

“The Law is just words after all”: Torture, Truth, and Language in the Post 9/11 United

States and Percival Everett’s *The Water Cure*

The prisoner is bound to an inclined board, feet raised and head slightly below the feet. Cellophane is wrapped over the prisoner’s face and water is poured over him. Unavoidably, the gag reflex kicks in and a terrifying fear of drowning leads to almost instant pleas to bring treatment to a halt.

*ABC News, November 2<sup>nd</sup>, 2007.*

One may see the functions of judicial torture, or interrogation torture, as a torture of the truth.

Michel Foucault, *Discipline and Punish*.

What happens to you here is forever.

George Orwell, *1984*

In a recent article, James Dawes has argued for “the importance of an explicitly articulated human rights framework to Americanist literary criticism” as well as the “importance of Americanist literary criticism to that same human rights framework” (“The Novel of Human Rights” 130). This imperative is driven in part by what Dawes identifies as a new subgenre of “the human rights novel” in American literature consisting of a “range of new literary forms and narrative patterns [which] cohere into [a] unique generic stability” and which have emerged “alongside the consolidation of rights culture and rhetoric in the United States” (132). As Dawes acknowledges, the “concept of human rights is not new” in the U.S., drawing attention to the fact that, for example, Frederick Douglass frequently used the term (127). Indeed, as Joseph Slaughter charts, human rights were being evoked regularly “by African American and abolitionist newspapers in both the North and the South in the middle of the nineteenth century [and], almost weekly, in Frederick Douglass’s *The North Star*” (747). What is new, Dawes insists, is that the U.S. is, in the twenty-first century, experiencing a “popular culture of human rights” and a “corresponding increase in institutional

intersections between human rights and literature” (128).<sup>1</sup> For Dawes, literary writing (and by extension, literary criticism) can “participate in [...] the work of human rights” (*That the World May Know* 218). There is an urgency to Dawes’s insistence that American literary studies engage with the framework of human rights, and Elizabeth Swanson Goldberg and Alexandra Schultheis Moore identify September 11, 2001, as the date when human rights and literature, as a field of scholarly pursuit, “gained formal momentum [with the] shift in political, social, cultural, and intellectual landscapes at that point [seeming to] obviate and to render imperative the connection in relation to changing understandings and practices of war, imprisonment, torture, and immigration” in the U.S. context (2).

Writing in 2014, Rachel Potter and Lyndsey Stonebridge meditate on the recent turn to human rights in literary studies, suggesting that “it is born of two pressures. The first [is] internal [...] with the current potpourri of literary methodologies [leaving] a discipline in search (yet again) of a purpose. The dodgy humanism of practical criticisms past is now a new historical memory,” and “there is a feeling that literature can, indeed must, be made to matter once more. That demand also comes from outside of the academy. It is not simply the case that the turn to rights is a response to the pressure that the humanities defend themselves in straightened economic and ethical times. Putting human rights into the humanities is more than just a slick way of gesturing real-world seriousness to sceptical education accountants; it is also a response to the question of how it is possible to imagine rights today” (2). As Potter and Stonebridge highlight, “If we are turning again to literature to help us think about rights [...], this is not least because it seems that once more we are charged [...] with imagining something that is not there” (2). This absence is paradoxical since today human rights are “everywhere and nowhere: everywhere spoken, defended, legislated for; nowhere in civilian-targeted warfare, the labour camps supplying mass consumption and enforced migration” (2).

Human rights are ‘everywhere and nowhere’ in Percival Everett’s 2007 novel, *The Water Cure*. Its treatment of torture through its form and content draws our attention to the intimate relationship between language and the law and shows us that the person as subject of the law is as rhetorical as it is given; that just as words can become people, people can become words. Words can create and they can destroy. Specifically, as my reading of the novel alongside the rewriting of U.S. laws that legislate for and provide the conditions for the use of torture—the rewriting of torture—shows, words create torture that destroys the human, culture, and civilisation. *The Water Cure* is a complex and experimental novel that cannot be reduced to being about any one thing, but the fact that it is framed by and infused with torture is worthy of critical attention. From its title onwards, the novel is engaged with its political moment of production – the war on terror – and the conditions that have resulted in the United States legally sanctioning the use of torture as a method of truth-seeking, and it questions this through both its form and content. As I show in this article, the novel achieves this in a number of ways; through the story of the traumatised and grieving father of a murdered child seeking revenge by torturing the prime suspect; through the breakdown of the language of the novel, with the novel being a tortured text; and through its intertextual relationship with Lewis Carroll’s *Alice* stories, which allows for an interrogation of the logic of the law so central to those nineteenth century texts and to the contemporary moment. In this way, *The Water Cure* allows the discerning reader to understand that, far from being a “series of isolated *actions* taken by heroic individuals in a moment of extremity,” torture is, rather, “a socially embedded practice” (Gordon 1) and it is embedded through language, reminding us of Bourdieu’s insistence that it is the language of the law that creates the social realm. The novel also underscores the importance of literature in understanding the law and rights more generally. It is broadly accepted in the field of law and literature that both disciplines have “common properties of language and vision” with law being a “matter of

language” and with the “fundamental connection” being “the sentence” (Dolin 2). It is for this reason that I read the novel in tandem with the changes to U.S. law regarding the use of torture as a method of interrogation showing that it is the logic of the law in the specific post-9/11 moment that allows for the unmaking of the world.

*The Water Cure*, is a text which confronts the law, its language and its logic, head-on in order to explore the destruction caused by torture exposing the inherent paradox of liberal society by showing that through its linguistic codes and logic it is able to produce the conditions for torture. Whilst the scholarship on *The Water Cure* is not extensive it has largely been read, justifiably, as formal experimentation; an exploration of language and identity; a tale of grief, melancholy and revenge; and an engagement with ancient Greek philosophy.<sup>2</sup> These readings are enormously insightful, and the novel is concerned and engaged with all of these, but it is striking that to date the novel has not been analyzed in relation to the law with which, through its formal experiments with language and logic, it is so entangled. Because of this it is perhaps less surprising that the novel has not been identified as an intertext of *Alice’s Adventures in Wonderland* and *Through the Looking Glass*, texts which are, of course, extended meditations on logic and the law.<sup>3</sup> This intertextual relationship is not incidental, it is a rewriting of sorts which centralises the question of torture, logic, and truth and it is through this, as well as its fragmented form, its breakdown of grammar, and its own playful experiments of logic, that *The Water Cure* interrogates the formal legal structures that have allowed torture to be practiced by the U.S.. The novel enacts how torture as a practice destroys language, meaning, the rule of law, the individual, and the social realm. In doing so it also forces us to consider the aesthetic implications of its internal destruction of art.

