humanism, and Enlightenment thought, this philosophic system

assumed the existence of a human "uniformity in keeping with [contemporaneous] assumptions

of physics regarding the natural world"—and worked to uncover and underscore both the science

of nature and the science of humanity.[3]

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[1] John M. Headley, *The Europeanization of the World* (Princeton: Princeton University Press, 2008), 63.

[2] For an example of St. Paul's call to universality see Ephesians 2.19.

[3] John Headley explains Grotius's stance: "[N]atural law, the established rational order of things, would pertain and prevail, even if God and his providence did not exist…If rights are derivative from natural law, natural law is itself derivative from human nature in its sociableness" (Headley 111).

Modern liberal democracy is predicated on such notions, employing the principle of a common humanity as the origin of governance by popular sovereignty. In governments ruled by popular sovereignty, citizens are responsible for holding their leadership responsible to the systematized rule of law. The constitutional texts governing these states declare civic participation a duty of the citizenry; they delineate appropriate channels by which citizens can voice their opinions, and they institute mechanisms by which political power can be checked (Kaufman-Osborn). Liberal democracy thus requires citizens to be public individuals "who set aside their 'private' selves [or identifications] in order to acknowledge that what they possess in common, i.e., their mutual culpability, is of greater salience to their identities than those dimensions…which divide them from one another" (9).

Hugo Grotius is largely credited with secularizing the concept of a common humanity. Writing in the early 17th century, he argued that natural law could exist without God because it derived from the human being's natural propensity for rationality and social relations (111). Grotius's contemporary, Thomas Hobbes, further advanced the notion, by establishing its source as a natural equality between individuals, and by contending that natural law was not supernal but derivative of the human condition.[4] Subsequent intellectuals seized upon these arguments for "a basic equality inhering to the human condition" (114). The concept can be traced from Hobbes through John Locke's two treatises, in which Locke asserts that natural rights exist prior to natural law and initiate it—thereby affirming Hobbes's assertion that natural law is objective

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[4] Hobbes inverted Grotius's relationship between natural rights and natural law, humankind and society, contending that the human's inborn condition is asocialness and his natural propensity is immense fear that encourages war against all. This "natural condition of mankind" is ruled by a *jus naturale* (natural right) of self-preservation, from which are derived *lex naturale* (natural laws) that advise creation of an artificial social body. In other words, Hobbes reconstitutes natural law as a natural right, and alters *lex naturale* from transcendental laws to precepts for self-preservation.

oriented (for self preservation) rather than transcendental. The end of Locke's career saw natural law reconstituted from a preternatural concept to a political theory that would be later translated into the American and French declarations (134).

Several other developments were important to the evolution of this liberal humanist system of thought. One was Jean-Jacques Rousseau's contention that all sentient beings in their natural state have an "aversion to seeing any other sentient being perish or suffer, especially if it is of our [species]."[5] Another was articulation of Immanuel Kant's "categorical imperative," which declares that humans, as rational beings, cannot merely be used as means to an end; according to Kant, actions as well as objectives must adhere to the universal laws governing humanity.[6] Still another development was the late Enlightenment's expansion of theories regarding universal humanity into world expansion and panopticism—a phenomenon Headley has described as "[t]he insatiable curiosity, the restlessness, the drive, to reduce the entire planet to a complete knowledge" (Headley 143). In this way, philosophical trends toward increasing knowledge and extending inclusiveness were applied to technological, economic, and geopolitical exploits, in a manner that aroused desire for exploration and enlargement of empire.[7]

Working to render the world knowable, and thereby conquer nature's chaos by human industry, liberal humanist principles consequently extended their reach in tandem with Europe's ability to transverse the globe, disseminate its culture, and forge imperialist ties. The mutually reinforcing nature of these developments is not surprising, for any universal principle is intended to spread. Johann Herder, discerning their correlation in the nineteenth century, described the

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[5] Jean-Jacques Rousseau, *A Discourse on Inequality* (London: Penguin Books, 1985), 70.
[6] Joseph Slaughter, *Human Rights, Inc.: The World Novel, Narrative Form, and International Law* (New York: Fordham University Press, 2007), 18.
[7] The era's belief in the all-powerful reach of science and man's ability to conquer nature through panoptic seeing and knowing are perfectly illustrated by Francis Bacon's *The New Atlantis.*

desire to know and control the world as a common human enterprise: "Man, while he continues man, will not cease from wandering over his planet…Curiosity, and the insatiable desire of wealth, fame, discovery, and increase of strength…will impel him…To him the Earth is given; and he will not desist, till it is wholly his own."[8]

It does not seem surprising that judicial use of torture was abolished across continental Europe during this same period, since the tenets of liberal humanism are seemingly antithetical to the cruelty and destruction of humanity at work in the torture act. Yet the spread of Enlightenment ideals, though historically considered a potent catalyst of abolition, cannot entirely claim credit for torture's prohibition. Rather, disestablishment of torture resulted from modifications to the penal system in the 16th and 17th centuries that decreased torture's importance to the juridical system.[9] Increased prosperity and education across Europe during this period altered the nature of common legal infractions from crimes of passion to those involving property, and consequently, the penal code became less exacting—eliminating capital punishment and reducing the burden of proof required for conviction (Langbein 97).[10] Such changes shifted reliance away from torture, which had functioned as a means for extracting confessions in cases warranting corporal punishment or death; instead, confronted with less serious crimes, torture decreasingly served a necessary juridical function, and the penal system gradually established circumstantial evidence and incarceration in its place. Decrees abolishing torture in the eighteenth century can thus be understood as largely symbolic acts that enabled

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[8] Johann Herder, *Reflections on the Philosophy of History and of Mankind* (Chicago: University of Chicago Press, 1968), 107-108, cited by Headley, 144.

[9] John H. Langbein, "The Legal History of Torture," in *Torture: A Collection*, ed. Sanford Levinson (New York: Oxford University Press, 2004), 98.

[10] Previously, the burden of proof had been a convict's confession (acceptable if given under torture) and two eye-witnesses.

rulers to purport to enlightenment without requiring them to change much in their policies (Langbein 98-99).

In short, the liberal humanist philosophy that rose to prominence during the Enlightenment period witnessed the rejection of torture in continental Europe as it concomitantly promoted an ideology founded on the equal rights and common dignity of humankind. The tradition's privileging of equality encouraged institution of a democratic government, predicated on both popular sovereignty that protects individual rights and civic participation that generates collective accountability for government action. Populations that disregarded or were ignorant of such practices were (and often continue to be) deemed backward and barbarous, while antithetical acts like cruelty, inhumane treatment, and torture, were (and often continue to be) represented by the tradition as vestiges of tyranny and despotism.[11] The U.S. Constitution, written during the Enlightenment's denouement, accordingly expresses disgust with acts that force individuals into collusion, abridge the individual's life or liberty, or serve as cruel or unusual punishment; it effectively outlaws torture in the 5th and 14th amendments.[12]

The international legal texts in effect today are indirect descendants of such American and French rights documents, and were translated into law after the Second World War. Concerned with the nature of human subjectivity, they protect the human being's right to voice, so that one is able not only to tell one's own story, but also to control representations of one's self.[13] Joseph Slaughter explains: "The freedom of speech, the liberty to tell one's story, [the first article of the accord,] is precisely what the following thirty articles of the Universal

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[11] See David Luban, "Torture, and the Ticking Bomb," *Virginia Law Review* 91, no. 6 (October 2005): 1425-1461.

[12] The 5th amendment was written in 1791; the 14th was not added 1868. Torture is also banned in Title 18, chapter 113C of the U.S. domestic law code.

[13] Joseph Slaughter, "A Question of Narration: The Voice in International Human Rights Law," *Human Rights Quarterly* 19, no. 2 (1997): 407.

Declaration attempt to ensure through prohibitions of abuses that tend to destroy the human

voice—'negative rights'—and through promotions of social welfare that tend both to encourage

and to foster the human voice speaking itself—'positive rights'" (415-416).[14] The contemporary

human rights regime thus extends the Enlightenment's attention to equality and common

humanity, i.e. civil and political rights, so as to guarantee economic and social ones as well, and

it considers the person an individual bearing not only rights but also *duties* (Slaughter, *Human

Rights, Inc*. 131). This new age of human rights law bans torture in several documents to which

the United States is a signing party.[15]

 Yet liberal humanism has not only inspired the structure of government in many states

and the composition of the contemporary international human rights regime, but has also

continued to shape the civic and ethical attitudes of individuals since the Enlightenment. For this

reason, the tradition's ideological legacy is more significant than even its function as a historical

determinant. While the philosophic tradition has never accurately represented reality for most

human beings, it nonetheless has always provided ideals to which adherents cling and toward

which they endeavor. As mentioned above, liberal humanist tenets have consistently served as a

measuring stick enabling individual self-definition and separation from others who do not

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[14] Slaughter further explains, "While civil and political rights might be the first guarantees for the right to narration, economic and social rights become important for understanding that an individual requires fair wages and safe working conditions to tell her story. The right to narration is not merely the right to tell one's story; it is the right to control representation" (430).

[15] Sanford Levinson, "Contemplating Torture," in *Torture: A Collection*, ed. Sanford Levinson (New York: Oxford University Press, 2004), 23. See also Alex Bellamy, "No Pain, No Gain? Torture and Ethics in the War on Terror," *International Affairs* 82, no. 1 (2006). The legal texts prohibiting torture include, but are not limited to, article 5 of the 1948 Universal Declaration of Human Rights; article 3 of the 1949 Geneva Conventions; the General Assembly of the United Nations' 1975 "Declaration Against Torture," which established torture as a crime against humanity; the 1977 American Convention of Human Rights; and the 1984 United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment of Punishment, which includes a "no exceptions" clause.

espouse "enlightenment"; they have been widely drawn upon to adjudicate and regulate various human exchanges ever since their induction into philosophic discourse.[16] Within the context of this ideology premised on equality and human dignity, the idea of torturing an individual helpless to defend himself naturally seems execrable: destruction of a torture victim's subjective agency via assault that forces collusion renders the victim a falsification of the liberal ideal of an active, engaged individual with control over his world (Luban 1433).[17] In this way, the tradition has encouraged ideological aversion to torture just as it facilitated the inscription of torture prohibition on constitutional and legal documents.

My expectation that the revelation of torture would mobilize the U.S. citizenry can be understood as a direct byproduct of this ideology; expectation of a public outcry and feelings of guilt for not speaking out were predicated on a belief in the common humanity and equal dignity of all human beings, and in governments ruled by the will of their people. In short, the liberal humanist tradition had led me to presume that dissent against torture was possible via political channels and would be efficacious, as well as that the United States government would operate according to the precepts delineated in its founding documents—when these assumptions do not necessarily always hold in praxis. Indeed, events since 9/11 have suggested that neither the U.S. government nor its citizenry upholds all tenets of the liberal humanist tradition consistently.

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[16] It seems that such demarcations between "progressive" and "backward," which inherently suggest a type of moral "development," work always in tandem with material development. Increased material prosperity often means closer interactions with Western nations and positive judgments by their governments and business interests alike; while accruing Western values in this manner, material prosperity also enables citizens of such nations to feel secure enough in their livelihoods to work actively to claim unrealized rights. See Ronald Inglehart, *Modernization, Cultural Change, and Democracy* (Cambridge: Cambridge University Press, 2005).

[17] See also Alex Bellamy, "No Pain, No Gain? Torture and Ethics in the War on Terror," International *Affairs* 82, no. 1 (2006): 29-130.

II. Contradictions of Liberal Humanism and the Advent of the State of Exception

The War on Terror has brought several of the liberal humanist tradition's contradictions to the fore. For the War, as Nathan Gorelick has noticed, attests to "the violence which inevitably results from the grand [Enlightenment] project of world ordering that will never be rid of its disordered and dangerous others."[18] The diametric oppositions, false intelligence, and superficially benign premises on which the War was initiated, have revealed the tradition's self/other differentiations and imperialist tendencies—not to mention to impossibility of knowing and controlling the world to the extent the Enlightenment project desires. Human rights ideals actually served as a warrant for invasion of Iraq and Afghanistan. Because the countries were not liberal democracies, many Americans deemed permissible our (forced) restructuring of the nations' social and political institutions: after invasion reconstituted Iraqi and Afghan citizens as rational and autonomous democratic subjects, how much easier it would be to treat them according to universal principles (Slaughter, *Human Rights Inc*. 419). Most symbolically, the catastrophe of 9/11 itself epitomized the danger of presuming that rationality rules the world and panoptic vision is possible; the fundamentalism in effect that day was, in many ways, a reaction against the inconsistent, even dark, legacy of liberal humanism—an assertion that not everyone wants to embrace its tenets.[19]

The War has also demonstrated that liberal humanism can make room for torture, if, as David Luban has pointed out, the act is used as an information-gathering tool that will avert

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[18] Nathan Gorelick, "Imagining Extraordinary Renditions: Terror, Torture and the Possibility of an Excessive Ethics in Literature," *Theory & Event* 11, no. 2 (2008), under "The Intimacy of Terror," http://muse.jhu.edu/journals/theory_and_event/v011/11.2.gorelick.html.

[19] Gorelick notices that when plagued by the unknown and seemingly irrational, the liberal humanist tradition responds by naming the thing that seems antithetical to reason—as totalitarianism, communism, or religious extremism, for example—thereby ostensibly rendering the Other both knowable and eradicable.

greater evil. It seems there is a hole in the absolute prohibition on torture when the act is

presented with the specific objective of saving the lives of others; divorced in this manner from

cruelty, terror, power and punishment, a moral objective seemingly renders torture palatable and

even necessary. Luban contends that in such cases it often dawns

> on reluctant liberals that the torturer's goal of forestalling greater evils is one that
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> liberals share. [Information-gathering] seems like a rational motivation, far
>
> removed from cruelty and power-lust…Thus, even though absolute prohibition
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> remains liberalism's primary teaching about torture, and the basic liberal stance is
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> empathy for the torture victim, a more permissive stance remains an unspoken
>
> possibility, the Achilles' heel of absolute prohibitions. (Luban 1439)

Luban terms this exception the "liberal ideology of torture," which has become familiar

in contemporary political and cultural discourses: it is at the heart of the infamous "ticking time

bomb" scenario that dominates the current torture debate and is characterized by a torturer who

acts to prevent a greater catastrophe. It is not until the security needs of a state assume a position

of supreme importance, however, that the liberal exception reveals itself in this way.

Consequently, liberalism's absolute prohibition generally stands firm until moments of fear or

exigency suddenly (and conveniently) reveal cracks in its foundations. In chapter three, I

examine the specious arguments and spurious assumptions undergirding the ticking time bomb;

for now, it is enough to notice that the scenario envisions the possibility of torture within a

liberal humanist tradition that simultaneously seeks to destroy it.

The relationship between the War on Terror and international law has also demonstrated

fissures in the system's legal codification. For example, as Judith Butler has pointed out, as the

Geneva Conventions presuppose a human community composed of rational and autonomous

subjects conceived primarily according to an Enlightenment model, it also presumes the

systematization of the world according to a Westphalian model of nation states—another

invention of the period. These perquisites speak uneasily to the contemporary situation of global

war involving non-state actors. The privileging of military-based state actors inherent to the

Conventions was readily exploited by the Bush administration's legal team, which claimed that

their prisoners were "detainees" and "unlawful combatants," rather than prisoners of war,

because the individuals did not belong to the "High Contracting Parties" (or recognizable nation-

states with "regular armed forces") specified by the accords.[20] The administration was thus able

to justify its refusal to apply the accord to detainees using the document's own vocabulary;

though the Conventions do not legally bear such a reading,[21] their essential favoring of

conventional war and nation states has been exploited in such a way as to seem legitimate

without careful scrutiny.

The Bush administration's maltreatment of prisoners in the War on Terror has established

that, despite their claim to immutability and universality, human rights in praxis are closely

coupled with state citizenship. Hannah Arendt once wrote that human rights in practice are the

positive rights of citizens, rather than the natural rights of individuals; that when individuals are

no longer treated as citizens, they often are also denied natural rights:

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[20] Judith Butler, "Guantanamo Limbo," *The Nation*, March 14, 2002, http://www.thenation.com/doc/20020401/butler.

[21] Even this argument over "high contracting parties" was spurious, however, because, as Butler points out, "the Geneva accord on POWs is explicit that the term 'POWs' includes those who belong to 'regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power.' In other words, the detaining power, in this case the United States, may not recognize the authority to which these prisoners profess allegiance, but that should have no bearing on their status. Any doubts about that status are to be settled by a competent tribunal convened under the terms of the accord" (Butler).

> If a human being loses his political status, he should, according to the
> implications of the inborn and inalienable rights of man, come under exactly the
> situation for which the declaration of such general rights provided. Actually, the
> opposite is the case. It seems that a man who is nothing but a man [i.e. not a
> citizen] has lost the very qualities which made it possible for other people to treat
> him as a fellow man.[22]

Without inclusion in a state from which one can derive legal personhood, the individual has little capacity for claiming or protecting his rights against divestment by others. In practice then, despite assertions of universal equality, some individuals inevitably become more equal than others, with more ownership of rights than others—unless states actively protect the equal rights of their people. Merely attributing every human being with individuality, social voice, social mobility, and liability, in theoretical or legal discourse does not mean that all individuals share equal claim on such rights in praxis (Slaughter, *Human Rights Inc.* 12).[23] Like liberal humanism writ large, human rights are above all an ideology that, as Joseph Slaughter has pointed out, personifies the person by ascribing to humankind characteristics the individual may not in reality possess. The ideal legal "person" in this way serves as a projection and vehicle for achieving an ideological objective, while the actual person may be left behind if his or her rights are not actively enforced (Slaughter, *Human Rights Inc.* 20).

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[22] Hannah Arendt, *The Origins of Totalitarianism* (Orlando: Harcourt, Inc., 1968), 300.

[23] It is also worth noting that the rights in question are specifically human, and thus the association of those different from us with animals initiates a divestment of their rights—or an assertion that they never had claim on rights in the first place—and enables us to distance ourselves from them. As Richard Rorty comments, "We think of Serbs or Nazis as animals, because ravenous beasts of prey are animals. We think of Muslims or Jews being herded into concentration camps as animals, because cattle are animals. Neither sort of animal is very much like us, and there seems no point in human beings getting involved in quarrels between animals." Richard Rorty, *Truth and Progress: Philosophical Papers, Volume 3* (Cambridge: Cambridge University Press, 1998), 168.

Manipulating these contradictions within the liberal humanist system of law and governance, using American legal texts and liberal humanist principles as a front for consolidation of power in the presidency, the United States for much of the past seven years has been a state of exception: what Giorgio Agamben describes as a state functioning in the liminal region between politics and public law, military and civilian rule—or a phenomenon of "legal civil war."[24] The state of exception operates outside of institutional and legal documents; its exception to the rule of law is predicated on the concept of state emergency. Authority thus derives from exigency, and results in "unaccountable prerogative power" and all-compromising recourse to heightened security (1-2). The United States' post-9/11 shift into a state of exception can be observed most visibly in October 2001's Patriot Act, which expanded the executive's sanction for surveillance, search, and seizure, and in President Bush's Military Order of November 13, 2001, which authorized "indefinite detentions" and trials by "military commission" rather than tribunal—and consequently divested individuals of their legal personhood (3).[25] These measures, justified by the emergency of war, provided the administration latitude to move outside the rule of law and engage in practices like domestic wire-tapping, extraordinary rendition, and torture.

A crack in the structure of our liberal democracy, the U.S. state of exception arises "in the dialectic between the powers of the president and those of Congress" delineated in Article 1

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[24] Giorgio Agamben, *State of Exception,* trans. Kevin Attell (Chicago: Chicago University Press, 2005), 1-2.

[25] The WWI era was characterized by states of exceptions around the world, which extended after the war in Germany and France due to economic situations; Hitler took power during one such state, in which parliament had been dissolved for years. During WWI, President Wilson was greatly empowered by Congress, and during this period established strict prohibition of sedition. During the Great Depression, President Roosevelt assumed extraordinary power to control the economy of the country. Then, during WWII, the President was granted the power to intern Japanese-Americans during another such state of exception (Agamben 12-22).

of the Constitution; the article allows suspension of habeas corpus in extreme circumstances that challenge public safety, but does not specify whether Congress or the president has authority to declare this suspension. The state of exception is also facilitated by the tension caused by Congressional power to declare war while the president serves as Commander in Chief (19-20). During times of fear and vulnerability, these ambiguities can be exploited to the extent that the citizenry will relinquish rights—particularly equality, freedom, and dignity—in exchange for heightened security. During the resulting state of exception, both domestic and international arenas become susceptible to conflation of rule of law with executive discretion.

Manipulating aporias in the structure of liberal humanist thought (such as the ticking time bomb scenario), as well as flaws in international law and difficulties in enforcing human rights, the post-9/11 state of exception was able to disregard domestic mechanisms for accountability, dissent, and rule of law—traditional methods for checking arbitrary power and promoting responsibility in the liberal humanist tradition. The Bush administration squelched internal dissent against its policies in domestic agencies and the military via employee dismissals and censure. It also discouraged dissent in the public domain by keeping civic protestors out of the media's eye and polluting the channels by which dissent could reach high-ranking officials; in particular, it sequestered opposition away from the president.[26]

It is thus not surprising that in states of exception like the one governing the United States post-9/11 it becomes difficult for citizens to respond to rights violations in the "expected and

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[26] See, for example, Mark Benjamin, "Bush's Top General Quashed Torture Dissent," *Salon*, June 30, 2008, http://www.salon.com/news/feature/2008/06/30/richard_myers; Dave Lindorff, "Keeping Dissent Invisible," *Salon*, October 16, 2003, http://dir.salon.com/story/news /feature/2003/10/16/secret_ service/index.html; Jim VandeHei, "Three Were Told to Leave Bush Town Meeting," *The Washington Post*, March 16, 2005, PA04; Mark Thompson, "Iran Dissent Cost Fallon His Job," *Time*, March 12, 2008, http://www.time.com/time/nation/article/0,8599, 1721491,00.html; or Andrew Sullivan, "Dissenting Voices Vanish from Bush's Inner Circle," *The Sunday Times*, November 21, 2004, Comment section.

appropriate" manner outlined by liberal humanism—not least because such outrages are the

theoretical tradition's own shadow self. As Nathan Gorelick explains,

> Extraordinary rendition, torture, the war on terror and the security of the state
>
> are…nodal points within the larger epistemology of liberal humanism—a
>
> humanism that produces [such] dark chambers in its flight from the black void at
>
> its own core…It would therefore be misguided to assume that the violence
>
> endemic to the war on terror can be cured by simply exposing its contradictions.
>
> (Gorelick, under "Literature Beyond Ethics")

Manifestation of the inevitable disparity between ideals and politics in praxis, between legal

constructs and reality, human rights violations are the underbelly of an ideological system

premised on rationality, equality, and panopticism; and they are often forced into obscurity.

Merely revealing these contradictions inherent to our liberal humanist tradition or the manner in

which its tenets can serve as fronts for illicit conduct—as public disclosure of torture use in the

War on Terror has in many ways—is irrelevant if the concealment processes remain necessary

for the tradition to function. Unless the ideological premises impelling rights violations (in

tandem with rights protections) are understood as determinative agents and critically evaluated

by a public desirous of ameliorating the state's behavior, revelation of the contradictions of

liberal humanism is inefficacious.

Consolidation of power within a state of exception makes this kind of confrontation

difficult; the very establishment of a state of exception presupposes a general public's forfeit and

disregard of rights in exchange for security. Accepting as justification the "emergency situation"

promulgated by the state, many citizens in the post-9/11 era did not respond to violations of their

own rights or the rights of others. Those who did, however, were constrained by constriction of

the channels designated for citizen-state exchanges. In such circumstances, when the tradition of

"expected responses" becomes inhibited by exceptions that obstruct channels for civic

participation or dissent, and when the capacity for civic enactment of change becomes

threatened, what are citizens' options? Are they rendered impotent? Should they act within the

broken system or outside it? As the following three chapters explore post-9/11 civic detachment

more fully, such questions of and constraints on citizen participation should be born in mind, for

when an epistemological structure like liberal humanism stands in disarray, individuals have a

tendency to feel themselves impotent and in social crisis.