There are two main reasons, I suggest, for the need to engage with literature in order to understand the role of the law in the use of torture and its consequences for American

culture. First, and most obviously, is that it is the novel as genre and form which has historically individualized humanity and “projected the social and cultural conditions out of which human rights must be recognized as commonsensical” (Warren 21 quoting Slaughter 29). Indeed, as Brook Thomas and William P. MacNeil have both demonstrated, in different contexts, there is an intimate historical relationship between literature and the law (Thomas 2007; MacNeil 2011). The second, and the main focus here, is that both the law and literature as language are creations of the individual and collective imaginary with both being largely conceived of as world-making; as Ian Ward highlights, “the rule of law is a product of the imagination before it is a product of legislative and judicial acts” (Ward 15).

It is not so surprising that there is an increased momentum to connect American as well as World literary studies and human rights in the context of the war on terror, since, so far, the twenty-first century has witnessed a perpetual crisis within the post-Enlightenment project of modernity; a modernity that gave birth to both the novel and human rights, the former associated with the birth of the individual human subject and the latter born out of the renunciation of torture as a practice that leads to the truth.<sup>4</sup> Democracy and the rule of law, the triumph of the second half of the twentieth century, is in decline,<sup>5</sup> and we are witnessing an authority crisis in today’s liberal order where, according to Stephen Hopgood, U.S. hegemony wanes and we are entering a neo-Westphalian world. “That is”, he tells us, “a world of renewed sovereignty, resurgent religion, globalized markets, and the stagnation or rollback of universal norms about human rights” (166). As Hopgood underscores, “[t]he core modernizing assumption, that history brings with it secularism, a sense of oneself as an individual rights holder, and the erosion of collective beliefs and loyalties, is fracturing alongside the western power that sustained it.” (166). Human Rights, the concept of which relies on an understanding of universal human dignity, is eroding indeed, with a cacophony of voices justifying and legitimizing the use of torture as a moral imperative in the post 9/11

world, with some people deserving of “no humane treatment” since they are so “depraved” (Krauthammer 321), and insisting once more that torture leads to truth. Since the devastating events of September 11, 2001, we have not only discovered that the U.S. government and its allies have employed torture techniques in the war on terror, but we have witnessed what Rebecca Gordon has called a “mainstreaming of torture,” with ethical questions about the use of torture coming to the fore once more; questions that most had assumed were long-settled (Gordon 2014) but are now eliciting positive – if reluctant – responses from across the political, legal, social, and cultural spectrums. At the heart of the debate about the use of torture is the role of and rule of law and my contention here is that if we are to intervene critically with those “changing understandings and practices of war, imprisonment, torture” in the US context (Goldberg and Moore 2) it is imperative for critics of American literature not only to connect the field with that of human rights but also with its parent discipline, law.

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The law I am referring to is the binding body of rules that a country institutes and is enforced by a controlling authority, usually the government. It is a form of language and linguistic practice that creates worlds. In this way, the law is also an authoritative symbolic pronouncement. Scholar of literature and law, Kieran Dolin, reminds us of Bourdieu’s assertion that the, “[l]aw is the quintessential form of the symbolic power of naming that creates the thing named” and has the “linguistic capacity to make things true simply by saying them.” Further, “it would not be excessive,” Bourdieu suggests, “to say that [law] creates the social world, but only if we remember that it is this world which first creates the law” (Bourdieu *The Force of Law* 838, quoted in Dolin 12). If law creates the conditions of the social world, and language is central to the “entire practical activity of ‘world-making,’” with literature being that which is most oft associated with the creative endeavour of “bringing forth new visions for society,” (Dolin 12) then we can see how intimate the

relationship between law and literature is. And yet, the relationship breaks down in the face of the practice of torture. In short, if law and literature are world-making, and torture—as the work of Elaine Scarry shows us—is world destroying or ‘unmaking’ (Scarry 1985); when law creates the conditions for, and writes the definitions of, torture, then it too becomes world destroying. Following Heidegger, “language is the house of being,” it is that which creates community (Heidegger ‘Letter on Humanism’ 1946, quoted in Ward 15). But words can also “wreak havoc” (Bourdieu ‘Intellectual Field’ 146, quoted in Dolin 13) and when the law ceases to be that positive “meaning-making function that pervades social life,” (Binder and Weisberg 17, quoted in Mark Sanders 478); when there is a de Manian “linguistic dilemma” within its very logical and grammatical structure which necessarily prevents coherence of meaning there is much at stake; we witness the havoc, the destruction, the un-making, of the social world. Torture simultaneously destroys being in the world and the house of being that is language. And it is here once again where the need for literature and literary analysis comes to the fore. After all, torture has always already been written into the legal and racial codes in the U.S. and is a fundamental part of the civilising process of modernity, and it is literature that consistently exposes this dark paradox of the democratic tradition.

Carl Schmitt famously asserted that “in times of crisis [...] the state remains, whereas law recedes;” in other words, a state’s commitment to govern through the law is challenged in the face of an emergency (Schmitt 12; quoted in Ramraj 3). But, as Victor V. Ramraj reminds us, the rule of law might recede, but the law does not disappear. Rather, it is galvanised in order to strengthen the authority of the state. “[M]ost modern states turn swiftly to law in times of emergency,” with “[t]he global response to the 11 September 2001 attacks on the United States being no exception,” he tells us, and it is a “common tendency in an emergency [...] to invoke the law [...] to empower the state” (3). As was clear from the direction of the administration of George W Bush and “the lawyers who enabled it” the move

was “toward a unitary executive with essentially unlimited powers to act against threats foreign and domestic” (Chesterman 53). The prohibition of torture is regarded in international law as *jus cogens* and one of the least controversial legal principles, and yet we see the United States of America utilising the rule of law to defend rather than challenge the executive powers allowing for the use of torture in the name of national security.

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The linguistic and logical feats of the law explored by *The Water Cure* cut right to the very heart of the executive structures of the United States after the terrorist attacks of September 11<sup>th</sup> 2001 with the White House’s legal counsel providing a case for the limited legal permissibility of torture (although, it should be noted that the term torture is not used) with some fancy footwork creating new legal conditions based on a reinterpretation of Article 2 of the U.S. Constitution. A new paradigm was created whereby only laws consistent with the Constitution are legitimate and the President, as Commander in Chief, is the only figure permitted to order the use of torture, to wage war, and to protect the interests of national security. Efforts to limit executive discretion over military, Federal, or international law is deemed unconstitutional. Thus, the President is legally permitted to order the use of torture. In 2005 the leaked legal and governmental torture memos were published exposing the communication between U.S. government officials to authorize and to document coercive interrogation and torture in Afghanistan, Guantanamo, and Abu Ghraib (Greenberg and Dratel 2005) despite it being forbidden under international law. The documents set out the argument that the administration could undertake any action without repercussion as long as it was consistent with U.S. law (as set out in the new interpretation of the Constitution). As Philippe Sands states, after the Abu Ghraib scandal was reported in late 2003

we did not know that lawyers in the US Department of Justice and elsewhere in the Administration had provided detailed legal advice to the US government on the international torture rules. But over the weeks that followed a rich source of leaked legal memos and opinions threw light on the logic which provided the context in



which Abu Ghraib could happen. The documents argued...that the international rules were inapplicable, irrelevant or unenforceable (Sands 205).

This reinterpretation of constitutional rights forms part of the rewriting of torture itself in the war against terrorism. At every point borderline or outright illegal activities were authorized through changing the name, altering the terms, manipulating the language through which reality is created: torture has become enhanced interrogation; kidnapping is now extraordinary rendition; confession is no longer, instead we have actionable intelligence; prisoner or citizen is unlawful enemy combatant –a subject without rights and legal existence since they are linguistically constructed as outside of the law. The illegal was made legal, the law was made through breaking the law and making itself anew.<sup>6</sup>

As Stephen Hopgood makes clear, the prohibition against torture is supposed to be a “desirable *and* accepted practice” where natural law, “customary law (accepted practice), and treaty law (a signed convention) all reinforce each other” (Hopgood 13). And yet, after 9/11 all were undermined in the name of national security. Five days after the terrorist attacks of 9/11 Vice President Dick Cheney stated that, “[w]e’ll have to work [...] the dark side, if you will. We’ve got to spend time in the shadows in the intelligence world. A lot of what needs to be done here will have to be done quietly, without any discussion, using sources and methods that are available to our intelligence agencies – if we are going to be successful...[I]t’s going to be vital to us to use any means at our disposal...to achieve our objectives” (Cheney ‘Meet the Press’). Shortly afterwards, President George W Bush signed a memorandum allowing the CIA to establish a secret detention and interrogation operation, and on September 26<sup>th</sup> Cofer Black, a US counterterrorism expert, testified in Congress that there was a “before 9/11 and an after 9/11, and after 9/11 the gloves came off.” What the administration makes clear in the days following the terrorist attacks is their belief that acts of torture elicit actionable intelligence—confessions, in other words— that torture can produce truth, that there is a

direct relationship between torture and truth, and therefore in the face of a new terroristic threat, in order to get to the truth to keep America safe, it was necessary to undertake acts of torture.

In their 2007 book, *Torture: When the Unthinkable is Morally Permissible*, Australian lawyers and Professors of Law, Mirko Bagaric and Julie Clarke, set out a moral utilitarian argument for the use of torture in the context of the war on terror. The reason torture is “defensible and necessary,” they argue, “is because the justification manifests from the closest thing we have to an inviolable right: the right to self-defense: which [...] extends to the defense of another.” The main tenet of their argument is that violating a wrong-doer’s “right to physical integrity” is morally permissible if the persecutor of that torture is doing so in order to save the lives of others. Indeed, for them it is “indefensible to suggest that there should be an absolute ban on torture” because without it states are at risk of preferring the “interests of the wrongdoer” over the interests of their own innocent citizens (Bagaric and Clarke viii). Furthermore, the authors suggest that the “absolute ban on torture reveals a fundamental shortcoming of our moral code” with the “preference for the interests of the wrongdoer” only being possible “in a moral vacuum, devoid of overarching moral theory” (xi).

I set out this legal and moral argument for the use of torture in order to illustrate the emergence and nature of what we might term ‘the great torture debate’ in the face of the war against terror and revelations about the use of torture by the U.S. and its allies. Since the war began in earnest in the autumn of 2001, we have witnessed a wealth of scholarship and commentary on torture: what it is and whether it can be ever justifiably employed. What we find is that the debate is dominated by a distinct moral utilitarianism of which the above position is representative. According to this stance, there should be limited legal permissibility to practice torture when deemed necessary to the interests of the state, with the

practice of torture being subject to judicial or executive oversight. Another strand of this utilitarian position sees advocates arguing against legal legitimation but rather for limited moral permissibility with political or military agents being able to break the law and permit the use of or commit acts of torture in exceptional cases. In either form, the utilitarian argument is seductive in its logic (summed up most often in the ‘ticking time bomb scenario’ thought experiment), a binding logic from which it is difficult to think out of; after all, who would not wish to save X number of people by torturing the alleged perpetrator of a potentially heinous criminal or terroristic act?<sup>7</sup>

The normalization of torture and public support for the use of torture as a legitimate (if unsavory) state practice leads one to imagine that we have truly gone through the looking glass of liberal society.<sup>8</sup> It should not need underscoring here that torture is illegal—it is absolutely forbidden by international law—with the rule against torture being non-derogable and not permissible under any circumstances. Further, the right not to be tortured is an absolute human right. And yet torture continues to be practiced on a global scale.<sup>9</sup> This fact is one that advocates of limited permissibility (whether moral or legal) use to support their pragmatic positioning. A leading proponent and advocate of the so-called ‘torture warrant,’ Alan Dershowitz, reasons that because “[a]ll forms of torture are widespread among nations that have signed treaties prohibiting torture,” the current situation is unacceptable as “it tolerates torture without accountability.” What is needed, according to Dershowitz, is a legal framework whereby torture is a visible and accountable practice. “If torture is being or will be practiced,” he asks, “is it worse to close our eyes to it and tolerate its use by low-level law enforcement officials without accountability, or instead bring it to the surface by requiring that a warrant of some kind be required as a precondition to the infliction of any type of torture under any circumstances?” (257). The current situation is not ideal, Dershowitz,

acknowledges, but we can't become idealists foolishly insisting that the rule of law be upheld.<sup>10</sup>