III. *The Liberal Humanist Representation of Torture:* The Body in Pain

Elaine Scarry's seminal work, *The Body in Pain*, is a paradigmatic example both of how

the liberal humanist tradition understands torture as barbarous and inhumane and what it

contributes ideologically to our understanding of the act. Although theoretical representations

cannot account for the complexities surrounding and nuances within actual cases of torture,

Scarry nonetheless offers a careful study of the way that torture destroys the victim's

subjectivity. She describes the act as one structured by three phases, in which the torturer first

inflicts physical pain upon a victim, then objectifies that pain in a manner that negates or

disregards it, and finally translates the pain into power for himself or his regime.[27] Using torture

instruments and interrogation and intimidation tactics to create a spectacle of power and fear, the

torturer "unmakes" the victim's world by converting ordinary objects and institutions into

seemingly foreign mechanisms for the purpose of producing pain. Essential to her understanding

is the torturer's falsification and denial of the victim's pain: "only this final act of self-blinding

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[27] Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (New York: Oxford
University Press, 1987), 20.

permits [the torturer] the shift back to the first step, the inflicting of still more pain, for to allow

the reality of the other's suffering to enter his own consciousness would immediately compel

him to stop the torture" (56).

Scarry's work helpfully outlines the ways in which the torturer relies upon appropriation

of social conventions and norms to upend the reality of the victim, and upon verbal and visual

rhetorical figures to "unmake" the victim's world.[28] Visual rhetorical devices—tactics that

create a spectacle, reinforce the torturer's agency and victim's helplessness, and metonymically

or symbolically generate fear—establish the power disparity between torturer and victim.

Simultaneously, verbal rhetorical figures like hyperbolic expression, irony, and continuous

repetition, work to diametrically reverse the assumptions that shape the victim's reality, so that

previous meanings and understandings of the world no longer hold true. Most importantly,

Scarry contends that even the most intimate elements of a victim's world—his or her loved ones,

hopes and dreams, religious, political, or social causes—are betrayed or forgotten amidst the pain

and fear of its infliction that define the torture act and reduce the entire world to the realm of the

victim's body.[29]

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[28] By rhetorical figures, I mean actions and speech that reify the power disparity between torturer
and victim: hyperbolic expressions, metonymic treatment of the torture tools or the victim's
body, irony, continuous repetition, conflation of the imperative, declarative and interrogative
modes, and reliance on exclamation. For example, the torturer's repetitious shouts that the
victim "knows" what the torturer wants to know, or that the victim is this or that pejorative
category of individual; inflicting pain on parts of the victim's body to signify greater pain or
death or the destruction of the victim's subjectivity; hyperbolic exaggeration of reality outside of
the torture chamber through statements that all of the victims peers have capitulated, that he is
the only one left, that his cause is doomed; treatment of the victim as if he were the whole body
against which the torturer is acting (Scarry 29).
[29] Such inversions or upending of convention are at the heart of the learned helplessness torture
technique, in which the destruction of the order in the victim's world renders him helpless and
dependent on his captors.

Scarry notes that one reversal that "unmakes" the victim's world is inversion of the international laws and legal norms outlined above. While legal norms traditionally study evidence "that may lead to punishment, the [torturer] uses punishment to generate evidence" or to produce false substantiation of previous assertions or assumptions (41). The act of torture thus manipulates and inverts the ground rules of legal thought the victim expects to govern the behavior of captors, at least in states that pay lip service to Enlightenment traditions.[30] In her understanding, interrogation and viable information-gathering are never the genuine motives for state-sanctioned torture. Writing at a time when the U.S. was not publicly perceived to be practicing the act, she highlights the reasons torture is typically hated by liberalism, and acknowledges the tendency for various objectives to be conflated in torture's use—essentially denying the validity of what David Luban calls the "liberal ideology of torture" (28).[31] The impetus of her world-destruction argument discredits the notion that anything a torture victim says is useful, and thereby tacitly disavows that liberal democracies could justify torture used for purposes of garnering intelligence.

Scarry argues that the institution of medicine is similarly inverted: intended to make the body more healthful, medicine is perverted out of the torture act into a mechanism for harming the body or healing it only so that the torturer may continue causing pain (42).[32] Still another inversion occurs within the institution of language, as the words of both torturer and victim move toward grunts and moans, signifiers are detached from the signified, and ordinary terms like

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[30] Especially in the case of the War on Terror; the United States' cultivation of its image as benevolent enforcer of justice and world-order makes its use of torture an inversion of the expected.

[31] Scarry wrote in the mid-1980s, at a time when there was little public perception that the United States had connection with torture, and her focus is primarily on instable political regimes rather than long-standing democracies.

[32] Medicine is often incorporated into the torture act through use of medical tools, paraphernalia, and facilities to produce pain.

"telephone," "dance," or "tea party," come to refer to the torture act (43-44).[33] Even

commonplace domestic objects (Scarry mentions chairs, radios, walls, and bathtubs) are divorced

from their ordinary functions and appropriated for the creation of pain.

The Body in Pain pivots upon the argument that one human being could never

consciously inflict the pain of torture upon the body of another, and therefore that the torturer

must falsify and deny the victim's pain in order to execute the act.[34] This insistence that the

torturer must be blind to his victim's suffering appears at first glance to be belied by the

photographs taken at Abu Ghraib, which display American prison guards posing and grinning

ostentatiously beside their suffering prisoners. The photographs will be considered in greater

detail in the next chapter, but for now it is enough to notice that the guards' affectations, grins,

and very acts of taking the pictures, all seem to suggest a self-conscious desire to document for

trophy rather than witness. A cursory look at these images thus seems to refute Scarry's

contention that humans are averse to watching or inflicting pain on others, because the

photographs appear to depict individuals in unsettling espousal of the pain of others.

However, closer scrutiny of the Abu Ghraib photographs reveals the very falsification

and denial of pain of which Scarry writes: for they depict torturers who are seemingly cognizant

of the consequences of their actions reflecting attitudes of justification. The number and

postures of torturers in the photographs, and passivity of their onlookers, suggest a general

normalization of the torture act and internalization of an epistemology that justifies it. In short,

they intimate that use of torture at Abu Ghraib was facilitated by a systematization that

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[33] This nomenclature was used in Brazil, Argentina and Greece. Notably, this same process of linguistic manipulation has been permeating the language (especially legal) in the United States during the War on Terror.

[34] This assumption is premised on Rousseau's contention in A Discourse on Inequality that before the introduction of reason and social constructs the human being has a "natural aversion to seeing any other sentient being perish or suffer, especially if it is of our kind" (Rousseau 70).

trivialized its ramifications and a normative context that viewed prisoners in a manner that diminished their humanity.

While pain negation and denial are more readily understood when they occur at an executive level and are espoused by those who make policy decisions but do not directly witness the implications of their decisions, the processes are more difficult to accept at the level of individuals with proximity to the ramifications of their actions.[35] It seems fair to assume that the tenet of common humanity would inhibit such cruel behavior in individuals socialized to uphold, or at least respect, the liberal humanist ideology—at least unless some other socialized attitude replaced or challenged it. In cases where individuals engage directly in cruelty like torture, Scarry and the liberal humanist tradition would expect the existence of some normative apparatus facilitating falsification of the victim's humanity. With regard to Abu Ghraib, this normative apparatus might be understood as cultural difference between U.S. guards and Iraqi prisoners; divergence in religion and degree of observance of Enlightenment principles— precipitated by the general collapse of all that is Islamic, Arab, or even Eastern, into terrorism— might be construed as a fundamental and internalized differentiator that promoted the guards' divestment of their Iraqi prisoners' common humanity.

Racism and otherization can therefore serve as vehicles for disregarding the pain of others: rendering the pain of the victim unequal to what we would feel in their place, because they are fundamentally different from us. Normative contexts that justify or condone the self-conscious embrace of another's suffering in this way are in many respects antithetical to liberal humanist principles of common humanity. Yet the Enlightenment project of world expansion

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[35] Denial undoubtedly occurred at an executive level in the Bush administration, both through overt denials of U.S. use of torture and through redefinition of terms like "abuse" and "detainee" (which will be discussed in the final chapter).

and its use of liberal humanist principles as a measuring stick have arguably consolidated a

Western epistemology founded upon notions of identity informed by and contingent on

differentiation from those outside this system—a discrimination that primes the resulting

"others" to become future victims. In this way, liberal humanism again reveals itself as

principally a theoretical construct, rather than a historical actuality: the ideology premised on

common humanity contains risk of its own falsification. The Abu Ghraib images, despite their

production by and representation of guards socialized in the liberal humanist tradition, allude to

the fact, intimating the existence of something within the "enlightened" U.S. soldiers that

"remains radically other," primal, and cruel (Gorelick, under "Conclusion: The Excess of

Responsibility").[36]

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[36] Similarly self-conscious acts of violence or brutality are depicted in souvenir lynching
photographs taken in the South between the 1880s and the 1930s, in the apparatuses of torture
employed by Apartheid South Africa, in Nazi controlled Europe, and in Russia under Stalin—to
name just a few in the last century.

Chapter 2. Photography at Abu Ghraib: Mimetic Representations and Violence

As Jacques Derrida pointed out in his interviews for *Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacques Derrida,* media coverage of the September 11th attacks was fundamentally a common interest for both Al Qaeda and the United States.[1] Through circulation of the shocking images of the collapsing Twin Towers, Al Qaeda was able to convey its message, to establish the fear and terror that were its objective; at the same time, it is through images of the event that the United States was able to proclaim its injury, to rally its citizens together as a nation, and to garner support for a military response.[2] The perpetrators and their victims who died in the September 11th attacks were some of the only human beings who never saw these ubiquitous images.

Images are central to our experience of the War on Terror—and to our experience of many events that occur in distant or secret locales, of which we have no first hand knowledge.[3] In such cases, we rely on the camera to mediate the world for us by peering into arenas that many of us would or could not enter. Images thus become the building blocks of our imagination; they allow us to imagine beyond what we have seen. As we use them to construct our realities and

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[1] W.J.T. Mitchell, "Picturing Terror: Derrida's Auto-immunity," *Critical Inquiry* 33 (2007): 279.

[2] Derrida: "Maximum media coverage was in the *common interest* of...the terrorists and those who, in the name of the victims, wanted to declare 'war on terrorism'," and for this reason, American culture saw exposure and exploitation of "the image of this terror by the target itself." Giovanni Boradori, *Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacques Derrida* (Chicago: University of Chicago Press, 2004), 108, cited in Mitchell, "Picturing Terror: Derrida's Auto-immunity," 279.

[3] It is worth noting quickly some of the other images, besides those from Abu Ghraib, that have become central to the War on Terror at large: the image of the terrorist, "a figure of exaggerated power and fantastic mutability, not to mention radical evil—a perfect foil to the equally radical goodness of its self-appointed opponents" (Mitchell, "Picturing Terror: Derrida's Autoimmunity" 278); the image of the decimated Twin Towers; Saddam Hussein's execution; American soldiers' bodies being sent home in caskets; dusty uniformed men and women, trudging alongside a convoy; the aestheticized body of the "falling man."

imaginations, we are subsequently constrained by the internal catalog of images we have

accumulated and how we can change or manipulate them.[4] Stephen Eisenman has pointed out

that just as images shape our personal imaginations, identities and realities, they also inform

social ones, so that "repetition of…acts of mimetic inscription by artists and writers—and

vicariously by viewers and readers—incorporates into our bodies ancient habits and

expressions."[5] As we produce and consume images, they become incorporated into our

collective consciousness and thereby influence our thoughts and actions.

Because torture is one experience that few U.S. citizens have encountered, we are

dependent on representations of the act to provide the information necessary for us to imagine,

recognize, understand, and form judgments about the act—whether those representations attempt

to be mimetic, like documentary photographs, or offer fabricated and fantastic representations

that associate torture with other worlds. In post-9/11 America, mimetic representations of

torture, mostly in the form of images, are a crucial means by which we have learned about

torture use in the War on Terror. Publication of the Abu Ghraib photographs in 2004 was how

the nation first learned that U.S. operatives were engaging in illicit treatment of prisoners: the

dissemination of these incriminating images forced the Bush administration into acknowledging

the practices.

Media circulation of representations like the Abu Ghraib photographs can position such

images as "agenda-setters," or visual cues that frame our social awareness and prioritization of

issues; frequent viewing of sets of images can influence the importance we assign to them and

their message as we form our preferences and opinions. In this way, like the "news" carried by

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[4] Even when we personally experience events, photographs can serve as counter-memories, because they block true memory of what occurred and replace it with representation. Michael Fried, "Barthes's *Punctum*," *Critical Inquiry* 31, no. 3 (Spring 2005): 556.
[5] Stephen F. Eisenman, *The Abu Ghraib Effect* (London: Reaktion Books, 2007), 99.

the media, images may focus our attention on issues of which we might otherwise have been ignorant or negligent. As they provide information, however, images inexorably frame it with a slant that may well inform viewers' attitudes or prime them for particular responses. Often, the ubiquity of salient images causes their iconography to become incorporated into our habits and expressions in a manner that causes certain iconographic motifs to become familiar to viewers' consciousnesses and subliminally evoked by particular situations or settings.

Despite the inevitability of such influential nuances within images, and despite the advent and ease of digital photo editing, photographic images retain a singular status as authoritative evidence—a vestige of the belief that the camera, in its capacity to capture a moment, "does not lie." As W.J.T. Mitchell has pointed out,

> one connotation always present in the photograph is that it is a pure denotation; that is simply what it means to recognize it as a photograph rather than some other sort of image. Conversely, the denotation of a photograph, what we take it to represent, is never free from what we take it to mean.[6]

The essence of this paradox is that even while photography is ascribed a measure of veracity, the intervention of the photographer and viewer in the very processes of creation and interpretation render photographic images *presentations*—or messages with tacit arguments. The ostensibly imitative quality of the photograph is always conflated with what the photographer and viewer want an image to mean. Concomitantly, the photographic process objectifies the historical moment "captured" by the photograph, in a manner that fundamentally obscures the broader narrative context to which the moment belongs and the invisible power-structures in which it is situated, thereby constraining the potential viewer's capacity to judge the moment's original

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[6] W.J.T. Mitchell, *Picture Theory: Essays on Verbal and Visual Representation* (Chicago: University Of Chicago Press, 1995), 284.

significance. Photographs of torture thus conjoin two difficulties: the paradoxical nature of the photographic medium on the one hand, and the impossibility of representing torture and its contextual situation on the other.

Images of atrocities like torture, as depictions of human suffering, are closely embroiled with the concept of "expected response." Liberal humanism would anticipate such images to elicit outrage, disgust, or pity, on the part of the viewer—the "natural" and appropriate responses to seeing violence and pain. The argument follows that if these images produce strong negative sentiments in enough people, the public will be stimulated to take action. As I have already noted, in the case of the Abu Ghraib images, the latter did not occur. While I did feel outrage, disgust, and pity at the sight of the photographs, and others presumably did as well, neither the public nor I were stimulated into action. This chapter will demonstrate that an expectation that images could initiate political change disregards both the number of atrocity images in U.S. culture and the limitations of the photographic medium. After examining mimetic images as the primary means by which the public has access to torture vis-à-vis the War on Terror, the situation of photography at the site of the violence depicted in the images, and the otherizing ideology legible within them, the following pages will suggest that the Abu Ghraib photographs mask and divorce viewers from the invisible power structures surrounding the events they depict.

I. The Abu Ghraib Photographs

The now infamous Abu Ghraib photograph collection comprises images and video footage taken at Abu Ghraib prison in Iraq between October and December 2003. Captured by numerous military personnel, the images depict abusive and often illegal guard-detainee

interactions, some of which amount to torture.[7] After months in the hands of government

investigators, their leakage to the press and pubic dissemination began April 28, 2004, with the

airing of CBS's "60 Minutes II" and an exposé by *The New Yorker*'s Seymour Hersh, which was

published a few days later.

Considering the secrecy and suppression of dissent that characterized the apparatus of the

state of exception governing the U.S. post-9/11, the events that transpired at Abu Ghraib likely

would not have reached the public eye without the anonymous leak to the press—although

several military investigations had probed into the events that transpired at the prison. The

photographic medium, opposed to the military's written reports and verbal testimonies by

military operatives, offered visually incontrovertible evidence, which, in a culture of virulently

spread images, could not be easily suppressed. On April 30th, in attempt to mitigate the political

maelstrom, and with an election looming only a few months away, President Bush responded to

the images by stating, "I share a deep disgust that those prisoners were treated the way they were

treated…Their treatment does not reflect the nature of the American people."[8] The

administration, desiring to maintain the image of benevolence with which it entered the War in

Iraq, quickly assured the press and international audiences that the behavior depicted in the

photographs was abhorrent to mainstream U.S. military culture, contending that the images

represented only the misbehavior of a few "bad apple" soldiers. Nonetheless, the release of the

photographs has, over the intervening five years, provoked both the media and other branches of

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[7] Not all of these photographs and videos have been released. Those unreleased are reputed to be quite shocking. See Greg Mitchell, "Judge Orders Release of Abu Ghraib Photos," *Editor and Publisher*, September 29, 2005, http://www.editorandpublisher.com/eandp/news/article _display.jsp?vnu_content_id=1001218842 and Glenn Greenwald, "Why a War Crimes Fact-finding Commission Could Uniquely Enable Prosecutions," *Salon*, February 25, 2009, http://www.salon.com/opinion/greenwald/2009/02/25/prosecutions/index1.html.
[8] "Shock, Outrage Over Prison Photos," Cnn.com, May 1, 2004, http://www.cnn.com/2004/ WORLD/meast/04/30/iraq.photos/.

government to be more attentive to procedures at U.S. detention facilities, from Abu Ghraib,

Guantanamo Bay to Bagram and secret "black site" facilities around the globe. It is comment on

the nature of the state of exception governing the United States post-9/11 that substantive

information about the events that transpired at Abu Ghraib, and about the torture apparatus

operating in the War on Terror writ large, has been slow to surface. Increased attention to torture

by the media, Congress, and the legal system has been similarly slow; their attention should not

be misperceived as policy changes or public outcry, but rather as attempts to check the Bush

administration's ever-expanding power of executive and the political milieu of acquiescence.

By the fall the photographs were taken, President Bush had already declared the War in

Iraq a success. Many of the prisoners (POWs) captured by the United States' during the war had

been released in mid-summer 2003. By fall, those prisoners still in U.S. custody had been

labeled "security detainees," ostensibly because the war was now officially over; as the United

States no longer considered detainees to fall into the POW category—a consequence of their

status as non-state actors, who could be classified as extralegal individuals through manipulation

of international law—the prisoners were deemed exempt from the rights granted POWs under

the Geneva Conventions.[9] For this reason, military officials believed they could detain them

indefinitely. The rights ideologically ascribed to prisoners of the War on Terror had thus been

destroyed; detainees were placed at the mercy of executive discretion.[10]

During the fall of 2003, Abu Ghraib prison, located approximately twenty miles west of

Baghdad, was the most attacked U.S. base in Iraq. It was overcrowded; at one point the ratio of

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[9] Philip Gourevitch and Errol Morris, "Annals of War: Exposure," *The New Yorker*, March 24, 2008, http://www.newyorker.com/reporting/2008/03/24/080324fa_fact_gourevitch?current Page=all.

[10] This mindset was established through a set of legal reinterpretations, memos, and executive orders that will be discussed in more detail in chapter four.

guards to prisoners fell as low as 450:7,000.[11] Resources were in short supply, and the general

setting was grim, as the military's unpreparedness for dealing with the power vacuum and Iraqi

insurgency resulting from the war's "end" was becoming dismally clear. Fear of being caught in

a sniper attack or injured by mortars on prison grounds was very real, and life inside the

detention facility was difficult for guards and prisoners alike.[12]

    Abu Ghraib's inmate population at this time encompassed a myriad of groups, from

"security detainees" under the command of Military Intelligence and Iraqis accused by friends of

terrorist activity to individuals picked up by the Iraqi Police and family members of those sought

after by the military—including their wives and children.[13] The infamous photographs document

acts that occurred in the Military Intelligence cellblock of the "hard site," in Tiers 1A and 1B,

where "high value detainees" under the jurisdiction of Military intelligence were housed

(Gourevitch and Morris). The guards stationed in Tiers 1A and 1B were reservists from the

372nd Military Police (MP) Company; they were combat operatives, trained in reconnaissance,

raiding, and patrolling, but never instructed in internment or interrogation procedures. The 372nd

had never been exposed to the Geneva Conventions, nor were they given standard operating

procedures for the treatment of their wards. Instead, they told were ordered to rely on the

commands of the Military Intelligence officers working in their respective cellblocks

(Gourevitch and Morris).

    The duties of the 372nd revolved around preparing prisoners for interrogation. Soldiers

stationed in Tiers 1A and 1B were required to provide "special treatment" to prisoners, such as

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[11] Joan Walsh, "The Abu Ghraib Files," *Salon*, http://www.salon.com/news/abu_ghraib/
2006/03/14/introduction/index.html.

[12] Though the Geneva Conventions expressly forbid stationing prisoners within a combat zone,
Abu Ghraib was located right in the center of insurgent activity (Gourevitch and Morris).

[13] Sabrina Harman, interviewed by Errol Morris, "Children," *The New Yorker*, March 24, 2008,
http://www.newyorker.com/online/video/2008/ 03/24/080324_children.

removing sites of comfort like mattresses and clothing, and they were responsible for

administering "physical treatment" that involved forcing prisoners to perform difficult or

degrading activities for extended periods of time. The guards were also responsible for imposing

regimes of sleep deprivation, sexual humiliation, starvation, and submersion, and for forcing

prisoners into stress positions and exposing them to the elements (Gourevitch and Morris). They

were required to perform these duties with minimal, if any, instruction as to what constituted

inappropriate behavior; their superiors issued oblique orders, warning only against killing the

charges (Gourevitch and Morris).[14]

This apparatus of interrogation and "softening up" grew out of a special access program

(SAP) created earlier in the War on Terror. In November 2001, after military officials voiced

concerns to the administration that onerous legal and bureaucratic procedure had thwarted their

attempts to capture senior Al Qaeda and Taliban members, the Department of Defense created a

highly secret "black" program, of which less than 200 operatives and officials had knowledge,

which enabled operatives to circumvent standard procedure.[15] Its origin was the SERE

(Survival, Evasion, Resistance and Escape) program created during the Cold War to teach

soldiers how to resist torture by the enemy, and its mantra was "Grab whom you must. Do what

you want."[16] SERE was never intended to be applied to American prisoners, not least because it

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[14] Staff Sergeant Chip Frederick stated that he was ordered to "stress out" a prisoner under these terms by his superior, Criminal Investigative Division Officer "Agent Romero." Specialist Sabrina Harman similarly told *The Washington Post* that it was her job to break down prisoners. See Jackie Spinner, "Soldier: Unit's Role Was to Break Down Prisoners," *The Washington Post*, May 8, 2004, Page A01.

[15] This entire paragraph is based on Seymour Hersh, "Annals of National Security: The Gray Zone," *The New Yorker*, May 24, 2004, http://www.newyorker.com/archive/2004/05/24/040524fa_fact.

[16] Scott Shane and Mark Mazzetti, "Report Blames Rumsfeld for Detainee Abuses," *The New York Times*, December 11, 2008, http://www.nytimes.com/2008/12/12/washington

taught soldiers how to provide false confessions if they were tortured (Shane and Mazzetti). The program, like its SERE predecessor, was as concerned with psychological as with physical pain, employing sexual humiliation and isolation in order to destroy the order of a prisoner's reality and thereby foster dependence on captors.[17]

The scope of the SAP, the individuals to whom it was applied, and the operatives for whom it was authorized, were gradually expanded through the early stages of the War on Terror; the program was then extended to Abu Ghraib by Secretary of Defense, Donald Rumsfeld, and Stephen Cambone, the Under-Secretary of Defense for Intelligence after the United States' invasion of Iraq. Though the SAP apparatus was not initially deemed productive at Abu Ghraib, it was quickly systematized by Major General Geoffrey Miller, former commander of Guantanamo Bay prison.[18] Miller, who had been dispatched to "Gitmoize" the prison system in Iraq so that it would generate more "actionable intelligence," introduced and normalized the SAP at Abu Ghraib: he "briefed military commanders in Iraq on the interrogation methods used in Cuba—methods that could, with special approval, include sleep deprivation, exposure to extremes of cold and heat, and placing prisoners in 'stress positions' for agonizing lengths of time" (Hersh). The army's military intelligence (MI) was consequently assimilated into the SAP

/12detainee.html?_r=1&ref=washington. See also Jane Mayer, interview by Scott Horton, "Six Questions for Jane Mayer, Author of *The Dark Side*," *Harper's Magazine,* July 14, 2008.