In addition to the philosophical utilitarianism at its heart, it is clear from the torture debate that there is perceived to be an intimate relationship between the realms of the moral and legal imagination (two spheres which we should take care to distinguish), as well as a bold assumption that has been largely taken for granted: that torture works. Bagaric and Clarke go as far as to assert that the "main benefit of torture is that it is an effective means of gathering information" (12). It is this commonly held assumption that torture works, that there is an integral relationship between torture and the truth, that has resulted in a worrying level of public acceptance of illegal abuse. When the Abu Ghraib scandal broke towards the end of 2003 and into 2004 with the publication of scenes of harrowing torture by American military personnel, the general discomfort of the American (and wider global public) was tempered somewhat by the belief that 'enhanced interrogation' was somehow justifiable for the greater good in the war on terror. The public debate has assumed that torture works in practice and all that is left to consider is whether to use it or not. What is more, the debate not only inverts the rule of law whereby a person is innocent until proven guilty, but has created a situation where there is no need to prove guilt at all, the burden of proof has been lifted, and even those who are not suspected of terrorism but who might know something, can be subject to torture (Wisnewski and Emerick 35).

We see this logic working through *The Water Cure*. On the level of fabula the novel is about an African American divorced male writer of romance fiction which he writes under a white American female persona and pseudonym. The narrator, Ishmael Kidder (call me Ishmael, he says at one point), is traumatized by the kidnap, rape, and murder of his eleven-year-old daughter and is seeking revenge as the suspected perpetrator has been released from custody uncharged since the police have not been able to establish his guilt. Ishmael finds the

suspect and, despite not knowing whether he is indeed guilty of the heinous crime, kidnaps him and keeps him in his basement, which he has prepared as a torture chamber in order to punish the man. It is in this dark chamber that the novel dissects and exposes the logic of torture that I set out above as Ishmael undertakes his torturous actions in order to get to the truth, the truth that is potentially locked inside the body of the prisoner, when he is never certain about the guilt of the man in his basement torture chamber. The reader is treated to a problem solving process as the narrator attempts to argue for his actions: “Man X is identical with Man Y. Man X = Man Y. If Man X has properties P, P1, P2...Pn, then Man Y has properties P, P1, P2...Pn. [...] Is Man X Man Y, and if so why is there a Man Y at all? With my vengeance eyes burning the horizon for Man X, will Man Y do [...] The things we think when we think to kill. Killing X = Killing Y?” (Everett 39).

We know that in fact torture does not work, by which I mean it does not achieve the explicit aims set out in current practice—namely intelligence gathering—as was made clear in the findings of *The Official Senate Report on CIA Torture: Committee Study of the Central Intelligence Agency’s Detention And Interrogation Program*, published in December 2014. A decade after the Abu Ghraib scandal broke, the report confirmed “how little these practices did to aid our efforts to bring 9/11 culprits to justice and to find and prevent terrorist attacks today and tomorrow” (McCain vii-viii). This, Senator John McCain—whose Senate Floor Statement is included in the report—acknowledges, might come as a big surprise to most Americans, “since it contradicts the many assurances provided by intelligence officials on the record and in private that enhanced interrogation techniques were indispensable in the war against terrorism” and in the name of national security (viii).<sup>11</sup> McCain, himself a victim of torture, asserts that the “objection of those same officials to the release of this report is really focused on that disclosure – torture’s ineffectiveness – because we gave up much in the expectation that torture would make us safer. Too much” (viii). The fact remains that it

should not have come as a shock to anyone as “[w]e know that torture itself did not spring from historical or practical evidence of torture’s usefulness. Instead those policy choices, driven many political, economic, and ideological factors, have been fueled as well by what we might call a resilient folklore of torture’s success” (Athey 185). Indeed, a 2006 report by the Intelligence Science Board made clear that, “[v]irtually no research indicates accurate information can be produced from unwilling sources through torture or coercive techniques,” and that “[n]inety-nine percent of US research has been about how to achieve compliance not cooperation. Furthermore, the report drew attention to the fact that “most personal and anecdotal accounts indicates that torture is not effective” (Quoted in Athey 185).

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The imperative ethical question of whether narrative should engage with the subject of torture is one that continues to test writers and critics. In her essay, ‘Dark Chamber, Colonial Scene: Post-9/11 Torture and Representation,’ Stephanie Athey rehearses some of the main ethical dilemmas by way of Idelber Avelar’s intervention in the debate (Athey 180-197). As Athey reminds us, Avelar questions whether, in our need to confront torture, there is any place for literature: “testimony, accusation, and empirical studies have told us all we need to know about the worldwide spread of torture...Given all this, what do literature or philosophy, neither anchored in experience...still have to tell us about the phenomenon?” (Avelar 2001 255, quoted in Athey 183). As JM Coetzee cautions, “the scene of the torture can spread terror *or* overwhelm and paralyze the reader *or* infatuate the audience with the torturer’s power.” (Coetzee 1986, quoted in Athey182), and as Athey insists, representation “is a moral problem with political consequences” (182). What Athey’s essay underscores is that there is a very real danger that inscribing torture into language risks assisting the state

perpetrator and that there are urgent questions around how one might “craft narratives that counter torture [...] display torture in prose [and] resist complicity in terror” (188).

These are important questions since, “visual, auditory, tactile modes of representation and theatricality are central to acts of torture, as are the narratives that surround it” (183).

Narrative form and language are key to any discussion of what literature can and should do in its confrontation of torture since

‘the torturer’s greatest victory is to define the language in which the atrocity will be named’ and, one might add, the narrative in which torture is cast. In this respect novels – the foundry of narrative—have the capacity to intervene in the torture debate in ways that counter the folklore [of mainstream media and political discourse] and offer new strategies and structures for reporting. As laboratories for language and narrative strategy, they can derail the political, historical, and emotional cliché, bypass cul-de-sacs of logic, and supplant alluring tales with new ones. Novels can make historical antecedents relevant and new arguments vivid with graphic compression that amplifies their force and extends their reach. As importantly, they can identify and then unsettle reader fascinations and expectations. In doing so, they can forge new emotional, intellectual, and political investments. (Athey 185/6, quoting Avelar 262).

Because narrative is so questionable and potentially dangerous in naming atrocity, Avelar calls for a “war on language” (Athey 189), since at the very heart of the issue here is the way in which meaning—and truth—is created and narrated in the political and legal fictions of the liberal west.

Everett’s *The Water Cure* takes up this challenge; there is a violence of language and a violence inflicted on language with the entire novel being at war with its own form. It is a tortured, fragmented, disordered text, without narrative coherence or chronology and with the body of the victim being the tortured body of the text itself. “Fragments. Frag-ments. Frags. Fr. m ents. This work is not fragmented; / it is fragments,” our narrator tells us (Everett 16), with these fragments making up the ‘plot’, or ‘story’ of the text; conversations with ancient philosophers; jokes; philosophical meditations; paradoxes; poems; images; riddles; sections

of nonsense; intertextual references; a scathing social critique of Bush's war on terror and more, all of which make up our narrator's note book.

From the epigraph, "the truth rests with God and a little bit with me," (Yiddish proverb) to the first sentence of the novel (which is divided over 7 pages) – "...so we induce / and / find / the arduous nowhere", the novel alerts the reader to its concerns with the relationship between reality, being, and language (Everett 1, 3, 5, 7). These ontological concerns are introduced slowly and in a manner that purposefully interrupts and disrupts the text's readability and as a consequence unsettles the position of the reader. In short, the first three words are given a page alongside an image of a single black line on a grey background with the following two words having double blank pages each and the final three appearing on a page that resembles more what we might expect from a novel or at the very least, a piece of prose. It is a serious sentence—small black markings, words, on large white spaces, stark in their becoming, arduous in their making of meaning. But it is also seriously funny as we are induced to puzzle over these first few pages of a disrupted sentence replete with a strange singular line in order to get to the end of the sentence, only to discover that this first arduous journey into the text (the first of many) takes you nowhere at all—the arduous nowhere where anything can mean anything at all.

In addition to denying narrative or chronological coherence, the unreadability of the text apparent from its opening pages as well as language being "shorn of all its referents" (McCarthy 74-5) might return us to Paul de Man's notion of reading as an allegory of unreadability. In turn this might lead us to the unreadability of the law whereby "[t]he disjunction of the semantic function and the formal structure of language [...] cannot be described as a simple polarity but rather constitutes the undecidability of grammatical and figurative readings" (Angsberg 372). As Angsberg, following de Man, reminds us, "no text is conceivable without grammar, [and] no grammar is conceivable without the suspension of



referential meaning. Just as no law can ever be written unless one suspends any consideration of applicability to a particular entity [...] grammatical logic can function only if its referential consequences are disregarded” (Angsberg 372). In short, the law is by definition *unreadable* since it cannot allow its “inherent uncertainty to reveal itself” (Angsberg 373). The law’s propensity to objective reason—to meaning and world-making—is grammatically impossible with its linguistic structures, its internal logic, serving to deceive.

*The Water Cure* is deeply concerned with the ways that language (and by extension, the logic of the law it is critiquing) can and does deceive. For example, there are moments in other languages which translate as “it is only a pun, pure affectation” (Everett 8); there are lists of figures of speech and rhetorical devices: “anaphora / burlesque / quip / jibe / anaphora / reproach / derision / twist / anaphora / metonymy / synecdoche / conceit / anaphora / aposiopesis—shhhh / asyndeton—no ands, or buts / litote” (Everett 164); and more than once Ishmael challenges the reader to not believe what is being read in a regular moment of metafiction. “This is my sweet and delicious alibi,” he tells us, “And what an alibi it is. I simply say that none of this is real. This is not blood on my hands, under my finger-nails. This network of implications is no more than mirrors and strings and a little smoke, blood, and judgment, good or bad, so well mingled, and perhaps discursive, but only in your imagination...” (Everett 148).

This central concern with the manner in which the deceptive potential of language—a deception made possible through grammatical construction—is able to create meaning through conditions of logic signals the novel’s rewriting of the *Alice* stories. The reader is presented with an extract of Carroll’s opening poem, albeit with altered grammar: “for both our oars, with little skill. / By little arms are plied, / While little hands make vain pretence / Our wanderings to guide” (Everett 181), and the image of the single line that opens the novel is developed throughout the text to become the head of a cat—the Cheshire Cat, perhaps,

with his head appearing rather than disappearing. In addition, much of *The Water Cure* is written in fragments of nonsense that rather resemble Carroll's Jabberwocky. For example,

Lastly, imaghost sublimighty.  
 Always imessgine the weaves of the breach.  
 Now pushking, rearing, constant, undenifable.  
 Ever may you may luke at the seind and the soon.  
 Imassing a storm.  
 Severely imagure the surf.  
 Deadly huge, rollackng, massive, sowell after swell,  
 thundjurious.  
 Ever still you kinknot terror your eyes aweee.  
 And you killnow that the wives will newt reach you.  
 Duely the waves re furightning and though you are not  
 Afreud, you fear these waves (Everett 186).

Jabberwocky and the fragments or nonsense sections of *The Water Cure* resist definite meaning for the reader (and Alice) but are not meaningless—they are not without meaning as they can be read, despite their linguistic ambiguity. Humpty Dumpty's famous declaration that "[w]hen I use a word [...] it means just what *I* choose it to mean—neither more nor less" (Carroll, *Through the Looking Glass* 223), not only makes an appearance within *The Water Cure* but encapsulates the very logic of the narrative which establishes new relationships between signifieds and signifiers that we cannot comprehend fully in the 'real' world and along with Alice the reader is inclined to declare that "it seems to fill my head with ideas – only I don't exactly know what they are! *Somebody* killed *something*: that's clear at any rate" (169). Significantly, *The Water Cure* is punctuated by, or at least peppered with, the exclamation "Shan't", which is, of course, the cook's declaration when the King demands that he show evidence at the trial. In the world of *The Water Cure* Ishmael Kidder, as well as the CIA and U.S. government which the novel interrogates, embody this very declaration.