[17] Jane Mayer, interviewed by Terry Gross, National Public Radio, Fresh Air from WHYY, September 18, 2008. A possible early motivation for photographing the sexual humiliation of prisoners was reported by Seymour Hersh: "It was thought that some prisoners would do anything—including spying on their associates—to avoid dissemination of the shameful photos to family and friends" ("Annals of National Security: The Gray Zone").

[18] Hersh reports officials thinking "Human intelligence is poor or lacking . . . due to the dearth of competence and expertise. . . . The intelligence effort is not coördinated since either too many groups are involved in gathering intelligence or the final product does not get to the troops in the field in a timely manner" ("Annals of National Security: The Gray Zone").

after Miller's arrival; the MP guards who worked under the MI subsequently provided the legwork for it.[19]

Public disclosure of the existence of the SAP at Abu Ghraib, in the form of the circulation of the photographs and their ensuing scandal, posed a political problem for military and defense officials: the photographs obviously could not be covered up, but many believed the SAP needed to be protected and maintained. Explaining the events depicted in the photographs to the public would mean destroying the program's cover (Hersh, "Annals of National Security: The Gray Zone"). The administration therefore employed the MPs depicted in the photographs as scapegoats for the affair, thereby protecting both the SAP and the administration's public image in the midst of its reelection campaign.

In objectifying moments of illegality and abuse that involved particular soldiers, the photographs localized the War's apparatus of torture to individuals who could be condemned, and therefore averted attention away from torture's employment at large. They also localized U.S. policies of torture in the techniques depicted in the photographs—techniques Mark Bowden has termed "torture lite," because they "generally leave no permanent marks and do no lasting physical harm."[20] Not dangerous when they occur in moderation, such techniques are only illicit when taken to extremes. For this reason, the type of sexual harassment and degradation depicted in the photographs can seem relatively harmless when not considered in excess. Localization of torture to the images and the techniques they present thus in many ways facilitates trivialization of the act and renders it more palatable to the public: it is far easier to acknowledge that soldiers

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[19] Hersh reports officials thinking "Its working. We're getting a picture of the insurgency in Iraq and the intelligence is flowing into the white world. We're getting good stuff. But we've got more targets (think prisoners) than people who can handle them" ("Annals of National Security: The Gray Zone").

[20] Mark Bowden, "The Dark Art of Interrogation," *The Atlantic*, October 2003, http://www.theatlantic.com/doc/200310/bowden.

rely on stress positions or sexual humiliation than that they use techniques involving physical

mutilation, though the situations equally violate U.S. international legal obligations. Moreover,

the seriousness of the events depicted in the photographs was undermined by the fear in which

many U.S. citizens still lived when the images were released; the photographs seemed to play to

this fear by reassuring viewers not be fearful of the "terrorist threat," because the United States

was protected by strong civic defenders.

II. Complicating the Story: Specialist Sabrina Harman

While photographs of inappropriate and cruel behavior were taken by many soldiers at

Abu Ghraib, many of the most famous images—including the notorious picture of the "hooded

man" (see figure 1)—came from the camera of Specialist Sabrina Harman of the 372nd Military

Police Company. Harman is depicted in several photographs, smiling atop of a heap of naked

prisoners or grinning above a macabre corpse with thumb-up (see figures 2 and 3). She is one of

several soldiers convicted of felony charges in the legal case arising from the scandal.[21]

Investigation into Harman's case, and publication of several of the letters she wrote to

loved ones while stationed at Abu Ghraib, have revealed that even her seemingly straightforward

photographs of torture and abusive treatment have stories that exude the moments of the

camera's flash.[22] For while it is easy to reduce many of the Abu Ghraib photographs to nothing

more than cruel "trophy" pictures, the events that transpired before and after the snapshots were

taken are much more complex. Considering the photographs without their narrative contexts

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[21] Harman was charged with destruction of government property, maltreatment of a deceased body, and tampering with evidence, as a result of her interactions with the corpse of Manadel al-Jamadi.

[22] "Cruel, Inhuman or Degrading Treatment" is outlawed by the 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

ignores the complicated power structures underwriting the scenes; while the images

ostentatiously exhibit the power disparity between guards and prisoners, they do not allude to the

larger torture and political apparatuses at work in the background.

The story behind the photograph of Harman posing above a corpse (figure 3)

demonstrates the misperceptions, and even injustices, that are risked by consideration of the

photographs in isolation, rather than as a form of photographic essay. The body in the picture is

that of Manadel al-Jamadi—an Iraqi insurgent suspected of connection to the deaths of two Iraqi

members of the International Committee of the Red Cross. The photograph was taken by

Corporal Chuck Graner, after Harman and Graner entered a shower room their commander had

informed them was storing the body of a man who died of a heart attack.[23] Harman has claimed

that the original motivations prompting this photograph was nothing more than curiosity and

desire to document the novelty of standing beside a dead person (Morris, "The Most Curious

Thing").

The picture of Harman posing with Jamadi, however, is not the only photograph of

Jamadi's body, nor does it encapsulate Harman's experience of the episode. Little over an hour

later, suspecting that she and her peers had been lied to by superiors, Harman returned to the

body. Having realized it was impossible that the mangled body packed in ice had died from a

heart attack, she photographed the grisly forensic details: "every little bruise and cut…to prove

to pretty much anybody who looked at this guy, 'Hey, I was just lied to. This guy did not die of a

heart attack. Look at all these other existing injuries that they tried to cover up'" (Gourevitch and

Morris, "Annals of War: Exposure").

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[23] Errol Morris, comment on "The Most Curious Thing," Zoom Blog, *The New York Times*, comment posted on May 19, 2008, http://morris.blogs.nytimes.com/2008/05/19/the-most-curious-thing (accessed November 1, 2008).

These later photographs, less sensational than the one in which Harman appears, received far less publicity—and for good reason, as they provided forensic evidence pertaining to Jamadi's murder. Unbeknownst to Harman and Graner, Manadel al-Jamadi had been killed sixteen hours earlier, during an interrogation with a CIA officer; Harman and Graner were thus unwittingly embroiled in the extensive cover-up operation sparked by the homicide, which initially implicated various intelligence organizations, including the U.S. Navy Seals, the CIA, and Military Intelligence (Morris, "The Most Curious Thing"). This covert back story, however, is far from present in the photograph of Harman smiling above Jamadi's body. Indeed, focus solely on this initial image—by the media, the administration, and many viewers—facilitates not only ignorance of the horrifying nature of Jamadi's death, but also misperception of Harman as his self-satisfied murderer.

Unlike the memento photograph she took with Graner, the intention of Harman's latter forensic photographs was ostensibly documentation. Harman, who wanted to pursue a career in forensic photography, has in fact cited documentation as her primary motivation for taking pictures at Abu Ghraib in the first place.[24] Of course, it is difficult to accept this statement at face value. Harman was, after all, imprisoned and court martialed for the activities she photographed at Abu Ghraib, and her images have been widely censured. Nonetheless, the letters Harman wrote to loved ones while she was stationed at the prison suggest that she was quite ambivalent about the events depicted in her photographs and confused about her urge to take them. Her letters express a desire to record the abusive treatment she witnessed daily, even while that desire was often overwhelmed by a need to conform to the culture of the prison and perform her duty. Although representations inevitably fall short in conveying the experience of

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[24] Sabrina Harman, interviewed by Errol Morris, "Look I Have Proof," *The New Yorker*, March 24, 2008, http://www.newyorker.com/online/video/ 2008/03/24/080324_lookihaveproof.

those who suffer, photographs that depict human misery are generally treated by the liberal

humanist tradition as positive contributions to our knowledge of injustice and ability to feel

solidarity with those in pain.[25] In this vein, Harman's letters suggest she believed her

photographs might serve as positive social contributions if she published them, though she never

established a plan for doing so.

Harman's urge to document as witness, however, can hardly be understood as her sole

motivation. Several letters suggest that frequently Harman would be drawn toward participation

in or spectatorship of the events depicted by her photographs—at least initially. She was liable

to embrace the sense of humor pervading practices like parading of prisoners in each other's

underwear or watching female guards molest their male prisoners' genitals; afterwards, however,

she would often realize with horror the full implications of such behavior.[26] Perhaps most

appalling of all, Harman regarded this uncertain division as something that isolated her from her

colleagues, who did not seem to be plagued by conscience. Her letters reveal that the normative

context at Abu Ghraib associated the abuse and torture of prisoners with patriotism and duty.[27]

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[25] I am thinking for instance of Walker Evans's photographs of suffering during the Depression; the images taken of the aftermath of Hiroshima and Nagasaki; Charles Moore's "Birmingham," which documents violence at a civil rights rally; and Mathew Brady's Civil War photograph of the "Federal Dead on the Field of Battle."

[26] After watching a sandbag be "put over [the prisoners'] heads while it was soaked in hot sauce," she wrote, "Okay, that's bad but these guys have info, we are trying to get them to talk, that's all, we don't do this to all prisoners, just the few we have which is about 30-40 not many." Then, later changed her mind: "I don't like that anymore. At first it was funny but these people are going too far…" (Gourevitch and Morris).

[27] "I guess I wasn't a very good patriot," she replied, when asked why it seemed that her peers could perform their duties with more enthusiasm and less hesitation than she did. "I shouldn't have been there. I mean obviously I didn't do what I was supposed to" (Gourevitch and Morris).

III. The Images as Icons

Errol Morris has identified four photographs as the most iconic images resulting from the Abu Ghraib scandal: that of the "hooded man," that of 372nd MP Lyndie England standing beside a prisoner on a leash, that of a pyramid of naked prisoners, and that of England pointing at the genitals of a naked man (see figures 1, 4-6).[28] Undoubtedly, the most indelible and ubiquitous of these photographs is the "hooded man," which depicts Ali Shalal Qaissi—the prisoner known to the 372nd MPs as "Gilligan"—standing on a C-rations box with his arms outstretched, his palms open.[29] The picture offers a frontal view that makes Qaissi's image seem to address the viewer directly. Electrical wires are tied to his fingers; they sag down and are caught underneath a draping black poncho.

The sole, dark figure against a garish background, Qaissi's face is covered with a pointed hood that calls to mind the executioner and his victim, the humiliation of the pointed dunce cap, the headpiece of the Ku Klux Klan (Eisenman 54). Preventing him from seeing, the hood not only disempowers Qaissi by removing his capacity for foresight, but also robs him of his identity. Shrouded in black, so that only the outline of his body and dangling appendages are visible, Qaissi's humanity becomes obscure.[30] Though we now know that Qaissi was not actually in physical danger at the time, for the wires to which he was attached were not live, he believed himself to be threatened with electrocution. The photograph captures him in a moment of terror,

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[28] Errol Morris, interview by Philip Gourevitch "Festival Video," *The New Yorker*, October 5, 2007, http://www.newyorker.com/ online/video/festival/2007/MorrisGourevitch.

[29] For a lengthy period of time, the identity of the "hooded man" was unknown to be Qaissi. I think it is also worth noting that though Qaissi was abused at Abu Ghraib, he not only lacked any "useful" information, but also was also innocent of the crime for which he was originally charged.

[30] W.J.T. Mitchell, "The Unspeakable and the Unimaginable: Word and Image in a Time of Terror," *ELH* 72, 2 (2005): 297.

fearing that the stress position in which he stood would cause his limbs to fail and his death to swiftly follow.

A consideration of Roland Barthes's "studium" and "punctum" may be helpful for a closer reading of the icon and what renders it so arresting. In *Camera Lucida*, Barthes differentiates between the studium of a photograph, or its ostensible subject and presumed interest for a viewer, and its punctum—the element that pricks the viewer's subjectivity and causes him or her to cling to the picture phscyologically (Fried 539). For Barthes, the detail that pricks the viewer is unintentional but fundamentally intrinsic to the photograph, never staged by the photographer; it seemingly transforms the photograph from a mere object into a palpable sign of the subject it depicts.

What is so striking about the photograph of the "hooded man" is that it inadvertently portrays Qaissi as a connotative aesthetic figure, "liberated from contingency and circumstance into a space of pure contemplation" (Mitchell, *Picture Theory* 294). Unlike most of the other images from Abu Ghraib, the picture of "the hooded man" seems natural rather than staged: the figure's uncanny familiarity—evoking Jesus on the cross or a sovereign addressing his people— seems too nuanced to be intended by Harman, its photographer. A Christological reading, almost unavoidable given Qaissi's stance, renders the image particularly salient: Christ too was a victim of torture and public humiliation; His martyrdom too was deemed necessary for the salvation (read security) of others. The image's incongruous casting of this abject prisoner as the canonical image of Western sacrifice thus becomes a felicitous analogy that renders it inherently poignant, not least because the analogy seems to be unconsciously revealed. Appearing to capture a moment so naturally striking and imbued with such meaning, the image is one before which viewers cannot help but pause.

This arresting quality is likely in large part why Qaissi's likeness has become so ubiquitous as an icon in the discourse surrounding the War on Terror. The image's ability to catch viewers' attentions and focus them on the messages both within and appended to its frame grant it a degree of polemical "power." As one of the only aesthetic and formally complex pictures emerging from Abu Ghraib, and the certainly one of the only easily read along Christological lines, the image is appropriated with facility as a symbol of the cruelty and injustice of torture, U.S. security policies, and the war—that now eloquently adorns t-shirts, pamphlets, murals, and posters.[31]

IV. On Photography

The aestheticization at work in images like the photograph of the "hooded man"—a product of the camera's ability to isolate a moment from its context—may operate at counter-purposes with documentation of hardship or suffering. When the camera objectifies a scene, it essentially commodifies a moment that can later become a good belonging to the photographer; in scenes containing violence and pain, suffering too is objectified, so that, as Nathan Gorelick points out, the "subject's pain is [potentially] reduced to a political bargaining chip, a source for aesthetic elaboration, a sensational news item" (Gorelick, under "Literature Beyond Ethics"). In the case of the photograph of Qaissi, "the singularly *unrepresentable* experience of torture—the reason for which it is inexcusable—is polluted by its representation" (Gorelick, under "Literature Beyond Ethics"). In other words, the poignancy which viewers experience when they look at the image is so divorced from the physiological terror Qaissi actually suffered that the formal quality

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[31] In Iraq, the image is also referred to as "The Statue of Liberty"—an ironic remark on its inconsistency with the liberal values embodied by the statue standing in New York Harbor. The name also refers to a Baghdad mural that parodies the "hooded man" photograph with the image of the statue of liberty wearing a Ku Klux Klan hood and preparing to electrocute the hooded man. W.J.T. Mitchell, "Sacred Gestures: Images from Our Holy War," *Afterimage* 34, no. 3 (November/December 2006): 18.

of the image essentially facilitates a distance between spectators and the photograph's subject: we focus on the photograph's aesthetic rather than the implications of its content. There is, as W.J.T. Mitchell has noted, "something deeply disturbing, even disagreeable, about this (unavoidable) aestheticing response to what after all is a real person" (Mitchell, *Picture Theory* 294). The aestheticization process encourages us to regard the photograph as an object and disregard that real individuals felt pain or may still be suffering.

This aesthetic quality in the "hooded man" photograph contrasts sharply with the amateurish, and almost crude, style of most other images taken at Abu Ghraib. Indeed, the collection of images emerging from the prison demonstrates that both intentions for and varieties of photographs can fall into myriad categories.[32] Many of the guards' decidedly non-aesthetic images, because of their gritty appearance, have been likened to such unsophisticated mediums as pornography,[33] voyeuristic photography, and the class of snapshots disseminated on internet social networking sites; terrorists themselves use similarly amateurish and contrived photographs and video footage to spread messages and recruit members.[34] Their coarse quality and ostentatious posing suggest a degree of visual artifice not present in the photograph of Qaissi.

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[32] Though they are not taken into consideration, it is important to note that the CIA interrogators operating in black sites around the world take documentation photographs as well—including photographs that depict the prisoner's moment of capture that are intended to facilitate humiliation and degradation via the act of photographing. It would seem that such photographs are incontrovertible evidence of violations of the Geneva Conventions, and for this reason, it is unlikely they will ever reach the public eye.

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[34] The link between such images and pornography has been noted by Michael Ignatieff, who commented that the genres similarly effect viewers, "at first making audiences feel curious and aroused, despite themselves, then ashamed, possibly degraded and finally, perhaps, just indifferent." Michael Ignatieff, "The Terrorist as Auteur," *The New York Times*, November 14, 2004, http://www.nytimes.com/2004/11/14/movies/14TERROR.html. When they were first released, the photographs were evaluated by many, including the Bush administration, similarly to pornography: as images to be hidden under the bed but tacitly tolerated—an uncomfortable shock.

Largely, such crudity and contrivance is a product of the images being intended as no more than memento photographs to document the U.S. soldiers' stay in Iraq. Photography was an important social aspect of military culture at Abu Ghraib. Soldiers photographed themselves often: with locals during their free time as well as in moments that symbolized the exoticness of their locale and gruesomeness of their duty. Harman explained, "If a soldier sees somebody dead, normally they'll take photos of it. I don't know why, maybe it's a curiosity thing or if they see something odd, they'll take a photo of it. Just to say, 'Hey, look where I've been, look what I've seen'" (Gourevitch and Morris, "Annals of War: Exposure"). For those far from home and living in awful conditions, photography was a form of souvenir making, a form of camaraderie, and a means for accumulating future bragging rights. The ritual was not a secret. In tiers 1A and 1B, Corporal Charles Graner, the officer charged with night duty, "made a point of showing his photographs to officers higher up the chain of command, and…nobody objected to what they saw" (Gourevitch and Morris, "Annals of War: Exposure").

Individuals across America, particularly young adults, similarly document their lives through photography: they too establish camaraderie and status with peers by publishing pictures of everything from scandalous exploits to quotidian details. The ease with which images of the self can now be taken and shared via digital photography—a technological breakthrough that, compound with the internet and mobile devices, has fundamentally altered the sociology of the photograph—has positioned photography as a cornerstone of U.S. culture, and promotes a fixation on images of the self that can be constantly groomed or updated. Digital images and mediatization thereby exacerbate the flattering self-gratification inherent to photographs, and promote preoccupation with the appearance of oneself to online or television audiences that seem

ever-expanding. The United States' fascination with reality television is just another example of our desire to be photographed in every aspect of our lives, to let the camera publicize anything.

The milieu of excessive photography at Abu Ghraib is thus merely a microcosm of a greater culture of panopticism that encourages cameras to intrude into every corner of our lives. Derrida has described this cultural phenomenon as "once again a question of the Enlightenment, that is, of access to Reason in a certain public space, though this time in conditions that technoscience and economic or telemedia globalization have thoroughly transformed" (Mitchell, "Picturing Derrida's Autoimmunity" 285). This desire to see all, know all, and show all—from the minutiae of our friend's lives to clandestine prison cells across the globe—is premised on the belief that such information grants us the capacity to control our world, and the assumption that others are invariably interested in both what we have to say and the images that document our lives.[35]

Harman indubitably used photography to document her life in Iraq within this context, but she presumably also photographed as a means of bearing witnessing to and *participating in* the events surrounding her. Even if she did not feel comfortable physically abusing or torturing prisoners (which may or may not have been the case), she could nonetheless join her peers and perform her duty of "softening up" as a spectator—indeed, as a spectator with a camera. By inserting a camera into the site of violence, Harman and other onlookers could essentially augment the humiliation and degradation of their prisoners' experiences, and thereby become

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[35] This assumption is evidenced in the prevalence of blogs and online social network sites that allow publication of digital pictures, and in new media like Twitter that prompt users to publicize their thoughts, feelings, and even locations, continuously throughout the day. These new mediums enable much of the individuals' personal life to become accessible to a potentially extensive audience. Though they might seem to enable publication of mimetic representations of the self, in reality, they cultivate a preoccupation with how one appears to others—and essentially allow a presentation of a self that might be far from the actual.

complicit equally through direct participation and through lack of intervention. The victim is doubly dehumanized in this process: both by the spectator's presence as an onlooker who tacitly condones via nonintervention and by the camera's reduction of his or humanity to a mere amusement that gratifies others. In the case of Abu Ghraib, it seems likely that many of the photographs were taken with this double dehumanization in mind; MI and MP officers believed their prisoners would do anything, including inform on friends and family, to prevent the circulation of images exhibiting their disgrace ("Annals of National Security: The Gray Zone").[36]

Introducing both the possibility of publicity and an additional source of abasement to the victim, photographers of violence thus become authors of psychological pain. Duplication of their violent images, just like duplication of violent acts themselves, essentially reproduces and immortalizes moments of aggression (Mitchell, "The Unspeakable and the Unimaginable" 300). Images that depict acts of violence are thus ambiguously positioned: while on the one hand they facilitate a consciousness of violent acts, perhaps even evidence of them, they simultaneously re-create violence on the other.

As photography of violence functions as a site of violence, the camera becomes a tool of control that enables the photographer, or oppressor, to objectify and reduce the subject into a victim; the photographer controls the subject's representation and eliminates the subject's right to tell his or her own story and construct his or her own self-image.[37] Not only does the oppressor have the power to photograph what is happening, but he or she also has the power to control and manipulate the record of what is remembered. Moreover, as Mitchell has noticed,

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[36] See also Seymour Hersh, "Annals of National Security: Torture at Abu Ghraib," *The New Yorker*, May 10, 2004, http://www.newyorker.com/archive/2004/05/10/040510fa_fact.
[37] The very language of photography reinforces the power disparity, as the photographer is said to "take" or "capture" the subject.

> The "taking" of human subjects by a photographer (or a writer) is a concrete social encounter, often between a damaged, victimized, and powerless individual and a relatively privileged observer, often acting as the "eye of power," the agent of some social, political, or journalistic institution. The "use" of this person as instrumental subject matter in a code of photographic messages is exactly what links the political aim with the ethical, creating exchanges and resistances at the level of value that do not concern the photographer alone, but reflect back on [his] (relatively invisible) relation to the subject as well and on the exchanges between writer and photographer. (Mitchell, *Picture Theory* 288)

In other words, the power disparity between photographer and subject is a product of invisible power structures that enable the photographer to be the individual with the camera, the one watching the victimization of another; the intervention of the camera essentially reifies these relationships by objectifying them in a photograph. For this reason, even well-intentioned photography of suffering can never be divorced from the photographer's relatively privileged position in the power structure, while photography intended to cause violence can easily embrace and aggrandize it.

Torture, like the violence of terror, largely operates as a spectacle—or a performative and self-conscious set of actions that are meant to be noticed. Consequently, it has great capacity for intensification and consummation through photography. Spectacle is indeed at the heart of the Abu Ghraib images: in the posing, the smiling, the performing for the camera. The spectacles that the guards created for the cameras served as means for intimidation that subordinated prisoners as it exaggerated the guards' power; the element of spectacle enabled the guards to downplay their own cruelty by fashioning their actions as *performances*, though it did so through

enhancing the suffering of the prisoners. The guards were thus self-consciously attentive to their own actions in the manner inherent to performance, while the act of performing simultaneously distanced them from the prisoners and allowed them to trivialize their behavior as merely show.

V. On the Smiles

The intentions of the Abu Ghraib photographers are certainly not unambiguous—as Harman's ambivalent relatonship to her photographs demonstrates. Nonetheless, the photographs coupled with their backstory, together a form of photo essay, present the abuses and torture at Abu Ghraib as acts with which guards had an amenable relationship. The thumbs-up signs, grins, and jaunty poses—which guards displayed self-consciously and voluntarily— juxtaposed with the dejected faces and prostrate bodies of the prisoners, seem a blatant affront to viewers' senses of compassion and notions of human nature.

Harman has insisted that, despite its impropriety, the thumbs-up sign she sports in photographs like the one with Jamadi's corpse is her trademark for the camera; and indeed, there are nearly two dozen other photographs taken before Jamadi's death, in which she is similarly posed (Gourevitch and Morris, "Annals of War: Exposure"). While her pose may be partially attributable in this way to a military culture of performing for pictures that capture exotic experiences, to dismiss a series of images of similarly smiling guards as merely the result of a sociable penchant for posing and playing seems too blasé. For the guards to act in such a way on several occasions with the knowledge of superiors and onlookers, and for them to intend to send their photographs to friends and family or keep them as visual mementoes, suggests that the pictures are manifestation of a far more dangerous internalization of the "otherness" of their Iraqi wards.

Indeed, the smiles in the photographs are unsettling, because they seem to suggest both an espousal of the violence being depicted and a trivialization of it. As a universally understood social convention, a sign of enjoyment that is often contagious, the smile seems shocking and brazenly aggressive in the context of the photographs: a product and fortification of the guards' power and superiority that frames as humorous the incongruity between the power of the torturers and the subjection of their victims. Directed at the camera, the smile's shamelessness suggests a sense of justification and pride; directed at the abject prisoners, it seems an absolute embrace of the pain—an act of violence in itself.

To some degree, the smiles are precisely what separate the torturers from their victims. They become a mockery—a social convention in which the prisoner cannot participate.[38] The victims are different, *because* they cannot smile, even as their difference is what precedes the smile and engenders it. Smiles become evidence of the guards' humanity, while the victims become "beings who do not smile—animals": beings who cannot smile precisely because the guards believed them subhuman before the pictures were even taken (Henderson 192). Some fundamental differentiator between the guards and victims has been internalized before the advent of the camera, and becomes reified by the guards' smiles. In this way, the smiles seem evidence of the process of pain falsification that Scarry contends is at the origin of the torturer's behavior; they are both an expression of and determinant in this process of negation and trivialization that facilitate divestment of the prisoners' common humanities.

Schuyler Henderson notes this attitude of "otherization" at the core of the photographs, present even in the images' "potent details: the jaunty angle of a cigarette, sterile teal gloves, the recurring motif of the leash" (9). Henderson cites such details as evidence of the guards'

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[38] Schuyler W. Henderson, "Disregarding the Suffering of Others: Narrative, Comedy, and Torture," *Literature and Medicine* 24, no. 2 (2005): 192.

ingrained association of the prisoners with animals: "[i]n one picture, the feebleness of a man is manifest in the drooping leash; in another, the power of the dog is kept in check by a taut leash" (9). Her reading of the photographs seems to be corroborated by the 372nd MPs' admissions that guards gave cartoon-like names to their wards and rarely knew the actual names of prisoners (Morris, "The Most Curious Thing"). Application of cartoonish names to their prisoners symbolically separated the guards from their charges, elevating the guards' humanity while minimizing the suffering of their subhuman prisoners.

IV. Social Memory and Violent Images

Though the Abu Ghraib photographs are decidedly not artistic, they nonetheless call to mind a patrimony of violent imagery in Western art, and seem to demonstrate the depth to which the structures of oppressor-oppressed relationships within Western iconography have become entrenched in our cultural memory; regardless of how well-versed in aesthetics were the Abu Ghraib photographers or subjects, the formal features through which power disparities are legible in the photographs are likely informed, even if unconsciously, by the iconography of domination in the history of art. The "pathos formula" as discussed by Stephen Eisenman in *The Abu Ghraib Effect* is a useful point of reference when considering the images and their relationship to Western art. Originally developed by Aby Warburg, the "pathos formula" is an artistic motif in which victims are depicted as passionate sufferers who willingly embrace their own subjection. Throughout history the motif has accrued a "collective memory of images" of anguish and morbidity that have been assimilated into our social consciousness (Eisenman 54).

In *The Abu Ghraib Effect*, Eisenman considers the "pathos formula" to include all depictions of victims that present "the internalization of chastisement, self-alienation, and even

the eroticization of suffering" (54). In this context, victims are not archetypes, but instead embody "recurring structure[s] of thought" that have been used to rationalize torture and abusive treatment since the age of Rome (54). Eisenman suggests that long before the Enlightenment's cultivation and systematization of rationality, this motif exemplified, reinforced, and justified through art, epistemologies of imperialism reliant upon exploitation and torture. Artworks can thus be understood as transcriptions of ideologies, depicting victims who have internalized the same racist thought structures as their oppressors (54). Eisenman contends that the Abu Ghraib photographs "are not exceptional images in the history of Western visual culture, they are rule" (44). Consequently, a large part of why the United States public did not actively respond to the images is because their iconography was uncannily familiar, and primed structures of thought that facilitated rationalization and justification of the prisoners' suffering.

Eisenman identifies three modes in which the pathos formula's theme of willing subservience appears: the form of deserving abjection, in which the victim appears to deserve his punishment; the form of suffering as a sacrificial or purifying act, in which the victim subordinates himself to his pain and welcomes it; and a form that attempts to rouse sympathy for victims and vilify oppressors, by depicting some variation of the master-slave dialectic. In unintentionally engaging the first mode of the pathos formula, deserving abjection, which presents "the body as something willingly alienated by the victim (even to the point of death) for the sake of the pleasure and aggrandizement of the oppressor," the Abu Ghraib photographs too participate in this tradition of Western iconography (16).

Such images of abjection are as old as Trajan's column, and, in fact, are scattered across the city of Rome—from the Forum's ruins to the walls of the Papal chambers in the Vatican, and countless sites in between. These artworks depict oppressors as deserving of their power and the

oppressed as somehow deserving of their suffering. Eisenman illustrates this dynamic with the defeated warriors of Hellenistic sculpture and Michelangelo's bound slaves, and in such frescoes as Raphael's "Battle of Ostia" and Vasari's "The Battle of Lepanto," which recount on the walls of the Papal chambers the Christian assault on Islam during the crusades. The Abu Ghraib photograph depicting a pyramid of abject men (figure 5), composed as a "dog pile" of nude and prostrate bodies with downcast faces, portrays individuals similarly positioned below a powerful standing figure; several other photographs exhibit the bodies of guards and prisoners in similar dispositions. This is how subjection is supposed to look.

Images of suffering as purification, Eisenman's second category, abound in Renaissance and Mannerist art. Much of the artwork in this category is religiously minded and centers on the deaths of Christ and the saints, aestheticizing the anguish, passion, and flagellation of these figures in order to encourage emulation—and by extension, to promote the purification of viewers' souls. Artists intended the beautiful poignancy they granted their suffering figures to make an argument about the devoutness of the figures' characters that might inspire devotion in viewers. While Christ is the perennial figure of aesthetic suffering in Western art, St. Sebastian too is identifiable as such an icon, with his ever-obeisant heavenward gaze and beautiful body plastered with arrows. A series of pious St. Sebastians, in attitudes of willing submission to their martyrdom, can be traced from Pollaiolo through Perugino, Sodoma, and Titian.[39] The impression inherent to these images that suffering can sanctify is a recurrent claim of Western culture—one that is tacitly present in the iconography of the "hooded man," as well as in notions

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[39] Michelangelo, however, is the paragon of depicting passionate suffering. The pulsating and muscular bodies he created as he strove toward ideals of beauty and sacrifice are at once completely in pain and completely beautiful, and epitomize the rendition of poignant pain.

that torture can strengthen or masculinize its victims (which will be discussed in the next chapter).

The final mode of Eisenman's pathos formula arose during the mid- to late- 18th century, with images of suffering that attempted to provoke sympathy for particular causes and tacitly affirm Kant's "categorical imperative" (14). Eisenman offers William Hogarth's cartoons criticizing the cruelty and hypocrisy of middle-class London, as well as cartoons employed by the Abolitionist movement, as a starting point for this category of art; later came the work of Francisco de Goya, whose 19th century "The Third of May, 1808," "Saturn Devouring His Son," and *Disasters of War* series, directly challenge the salvatory aspect of suffering by presenting a clearly negative attitude toward human brutality (86). Inclination toward such politically minded art increased in the twentieth century with the rise of fascism, as artistic movements attempted to respond to world events by rendering their work social statements.

Many artistic depictions of torture, such as those by Goya, Leon Golub in the 1980s, and Fernando Botero most recently, fall into this category. They attempt to present torture so that viewers will perceive it as a horrifying act, and consequently, there is often a degree of shock and sensationalism in their works appropriate to such aims. Though these artists attempt to be raw, their works, like those in category two, must to some degree aestheticize the suffering of victims in order to convey their argument—and in so doing, they risk distancing viewers from the immediacy and ugliness of suffering and objectifying the pain their work aims to protest and prevent.

VI. On Images and Accountability

Methodologically, the Abu Ghraib images are a demanding subject: informed by countless political, social, and artistic factors—and yet fully elucidated by none. While this

chapter has thus far delved into the political background of the photographs, considerations of medium and meaning, and possible reasons for their inability to stimulate public outcry, it has not yet positioned U.S. viewers vis-à-vis responsibility. Thus, it now seems prudent for me to acknowledge that we can never work out *all* of the issues within and surrounding the unsettling photographs, and use this final section to inquire into how we can responsibly approach and respond to images of violence or atrocity.

In *Regarding the Pain of Others*, Susan Sontag proposes that the deluge of atrocity images claiming our attention and emotion is so dense that it would be impossible to respond adequately to all of them. Richard Rorty concurs, writing that U.S. culture is plagued not by "stimulus overload, but demand overload," which "fits into a more universal cognitive combination…the oppressive difficulty of knowing that there is too much to do, too many demands even to discriminate between."[40] Sontag suggests that in order to cope with the excess of images in our culture, we inevitably must privilege some images over others; typically, we choose those that affect us most urgently or those in which we have the most immediate stake. Proximity matters. Therefore, images that depict individuals undergoing violence or pain halfway around the world are less likely to capture our attention than those same images would if they showed the children down the street or our close friends.[41]

Distance between viewers and the individuals depicted suffering may be purely geographical in this way, or, more significantly, it may be psychological: based upon a deep feeling that the individuals within photographs are irreducibly different from us. The photographic medium itself, which employs the camera to mediate between us and the actual,

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[40] Richard Rorty, *Truth and Progress: Philosophical Papers, Volume 3* (Cambridge: Cambridge University Press, 1998), 193.

[41] Susan Sontag, *Regarding the Pain of Others* (New York: Farrar, Straus and Giroux, 2002), 111.

only compounds this sense of distance. No matter its origin, the inability to feel the urgency or

immediacy of the victims' pain tends to govern our reception of the Abu Ghraib photographs;

while they may temporarily shock or inform us, make us feel anger or pity, in the end, the

images can easily be reduced to mere objects, and quickly dismissed.

Sontag contends that exacerbating this already problematic distance is the impotency

working at a meta-level in atrocity images like those from Abu Ghraib. She claims that despite

their disgust with the photographs, viewers fundamentally believe they can do nothing to change

the systemic issues reflected in them; thus, what inures us to culture's overload of images—

particularly violent ones—and inhibits an efficacious reaction, is not merely the sheer number of

images but also the continuous frustration of knowing that we are unable to effect change on all,

perhaps any, of the atrocities they depict. Her argument seems compatible with the experience

of life under a state of exception; it seems plausible that many indeed understood their

relationship to the political structure governing the United States after 9/11 to be characterized

by powerlessness.

On the other hand, perhaps in offering blamable and guilty faces, the photographs

actually mask viewers' own relationships to the power structure that enabled U.S. guards to be at

Abu Ghraib, taking pictures in the first place—thereby masking our relationships to complicity

and responsibility. Perhaps viewers are not stimulated to take action, because they do not see

how the images personally correspond to their situations as U.S. citizens benefiting from the

events depicted. Photography is not perfectly mimetic; it cannot demonstrate *exactly* what is

there, because it cannot capture such intangibles as invisible power structures, and because it

introduces the interventions of human creators advancing objectives and human viewers

interpreting them. As Anna Siomopolous observes, images "embody and mediate hegemonic

power because of who made [them], what messages they convey, as well as when, where, and how they are circulated in society."[42] To attend to the myriad of messages and associations governing images like those that emerged from Abu Ghraib, and to discover the historical and political contexts in which they are situated, Mitchell proposes that viewers utilize "the tuning fork of critical reflection, based on a Nietzschean sounding of idols of the mind, that entails accepting the presence of the images and their polemics, realizing that images encourage us toward oversimplifying and thinking irrationally, and paying closer attention to their multiple layers and echoes throughout history."[43] Bringing attention to their formal and subjective content, extra-textual narrative, and relationship to a history of iconography, prevents such photographs from sliding by us and adhering unnoticed to similar images already present in our culture.

Yet, while we critically "sound" the images streaming through society, it seems we should also be considering both our reliance on their information and the excessive panopticism they promote.   Photography of the minutiae of our daily lives positions mediatization at the center of our experiences and promotes fixation on self-image; still worse, photography of violence like torture entangles the photographer in collusion with objectifying violence and misery. As Nathan Gorelick suggests, we must shift away from this dependence on images to inform and mediate our experience of the world, especially when violence is at stake, for "to focus exclusively on that which can be seen is to sensationalize suffering, to isolate it…and to privilege the panoptic characteristics of the systems of thought from which torture is viewed as a strategic and necessary means to an end" (Gorelick, under "Conclusion: The Excess of

[42] Anna Siomopoulos, "What W.J.T. Mitchell Wants," review of *What Do Pictures Want?" The Lives and Loves of Images*, by W.J.T. Mitchell, *Afterimage* (January/February 2006): 49.
[43] W.J.T. Mitchell, "The Spectacle Today: A Response to RETORT," review of *Afflicted Powers: Capital and Spectacle in a New Age of War, Pop Culture* 20, no.3 (2008): 577.

Responsibility"). If the system of liberal democracy forces contradictions like torture into the dark recesses of its bulwark, those recesses should be brought to light, but attempts to contain or delimit torture through such mimetic images risks "a different kind of satisfaction than that which is demonstrated by a smiling prison guard at Abu Ghraib—a voyeuristic pleasure in consuming images of a suffering other and a dangerous appropriation of that suffering as something to be easily understood and made one's own" (Gorelick, under "Literature Beyond Ethics"). Instead of allowing images of torture to become the root of our perceptions of the act, we should sound them for their layers of messages and evaluate those messages; we should situate them within the power structures imperceptibly present in their frames; and we should remember that they are silent—lacking the voices of victims. "The true challenge," as J.M. Coetzee wrote, "is how not to play the game by the rules of the state…how to imagine torture and death on one's own terms."[44]

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[44] J.M. Coetzee, "Into the Dark Chamber: The Novelist and South Africa," *The New York Times*, January 12, 1986, http://www.nytimes.com/ref/books/author-coetzee.html.

Chapter Three. Torture and the Fantastic: Epics and the American Identity

I mentioned in my introduction that this thesis presumes the implicit presence of a collective public body—the collective body of at the heart of liberal tenets like popular sovereignty, which in times of fear and uncertainty might relinquish its rights in favor of heightened security provided by the state. The catastrophe of the September 11th attacks was a painful shock to that collective American body, a shock which soon became a memory challenging previous conceptions of American invulnerability and invincibility, as well as the strength of the nation's ideals. To understand why this collective body might be willing after 9/11 to tacitly consent to a state of exception or status quo of torture requires attention to the collective psyche: the collective imagination's interpretation of the social identity crisis posed by September 11th as it worked through the disaster.

One method for locating the workings of the collective imagination is the epic film, a genre meant to appeal to wide and mainstream audiences by depicting clearly demarcated archetypal heroes with capacity for unusual human feats.[1] The epic in contemporary culture is often considered synonymous with successful blockbuster film and is undeniably profit driven; epic franchises are some of the most lucrative production ventures (Santas 13-15). Such profit-consciousness, however, makes these productions especially attentive to satisfying their audience's desires—delivering to the collective body that which they lack, assuaging fears or fulfilling wishes through hero figures with agency over their uncertain film worlds. The beloved heroes of these productions are invested with qualities that reflect or respond to contemporaneous collective conceptions of bravery, virtue, moral authority, autonomy, and honor. From the identities of such heroes, and from the normative contexts in which they

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[1] Constantine Santas, *The Epic in Film.* Plymouth (U.K.: Rowman & Littlefield Publishers, Inc., 2008), 4, 12.

operate, we can make inferences about the fears, wishes, and desires of the collective body for which they are created and to which they appeal. Broadcast around the world, epic films are concurrently idealized projections, which in turn, become vehicles used by other nations to understand and interpret American culture.

Unlike the classic epic film, with its huge casts, sets, and traditionally epic narrative (*Ben Hur* for example, or *The Ten Commandments*), contemporary epics have become less self-consciously structured by the traits outlined by classical conventions—and more prolific.[2] Epics now come in many forms, including historical drama, action thriller, and comic strip adaptations (Santas 19). Nonetheless, these productions maintain the long narrative structures, fantastic premises, and improbable coincidences inherent to the genre; epic films ask their audiences for unquestioning acceptance of the spectacular, for a willing suspension of disbelief in favor of the unusual feats performed by their super human heroes.

This chapter will consider three instances of the epic that have found significant success in the post-9/11 cultural milieu: the network television program *24*, the James Bond film *Casino Royale*, and the Batman production *The Dark Knight*. (Though *24* is a television program and not a film, it can be categorized as an epic production when the series is considered in its entirety, because it constructs an archetypal epic hero, employs spectacle and remarkable human exploits, and clearly responds to the post-9/11 social crisis in a manner meant to answer audiences' fears, wishes, and desires.) Though released at different junctures, all three productions noticeably respond to the September 11th attacks and to the American identity crisis that followed the attacks' assault on the nation's sense of invulnerability and security. This identity crisis, catalyzed by the fear and uncertainty generated by 9/11, has been sustained over

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[2] As outlined by Aristotle in his *Poetics*.

the past eight years by the additional catastrophes of Hurricane Katrina in 2005 and the financial

collapse of 2008-2009; for this reason, it largely seems to still be governing the attitudes of

United States citizens.[3]

The identity anxieties plaguing the U.S. since 9/11 are not unique to the era. Mass

feelings of impotency, dispensability, disillusionment, and lack of control over one's existence,

have occurred at many other historical moments in which prevailing ideologies or institutions

similarly seemed threatened: when the institution of religion was shaken by the rise of science

and industrialization at the turn of the twentieth century (a dilemma in many ways synonymous

with modernism); after the utter horror and meaninglessness of the First World War unsettled

faith in political states and ideals of patriotism; during the Great Depression, when capitalism

seemed to have failed; after the shocking capacity for human cruelty was revealed after the

Second World War, and individuals became disillusioned with liberal humanist notions of

human nature; and during the 1950s, when the threat of Communism and post-war social

changes facilitated mass conformity and forfeit of personal autonomy.[4] It seems that social

crises often can be understood as moments challenging preconceived identities and threatening

traditional categories for differentiating between or uniting political subjects. In particular,

several parallels can be drawn between the anxieties roused by the social crisis of the seemingly

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[3] It has been further complemented by such challenges to American self-perceptions of benevolence, sophistication, and influence as the Abu Ghraib scandal, civil war in Iraq, revelation of the nonexistence of weapons of mass destruction, and the general decrease in international political goodwill.

[4] Various works discuss this phenomenon in different capacities. Apart from the artistic work of individuals—modernist poets like Wallace Stevens and T.S. Eliot, modernist novelists like Virginia Woolf, Franz Kafka, and James Joyce, Primo Levi's prolific writings on the Holocaust, Ernest Hemingway's novels of the Great War, to name a few—my considerations have been shaped primarily by the work of Leon Surette's *The Modern Dilemma: Wallace Stevens, T. S. Eliot, and Humanism*, part III of Hannah Arendt's *Totalitarianism*, and Leerom Medovoi's *Rebels: Youth and the Cold War Origins of Identity*.

interminable Cold War and that of the War on Terror. In both cases, masses of individuals responded to the challenge to their identities and ideologies by abandoning themselves to dominate patriotic behaviors that joined them with others, thereby renouncing personal autonomy in favor of a unity through nationalism that ostensibly offered security; the political milieu of both periods therefore similarly viewed dissent as a threat that might disturb general acquiescence with state action.

The epic productions under scrutiny in this chapter respond to the fears, anxieties, and desires permeating the post-9/11 cultural milieu by offering heroes who can successfully assuage and satisfy them. The heroes in these productions are all civic defenders who privilege duty over personal relationships; they embody robustly masculine identities that maintain a sense of agency over the chaos and evil of the world and are characters that reassuringly reaffirm the identities under assault by the September 11th attacks. Bond and Batman are composite action heroes who have historical popularity with male audiences. Consequently, they have been mainstreamed to the extent that they have amassed considerable global audiences. Along with Jack Bauer, the hero of *24*, they operate outside of the rule of law: Batman is a vigilante, while counter-terrorist agent Bauer anarchically disregards U.S. law, and Bond operates above it—as a 00 special agent with a license to kill.

It is worth emphasizing that the fantasy of *24*, *Casino Royale*, and *The Dark Knight*, does not necessarily lie in spectacular special effects or particularly whimsical fictions; rather, most of the formal qualities of these productions—their filming, editing, acting, and directing choices—tend toward realism and reject excessive reliance on computer generated imagery (Shin and Namkung 131). Instead, these productions are fantastic because the premises and assumptions of their narrative structures, which tend to be much less perceptible than ostentatious special effects

or magic, are fantastic. In the productions, human beings have the capacity to behave in fantastic ways, science is imbued with fantastic powers, and the narrative world's degree of order or disorder too is fantastic. Such unobtrusive elements of fantasy can be easily overlooked—a fact that is particularly pertinent to the three productions under scrutiny, whose elements of fantasy are further obscured by topical relevance.

Scenes of torture and interrogation are common to and serve as necessary devices within all of the epic productions under scrutiny. In these productions, the relationship between torture scenes and the narrative structure is closely entwined with the identity formation of heroes and the relationship between heroes and the law. For this reason, the scenes serve as loci for understanding the films' commentary on the collective American body's myths, identity, desires, and values. Especially considering their formal attention to realism, these scenes, like the images of torture discussed in the previous chapter, risk becoming a source of information about the act, because the collective audience has little first hand experience with the actual thing; aspects of the torture act in each of the scenes under consideration might easily be mistaken by audiences for the real experience. In such a way, the scenes risk and sometimes invite a blurring of reality and fiction that facilitates skewed perception of the actual, and—through such misperceptions—these scenes work to shape reality.[5]

To highlight the importance of underlying assumptions, and the dangerous ease with which they can be overlooked, I will preface my discussion of these epic productions with an analysis of the ticking time bomb scenario—a pseudo-philosophic representation of torture premised on fantastic grounds, which nonetheless has been employed by utilitarianism and the

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[5] As Baudrillard has noticed, our life experience often seems to be a "hyperreality," in which reality has "always already [been] reproduced"—or that which is deemed reality has never actually existed. Quoted in Douglas Kellner, *Baudrillard: A Critical Reader* (Cambridge, MA: Basil Blackwood Ltd., 1994), 171.

liberal humanist tradition as an exception to the absolute prohibition on torture, and by the state

of exception as a vital necessity for security. Though a hypothetical situation, resting on

fantastic premises, the scenario purports to possibility. In the contemporary torture debate, it has

been treated as the singularly important scenario into which all discussion of torture can be

collapsed; torture apologists have cited the scenario as reason why blanket condemnation of

torture cannot stand, while those who argue in favor of absolute prohibition have also been

forced to reconcile it with their views. Treated as reality in this manner, the scenario's fantastic

character and underlying assumptions have been fundamentally obscured to the degree that the

construct can be readily used as justification for torture, regardless of whether or not those

assumptions are satisfied. Able to blend into reality in this way, the scenario has been strikingly

able to influence actual public attitudes and policy preferences.