This is not merely intertextual play as with other works which appear throughout the novel (most obviously *Moby Dick*), but a rewriting of *Alice* for the twenty-first century. As such, *The Water Cure* explores contemporary concerns with the workings of language, logic, and law, just as the *Alice* stories did in their own nineteenth century context. However, in this

version Alice is dead—she is the murdered daughter, but also we, the readers, are Alice. And yet it is even more: Alice is also the world, civilization, culture itself; a world at the mercy of the U.S: “Who is to say that in the middle of it all [the novel] I cannot stop and say [...] that my nation shames me as it rapes the world [...] All right here in the middle of what is a novel about something else. Is there really anything else?” (Everett 62-3). If *Alice’s Adventures in Wonderland* and *Through the Looking Glass* can be considered complex linguistic jokes at Alice’s expense, where she is powerless as she doesn’t have access to the requisite knowledge to make sense, then *The Water Cure* is a linguistic joke at the readers’ expense. And in a text that ruminates on the nature of being and subjectivity, it is the readers who are written into being as dead subjects, non-subjects, subjects of this tortuous text. The reader enters this disturbing wonderland, this mirror world, without the requisite tools to navigate the terrain—and that is the point. As with the *Alice* stories, nonsense language, parody, fantasy may, “be considered similar in one respect: they explode or transgress the frame of the ‘real’ and thus open up a space of uncertainty. Pushing towards the realm of the non-signification where nothing is stable, these forms open up a gap between signifier and signified which makes a definite meaning or absolute reality impossible to attain” (Shires 267, quoted in Turner 248). This space of the impossibility of meaning in *The Water Cure* is the law in which American citizens (and by extension its allies in the war on terror) are all bound, and specifically the conditions of torture which it allows through its linguistic slippage, its logical construction.

It might be suggested that the law in this case enacts Wittgenstein’s theory of language games in much the way that the *Alice* stories and *The Water Cure* do. Indeed, the texts (including the law as text) more than simply indicate that language is not separate from reality or that language does not need to be clear in order to be meaningful (both of which we do see throughout the texts, of course), but more that language rules which cannot be

followed lead to a breakdown in language which creates a form of madness. Laws that allow for the use of torture are a kind of madness, to be sure, and Wonderland and the inner and literary world of Ishmael Kidder are, too. The reader, as Alice, is implicated within this madness: “‘How do you know I am mad?’ said Alice. ‘You must be,’ said the Cat, ‘or else you wouldn’t have come here’” (Everett 66). But, as with the Cheshire Cat, it is through logical argument that *The Water Cure* proves the assertion that the deception of language and by extension the law creates such a madness.

*The Water Cure* is dominated by descriptions of, mediations on, and interactions with ancient philosophers from Heraclitus, Aristotle, Plato, Socrates, Seneca, Zeno, Thales, Parmenides, Anaximenes, to Anaximander, and more, which all center around the origins of things, of being, the logos, sets of paradoxes, principles of logic and argument, and how to influence the burden of proof. There are too many and they are far too lengthy to quote here, and many are conversations or arguments between philosophers (more often than not highly amusing), but all point to and explore the processes of logic in argument so that despite the facts in front of you you might win an argument by following a principle. Much like the law, a recurring proposition is that the best argument is that based on the purest form of logic which is to reduce everything to nothing; Zeno’s *reductio ad absurdum*. Nothingness is the only place of stability in this textual world where so much is unstable, dismembered, cut up into pieces, and fragmented, as demonstrated through the inclusion of the ‘nothing machine’—or the British Inertial Energy Programme—so-named because its ability to stabilize “pure nothing” (Everett 53). If, as Elaine Scarry suggests, the basic structures of culture are to stabilize the sign, then there is no culture in the world of the novel. Civilization is dead, murdered by the perpetrators of torture.

As in *Alice*, the law is the textual fabric of *The Water Cure*, with both texts being concerned with—and made out of—logic and illogic, order and disorder, justice and injustice, meaning and arbitrariness. As Catherine Siemann highlights

Carroll's texts are filled with a generalized anxiety about the law. *Alice in Wonderland* ends with a trial, and the arbitrary rule of law of the Queen of Hearts is a thread (and a threat) that runs throughout the text. The chess-board world of *Through the Looking Glass* is so rule-bound that hardly an action occurs that is not in some way governed by the progress of the game; the rules of chess here represent the law of the land. Only at the end of each book, when Alice has come to terms with and learned to defy the dominant legal system, does she regain control of her situation and complete her journey (431).

Furthermore, “confrontation with the prevailing system of law is central to each of Alice’s adventures” (451) and Alice must engage in numerous acts of defiance against the systemic injustice of Wonderland, with its justice system rooted in absolute power. In both books it is the prevailing system of law, magnified by the absurd logic of nonsense, that Alice must overcome to complete her journeys (452). This is the stuff of the *The Water Cure* only this defiance is no longer a possibility: the young girl is dead, murdered in the most unimaginable way, and instead the reader is Alice reading the protagonist playing precisely by the rules of the game, following the nonsense logic and law of the land to the letter through his act and art of torture. He is the law, he is the United States, and the reader must negotiate the Carrollian chessboard that is woven throughout the text in words and images in order to challenge the logic of the law. “There’s the law and there’s the law,” we are told, “There might be a law against it, but that doesn’t mean you can’t do it. The law is just words after all [...] It’s the American way” (Everett 118).

As in *Through the Looking Glass*, in Ishmael’s house of horrors, the punishment comes before the trial. He is the Queen of Hearts – “sentence first – verdict afterwards!” – and the reader is Alice in her attempts to impose logical order on a distinctly illogical system; one that in its panoptical structures operates backwards. Torture in *The Water Cure* becomes

the trial scene of *Alice* with the guilt or innocence of the detainee (rather than defendant) being of little significance and the subject being reduced to a basic function, that of being uncreated and unmade through language. By rewriting *Alice* Everett's long linguistic joke, this Carrollian game of chess, demonstrates that rather than the relationship between justice and logic being disconnected because of the apparent relationship between justice and truth it is in fact intimately connected through the inherent logic of the seemingly illogical. Truth as a logical category is meaningless, rather the logic of language creates a deception at the heart of the legal frameworks that allow for the destruction of the worlds, the death of creativity and the aesthetic.