Behind their realistic façades, *24* and *Casino Royale* similarly present scenes of torture

that bear little if any relation to the real act. Unlike the actual act of torture, which destroys

one's ability to narrate a story by attempting to destroy one's ability to remember, value, and

create or speak one's own words, the scenes of torture in these productions often assume the

victim's ability to retain a sense of agency throughout the act. Whereas torture, as Joseph

Slaughter points out, "fashions a nonentity out of the tortured's subjectivity," and "destroys

memory by numbing the mind with pain, denying the victim the possibility of reconstructing an

integral self through thought," scenes of torture in these two films collapse the act into a

simplified moment of opposition between goodness and evil, a confrontation between

penetration and impenetrability, throughout which both the torturer's and victim's integral

characters retain their autonomy (Slaughter, "A Question of Narration" 426).

The scenes serve as important moments of character development. Both when Jack Bauer tortures and when James Bond becomes a victim, the identities of the characters as strong, masculine figures are reaffirmed and developed. Thus, even when the moment of torture takes a physical toll on the character, as it arguably does when Bond is tortured in *Casino Royale*, this "toll" serves to mature him and help him realize his autonomy—rather than to destroy it. Just as one cannot hear the voices of the victims in the Abu Ghraib images, neither can one locate these voices in the words of the victims in these productions. For whether the victim is the production's hero or villain, his voice does not sound with destroyed subjectivity; instead it sounds with the words desired by the collective body of the American torturer: words revealing the victim's evilness if he is the villain, words revealing his strength if he is the hero. In a highly problematic way, Hollywood culture therefore supplies these representations with its own set of ventriloquized voices—and broadcasts them around the world.

Only in *The Dark Knight* are the effects of torture on both torturer's and victim's characters taken into consideration. It is worth noting that though all of the films under scrutiny are fantastic, as this chapter proceeds from *24* to *The Dark Knight,* the degree of formal fantastic devices (like special effects or elaborate costumes and devices) increases, while the degree of fantasy in the premises of the narrative structures decreases; the degree of fantasy in the torture scenes also follow this trend, so that by *The Dark Knight* the premises of the scenes are relatively realistic considering the medium. Indeed, the scenes of torture in this last film position torture in the most complicated manner: as sometimes necessary, but at odds with law and political morality—an act that damages the psyche of the perpetrator.

I. The Fantasy of the Ticking Time Bomb

The "ticking time-bomb" scenario pivots on the image of a captured subject who knows the details and whereabouts of an active bomb that is scheduled to detonate in a public space and thereby to take the lives of innocent civilians. Opposite this terrorist subject is the political official who has sequestered him and ostensibly must torture him, in order to extract the invaluable information that will avert the catastrophe and save thousands of lives. Thus, in the scenario, torture serves as a necessary mechanism for saving the lives of innocent citizens—and, within the world of the scenario, it always succeeds. In this context, torture is understood to have positive implications for the interrogator, or torturer, who is presented as a hero with clear and ethical intentions.

As Alex Bellamy points out, the origins of the ticking time bomb can be located in the eighteenth century utilitarian writings of Jeremy Bentham, who first imagined a scenario in which the necessity of securing the greatest happiness for the greatest number of citizens would require and justify a politician to tread upon the unalienable rights of a few. Bentham asks,

> Suppose an occasion were to arise, in which a suspicion is entertained, as strong as that which would be received as a sufficient ground for arrest and commitment as for felony—a suspicion that at this very time a considerable number of individuals are actually suffering, by illegal violence inflictions equal in intensity to those which if inflicted by the hand of justice, would universally be spoken of under the name of torture. *For the purpose of rescuing from torture these hundred innocents, should any scruple be made of applying equal or superior torture, to extract the requisite information from the mouth of one criminal*, who having it in his power to make known the place where at this time the enormity

was practicing or about to be practiced, should refuse to do so? (emphasis my

own)[6]

Bentham, who viewed the inalienable rights of the liberal humanist tradition to be "nonsense on

stilts," did not see how the answer to this question could be "no" (Slaughter, *Human Rights, Inc.*

24). According his utilitarian principles, the end result of saving hundreds of innocent civilians

is justifiable grounds for the maltreatment of one criminal, who has the necessary information to

bring about, but refuses to cooperate in, their rescue. The positive value of that criminal's

salvation from torture cannot outweigh the value inherent to the salvation of hundreds of

innocents who will be rescued from injury.

There is obvious merit in this type of utilitarian ethics; when one is placed in a position

necessitating the choice between two outcomes, particularly such difficult outcomes as

determining which of two groups should live or die, be tortured or not, the practicality of

utilitarianism allows a dispassionate means for determining which path to choose. It is likely

that, if placed in this *exact* situation, many of us, like Bentham, would see only one viable

option. The problem with Bentham's scenario, however, is two-fold. Firstly, it proposes no

guidelines for such cost-benefit analysis or burden of proof.[7] Secondly, and most significantly, it

is such a remote possibility few, if any, of us would ever be placed in an identical situation; the

assumptions on which such scenarios rest are simply too implausible.

Bellamy proposes four general assumptions on which the ticking time bomb scenario

depends in order to justify torture. Firstly, the interrogator must apprehend the correct

individual, who has the desired knowledge. Secondly, that information must be sufficient to

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[6] Quoted in Alan Dershowitz, *Why Terrorism Works: Understanding the Threat, Responding to the Challenge* (New Haven, CT: Yale University Press, 2003), 142.

[7] Alex Bellamy, "No Pain, No Gain? Torture and Ethics in the War on Terror," *International Affairs* 82, no. 1 (2006): 133.

prevent the disaster. Thirdly, the use of torture must elicit the appropriate information within enough time to avert the catastrophe, and, fourthly, the information retrieved must be accurate (Bellamy 141-142). I would argue that the scenario further presupposes the interrogator knows of a pending threat before the application of torture, and that it the subject is captured within an exceptionally narrow time-frame: after the interrogator has learned of the threat, but before the bomb detonates.

It seems important to note, alongside Bellamy, that this scene "is designed to prejudge the moral outcome" (141). The scenario rests not only rest upon the sense of moral authority attributed to the interrogator's cause, but also upon the interrogator's belief that the conditions mentioned above justify the use of torture, and would in fact make inaction wrong (141-142). In other words, the scenario is designed with such specificity that it becomes one against which few could condemn torture; and thus, when the it becomes the key defense of torture apologists, the crux of the entire torture debate becomes a hypothetical situation resting on fantastic premises. When all torture is collapsed into this one hypothetical construct, in which options are limited and the cost-benefit analysis weighs heavily in favor of employing the act, then all torture is deemed justifiable, even when the essential assumptions are not supported; treatment of the essentially fantastic scenario as reality enables inattention to its underlying, fantastic assumptions, thereby rendering it a justification for torture regardless of whether those assumptions are valid. In this way, this highly implausible scenario becomes the warrant for justifying torture regardless of the existence of actual ticking bombs.

While it is true that not all cases of torture in the real world have been brought to light— indeed, most will always remain hidden in the dark chambers of the world's intelligence organizations—it is nonetheless ridiculous to rely upon an artificial scenario as the cornerstone

of discussion of torture or to promulgate it as a warrant for loosening the legal prohibitions on

the act.[8] Considering the unrealistic nature of the assumptions on which the scenario rests, and

the lack of recorded examples of its historical existence, it is illogical to form perceptions and

attitudes toward torture, or to reconsider decades of domestic and international law, just because

in one artificial scenario, we could or even possibly should torture. As Henry Shue has written,

"there is a saying in jurisprudence that hard cases make bad law, and there might well be one in

philosophy that artificial cases make bad ethics. If the example is made sufficiently

extraordinary, the conclusion that the torture is permissible is secure."[9]

In the real world, knowledge and intelligence are far from perfect—just how far from

perfect has been exemplified by the United States' experience in the War on Terror. Thus, in the

real world, each of the scenario's many assumptions is clouded by uncertainty. Let us consider

those assumptions more carefully. To begin with, the interrogator needs to know for certain that

an attack is pending: he needs to know that the suspect carries information about that attack (not

something all of the "enemy" can know by proxy), before torturing him or her. This certainly

would assume an extraordinarily effective intelligence-gathering apparatus: so great, in fact, that

it contained intelligence about *everything except* where the ticking bomb is located (or else we

would not need to use torture to find out). The interrogator also needs reasonable justification

for believing that his prisoner has enough information about the attack to rapidly avert it.

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[8] The contemporary torture debate has seen a strain of reasoning, headed by Alan Dershowitz, but upheld by others, which proposes the ticking time bomb scenario as grounds for reconsidering blanket condemnation of torture. Dershowitz supports a system in which officials would be able to procure warrants before interrogation and thereby legitimize their use of torture and ostensibly bring the act transparency.
[9] Henry Shue, "Torture," in *Torture: A Collection*, ed. Sanford Levinson (New York: Oxford University Press, 2004), 57.

The issue of time is vitally important here. The structure of terrorist cells requires that they alter plans and locations after learning of the capture of their members, in order to avoid further compromise; the cells cannot operate effectively without the element of surprise produced by their secrecy. Thus, in the scenario, to avert a pending attack, the interrogator would need to elicit the appropriate information from his prisoner before the terrorist cell has time to alter its plans. In some cases, the capture of an individual with the type of sensitive information that the scenario demands may persuade the terrorist cell to postpone the plan.

Granted that in the scenario an attack is nonetheless still pending (though even this is an assumption, for how can we know?) and the terrorist cell has not altered its plans or location, in order for the ticking time bomb scenario to be realized, the torture act would subsequently need to actually work—in the two-fold sense of both "breaking" the individual *quickly*, and forcing the individual to provide the appropriate information. This type of quick and truthful cooperation, however, is much easier to imagine than it is to produce. As the ticking time bomb formula reduces the complexity, uncertainty, and disorderliness of the world of interrogation, the act of torture is streamlined into simplicity: in the real world, interrogation takes time, patience and nuance, and torture does not always meet with speedy cooperation or truthful information.[10]

Moving beyond the scenario's many assumptions, there are also several problems with its practical implications. For example, the scenario does not attend to the fact that in praxis authorization of torture, even for very explicit and "necessary" exigent circumstances, often slips into sanction for torture just for expedience's sake; justification for that which is deemed "necessary," like saving innocents from a pending attack, eventually slides into justification for that which is deemed expedient or helpful. Torture is the ultimate shortcut. The War on Terror

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[10] "Primetime Torture," video clip, directed by David Danzig, Human Rights First, http://www.humanrightsfirst.org/us_law/etn/primetime/index.asp.

has witnessed how the practice can easily slip from situations of "necessity" to those which help

cut corners: the Special Access Program (SAP) that was developed to expedite interactions with

high-value terrorists was gradually expanded in scope over the course of roughly a year from

application to valuable suspects, who presumably might have "necessary" or at least very

important information, to widespread application at Abu Ghraib, where it could be used on

"cabdrivers, brothers-in-law, and people pulled off the streets"—any prisoner who could

potentially know something, just by proxy (Hersh, "Annals of National Security: The Gray

Zone").

In a recent essay on the ticking time bomb scenario, Elaine Scarry has argued that the

another often overlooked aspect of the scenario is that it allows one to imagine an interrogator

willing to overcome both his aversion to torture and his commitment to the rule of law, for the

sake of a higher purpose (the saving of innocent lives), but does not presume that the same

individual would be willing to accept the legal culpability and punishment tied to his crime.[11] In

this way, the ostensibly innocent interrogator stands somewhere between altruist and criminal,

and certainly cannot be understood as an Antigone-like unadulterated moral agent, taking on a

moral burden for the good of many—as the construction of the scenario would suggest. For such

an individual would surely accept the consequences of his actions, as part of the same duty that

required him to torture and breach the law in the first place. Moreover, when such an

interrogator believes that his or her behavior will meet with approbation before ever acting, the

act of injuring a defenseless individual requires really no moral courage at all.

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[11] Elaine Scarry, "Five Errors in the Reasoning of Alan Dershowitz," in *Torture: A Collection*, ed. Sanford Levinson (New York: Oxford University Press, 2004), 282. Note that in her certainty that the torturer would have to *overcome* an aversion to torture and a deep desire to uphold the rule of law in order to execute the act, Scarry is arguing distinctly along liberal humanist lines.

II. Jack Bauer: The American Hero

The ticking time bomb scenario was popularized in 1960 by Jean Larteguy's Algerian

War novel, *Les Centurions*. The novel—which was likely inspired by or seen as a re-

imagination of the closest recorded case to an actual ticking time bomb scenario that occurred

during the Battle of Algiers—features a protagonist named Boisfeuras who has been tortured at

the hands of the Nazis and the Viet Cong, and, in turn, heroically averts several pending disasters

by torturing his enemies (Rejali 152). In contrast, during the actual situation, French Police

Prefect, Paul Teitgin was faced with the threat of a bomb hidden in a gasworks facility and the

possibility that his prisoner might have important information, but he nonetheless refused to

sanction torture—and no bomb ever exploded.[12] Larteguy's novel can thus in many ways be

understood to fantasize the scenario by reversing what actually happened.

Darius Rejali suggests that Larteguy's novel is predicated on an attitude prevalent during

the Cold War, in which democratic, liberal humanist ideals are believed to weaken and

emasculate men. In this context, Teitgin's refusal to torture can be read as manifestation of his

craven character, the consequence of his identity as a democratic citizen more inclined toward

equal treatment and letting others make difficult decisions than toward resolute action and the

exercise of physical or psychological strength. It is therefore unsurprising that in *Les*

Centurions, the use of torture is associated with reclaiming masculinity, virility, and potency. To

illustrate this point, Rejali notes that one of Boisfeuras's victims is an attractive young woman,

and in the scene of her torture, Larteguy conflates the act of violence with impulses of love and

lust. During the scene, the victim affirms her love for and attraction to Boisfeuras; she even

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[12] Darius Rejali, "Torture Makes the Man," *South Central Review* 24, no. 1 (Spring 2007): 152.
In the actual situation, Teitgin's Communist terrorist prisoner, Fernand Yveton, had been caught
planting a bomb in the gasworks, and authorities feared the existence of another bomb, which, if
detonated, would injure thousands. Nonetheless, Teitgin decided against sanctioning the torture.

admits to partially enjoying the pain (152). Larteguy's eroticized plot suggests that Boisfeuras's own torture at the hands of others restored his masculinity and strengthened him so that he became "man" enough to torture others (151-152). Torture is salvatory in the sense that it reclaims or "saves" his heterosexual masculinity.

Anxiety about the emasculating nature of liberal humanist ideals and fear that democracy was engendering spineless (especially male) citizens was not exclusive to France: it also raged through Cold War America. Americans, accustomed to decisive victories, were having difficulty accepting the lack of a tangible success in the Korean War, and the conviction that American POWs during the war had proved feeble vis-à-vis their enemies was widespread (166). It is within such a cultural milieu that the SERE program, mentioned in the previous chapter, had been developed to toughen American soldiers. Such anxieties were only compounded by what Leerom Medovoi calls the "agency panic" that resulted from the 1950s' culture of containment—the fear that an era of conformity, mass culture, and suburban life, was robbing American citizens of identity and personal agency, warping them into mere cogs in social and political mechanisms beyond their control.[13] The social identity crises of the Cold War thus provoked desire for reaffirmation of personal autonomy and masculine strength; for this reason, the period generated such rebellious heroes as James Dean's Jim Stark in *Rebel Without a Cause* and Marlon Brando's Johnny Strabler in *The Wild One*.

Several parallels can be drawn between the spectral and seemingly interminable Cold War and the War on Terror: dichotomous geopolitics, fear-mongering, anxiety about the enemy within the social body, nuclear threat. Not least among such similarities is the sense of crisis in American identity. Just as the War in Korea and the communist threat challenged the United

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[13] Leerom Medovoi, *Rebels: Youth and The Cold War Origins of Identity* (Durham: Duke University Press, 2005), 21.

States' conception of itself in the 20th century post-war, the 9/11 attacks and terrorist threat have

challenged the American identity in the 21st. Indeed, the 2003 orange alert that sent many

Americans rushing to store provisions and fortify their homes is a recognizable throwback to the

era of "duck and cover." The traumatic disaster the unexpectedly shook the nation on September

11th unsettled the United States' perception of itself as an invulnerable but benevolent

superpower in control of both its own security and the world order.

Unease and apprehension about such challenges to the United States' identity and status

are nowhere more culturally resonant than in the reception of the network television program *24*,

starring Kiefer Sutherland, which premiered only two months after 9/11.[14] The first seven

seasons have presented Kiefer Sutherland as Jack Bauer, a hard-boiled utilitarian who works for

the fictional American Counterterrorism Unit (CTU) and refuses to be inhibited by anything—

including domestic or international law—when it comes to his job of protecting American lives

from terrorists. With his utter disregard for the Constitution and the United States' legal

obligations, Jack is both the ultimate patriot and the ultimate anarchist. The world in which he

operates is fraught with fear, continuous emergency, and a constant terrorist threat.

The series structures each season as one 24-hour interval—hence the show's title.

Therefore, each season's very complicated storyline is understood to be conveniently resolved in

just one single day, of which each episode composes one hour. The program is driven by the

urgency of time: the minutes and seconds remaining for the hour of each episode continuously

dwindle, with an ominous ticking that returns after each commercial break. Demanding that

everything happen fast so that intricate plots can be untangled and thwarted within "one day," it

has little time to consider consequences that might result from its heroic characters' behavior; as

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[14] Peter Finn, "Day of Reckoning," *The Washington Post,* January 10, 2009, Arts & Living
section, Page C01.

a result, the program relentlessly simplifies everything. This high tension inherent to *24* is highly conducive to exploitation by "ticking time bomb" plots, because the entire narrative premise of the show is essentially a ticking bomb; the "ticking" is explicitly embraced as the show's temporal logic. The audience can never forget that time is dwindling, and the urgency viewers understand to be constraining Bauer's actions encourages them to condone his reliance on torture to get information more quickly.

Jack Bauer's mantra is "Whatever it takes," because the terrorists with whom he interacts "don't care about [our] rules."[15] He has adapted accordingly. Similarly disregarding our rules, Bauer ignores the need for warrants, helps suspects break out of prison, kidnaps, and threatens elected officials.[16] Placing himself above the law in this way has also translated into many scenes of torture. According to the Parent Television Council, a nonpartisan nonprofit organization that serves as primetime television's foremost nongovernmental watchdog, the program presented sixty-seven scenes of torture during its first five seasons, making it the most frequent portrayer of torture on television during that period.[17] The ticking time bomb formula appeared, on average, twelve times during each of those seasons. Since every season represents

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[15] Judith Warner, comment on "Bauer and Bush, Running on Empty," Domestic Disturbances Blog, *The New York Times,* comment posted on January 15, 2009, http://warner.blogs.nytimes.com/2009/01/15/bauer-and-bush-running-on-empty/ (accessed February 2, 2009).

[16] Brett Chandler Patterson, "I Despise You for Making Me Do This," in *Jack Bauer for President: Terrorism and Politics in 24,* edited by Richard Miniter (Dallas: Benbella Books, Inc, 2008), 36.

[17] Martin Miller, "24" and "Lost" get symposium on torture," *Seattle Times*, 1/14/07. The Council counted four depictions of torture on primetime television in 1999, 127 in 2002, and an unbelievable peak of 228 in 2003—the year the U.S. invaded Iraq ("Primetime Torture").

one 24-hour interval, this means that "Bauer encounters someone who needs torturing 12 times per day."[18]

On only one occasion—when he intuits that his prisoner is "not going to tell us anything"—does Bauer seem to lose his penchant for torture. The momentary dispute of torture's indispensability is quickly rejected, however, when, after wresting control of the prisoner, Jack's coworker uncovers a horrifying plot that threatens Los Angeles (Mayer, "Letter from Hollywood: Whatever It Takes"). The message in this scene, and countless others, is crystal clear: torture always works and is always necessary. Wavering for even a moment is dangerous.

Torture in *24* is always creatively macabre. It is also always effective, in the two-fold manner of both "breaking" the victim and producing the desired information in a timely fashion. Those whom Bauer interrogates reveal their secrets episode after episode (while Bauer himself, even after 20 months of torture between seasons five and six, has, of course, never been "broken"). Characters who question torture's usefulness or necessity are depicted by the program as bumbling weaklings or bureaucratic doctrinaires, who measure up poorly against a Bauer who always saves the day; indeed, the show overtly pokes fun at such agencies as Amnesty International. Jack always seems to be plagued by such individuals, who represent organizations—be it his own CTU, other government agencies, or ACLU-style human rights activists groups—that want him to adhere more closely to the rule of law. Yet, with the clock ever-ticking, Bauer consistently proves their concerns to be irrelevant—mere annoyances that obstruct his task at hand. He is therefore constructed as the ultimate foil to a United States

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[18] Dahlia Lithwick, "The Fiction Behind Torture Policy," *Newsweek*, August 4, 2008, http://www.newsweek.com/id/149009.

weakened by democracy, never allowing liberal ideals or bureaucratic details to inhibit his performance of duty or espousal of bravery.

Jack's illicit activities and reliance on torture are often supported, however, by the current season's "president" character.[19] In one season, for example, the usually very honorable president instructs a Secret Service agent to torture his national-security advisor: a suspected traitor. Because the audience has known for some time that the suspect is guilty, viewers are sympathetic and become "complicit in hoping that the torture works"—which, of course, it does. Just moments before the subject capitulates, the president resignedly admits, "[e]veryone breaks eventually."[20] As Eric Greene has noticed, these president characters are often "black and thus presumably liberal."[21] Consequently, through the vehicle of the president, the program grants torture support from even unlikely apologists; even the decent and progressive seem to recognize the necessity of the act.

Bauer's conduct and his all-encompassing dedication to his duty have evident consequences for his own life, largely manifest in a lack of meaningful personal relationships. In order to devote himself so completely to protecting America at all costs, Bauer must sacrifice his personal life and his family: his wife is killed, he becomes estranged from his daughter, he must torture family members, and he is alienated from his love interest. Bauer is, in short, what Paul Lytle calls the ultimate "utilitarian martyr" (Patterson 35). Yet despite these negative consequences in Bauer's personal life, the United States itself never encounters consequences for Jack's abrogation of the rule of law (Greene 183). There is no consequence for disregarding the

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[19] The only President in the series who does not sanction torture is season four's corrupt President Logan.

[20] Jane Mayer, "Letter from Hollywood : Whatever It Takes," *The New Yorker*, February 19, 2007, http://www.newyorker.com/reporting/2007/02/19/070219fa_fact_mayer.

[21] Eric Greene, "Jack Bauer Syndrome," in *Jack Bauer for President: Terrorism and Politics in 24,* edited by Richard Miniter (Dallas: Benbella Books, Inc, 2008), 183.

Geneva Conventions, for example, when Jack stages a fake execution; though he is initially

rebuffed, after the event is revealed as a bluff, all criticisms are dropped. The ramifications of

torture too are understated. After Jack's CTU coworker Morris O'Brian is captured, tortured,

and capitulates, Morris returns to work in the next episode—or, the next hour. When Jack

himself is tortured to near-death in season two, he is quickly revived and back in action.

The program has been recognized, quite aptly, for capturing the zeitgeist of post-9/11

America. With its constant threats and continuous emergencies, it is readily understood as the

zeitgeist of the state of exception (Finn). (The degree to which the current season of the program

expresses an emergent post-Bush zeitgeist will be discussed in the next chapter.) Yet Jack Bauer

has also achieved a presence in political discourse beyond the fictional realm of the series: often

cited by politicians as the ideal American patriot, his is touted as a justification for harsh

interrogation techniques and emblematic of the benefit of razing the bureaucratic structures that

slow the terrorist apprehension.[22] Treated by these politicians as a real person, Bauer is

expropriated from his continuously urgent fantasy world and cited as a model for the civic

defenders working in our own. Just as the ticking time-bomb scene has been appropriated by the

torture debate in a manner that downplays its fantastic assumptions, Bauer too is divorced from

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[22] Secretary of Homeland Security, Michael Chertoff, was quoted declaring that "the show 'reflects real life.'" Supreme Court Justice, Antonin Scalia, has commented that "Jack Bauer saved Los Angeles … He saved hundreds of thousands of lives…Are you going to convict Jack Bauer?" John Yoo, the former lawyer for the Justice Department credited with composing the memos, which created a legal guise for the Bush administration's torture policies, asked in his book *War by Other Means*, "What if, as the Fox television program *24* recently portrayed, a high-level terrorist leader is caught who knows the location of a nuclear weapon?" (Lithwick). Congressman Tom Tancredo, at the Republican primary debate in 2007, said that he was "looking for Jack Bauer" when it came to questions of torture. Ken Rudin, "Republican Presidential Contenders Meet on Stage," NPR.org, May 16, 2007, http://www.npr.org/templates/story/story.php?storyId=10204580.

the premises governing his fantastic world and used as a political bargaining chip to support pro-security policies—informing actual public attitudes and perceptions in the process.

Bauer's attitudes and behaviors have had noticeable influence on cadets at the United States Military Academy at West Point. U.S. Army Brigadier General Patrick Finnegan, the dean of West Point, Stuart Herrington, a veteran interrogator, and Gary Solis, who designed and taught the Law of War for Commanders course at the academy, among others, have openly discussed the adverse effect of *24* on students' perceptions of torture. Solis, for instance, has avowed that the program increased the frequency with which "Jack Bauers," or students who believe that torture is a necessary and effective tool, appeared in his classroom: "I tried to impress on them that [Jack's] technique would open the wrong doors," he said, "but it was like trying to stomp out an anthill" (Mayer, "Letter from Hollywood: Whatever It Takes").[23] In a similar vein, Tony Lahouranis, an Army investigator, has explained that military protocol in the War on Terror, which demands new and creative interrogation techniques to contend with an ostensibly "new" type of enemy, inadvertently encourages agents to draw upon popular culture as resources as they construct interrogation strategies ("Primetime Torture").[24] Representations of torture and interrogation in *24* thus literally serve as points of reference for cadets and interrogators, just as they do for the U.S. citizenry: these scenes present techniques for emulation in real situations with real lives and laws at stake.

Considering *24* as a zeitgeist, the ostensibly manly figure of Jack Bauer can also be understood as a figure that bolsters an American identity under fire after 9/11. While the Cold

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[23] See also Peter Finn, "Day of Reckoning," *The Washington Post,* January 10, 2009, Arts & Living section, Page C01.

[24] The Inspectors General of the Dept. of the Army also acknowledged circulation of reports that both officers and noncommissioned officers have used techniques they remembered from movies ("Primetime Torture").

War had primed the American public for anxieties that emasculation was inherent to democratic ideals, the social crisis presented by 9/11 similarly suggested we had grown lax about maintaining our more "masculine" American myths and identities: the predatory strength inherent to the bald eagle, the rugged individualism and determination that conquered the West, and the bravery of those who dwell in the land of the free. Revelation that the nation could be so unexpectedly attacked threatened the notion that the U.S., while quite capable of penetrating other countries, was invulnerable to penetration itself.[25]

The overtly gendered imagery of penetration is significant in this context because it reflects anxieties over masculine American identities that clearly underwrite policy in the post-9/11 era of the security state. Indeed, the imagery of penetration explicitly informs the Bush doctrine's tenet of preemptive strikes—penetration of the enemy before "he" has the opportunity to penetrate us—while the tenet of unilateral response seems reaffirmation of a mythically male rugged American individualist.[26] Though the neoconservative agenda governing the U.S. post-9/11 is a relic George H. W. Bush's presidency, the immediacy of the peril posed by September 11th instantly brought new relevancy to its policies. Neo-conservatism was thus quickly offered as a means for stabilizing the masculine identity crisis. The administration and the media

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[25] Unlike many other nations in the world, including most of its peer countries, the U.S. has rarely experienced attacks on the home front; instead, our troops have typically left the safety of their own borders to fight and invade abroad.

[26] Aaron Thomas Nelson, "Simulating Terror," in *Jack Bauer for President: Terrorism and Politics in 24,* edited by Richard Miniter (Dallas: Benbella Books, Inc, 2008), 78. It is worth noting that, even while *24* embraces some tenets of the neoconservative agenda, reading the program as mere verbatim of neoconservative policies would disregard the complicated plot twists at the end of each season. Time and again, a corrupt American or Westerner is revealed as the origin of the season's problems: in season two, it is a western businessman; season three an MI-6 agent; in seasons four and five Americans; and, in season six, the President and Western business interests. Moreover, throughout the series, politicians are complicit in Jack's crimes— or guilty of their own. Nonetheless, the program does support key Bush administration policies, using plot lines to both question and then defend such controversial issues as the infraction of citizens' civil liberties and Guantanamo style-prisons.

concomitantly affirmed the existence of such a crisis—and thus the necessity of embracing neo-conservatism as an antidote—by disseminating the notion that the September 11th attacks were manifestation of Al Qaeda's hatred of American ideals and consumer capitalist lifestyle, and focusing attention on America hedonism as a source of national emasculation. Consumerism had dulled our perspicacity, made us lazy and inattentive, and sequestered us away from the grittiness of the real world in a bubble of prosperity and security. In a December 2001 interview with Bob Woodward, President Bush echoed such sentiments: "I do believe there is an image of America out there that we are so materialistic, that we're almost hedonistic, that we don't have values, and that when struck, we wouldn't fight back" (Rejali 166).

In the context of such insecurity, the nation came to deeply desire, even to need, Jack Bauer—who embodies the myth of masculine American identity and disparages the privileging of justice or equality over security. Bauer's ability to take action decisively in tight situations, to be unconstrained by fear, and to act with utmost acuity upon valid intelligence, answers the "agency panic" plaguing a nation feeling beleaguered by something against which it could not offer conventional riposte: an organism difficult to name, define, find, or face, that adumbrated our lack of control over the world with its ability to attack from within, when we thought ourselves safe; an organism that the collective body had never known to exist and seemed powerless to efface. Into this chaos, Jack Bauer shines agency and manliness, by encouraging viewers to trust in their civic protectors, to believe that America can vanquish its terrorist enemies. His use of violence, as Eric Greene observes, effectively imposes order amidst fear and confusion: "*24*'s unflinching depiction of torture and violence does not really glamorize violence, it sanctifies it. In *24*'s version of our world, words may be hollow, allegiances may shift, your closest intimates may deceive and betray, but *violence clarifies*" (Greene 182). In

offering a revision or reversal of September 11th (for if Jack Bauer had been in charge, the

attacks would never have happened), Bauer is the perfect projection of a strong American

identity to be consumed at home and broadcast around the world. [27]

The world presented by *24* thus became a projection of the America for which many, in

the wake of September 11th, deeply wished. The television program served not as an escape, but

as a reminder of the threat of terrorism and a reassurance that the U.S. could answer it. It is

positioned awkwardly as a production that purports to realism through topical themes and

plausible events—allowing bombs sometimes to explode, people sometimes to die—even as it

situates such themes within a fantastically premised world. Yet, just as daily correspondence

between President Bush's office and intelligence agencies created a political milieu rife with

imminent threats and calls for constant vigilance, maintaining security at the top of the

President's agenda,[28] so *24* worked to keep the menace of terrorism ever-present in the minds of

Americans—highlighting its continued risk in a degree not necessarily reflective of or

proportional to reality.[29]

III. The Name's Bond. James Bond.

Bearing in mind the epic heroism of Jack Bauer, and his fantastically urgent world—in

which torture and disregard for the rule of law are necessary to maintain American supremacy—I

turn next to the exploits of one of western cultures' most beloved heroes: James Bond. A larger

than life icon central to contemporary Western mythology and part of an extensive franchise,

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[27] Jeanne Cavelos, "Living With Terror," in *Jack Bauer for President: Terrorism and Politics in 24,* edited by Richard Miniter (Dallas: Benbella Books, Inc, 2008), 10.
[28] Douglas Jehl, "Dispute Prompts Scrutiny Of Bush's Daily Reading," *The New York Times*, February 14, 2004, http://query.nytimes.com/gst/fullpage.html?res=990CE2D61E3AF937A25751C0A9629C8B63.
[29] Similarly, the administration played to fears and anxieties by highlighting the terrorist threat in press conferences, public addresses, and the proclamation of color-coded alerts.

part of the fantasy inherent to each Bond film derives from the imagination of each new iteration

as *the* hero; while portrayals of the Bond figure are always complete in themselves, a subtext of

comparison with past depictions renders each incarnation a composite character who must be

embraced. The Bond films, particularly *Casino Royale*, are predicated on the assumption that

Bond is a man capable of super-human feats of strength, implausibly perfect timing, and

relentless energy. He is one for whom risks and near-death experiences are neither rattling nor

significant.

Since 9/11, Eon Productions has released three Bond films: *Die Another Day*, starring

Pierce Brosnan in 2002, and *Casino Royale* in 2006 and *Quantum of Solace* in 2008, both

starring Daniel Craig. Unlike the Brosnan era films, which straddle Fleming's original Cold War

geopolitics and the post-Soviet world, both the Craig films offer a modern variation on the

traditional Cold War geopolitics of Bond's world.[30] *Casino Royale* explicitly presents itself as a

self-conscious reconfiguration of the Bond character for a post-9/11 world: M (the head of

British foreign intelligence and Bond's supervisor) makes a point of acknowledging the end of

the Cold War,[31] and Bond's nemeses are linked to Al Qaeda.[32] Though the audience never learns

the specific scheme for derailing humanity that motivates the terrorist network lurking in the

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[30] For commentary on the anti-imperialistic geopolitics of the newest Bond film, *Quantum of Solace*, see Juan Cole, comment on "A Quantum of Anti-Imperialism," Informed Comment Blog, comment posted on November 16, 2008, http://www.juancole.com/2008/11/quantum-of-anti-imperialism.html (accessed February 28, 2009).

[31] M laments, for example, "In the old days, if an agent did something… embarrassing, he'd have a good sense to defect. Christ, I miss the Cold War."

[32] After an extensive action sequence involving a bomb at Miami airport, M informs Bond that the events had been intended to deflate airline stocks, in the same manner the stocks had collapsed on September 12—thereby connecting the international terrorist organization and its villainous financier to the events of 9/11. (It is worth noting that the United States' two largest stock markets were not actually open on 9/12.)

background of the film, a terrorist menace is nonetheless continuously informing the plot as the film's ostensibly most dangerous villain.

Casino Royale, which met highly favorable box office revenues and garnered a wide audience (reaching 78 countries within two month), upholds the classic Bond plot-formula as the twenty-first film in the film series (Shin and Namkung 127).[33] Somewhat paradoxically, however, its story, based on Ian Fleming's first novel, is unique to the franchise in that it depicts the "early Bond." The film provides insight on the events that have shaped MI-6 agent 007 into the man we all know as James Bond, by outlining formative experiences in his early career—just as he has received his "00" status, or license to kill. Although the events depicted in the film unquestionably occur after the Cold War, the audience is engaged in the fantasy that the early Bond exploits recounted by the film have preceded all the other adventures of the series. Differentiating the early Bond from the iconic amalgam recognizable in several decades of films, *Casino Royale* thus works to redefine the familiar character. As it traces Bond's development from an arrogant but blunt government "tool," easily duped by his associates, to the classy but hardboiled icon who trusts no one, the film proposes Bond's suavity and hardened temperament as learned mechanisms of self-preservation.

Concomitantly, *Casino Royale* sets itself apart as grittier than the films that precede it, particularly those of the Brosnan era. While Brosnan's Bond relies on special effects and

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[33] The Bond formula that it upholds as originally delineated by Umberto Eco: M gives Bond a mission (in this case, to investigate an international terrorist organization). The villain (in this case Le Chiffre) then makes himself known to Bond (attempts to bomb an aircraft at Miami airport) and Bond responds accordingly (thwarts the plan). Bond and the villain parry back and forth, each making moves (demonstrated via the high-stakes poker game). The Bond girl (the agent for the British Treasury, Vesper Lynd) then makes her move (refuses to provide Bond with additional funds for the poker game). Eventually, the villain captures and tortures Bond, who escapes, attends to the villain's demise, and reunites with the Bond girl. Referenced in Philip Gardiner, *The Bond Code* (Franklin Lakes, New Jersey: New Page Books, 2008), 11.

gadgetry, this film is heavy on realistic combat scenes and free-running stunts; there are fewer

gigantic guns, more iron-fist punches. Bond himself is rawer than audiences have seen him, or

realized he could be. Craig is one of the only Bond incarnations to suggest a psychological and

emotional depth to the character, which only becomes more complex throughout the film. The

introduction of a new actor, Daniel Craig, for this endeavor heightens the film's self-conscious

novelty, reinforcing its function as both a pivotal post-9/11 revitalization of the series and a

vehicle for repositioning Bond in a post-9/11 world order.

Though the James Bond created by Ian Fleming is a distinctly British agent, the film

versions of Bond have always exhibited an Americanized Bond, and *Casino Royale* is no

exception. The franchise, governed by the profit-driven Hollywood film system, has always

been dependent on U.S. capital for production and distribution (Shin and Namkung 130).[34] It is

thus unsurprising that the figure of Bond the films depict is perennially an "American

Englishman"—cast to attract American audiences and reduce his British mannerisms (130). As

Jeremy Black points out, Fleming's Bond figure has been "translated into a kind of Anglo-

American hybrid for the film role, and it is the film rather than the literary Bond that is most

familiar to millions around the world."[35]

Throughout the film series, and particularly in *Casino Royale*, the values and agenda of

the British intelligence community are closely related to those of the United States. The films

are renowned for demonstrating Britain's position in a post-war world order: no longer an

imperial power, but in special rapport with the U.S.—its successor to role of superpower. In

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[34] The British corporation Eon Productions, which has produced nearly the entire Bond series,
was founded by two Americans; production has relied heavily on funding by American investors,
and distribution has been lead by Hollywood's United Artists.
[35] Jeremy Black, "'Oh, James': 007 as International Man of History," *The National Interest*
(January 2003): 106.

both Fleming's novels and the Bond films, Britain's dependence on the United States is

symbolized by the American agents who consistently come to Bond's aid. In *Casino Royale*, for

example, the United States makes an overt appearance as the character of Felix Leiter, a

trustworthy CIA agent who works undercover alongside Bond in a high-stakes poker game, and

provides financial assistance and encouragement when Bond needs it.[36] This coordination

between Britain and the U.S. is a consequence of the fact that in Bond's world, just like

frequently in our own, the two nations struggle against the same enemies with the same objective

in mind—namely, upholding the ideals of Western society. Studies of word relationships in

Casino Royale suggest that, despite its spotlight on British intelligence, the film actually projects

strong linkages between "America" and the concepts of "safe," "world," and "best," and thereby

encourages a positive valuation of U.S. world leadership (Shin and Namkung 140). Though

British, Bond can thus readily be understood as one who risks his life to uphold the values

inherent to the U.S. hegemony, while his broadcast around the world can be understood as a

means of reinforcing American soft power; accordingly, he is easily appropriated and embraced

by U.S. audiences.

It is worth noting that Bond's "nemesis" is depicted rather differently in *Casino Royale*

than is typical to the franchise: his enemy, Le Chiffre, is not a megalomaniac villain, but a math

genius who, though self-serving and dangerous, never seems monolithically evil—rather, Le

Chiffre is an unscrupulous capitalist, who finances international terrorists by using bombs to

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[36] In exchange for this support, Leiter requests that Bond allow the United States to take credit for Le Chiffre's capture by taking the villain into custody. For insight on the more overt critique of the Anglo-American relationship in *Quantum of Solace*, see Juan Cole, comment on "A Quantum of Anti-Imperialism," Informed Comment Blog, comment posted on November 16, 2008, http://www.juancole.com/2008/11/quantum-of-anti-imperialism.html (accessed February 28, 2009).

control the stock markets.[37] When Bond foils Le Chiffre's attempt early in the film to deflate

airline stocks by planting a bomb on an aircraft, the financier's scheme is ruined, and he loses the

money entrusted to him by the terrorist network. Consequently, the audience recognizes

throughout the film that Le Chiffre faces a dual threat: from Bond on one hand and from the

terrorists whose money he has lost on the other. In contrast to Craig's physically powerful Bond,

Le Chiffre never physically assaults anyone, and appears pale and thin. Noticeably dependent on

an inhaler during moments of anxiety, and motivated by fear of the terrorist network whose

funds he has lost, Le Chiffre is an unambiguously weak and effeminate villain.

Bond's torture at the hand of the effete Le Chiffre late in the film is therefore a pivotal

moment: it becomes both an explicit affront to Bond's manhood and an affirmation of his

heterosexual masculinity. As a rhetorical device familiar in Bond films, Bond's torture is

expected by the audience; it is also deemed tacitly necessary in order to push Bond to the limits

of his inner, rather than physical, strength—and thereby force him to prove his mettle and his

masculinity. The scene, underwritten with sexual tension (which is ultimately resolved when

Bond consummates his desire for his love interest, Vesper Lynd), features Bond stripped naked

and tied to a chair as Le Chiffre attempts to force him into revealing the account number for the

bank account into which Bond has transferred the villain's lost money.

Le Chiffre opens the confrontation by noticing Bond's well-sculpted physique,

sardonically declaring, "Wow. You've taken good care of your body." Moments later, he

caresses Bond with a rope that has been prepared as a whip—a rope knotted to look uncannily

like male genitalia. Warning Bond that "if you do not yield soon enough... there will be little left

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[37] Indeed, his evilness seems to inhere to a fanatic capitalism, for he has no scruples about what
is done with the money he earns for others, and asserts that he does not believe in God, only "in a
reasonable rate of return."

to identify you as a man," Le Chiffre begins beating his captive's genitals. After each onslaught,

Bond not only refuses to divulge the password (i.e. be penetrated), but also spits out countering

verbal assaults that attack Le Chiffre's masculinity—retaliatory attempts at verbal castration.

Just as Bond's castration becomes imminent, Le Chiffre's plan is thwarted when a member of the

terrorist organization unexpectedly enters the torture chamber and shoots the villain.

At this point in the film, the audience has not yet witnessed Bond possess a woman;

though viewers have been cognizant of a ripening sexual tension between Bond and his "girl,"

Vesper Lynd, the two have never engaged in sexual intimacy. Thus, considering the audience's

perception of the composite Bond icon as a virile male, and the lack of sexual activity in the film

up until this point, the subtext of homosexuality in the torture scene can be understood as a

climactic moment in which Bond rejects Le Chiffre's homosexual advances and affirms his

heterosexuality. The scene thereby performs an important function in the formation of Bond's

identity for both this film and those the audience understands to occur after it: it proves Bond's

masculinity and foreshadows his choice at the end of the film to privilege duty, physical

prowess, and arrogance over a life of love and companionship.

In order to understand the import of this torture scene, it is necessary to trace Bond's

maturation through *Casino Royale*. Viewers first meet Bond as he receives his 007 status, and

quickly understand him to be an arrogant, reckless agent, who is unable to see the "whole

picture": the complex web of connections and dangers behind the immediate jobs that M assigns

him. Bond is determined and powerful, but, as M complains, "any thug can kill"; he is witty but

neither subtle nor discriminating. Bond is also above the law—an MI-6 operative with a newly

acquired license to kill. As a result, even when he misuses his power by storming an embassy

and killing a man wanted alive, and is subsequently censured by the British press, he suffers little

consequence. Cognizant of his clout, Bond is unequivocally arrogant. His early interactions

with M and his love interest Vesper Lynd thus seem to be fencing matches rather than

conversations, as each woman challenges his egotism. Yet despite his propensity for charm,

Bond lacks the effortless style of the debonair; a graduate of Oxford or somewhere comparable,

he nonetheless seems more uneasy with wealth than the Bonds of old, and wears his suit with a

hint of disdain.

Needing to maintain appearances at the ritzy resort hosting Le Chiffre's high-stakes

poker game, however, Bond seems to be learning nuance by the middle of the film. Though his

early missions have been executed in casual street wear, it is at the resort in Montenegro that

Bond, with the help of Vesper, dons his first tuxedo of the film. At last in the dinner jacket that

is his trademark, viewers watch Bond concoct the martinis that are his signature. His egotism

slightly tempered by the middle of the film, Bond also begins to show tenderness: in possibly the

most passionate shower scene of the entire franchise, he comforts Vesper, emotionally shaken

from her close witness of death—with his clothes *on*. Yet, despite all, Bond is still heroically

tough: able to eclipse the average man with such feats as killing two terrorists in a stairwell with

his bare hands, and returning to his poker game only minutes after being poisoned into cardiac

arrest.

Throughout the film, Bond has been attempting to define his masculinity by negotiating

relationships between the self-indulgence of luxury and the perspicacity necessitated by duty,

between arrogance and vulnerability, and between his feelings and his brute force. Appearing

relatively late in the film, the torture scene further matures Bond's character by reifying this

negotiation through literal attacks on his manhood. In the scene, Bond fully claims and

safeguards his masculine identity, despite the risk of castration: firstly, by refusing to reveal his

secret and thus refusing to be penetrated; and secondly, by responding to the pain inflicted upon

him with humorous retaliatory innuendos that challenge Le Chiffre's own masculinity.

Laughing, Bond responds to each blow not with the information Le Chiffre wants to hear, but

with insinuation that Le Chiffre is performing sexual favors for him.[38] Unrealistically

maintaining control over his voice and diction in the midst of extreme pain, Bond retains agency

throughout the scene. His pain is palpable, and yet mitigated, by the humor he injects into the

situation, humor that allows him verbally to maintain equal footing with Le Chiffre nearly to the

end.

This agency upends the torturer-victim relationship presented by Larteguy or *24*. If *24*

serves as a reminder of the constant urgency of the terrorist threat, setting it atop our agenda and

arguing that torture is necessary to avert it, *Casino Royale* is a vehicle for considering torture as a

purification and strengthening process—an act facilitating masculine potency. Here is it the

effete man who resorts to the act of torture and the strong who survives it. Viewers, who

recognize the torture act as a desperate attempt by Le Chiffre to regain his lost funds and save his

own life, concomitantly understand Le Chiffre's power in the scene to be wholly superficial.

Instead of enhancing Le Chiffre's masculinity, as it did for Jack Bauer, the act of torturing only

highlights Le Chiffre's impotency. Rather, it is the *victim*, Bond, who like Larteguy's Boisfeuras

is toughened and purified by undergoing the act.[39]

Bond, unlike Bauer, is granted an extensive convalescence after his torture, a period

during which the tensions raised by the scene with Le Chiffre are put to rest: Bond's sexuality is

reaffirmed and consummated, as he finally possesses Vesper Lynd in a rough-and-tumble scene

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[38] "Now the whole world's gonna know that you died scratching my balls!" and "No, no, no, no...to the right, to the right, to the right!"

[39] This process resembles Eisenman's understanding of the "pathos formula" in relation to religious art, in which suffering religious figures become purified through their suffering.

that establishes him as the dominant male.[40] Simultaneously, this convalescence period presents

Bond at his most humble and unguarded, more vulnerable in scenes with Vesper than he ever

was during his torture.[41] It is thus at his most vulnerable that Bond most demonstrates his

virility; telling Vesper that he loves her, that he has no armor behind which to hide, he ultimately

decides to resign his job so that they can create a life together. As the rough-and-tumble

lovemaking is followed by several scenes of a more tender and intimate nature, the audience is

presented with a Bond who has learned to strengthen and affirm his masculinity through

commune with a feminine equal. Though he begins the film with a penchant for married women,

who come without strings attached, Bond finds in the intelligent and poised Vesper a partner for

whom he is willing to forsake his machismo. In this way, he seems to renounce the type of

masculinity espoused by Bauer, whose sexuality is never witnessed, whose guard is never down,

and who never puts a personal relationship before his duty.

Yet this contented Bond does not end the story. For after a few days of bliss, Vesper's

hypocrisy is revealed. After learning of her betrayal and watching her consign herself to death,

the Bond who closes the film is the hardened icon we know—dressed to kill, trusting no one. In

the film's final moments, as Bond rejects both the possibility that Vesper may have loved him

and the emotional depth he found with her, he hastens to his next assignment recognizably

inured. The closing scene presents him in perfect form—standing tall above his prostrate enemy,

immaculately dressed and face hardened, gripping an enormous gun.

The audience, however, leaves the film knowing that Bond's tough exterior hides a

tender lover, wounded and betrayed, who has returned to his job with a vengeance—a romantic

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[40] It is only after the torture scene that Bond becomes the object of Vesper's erotic gaze—that she calls him more of a man than anyone she has ever met.