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If torture does not establish truth, then the question must be asked, what is it for and why is its use on the rise? "The object of torture is torture", we are told in Orwell's *Nineteen Eighty-Four* (Orwell 227). And as Jean Améry, a Holocaust survivor, most famously makes clear, torture is about destruction. The true purpose of torture is to negate being and blot out "the contradiction of death". And further, "whoever was tortured, stays tortured. Torture is ineradicably burned into him, even when no clinically objective traces can be detected" (83). There are three ways that torture appears in democracies, as Darius Rejali, sets out for us: the national security model, the civic discipline model, and the juridical model (22) which "correspond roughly [in democracies] to the three main purposes of government torture: to intimidate, to coerce false confessions, and to gather accurate security information" (23). In short, the national security model seeks information, usually abroad; the juridical model turns on true confession which can then be turned into a document and considered and evaluated as evidence (whether in a judicial or extra-judicial setting)—torture *turned into writing*; and the civic discipline model is "tied to citizenship [and] inflicted exclusively on noncitizens" (Rejali 56) and thus is the punishment of an undesirable person. Torture thrives on the

insecurity of modern democracies—and according to Rejali, we “live in a world in which torture is returning to a role it had in ancient Greece, inducing civic discipline and shaping civil order in liberal democracies” (59).

What we see with the use of torture in the war on terror is these three models overlapping, or merging together, so that we have torture imagined, written into law, and practiced as a way of punishing the other that exists on the periphery of liberal democracy or indeed in its heartlands, of condemning people—criminal or otherwise—to a bare disposable life, undeserving of protection from any state. The idea of eliciting truth is central to the practice, even though torture is highly unlikely to get you anywhere near the truth. But it seems that in actual fact that this does not matter. The means are not as important as the end. In its truth seeking, the interrogation room is the confessional, the torturer the priest, the act of torture, the cleansing. As Stephen F. Eisenman tells us, “[t]here is something special about waterboarding, which, since its inception in the late middle ages, has allowed its adepts to believe they are engaged not in an act of physical torture, but of moral suasion, and even religious sanctification” (135); a forced baptism with the “full cleansing and sanctifying power of water.” In this way, the ‘confession’ sought is not one of truthful testimony (as we’ve established, there is no relationship between torture and the truth), but a confession of “error, apostasy, or moral responsibility” (134). We see this merger of national security, civic discipline, and juridical forms of torture within *The Water Cure*: the water cure of the title refers, of course, to the act of waterboarding: a favorite enhanced interrogation technique of the CIA in the twenty-first century, and one which Senator John McCain calls “an exquisite form of torture” which constitutes a “mock execution” and the use of which is “shameful” (McCain vi)<sup>12</sup> and its place within the novel reminds us of the horrors at the heart of the post-Enlightenment liberal modernizing project whereby all others are reduced to non-beings and the liberal subject reduced to brutality in order to preserve the self.

It is clear that torture destabilises existence and both provides the conditions for the suspension of, and is somehow the opposite of, the truth is purports to seek. Indeed, as Wisenewski and Emerick summarize, both the CIA's *Kubark Interrogation Manual* (1963) and the *CIA Human Resource Exploitation Manual* (1993) assert that the aim of torture is to breakdown the identity of a person; to break down a subject's world and understanding of self. Ultimately, it is a regressive act which seeks to "enforce a loss of autonomy" (Kubark Interrogation Manual, 1963, quoted in Wisenewski and Emerick 30). Furthermore, the *Human Resource Exploitation Manual* makes clear that the most effective way to do this is to turn the subject's body against itself, "obliterating agency by turning agency on itself" (Wisenewski and Emerick 30, 56). As a destabilizer of existence, of being, torture is a categorical and ontological deceit; it is, to follow Elaine Scarry, a display of agency that allows one person's body to become another person's voice, that allows the real human pain to be converted into a "fiction of power" (Scarry 18).

As Scarry explains, it is

astonishing but obvious: for that torture and war are acts of destruction (and hence somehow the opposite of creation), that they entail the suspension of civilization (and are somehow the opposite of civilization), are things we have always known and things one immediately apprehends even when viewing these two events from a great distance; the only thing that could not have been anticipated from a distance but that is forced upon us as self-evident once we enter the interior of these two events is that they are, in the most literal and concrete way possible, an appropriation, aping, and reversing of the action of creating itself (21).

The *Alice* stories and *The Water Cure* enact the relationships between subject and object, fiction and reality, through language. To wield language in these texts, be it intelligible or otherwise, is to have the power to define, create, and to destroy. When language ceases, so does existence. In *The Water Cure* it is torture that makes language cease. This novel embodies the destruction of language that torture ensures. As Elaine Scarry explains, "physical pain does not simply resist language but actively destroys it, bringing about an immediate reversion to a state anterior to language, to the sounds and cries a human being



makes before language is learned” (4). And further, “its resistance to language is not simply one of its incidental or accidental attributes but is essential to what it is” (4). It is this destruction of language through torture that leads to Scarry’s ‘unmaking of the world’ that marks the end of civilization and it is this that *The Water Cure* embodies. For Scarry the structure of torture includes the incommunicability of pain, the power relation between torturer and victim, and the fiction of power previously referred to. The very structure of the novel enacts all of these elements of torture and more. The kidnapped and tortured victim does not have a voice, is spoken to, named, defined, with the torture being described in accordance with Scarry’s insistence that part of the structure is the two bodies feeling such different things. But it is more: *The Water Cure* is a tortured text. A tortured text because the tortured body of Kidder’s victim is also the body of writing that is the text with the violence and torture being wholly textual. As suggested above, the fragmented, ‘broken’ narrative destroys language’s ability to make meaning, to make sense. Words and sentences don’t mean what you expect them to mean, they are manipulations in a slippery game. The language of *The Water Cure* is violent but also the subject of violence. It is torturer and tortured. It is through these means that the novel resists the representation of torture, resists even *narrative* itself and rises to Avelar’s call for a “war on language” in the face of torture.

The act of naming is, of course, an act of power and violence. “Names,” Ishmael informs his victim, or his subject as he prefers to call him, “are always just substitutes for nouns, and you know what good nouns are. I will name you. [...] I name you W. Poor, poor W.[...] I have renamed you Art and now you are Art and no longer W. My god, what have I done to you? Poor, poor W. now has a new name. Just like that a new name” (Everett 90). As Scarry’s work makes clear, denying or changing the subject’s name begins the process of dehumanization so integral to torture and it is important that the new name (W) is a pun on George W. Bush’s name as well as indicating a doubling which reminds us of Ferdinand

Haenel's reflections on torture as being a "downward slope from power to powerlessness experienced in relation to the perpetrator who has ripped apart the victim's ego and world into two or more pieces" (Haenel 1, quoted in Wisenewski and Emerick 57). In addition, Art is a noun through which to explore the complex relationship between and the limits of aesthetics and the law in the face of torture. In the novel Art becomes the technology and the subject of torture.

you are my masterpiece. How does that strike you? I will continue to work on you every day, nudging clay here, tempering hue there, chipping at a corner, changing tense, altering key. In my mind, somewhere in this sick thing I call a mind, I have a picture of my goal, a model of my ideal. You are not my phoenix and neither, sadly for you, is your destruction (Everett 117).