[41] As he assures Vesper, "I have no armor left. You've stripped it from me. Whatever is left of me…I'm yours."

who can perform his duty with insouciance and is comfortable in democratic relationship with a woman. The overwhelming popularity of Daniel Craig's new incarnation of Bond is undoubtedly a product of Craig's ability to grant the character such depths of emotional complexity, even as his physique—with its sturdy muscularity not perfectly tailored for the elegance of the tuxedo, his ears a bit awkwardly placed on his weathered face—appears a more "manly" version of sexy than the tall, slim, and handsome Pierce Brosnan. Craig's Bond relies less on technology (for his own physical strength is more than sufficient) and is less comfortable with commodities; filled with free-running stunts, his action sequences also seem more real. Yet he is also more attuned to the seemingly feminine aspects of his personality, navigating his masculinity vis-à-vis the effeminacy of luxury, vulnerability, and threat of castration. Thus in Craig, the Bond figure becomes not only a hero capable of upholding the world order against terrorism, but also a hero with the capacity for feeling.

Despite his epic feats, Bond's emotional depth makes him seem real. Though he is every bit as brutish as Bauer, he is also more nuanced and glamorous; and thus, though we want to be protected by both men, and perhaps aspire to their tough demeanors, we only want to *be* (or be romanced *by*) Bond. While cadets might profess Bauerism in the classroom or emulate the techniques Bauer uses in the interrogation chamber, few would espouse his untenable life of constant emergency and isolation. Bond, on the other hand, offers audiences more than just a sense of security and efficacy; he offers them reassurance that heroes need not be invulnerable. As a man who can be strengthened by and overcome his unhappy experiences, Craig's Bond reassures American audiences that they too will rebound from their injury.[42]

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[42] Alexis Albion, "Wanting to Be James Bond," in *Ian Fleming and James Bond,* edited by Edward P. Comentale, Stephen Watt, and Skip Willman (Bloomington: Indiana University Press, 2005), 214. It is thus no surprise that British forces in 2003 named an operation in Iraq,

IV. Batman and the Rule of Law: The Dark Knight

Two live-action Batman films have been released since September 2001: *Batman Begins* in 2005 and *The Dark Knight* in 2008. Just as *Casino Royale* traced the origins of the Bond figure, and thus became a site for his reinvention, 2005's *Batman Begins* also considers the genesis of Batman, tracing Bruce Wayne's evolution into the icon, and in so doing, it revitalizes the Batman industry. The storyline of *Batman Begins* focuses much attention on Bruce Wayne's psyche, expounding his fears and desires, highlighting his drive to avenge his parents' untimely death. Its sequel, *The Dark Knight¸* instead turns its attention to the social context of the world in which Wayne operates.

A more recent production than those considered in the previous sections, *The Dark Knight* presents a more complicated worldview than the one espoused in *24* or the ticking time bomb scenario, and a more pointed critique of the normative context of the post-9/11 world than *Casino Royale*. It explicitly challenges the apparatus of the state of exception by asserting the importance of maintaining traditional liberal humanist principles during moments of insecurity; its scenes of torture highlight the film's contention that civic officials by duty must defect to rule of law. Unlike the scenes in which Bauer and Bond star, torture scenes in this film expressly delineate torture as an extralegal practice with ramifications for civic morality, and they function as definitive moments in which Batman establishes and imparts his complicated ethical system.

Like *Casino Royale*, *The Dark Knight* is a self-consciously topical film, calling attention to its self-proclaimed relevancy in a post-9/11 world with pointed one-liners that frame the Joker as a terrorist, label domestic wiretapping immoral, and probe the importance of the rule of law.

"Operation James," and its targets "Goldfinger" and "Blofeld," in an attempt to elevate troop morale . ("Goldfinger" and "Blofeld" are two the villains in earlier Bond films.) Here once again we see fantastic figures making an intervention into real life.

The film is more theatrical than *24* or *Casino Royale:* not only do its characters wear outlandish costumes, appear more gruesome, and bear names like "The Joker," "Two Face," and "Batman," but these figures also are embedded in a world occasionally characterized by special-effect explosions. The microcosm of Gotham City, in which the film is set, is also depicted in grimmer tones: it is perennially overcast and teeming with criminals and deceit. Here, the world is both literally and figuratively grayer than we actually know it, and the audience is asked to dwell within the assumption that evil verges on triumphing over this comic book city.

Dressed like a bat and with an ominous-sounding voice, the Batman in *The Dark Knight* is intrinsically fantastic. Unlike Bauer or Bond, his perceived duty is not to serve his country (though most viewers will understand him to be an American and Gotham to be New York City), but rather to protect humanity: he is a vigilante operating under a higher law. His personal life, like Bauer's, always takes a backseat to his commitment to protecting Gotham from evil. When Batman is forced to sacrifice his love interest, Rachel, in order to save the city's upright District Attorney, Harvey Dent, Batman's last hope for a regaining a normal life is dashed. Like Bauer, he is a social outcast: isolated, sexually frustrated, with few confidants.

The Dark Knight is concerned not with Batman's identity so much as with the moral authority, responsibilities, and categories of the hero figure. The film challenges, and then reaffirms, Batman's incorruptibility, his unwavering faith in human goodness. Inclined toward a system of Kantian ethics that judges actions and intentions equally by liberal humanist conceptions of natural law, Batman explicitly renounces the validity of murder—even for the purpose of eradicating evil. In this way, he can be understood as a figure diametrically opposed to both Jack Bauer and the utilitarian figure employed by the ticking time bomb scenario; for in refusing to kill, Batman also refuses to stoop to the rules—or lack of rules—of his nemeses in

order to defeat them. He upholds ideals; he has a conscience; he feels sorrow when others die on

his watch. In *The Dark Knight*, violence does not clarify or purify, its mere existence causes the

hero emotional and psychological pain.

The absoluteness of Batman's moral system, however, is challenged by the complex

reality of evil in Gotham City. For most of the film, Batman must attempt to negotiate a path

toward avenging inexorable evil without becoming it. Ambivalent about the appropriate

relationship that civic protectors should have with the law, he is plagued by doubts as to whether

he should turn himself in to the police, and face the consequences for his vigilantism, or remain

an outlaw that protects the city. [43] At the end of the final, despite his desire to meet the

consequences of his actions, abrogate his guilt, and regain a normal life, Batman affirms the

necessity of remaining outside the legal system—even as he maintains that the law is the ideal

mechanism for protecting Gotham's citizenry. He embraces his ambiguous position outside of

the juridical system, and well as the social one, as the concession he must make in order to

protect a city so threatened by crime; vigilantism is the burden his conscience must bear.

Batman thus lurks in the shadowy region between order and chaos, operating outside of

the rule of positive law so as to move Gotham back toward law's order. He considers his actions

to be assisting the broken legal system again become self-supporting. At the heart of this

philosophy is the belief that "Gotham needs a hero with a face," a hero like District Attorney

Harvey Dent, who can protect the city from within the system. Recognizing himself as

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[43] Much of *The Dark Knight* deals overtly with the law—in scenes of courtroom drama, and in a plot pivots upon judges, District attorneys, legal cases, and interrogation—and it exhibits characters with varying attitudes toward the importance of upholding the rule of law. For instance, Dent feels the rule of law can be temporarily suspended for Batman, given the urgency of the present moment, but that Batman should be held accountable later; Alfred believes Batman should remain above the law; Lieutenant Gordon sees Batman as a necessary mechanism for upholding the law when Gotham's law enforcement cannot.

fundamentally divorced from and in contrast with such ostensibly upright civic officials as Dent,

Batman makes it clear that he believes himself and Dent to represent two separate categories of

public servant: one which works in and is responsible to the light of the law, and one who

operate in the darkness beyond it. The scenes of interrogation in *The Dark Knight* are largely

sites in which he makes this distinction explicit. Though the interrogation scenes are less

unequivocally understood to depict acts of torture than those examined above, for they more

resemble "torture lite," the scenes nonetheless establish torture as an extralegal act inherent to

the state of exception, and expressly mark it as antithetical to the self-sustaining legal system for

which Batman strives.

The film's first interrogation scene depicts Harvey Dent preparing to torture a man that

Dent believes possesses information about the Joker's plans for injuring Dent's girlfriend.

Though Dent has no real intention of hurting the man—the intimidation is a bluff, for the man's

life is not in danger—neither Dent's prisoner nor Batman knows this to be true. Believing that

Dent, a civic official, is about to step beyond the rule of law, Batman intervenes. Informing the

District Attorney that the man he has captured is in fact a paranoid schizophrenic, hardly an

individual with the salient information he desires, Batman chastises Dent's reckless recourse to

such dark measures. He is certain that resorting to torture would both damage Dent

psychologically and compromise his political and moral authority, and in so doing, inhibit the

civic official's ability to perform his duty of leading Gotham toward a more just future.

Yet in the second interrogation scene, we learn that, although Batman deems it wrong for

civic officials like Dent or Gordon to engage in extralegal activity like torture, he considers his

own social role to bear a capacity, perhaps even a duty, for such behavior. Presented with a

scenario in which the deaths of both Dent and Rachel are imminent, Batman claims torture as a

possibility for outlaws: waiting until after Police Commission Gordon exits the interrogation room, Batman aggressively beats the Joker until he discloses Dent's and Rachel's whereabouts. Batman quickly obtains the information he seeks, however, not because his actions cause significant fear or pain, but because the Joker had planned on telling Batman in the first place. Lying prostrate before Batman and laughing, the Joker reveals that his capture and interrogation had been expected all along. In this way, the Joker is not only relatively uninjured by Batman's brutal behavior, but, moreover, remains unrealistically in *control* of his own experience of torture. [44]

While the information that the Joker divulges is true, Batman is nevertheless unable to save both Dent and Rachel; Dent's body is badly burned, and Rachel perishes in an explosion. Despite the torture, the Joker's plot succeeds. The only instance of Batman's aggression in the film, the scene seems to represent a moment of fear and weakness that is essentially incapable of rectifying the predicament in which Batman finds himself: torn between his anxiety about Rachel and his perceived duty of saving the city's District Attorney. Considering the film's treatment of torture as an act that needs considerable qualification and risks inefficacy or uselessness, *The Dark Knight* can be understood to promulgate the most complicated, indeed the most realistic, attitudes toward torture in any of the productions under scrutiny.

Batman's insistence that there are two different classes of public servants and contexts in which the torture act should be viewed speak to the film's more general theme of undermining rigid categorizations of actions, ideas, or people. In particular, the film is concerned with destabilizing dichotomies of "good" and "evil." Even as *The Dark Knight* affirms the existence of incorruptible good (Batman) and incorrigible evil (The Joker), much of the film works to

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[44] In an inversion of the torturer-victim relationship of *Casino Royale,* in this case it is the hero who enacts the violence, the archnemesis who maintains an equal footing via verbal cunning.

assert that most actions, ideas, and people, fall somewhere in between. Several characters demonstrate their capacity to operate as two selves and thus elude easy categorization: citizen Bruce Wayne/vigilante Batman, District Attorney Harvey Dent/villain Two Face, detective Ramirez/traitor Ramirez.[45] Even Gotham's criminal underbelly is revealed as a spectrum ranging from individuals like the Joker, who kill for enjoyment, and those like the mob, who act out of self-interest and greed. The film in this way refuses to allow binary oppositions between good and evil to govern its moral universe; instead of attempting to classify all characters into such strict categories, the films allows them to operate within the gray area that is Gotham city.

As Batman's ethical system is challenged by his attempts to reconcile an aversion to killing with the existence of unadulterated evil, and find a means for avenging evil without himself becoming it, the hero proposes the possibility of a space outside the law for moral individuals to execute higher law—but explicitly rejects that this space is compatible with the responsibilities of civic officials. In other words, while Batman does not deny that it is sometimes necessary to move beyond rule of law, he nonetheless expressly clarifies that the obligation for doing so should not involve those who are responsible to the public. For Batman, such hypocrisy is immoral, and undermines the transparency of and faith in the political structure that enables it to properly function.

These themes of critical reflection and constant qualification can be understood as a challenge to the normative context pervading post-9/11 America (while several of the film's individual scenes can be understood more specifically as critiques of particular policies of the

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[45] Detective Ramirez, Lieutenant Gordon's closest associate, joins forces with the mob to earn money for her mother's medical expenses. She operates as both a good detective and a disloyal traitor alternatively through out the film.

state of exception).[46]   While for much of *The Dark Knight* it seems the uncertainty and chaos

ruling Gotham have rendered citizens so fearful that they will readily cast aside their rules and

sell their ideals—shooting others or flouting the law—in attempt to ensure their self-

preservation, the film concludes with a resounding rejection of fear in favor of common

humanity: when two ferries full of passengers (one with average citizens and one with dangerous

criminals, which have been pitted against each other by the Joker) refuse to save themselves by

sending the other to its death. Their reclaiming of a mutual humanity and dignity (despite the

intense prejudices of the average citizens and the experience in killing of the criminals), thwarts

the Joker's ultimate goal of manifesting Gotham's hypocritical tendency to uphold ideals only

when they are convenient. In a very important way, it is these citizens, and not Batman, who

ultimately save the city; though Batman heroically captures the Joker, it is the citizenry who

demonstrate that despite the crime in Gotham's streets, evil will never conquer the city. Harvey

Dent, the one man who allows trauma and catastrophe to destroy faith in his ideals, and who

believes it impossible to be "decent men in an indecent time," is killed.

The significance of this message to a U.S. audience cannot be overlooked. Just like the

citizens of Gotham living in fear of the Joker, after 9/11 the nation too cast aside its rules and

ideals with the hope of gaining security. The film exhorts viewers, however, not to allow

themselves to be forever mired in a zeitgeist of fear and anxiety. Rather, it advocates a

reclaiming of liberal humanist principles, asserting that citizens do not need heroic civic

defenders like Batman so much as their own defense of ideals to be saved from evil.

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[46] More specific policies of the state of exception like torture and domestic surveillance are also
questioned by the film; both are rejected as unjustifiable when utilized by civic officials, and
validated when utilized by the outlaw Batman for exceptional cases. Batman, however,
acknowledges the unfortunate nature of these practices and regrets their necessity. It is the
recourse to such acts that makes him feel remorseful of the burdens of his duty.

It is worth noting, by way of conclusion, that *The Dark Knight* also comments briefly on the inherent danger in attempting to emulate super human heroes: those who wander Gotham City as Batman impersonators not only complicate life for Batman, but are actually exploited by the Joker so as to endanger the lives of other citizens. These copy-cat Batmans cannot differentiate Batman from themselves; they do not understand what gives him the right to act above the law. Batman warns them that he is "not wearing hockey pads"—meaning that he is prepared, trained, and equipped for dangerous situations, that he has recognized the ethical consequences of his behavior, in a manner they have not. Not cognizant of the underlying prerequisites justifying Batman's behavior, or at least constraining it, they see Batman as a one of themselves. In other words, because the imposters overlook Batman's qualifications and his self-conscious habitation of a shadowy moral ground, they see him merely as an average citizen who is acting heroically above the law. Consequently, their desire to emulate him becomes dangerous, because they lack his physical and psychological preparation and because their actions produce outcomes far different from what they intend or expect.

Though Batman is not a "fantastic figure" to these imposters in the same sense he is to audiences, both the imposters and some real-world film viewers share a similar inability to recognize underlying assumptions and presumptions. Real-world emulation of fantastic hero figures like Jack Bauer, James Bond, or Batman, by viewers who disregard the fantastic premises underwriting these heroes' worlds and action (like the emulation of Bauer's torture techniques by interrogators or West Point cadets) can produce similarly dangerous outcomes that differ greatly from those witnessed on screen. Still worse, such treatment of the fantastic characters as realistic figures facilitates their assimilation into our consciousness *without* the assumptions that the film world attaches to them; thus, as we incorporate them into our consciousness we risk

unintentionally granting them the ability to inform our perceptions of—and consequently

intervene on—a real world to which they bear no relation.

Chapter Four. Torture and Responsibility: Toward a Tenable Accountability

Hannah Arendt once wrote, "there is no such thing as being or feeling guilty for things that happened without onself actively participating in them."[1] Convinced that collective guilt only exculpates the individuals who are responsible, Arendt argued that "where all are guilty, nobody is" (Arendt "Collective Responsibility"). Her statements are cause for consideration. I mentioned in my introduction the guilt that accompanied my apprehension of torture's role in the War on Terror—guilt over a failure to respond to this revelation in what I deemed the appropriate and expected manner. This reaction needs to be discriminated from feelings of personal responsibility for the act of torture itself. I felt angry about the use of torture by U.S. operatives. I felt embarrassed that I belonged to a political community capable of performing such acts. I believed that the torture was an injustice I had a duty to contend. But I did not feel private guilt for it.

As Arendt's comments would suggest, I instead felt culpable for the aspect of the situation for which I understood myself to have personal responsibility: the civic response. My belief in the equal dignity of every human being, in the reprehensibility of the act of torture, and in the importance of the rule of law, made torture an act that necessitated a civic response; my upbringing in the normative context of liberal democracy and ideology of liberal humanism had established that the proper form of response to injustice was political engagement using the state's designated channels for dissent, particularly influence on the legislative branch. Yet I nonetheless did not respond in this anticipated way. I did not write my Congressman nor join Amnesty International. These actions, I felt, would amount to nothing more than waste of a few

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[1] Hannah Arendt, "Collective Responsibility," *Amor Mundi*, edited by James Bernhauer, (Dordrecht: M. Nijhoff, 1987), 147, cited in Kaufman-Osborn, under "Liberal Legalism and Accountability.

moments of my time. Instead, feeling angry about but powerless in the situation, I began talking

to people about it, reading about it, and writing about it.

This thesis is an attempt to understand why I reacted the way I did, and why I felt I

needed to respond in a particular manner—but also why others were similarly politically

disengaged. For though I had expected a public outcry after the collective social body learned of

torture's relative prevalence in the War on Terror, the public has never cried. It seems that

perhaps this silence reflects a civic incapacity in the state of exception governing the U.S. post-

9/11 to demand answerability; restricting the channels for dissent and accountability over the

past eight years likely rendered impotent many who would have liked to engage in public outcry.

There is something profoundly cynical about the official response of the Bush

administration: secretly redefining torture[2] only so that it could proclaim that in the United States

"We do not torture." [3] Yet perhaps the most disturbing aspect of the situation is the degree to

which elements of civil society, rather than the political structure, embraced the necessity of

torture and approved it before it was used—overtly forsaking a traditional ideology of common

humanity in order to embrace an ideology of anxiety and prejudice. Approbation and

encouragement of policies that protected U.S. security at all costs came from many fronts: a tacit

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[2] It did so in a collection of secret memoranda that officially reinterpreted international and constitutional law. These infamous torture memos discussing the legal status of torture were disseminated between the White House, State Department, Department of Defense, and Justice Department. The most influential were issued from the Justice Department's Office of Legal Counsel, and stated that the Geneva conventions did not apply to members of Al Qaeda and the Taliban (this was subsequently translated into President Bush's famous memoranda and into the Military Commissions Act of 2006) and that psychological torture and "torture lite" do not constitute torture because they do not impart "lasting damage." The memoranda are rooted in reinterpretation of statutory law, presidential authority, and the self-defense, as a justification for the War on Terror writ large as well as its policies. See Jane Mayer, interview by Scott Horton, "Six Questions for Jane Mayer, Author of *The Dark Side," Harper's Magazine,* July 14, 2008.
[3] See Tabassum Zakaria, "Bush: 'we do not torture,'" *The Washington Post*, November 7, 2005, http://www.washingtonpost.com/wp-dyn/content/article/2005/11/07/AR2005110700772_pf.html

moral sanction from the evangelical religious base, the implicit xenophobia of a fearful public, the "moral myopia" of the bureaucracy, the unquestioning hierarchy of the military, and the willing inattention of the public (Luban 11453-55). Indeed, the degree to which these civic attitudes and behaviors actually engendered a normative context in which the political structure could expand its power and reduce civil liberties is more unsettling than the fact that political actors actually overstepped their bounds and infringed on individual rights, because liberal humanism has always functioned principally as a hegemonic governing ideology rather than as a historical reality. When liberal humanism is renounced at an ideological level, there is little motivation for enforcing its rights and tenets politically, and thus it becomes dually unable to guide or restrain our actions.

After considering the ways that the mediums through which the public knows about torture (i.e. representations) can facilitate distance between victims and the public, the manner in which torture narratives in mainstream culture promote misperceptions of the act and what it does, and the social and identity crises that constrained U.S. citizens in the post-9/11 period, we can hardly find surprising the lack of a public outcry. To recognize these sources of public disengagement with torture in the War on Terror, however, is only half the battle. For as U.S. citizens who took part in the creation of a milieu engendering torture, we are in a position of mutual culpability that suggests our civic responsibilities now extend beyond merely acknowledging its use. This complicitous accountability, as Timothy Kaufman-Osborn explains, is

> not to be confused with the liberal legal doctrine of complicity, which holds that
> an individual can be held culpable for another's crime…[but a notion] predicated
> on a relational understanding of conduct…as a consequence of joint enmeshment

in complex and historically-specified constellations of power relations, such co-implication is for the most part fruit of habitual submission to the current order of things. (Kaufman-Osborn, under "From Liberal Guilt to Complicitous Accountability")

The invisible power structures in which we are situated as U.S. citizens, and in which we participate through the production, consumption, and digestion of cultural forms, entangle us in mutual complicity with the actions of physical power structures operating in society—to the extent that even our inactions, our inattentions, and our "habitual submission to the current order of things" are significant determinants in a process of political, economic, and cultural world-ordering (Kaufman-Osborn, under "From Liberal Guilt to Complicitous Accountability"). These networks of relational power are engendered and reinforced by our behavior, and they can be disconnected by our conduct as well. Our complicitous culpability therefore renders us liable for the sanction and use of torture in the War on Terror, while our liberal humanist tradition suggests we are responsible to do something about it—but what?

I. Enlightened Hypocrisy

Historically, the United States has been seen as a chief advocate of liberal humanism and egalitarianism across the globe. While this thesis is not intended to be an extensive comment on the legitimacy of U.S. practices of cultural imperialism, it is worth noting that our tradition of spreading liberal humanist principles is completely undermined by use of a practice they expressly forbid. By overlooking the rights by which the United States measures the "development" and status of other nations when those rights seem inconvenient, the message the nation sends is clear: we will judge *you* by your ability to practice the ideals of the

Enlightenment, but not ourselves. This hypocritical neglect makes our revered rights seem a front for less altruistic aims. If we want to serve ostensibly benevolent culturally imperialistic foreign policy aims in the future, we cannot ignore the tenets that underwrite them in the present. (If it is so easy to make a case against upholding the equal dignity of all men, of privileging the rule of law, why should Americans trample across the globe attempting to instill such values in states like Iraq and Afghanistan? What rights have we to tout Enlightenment ideals, when we overlook them ourselves? Could anyone take us seriously in such ventures?)

U.S. policy in the War on Terror has only demonstrated the hypocrisy of our Enlightenment project of spreading egalitarianism. We have yet to see whether the attempt to spread liberal democratic ideals will take root in Iraq or Afghanistan, but we have already begun to notice the ways that their domestic neglect has proved problematic (Slaughter, *Human Rights Inc.* 326). As Mark Danner has noticed, "the decision to torture, in a political war with militant Islam, [has] harmed American interests by destroying the democratic and Constitutional reputation of the United States, undermining its liberal sympathizers in the Muslim world and helping materially in the recruitment of young Muslims to the extremist cause" (Danner). Instead of demonstrating the significance of rights, and their ability to help us weather difficult situations, desertion of our ideals and our liberal democratic framework has only granted other nations a successful example for ignoring or overlooking them, and suggested that obligations to international charters are minimal. If we ignore the Geneva Conventions, why should other nations not ignore them as well?

Those who are critical of strict adherence to rule of law during moments of emergency will remark that the nation has shifted toward the state of exception many times over the course of its history. Indeed, similar transformations to the political structure occurred in varying

degrees during the Civil War, the Fist World War, the Great Depression, and the Second World War. It is for this reason that WWI saw such excessive punishment of dissent and sedition, the Great Depression witnessed total regulation of all economic activity, and WWII witnessed the internment of seventy thousand Japanese-Americans—hardly moments for which the United States should be proud or wish to repeat (Agamben 20-22).

Critics of strict adherence to international law will say that international legal obligations are hardly enforceable, that time and again signers have flouted their obligations—especially those inhibiting the use of torture. Indeed, Oona Hathaway has demonstrated that signers of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are not necessarily less likely to use torture than non-signers.[4] The signing of international treaties banning torture does not inherently or drastically reduce torture's prevalence, for international law is undeniably difficult to enforce (Hathaway 200). Many international laws lack effective enforcement mechanisms, and as a result, are reliant on domestic institutions to enforce compliance; domestic institutions that have either incorporated such tenets into their own statutory law or see enforcement as necessary to maintaining their own reputation are an important means by which international law is policed (Hathaway 209). Accordingly, often the most effective means for observance of international accords comes from within, rather than outside of, individual states.[5]

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[4] Oona A. Hathaway, "The Promise and Limits of the International Law of Torture," in *Torture: A Collection*, ed. Sanford Levinson (New York: Oxford University Press, 2004), 207. Non-democratic nations that use torture more than average are actually quite likely to sign such treaties—in order to gain an "enlightened" reputation by nations like our own that judge according to such standards. Signing these types of agreements can translate into prestige, foreign investment, and humanitarian aid, among other benefits, for these states.
[5] The 1984 Convention charges all signers with the moral responsibility of prosecuting offenders. See Philippe Sands, interview by Terry Gross. *Fresh Air*. National Public Radio. WHYY, Chicago, January 7, 2009.

Thus, when U.S. domestic institutions disregard rule of law, they simultaneously disregard their tacit responsibility for effecting the self-enforcement that underwrites the institution of international law. Since political actors often have incentive to extend their power and disobey legal statutes, it becomes civil society's responsibility to maintain international legal obligations via litigation, media exposure, and political confrontation (Hathaway 205). Because the reality of politics in praxis makes it unlikely that an international body would extradite a U.S. national who served in a high status political office, or that the Bush administration that left office unremorseful of its policies would willingly submit itself to litigation or media exposure, it is the responsibility of the political body and its juridical institutions to call for attention to and enforcement of our legal obligations.[6] We must reclaim our liberal ideals by avowing the importance of rule of law and upholding self-enforcing our international obligations.

II. The Bush Administration's Dirty Hands

As Michael Walzer famously demonstrated in his essay "Political Action: The Problem of Dirty Hands," there are certain circumstances in which what we expect of our public officials stands at odds with what we construe as good or moral conduct: moments when our demand that political officials defend and protect us is directly challenged by our demand that they behave according to certain ethical principles. When these two demands come into contention, often the nature of an official's civic office will trump other considerations, causing him or her to carry out actions that "dirty" his or her hands.

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[6] These officials could conceivably be accosted in visits to other countries who have signed the charter, however, if they willingly entered such countries (Sands, *Fresh Air*). See also Charlie Savage and Scott Shane, "Terror-War Fallout Lingers Over Bush Lawyers," *The New York Times*, March 8, 2009, http://www.nytimes.com/2009/03/09/washington/09lawyers.html?ref=us.

Such dilemmas are unavoidable, indeed anticipated, in political life. Their inevitability, however, does not imply that the "dirty" actions they stipulate should be ignored. Moreover, it does not mean that the political officials who perform the acts should be exempt from the consequences of the decisions that dirty their hands. Rather, when a "dirty" act is illegal, it should continued to be treated as such, despite an official's putative need to perform it; any official who deems an illicit act the lesser evil and consequently performs it should be required afterward to justify its necessity before a group of peers.[7] As individuals willing to sacrifice the cleanliness of their hands in the name of a greater good, political officials should also be willing to acknowledge the stain on their hands, and accept the punishment attached to the crime by the juridical body. Only then can the official's civic integrity be redeemed. To ignore his or her guilt belies the commitment to duty which presumably prompted the action that dirtied his or her hands in the first place. Walzer notes that, in a liberal democracy, citizens have the legal right and ethical responsibility to demand more than melancholia from a politician who sanctions the use of torture when we find torture legally and ethically reprehensible (Walzer 65). Even when officials find their personal actions justifiable in certain exigent circumstances, even if they personally do not find torture unethical, they are nonetheless responsible to the rules of the body politic they represent and from which they derive their political authority.

Yet far from acknowledging the dirt on its hands or accepting the legal consequences of violating the law, the Bush administration continuously denied its sanction of torture in the War on Terror. While it ultimately did not deny that events like water-boarding, excessive force, and sexual degradation occurred, it claimed that these behaviors are not what they seem and have traditionally been labeled: torture. Instead, it redefined the act of torture, reinterpreting

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[7] Michael Walzer, "Political Action: The Problem of Dirty Hands," in *Torture: A Collection*, ed. Sanford Levinson (New York: Oxford University Press, 2004), 68.

international legal texts so as to limit the scope of practices defining the act. It moreover

justified "enhanced interrogation techniques" (a euphemism first adopted by the Gestapo during

another state of exception) by arguing that the constitutional powers of the presidency grant him

authority to manage the military uninhibited.[8] As the phrase "enhanced interrogation methods"

came to signify the acts traditionally and internationally known as torture, similar games of

semantics were played on the definition of "prisoner"—which was relabeled with the signifiers

"detainee" and "unlawful combatant"—so as to evade the POW conventions outlined by

international accords (Mayer, "Six Questions").[9] These legal precautions, most of which were

done in secret, can be tacitly understood as cognizance of guilt: the Bush administration would

not have taken such measures to protect itself, if it had not recognized that its policies were

legally ambiguous or explicitly punishable by law.[10]

President Bush's lack of public retrospection or ethical reflection on his administration's

policies and their ramifications positions him, in terms of Walzer's essay, as a man lacking in

political morality: "if he were a moral man and nothing else, his hands would not be dirty; if he

were a politician and nothing else, he would pretend that [his hands] were clean" (Walzer 65).

While the moral politician would acknowledge that his hands were dirty, but that the reason for

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[8] This justification of course is predicated on a highly contestable understanding of the War on Terror itself as an action of self-defense and the post-9/11 era as an interminable state emergency.

[9] President Bush largely defended "enhanced interrogation" techniques by claiming that they work. However, he based his entire argument on a single case, which he misrepresented. He stated firstly that Abu Zubayda told the C.I.A. under torture the name of the individual who authored 9/11, when the agency already had this information before Zubayda's torture. He secondly stated the Zubayda revealed the name of an al-Qaeda figure that was plotting another attack, but failed to mention that this information also came before torture was applied. He finally added that Zubayda provided information enabling capture of another terrorist, though other sources have suggested that this information was garnered from an interview the unnamed other terrorist gave al-Jazeera.

[10] Similarly, members of the intelligence community would not have purchased professional liability insurance if they saw their actions as guiltless or permissible.

their defilement was a moral one, instead, the former President and his administration pretended

its hands were clean. Indeed, the administration denied its sanction of torture and upheld support

for "enhanced interrogation" to the very last: "We do not torture."

To quote Walzer again, the moral politician's "willingness to acknowledge and bear…his

guilt is the only evidence he can offer us, both that he is not too good for politics and that he is

good enough" (Walzer 68). When an official does not offer us this evidence, how can we

recognize him as either a politician good enough to put aside his personal concerns for the sake

of the body politic or as an individual moral enough to accept the consequences of his actions? It

is through performing the task that dirties his hands, and then accepting responsibility for it, that

such a man can prove his ability to be both.

It seems apparent that the Bush administration viewed its "dirty" actions as necessary

perils undertaken for the security of the nation; the state of exception by which it governed was

predicated on the conviction that such emergency circumstances characterized the historical

moment and rendered such actions necessary. Although arguable, this belief is one to which the

former administration is entitled.[11] The necessity of an action, however, does not make it any

less lamentable or illegal. Instead of publicly recognizing that torture seemed requisite, and later

regretting, repenting, or at least lamenting it (and consequently reminding the public of the

dangerous inhumanity and illegality of sanctioning such actions), the administration instead

defended its policies with fervor. If the continuous public disclosures that the United States was

using torture had been answered by the administration with statements of remorseful

justification—"it is an unfortunate fact, but we felt that such actions were necessary…"—its

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[11] Of course, it should not be forgotten that the administration worked consistently through its tenure to expand the powers of the executive, and interpret domestic law in order to expand these powers.

integrity could have at least been salvaged. Recognizing the broken laws would have meant the administration acknowledged the liberal democratic framework governing the nation, and the importance of maintaining it; would have been an avowal of torture's status as a reprehensible practice. Instead, the administration chose to uphold a position that signified the executive branch's right to operate outside rule of law without consequence and to reject the constitution in exigent situations—in short, it chose a veiled state of exception. And consequently, its hands are unequivocally dirty and the extent of its morality is undeniably suspect.

III. The State of Exception and (Lack of) Accountability

The interrogation community lacks consensus about the efficacy of torture's use in the War on Terror (Bellamy 138). As Jane Mayer has pointed out, conversations with top officials suggest that many find torture produces too much misinformation, while others are sure they have proof of its usefulness in protecting citizens from terrorist plots after September 11th (Mayer "Six Questions).[12] Torture apologists and denouncers alike argue that the facts necessary to substantiate claims of torture's value as an information-gathering tool are kept in the deep vaults of "intelligence" agencies around the world; while some of these documents are slowly reaching the public eye, most remain hidden.

I would argue, however, that evidence of torture's inefficacy is in plain sight: a history of situations in which the act produced more false information than veracious (Langbein 98). More importantly, however, I would argue that such questions of efficacy are irrelevant, considering torture's status a domestically and internationally outlawed practice antithetical to truth and justice: the practice not only overwhelmingly disempowers subjects to the extent that their ability

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[12] See also Nicholas D. Kristof, "Putting Torture Behind Us," *The New York Times*, January 28, 2009, http://www.nytimes.com/2009/01/29/opinion/29kristof.html?_r=1&emc=tnt&tntemail1=y.

to recount information with integrity is undermined, and not only operates as an arbitrary exercise of power that purports to but is not informed by justice, but torture also delegitimizes accountability for individuals who have actually, rather than speculatively, done wrong. Evidence produced under torture is not legally valid; judges often refuse to adjudicate cases in which a victim has been tortured.[13] Consequently, after individuals who have violated laws are tortured—as is the case with many of the "high-value" detainees who were tortured in the War on Terror—they can no longer be held accountable for their legal violations. Justice is thus dually obstructed: first in the execution of the torture act and second in the lack of answerability by tortured individuals who are guilty of possibly flagrant infractions of the law.

In a state of exception, policies that obscure justice and circumvent law are the norm. Even the ground on which the post-9/11 state of exception stands is legally dubious: although suspension of habeas corpus is constitutionally justified in singular exigent situations, rampant expansion of emergency powers and interminable extension of the "emergency situation" is not. Power consolidation in the executive branch, a process inherent to the state of exception's notion that decisiveness and unitary power provides security, inevitably diminishes the traditional liberal democratic mechanisms for checking power. With rule of law in abeyance, judicial authority denied in favor of the military, and checks and balances blurred, the legal norms of the post-9/11 state of exception cleared the way for political officials to reject accountability for their legal infractions.

Torture thrives in such settings. During the War on Terror, the state of exception's constantly shifting and blurry demarcations between who is authorized to operate outside the rule of law and when they are authorized to do it, enabled torture to spread through the chain of

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[13] Mark Danner, "Tales From Torture's Dark World," *The New York Times*, March 14, 2009, http://www.nytimes.com/2009/03/15/opinion/15danner.html?pagewanted=5&_r=1.

command. Though the highly secret special access program (SAP) that sanctioned torture was at first limited to high-value terrorists who might reasonably be thought to possess necessary, or at least very useful, information, the program was soon adopted for Abu Ghraib at large—with the possibility of application even to "cabdrivers, brothers-in-law, and people pulled off the streets," who might not have any information at all (Hersh "Annals of National Security: The Gray Zone."). When the SAP was extended to personnel beyond those experienced, trained, and originally authorized for it, control was soon lost.

The Obama administration is in many ways shifting the nation away from these legal ambiguities and infractions, back toward the framework of the Constitution: President Obama's executive orders, signed the day after he took office, have ostensibly prohibited torture, halted the tribunals trying Guantanamo prisoners, and called for the closing of Guantanamo Bay prison by 2010. Generally it seems that the United States is returning to liberal democracy—a very heartening observation. Nonetheless, we cannot forget that the past eight years happened. In order for the nation to truly reclaim its liberal humanist ideals, we must both acknowledge our collective disavowal of them during the state of exception and apply their principles toward those who espoused policies contrary to them; we must not only adhere once again to rule of law, but also demonstrate our willingness to let it guide us through uncomfortable situations and rehabilitate legal offenders. Laws were violated, and the officials responsible should be held accountable. Disregarding the illegality of the policies of the state of exception now that we are regaining liberal democratic normalcy will only make the possibility of the state's recurrence all too likely, all too easy.

While we cannot undo the pain inflicted on others by our peers, we *can* demonstrate our regret and act to prevent atrocities like torture from happening again. Accountability provides

closure for victims and perpetrators alike, offering punishment as a step toward reconciliation. While the damage has already been done—to the bodies and minds of victims, to their families, to the United States' global reputation, even to the psyches of those who inflicted the pain—and while Abu Ghraib and Guantanamo Bay have already become symbols recruiting insurgents to work against U.S. interests,[14] public demonstration of accountability would nonetheless serve as a step toward reconciliation.[15]

IV. Responsibility in the Era of Obama

Arguably, the election of President Obama in November of 2008 is a product and manifestation of the nation's shift away from the normative context engendering the state of exception—away from the feelings of powerlessness and fear that predicated it—toward a reclaiming of liberal humanist ideals and reaffirmation of governance by the rule of law. In many ways, the 2008 election can be understood as a rejection of the privileging of security over all other national interests. As the political climate grew less approving of the Bush administration's policies, and its treatment of additional catastrophes (Hurricane Katrina, the current economic crisis) and underhanded operations (Abu Ghraib, the Alberto Gonzales scandal), faith in the ability of an expanded executive branch and neoconservative tenets to provide for the general welfare was gradually lost.

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[14] That prisoner abuse at Abu Ghraib and Guantanamo Bay prisons have become catch-words by for recruiting insurgents and terrorists has been attested by many, including Air Force Reserve Major Mathew Alexander, interrogator of terrorists who betrayed Al Qaeda in Iraq. See Dan Froomkin, comment on "Return to the High Moral Ground," White House Watch Blog, *The Washington Post*, comment posted on January 23, 2009, http://voices.washingtonpost.com/ whitehousewatch/2009/01/ return_to_the_moral_ high_groun.html?wprss=white-house-watch (accessed January 30, 2009).
[15] Steven D. Roper and Lillian A. Barerra, *Designing Criminal Tribunals* (Burlington VT: Ashgate Publishing Company, 2006), 4.

Mainstream American culture has also seen a shift away from all-American Jack Bauer

figures, suggesting that the audiences to which such heroes appealed are now less needing of

Bauer-like unconscionable masculine hero figures to answer anxieties regarding effeminacy or

insecurity. Not only have the past few years seen an increase in hero figures with psyches and

vulnerability (like Bond), but they have also seen more heroes with a consciously complicated

and uncomfortable relationship to ethics and the law (like Batman).[16] Bauer himself has inserted

a few new lines into his routine: in the most current season of *24*, he acknowledges that the

American public has a right know about what is done in its name, and the television program has

incorporated fresh opinions into the political milieu of Jack's world—including a president

averse to torture. Unlike the Bush administration, Bauer has acknowledged his dirty hands,

stating: "I am more than willing to be judged by the people you claim to represent. I will let

them decide the price I must pay." (Finn). (Similar to the administration, however, Bauer does

not regret his decisions, because he believes he has always acted out of necessity.[17])

Of course, the nation's increased tendency toward criticism of the Bush administration

may have more to do with disillusionment with conservatism, weariness with the War on Terror

and state secrecy, and frustration with accumulation of debts and economic setbacks, than with

conscious rejection of the state of exception and embrace of civic engagement. For to a large

extent, President Obama's campaign of hope and change was greeted with such popular support

because it responded to the disillusionment and weariness of the masses. The degree to which an

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[16] For example, Hancock in *Hancock*, Jason Bourne in the *Bourne* series, Billy Costigan in *The Departed*, and Dexter Morgan and Dr. Gregory House in the televisions series *Dexter* and *House* respectively.

[17] Saying, "do not sit there with that smug look on your face and expect me to regret the decisions I have made because, sir, the truth is, I don't" (Finn).

attitude of critical awareness is applied to the actions of our new Democratic administration will be telling.

President Obama made symbolic return to the United States' liberal humanist roots an early priority. In an unmistakable repudiation of the post-9/11 state of exception's policies of domestic eavesdropping and torture, he called in his inaugural address for a return to American ideals:

> [W]e reject as false the choice between our safety and our ideals. Our founding fathers faced with perils that we can scarcely imagine, drafted a charter to assure the rule of law and the rights of man, a charter expanded by the blood of generations. Those ideals still light the world, and we will not give them up for expedience's sake.[18]

Then, on his first and second days in office, the President signed executive orders calling for state transparency, for the closing of Guantanamo Bay prison, for a moratorium on war crimes trials, and for the definitive prohibition of torture. Now that he has set a tone for transparency and underscored the importance of the rule of law,[19] and many of the principal enthusiasts of both torture and the state of exception are no longer in office, how easy it would be to let the messiness of the past eight years drop into Lethe and move on. The Obama administration itself seems inclined toward this notion of forgetting: exhorting us to move forward or focus on the task at hand, disavowing intentions to investigate or pursue the Bush administration's legal infractions.

The administration thus stands in opposition to torture, but cautiously—claiming a change in policy and return to rule of law without drastically endangering its political capital by

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[18] Barack Obama, "Inaugural Address," Inaugural address, Washington, D.C., January 20, 2009.
[19] He has done so in the form of many of his executive orders, as well as in public remarks to the press and a joint session of Congress.

spearheading awkward or uncomfortable investigations. It has rejected the possibility of torture

use on its own watch and avowed the definitions of torture promulgated by international law, but

also rejected concentrating on prosecution of past wrongs.[20] Leading such probes would not

only require expending considerable time, energy, and political capital, but would also alienate

the intelligence community—something disagreeable to a President who unequivocally needs the

community's support, and has already contentiously appointed the outsider Leon Panetta to lead

it.[21] Naturally, the CIA is not welcoming of a close inquiry into its activities, which would

compromise agents who used torture when it was sanctioned as standard operating procedure;

the justification that many who used torture were obeying orders or acting in the perceived line

of duty makes the proposition of prosecution thorny. Moreover, while several of the President's

cabinet members could yet promote an official probe spearheaded by the Justice Department, the

department too is susceptible to uncomfortable outcomes from intra-office prosecution that

would compromise its own. [22] Congressional inquiry into the Bush administration's power

abuses and sanction of torture seem the most likely possibility for a state-lead probe.

Encouragingly, two Congressional committees regarding post-9/11 legal infractions have

recently been proposed, and several members of Congress have expressed strong intention to

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[20] Mark Benjamin, "Senate Will Advance Torture Commission," *Salon*, February 24, 2009, http://www.salon.com/news/feature/2009/02/24/torture_commission/.
[21] Mark Mazzetti, "Panetta Open to Tougher Methods in Some C.I.A. Interrogation," *The New York Times*, February 5, 2009, http://www.nytimes.com/2009/02/06/us/politics /06cia.html?scp =4&sq=panetta&st=cse. Panetta, though he has publicly labeled water-boarding as torture, stated in his confirmation hearing that he would not prosecute agency operatives who had utilized interrogation methods—even those as torturous as water-boarding—that were previously authorized by the Justice Department.
[22] Attorney General Eric Holder, for instance, and Assistant Attorney General for the Office of Legal Counsel, Dawn Johnson. Johnson has been publicly scathing of the Bush administration's legal policy, which she thinks demands public outrage. See Glenn Greenwald, "Obama's Impressive New OLC Chief." *Salon*, January 5, 2009, http://www.salon.com/opinion/greenwald /2009/01/05/olc/ and Scott Horton, "Six Questions for Jane Mayer, Author of *The Dark Side,*" *Harper's Magazine,* July 14, 2008.

promote public disclosure of the United States' torture policy (Benjamin). Nonetheless, in order

for such initiatives to gain traction or be exposed to the public, they will need bi-partisan and

public support; it should not be forgotten that with a probe into the torture sanction several

members of Congress risk potentially damaging public disclosure of their ties to collusion with

U.S. torture policy.

Considering these political obstacles impeding a publicly exposed investigation into

torture's role in the War on Terror, demonstrable public support is necessary; in order for a

political body to expend the political capital necessary to appointment a commission or special

prosecutor, they will need to know it is welcomed by the public. A public clamoring for at least

investigative probes, even if the probes do not result in prosecution, would serve as an official

and historically symbolic rejection of the Bush administration's state of exception policies and

its departure from office without so much as a remorseful word. [23] Not only would an

investigation lead to further declassification of the secret documents inhibiting full judgment of

the administration's activities, it would also serve to dissuade future recourse to such extralegal

conduct. As the nation moves back toward its tradition of liberal democracy, we must not forget

the importance to that framework of civic engagement.

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[23] David Johnston and Charlie Savage, "Obama Reluctant to Look into Bush Programs," *The New York Times*, January 11, 2009, http://www.nytimes.com/2009/01/12/us/politics/12inquire.html. Recent polls have suggested that U.S. citizens are less than 40% in favor of a criminal investigation into use of torture in interrogations, while 24% prefer investigation by an independent panel. See Jeffrey M. Jones, "No Mandate for Criminal Probes of Bush Administration," *Gallup*, February 12, 2009, http://www.gallup.com/poll/114580/No-Mandate-Criminal-Probes-Bush-Administration.aspx.

V. Mutual Culpability. Or, Toward a Conclusion.

By way of a conclusion, I would like to make explicit that the American people's

complicitous accountability is not wholly contained within the political arena. Rather, our

consumer preferences and choices, the ways we read, write, and talk about human rights, torture,

or the rule of law, all contribute to the normative context in which we live—and therefore have

an unforeseeable effect on way political officials act, cultural producers represent, and average

citizens behave. While our attitudes and choices, actions or lack thereof, influence political

actors' perceptions of how they can behave, so our decisions as consumers reflect a need for

cultural forms to satisfy wishes, desires, and fears, that is carefully considered by cultural

producers. Our cultural production and consumption, as Joseph Slaughter noticed, have

"implications not only for the imagination but the legislation of an international human rights

community; they partly determine the discursive parameters within which and imaginative

patterns with which a human rights international might be realized" (Slaughter, *Human Rights*

Inc. 328).

Moreover, participation in our cultural milieu renders us cultural actors who make

demands for "generic conformity [in representations] that influence the terms and conventions in

which the world can be imagined and the observation and enjoyment of human rights realized"

(Slaughter, *Human Rights Inc.* 326). Just as international legal conventions are dependent on

domestic institutions to uphold their precepts, since they themselves lack proper enforcement

mechanisms, international legal conventions and human rights principles are also dependent on

civic espousal of their ideals and cultural representation of their precepts in order to become

reified and expressed by social convention (Slaughter, *Human Rights Inc.* 44). As beneficiaries

and "image brokers of an international imaginary," we are complicitous in creating a normative

context that spreads around the world attitudes and ideals we have reflected or desired—thereby broadcasting those attitudes and ideals exclusive of the extent to which they are politically enforced (Slaughter, *Human Rights Inc.* 327).

Attention to representations of issues like torture is thus imperative. For we must recognize the extent to which the mediums by which we encounter human rights issues inform our attitudes and perceptions, promote distance between viewers and issues, and establish or reinforce distorted perceptions; simultaneously, we must be cognizant of our culture's appropriation of the fictions within these mediums as pseudo-realities with the capacity to intervene on actual events. Above all, we must remember that the voices of victims—be they victims of torture or other human rights violations—are largely excluded from this process. It is not the words of victims, but those that we as cultural producers ventriloquize, that sound in our culture and our cultural forms.

Appendix

Figure 1

Figure 2

Figure 3

Figure 4

Figure 5

Figure 6

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