The language of the novel, the words that Ishmael utters, are an extension of the cutting of his knife, as well as threats and part of the process of torture, reminding us once more of the violence of language. With the body of the victim forming the body of the text we are voyeurs to the process of writing itself in the making and unmaking of this literary world, the suspension of culture, the destruction of civilization; through the structures and logic of torture we are presented with the very opposite of world-making and aesthetic creation.

*The Water Cure* inverts domestic space. The home, that place where Ishmael reminisces about family life, is transformed into that which hides within it a chamber of horrors. The basement is described in brutal terms, with walls and ceilings turned into weapons—to suspend, to stick, to harness, and to hang the eighteen mirrors which reflect multiple selves back to the victim. We see ordinary objects (mirrors, a chair, tape) take on new, twisted significance with the world being reduced to that of the torturer. Elaine Scarry has shown how the space of torture becomes the world of the victim, the perpetrator of torture dramatizing the disintegration of that world as well as the obliteration of consciousness. This inversion, she argues, is what unmakes the world for the victim but also for the culture that engages with torture. The unmaking of civilization requires "a return to

and mutilation of the domestic, the ground of all making” (Scarry 47). Though torture the world is reduced to the room; it is the home but an inversion of the domestic and all that implies. The comforts or features of the home turn in on the prisoner and become weapons; the bed, the sink, the walls, the floor, the chair, and the bathtub. Objects are unmade as the prisoner is unmade: this is civilisation undone (Scarry 38-45). The respect and dignity usually afforded to a human subject is absent and a subject is reduced to mere body where meaning-making, being-in-the-world and, as Améry articulated, “trust in the world” and feeling at “home in the world” is destroyed (Améry 83,87).

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Dawes’ article that I opened with successfully creates the parameters for connecting the subfield of literature and human rights to the “urgent work on ethics, rights, and aesthetics produced over decades in Americanist literary study” (129). He is concerned to explore the benefits of considering specifically American literature and human rights rather than as “a matter of world systems” due to the ways in which in the U.S. “human rights signifies differently” (133) generating “distinctive literary patterns” which take “not just atrocity abroad as its narrative focus but also atrocity at home” (134). *The Water Cure* is a furious confrontation to this atrocity, as well as to the unmaking of civilization that the war on terror has accelerated. In this time of crisis, this state of emergency, this state of perpetual war, where the law is employed for the interests of the state and the political and cultural institutions of the United States have become legalized, we see “war and peace themselves ever closer together” (Kennedy 24). In bringing U.S. atrocities abroad directly into a domestic space on domestic soil, Everett’s *The Water Cure* allows the reader to analyze the shifts in cultural, political, and significantly, legal, understandings of torture since 9/11 and their implications socially and aesthetically in the U.S. context. War is usually regarded as exceptional but now it is the new peacetime and as Kennedy insists, “[w]ar today is both

continuous with—and sharply distinguishable from—peace,” (5). In other words, there is a rhetorical assertion of their distinctiveness but both war and peace lead to the law which is now a permanent feature in (liberal Western) peacetime culture. As Kennedy notes, “[l]aw has built practical as well as the rhetorical bridges between war and peace, and is the stuff of their connection and differentiation” (36). The twenty-first century has witnessed a merger of law and war—*lawfare*, as Kennedy calls it—which, as we have seen, is employed to legitimize and justify illegal acts of violence in order to achieve peace and, apparently, the preservation of human rights. Torture for peace, Torture for the right not to be tortured: you can see the dystopian slogans straight away.

With its formal experimentation and rewriting of Carroll’s *Alice* stories, *The Water Cure* is an interrogation (purposefully and ironically violent) of language, logic, the law—and literature itself—in the face of arguably the most heinous violation of human rights: torture. Through its explorations of the logic of language and the language of logic the novel interrogates and embodies what happens when torture becomes the law with the law ceasing to be that which builds the social world but rather than which breaks and unmakes it. When confronted with the practice of torture, the novel ceases to be worldmaking and instead enacts the world unmade. Torture and war destroy the vital and civilization and it is humanity that is at stake: “[t]he day we stop condemning torture...is the day we stop being human beings” (Admiral Mayorga quoted in Levinson 2013).

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<sup>1</sup> Dawes argues for the importance of Americanist literary criticism to engage with the human rights framework which it has until now avoided because of the problematic translation of civil rights into human rights with the latter’s universalising discourse potentially flattening the urgent historic specificities of race relations in the United States. Accordingly, civil rights is a constitutional matter that invokes the concept of the citizen rather than the human. He

also acknowledges that work has been done on the intersections of literature and human rights but that it has tended to be in postcolonial literary criticism, a field that American literary studies can learn much from.

<sup>2</sup> See: Amfreville, Marc. 'Erasure and *The Water Cure*: A Possible Suture?' *Canadian Review of American Studies*, Vol. 43, No. 2, 180-88; Bauer, Sylie. "'Nouns, Names, Verbs" in *The Water Cure* by Percival Everett, or, "Can a Scream be Articulate?'" *Revue française d'études américaines*, Vol. 128, No.2, 2011, pp. 99-108.; Dittman, Jonathan. "'Knowledge<sup>2</sup> + Certainty<sup>2</sup> = Squat'" (re)Thinking Identity and Meaning in Percival Everett's *The Water Cure*, in Mitchell, Keith B. and Robin G. Vander, *Perspectives on Percival Everett*. Jackson: University of Minnesota Press, 2013, pp. 3-18.; Feith, M. 'The Art of Torture in *The Water Cure* by Percival Everett.' *Revue française d'études américaines*, Vol. 132, No. 2012, pp. 90-104; Morton, Seth. 'Locating the Experimental Novel in *Erasure* and *The Water Cure*'. *Canadian Review of American Studies*, Vol. 43, No. 2, 2013, pp. 189-201; Tissut, Anne Laure. 'Percival Everett's *The Water Cure*: A Blind Read.' *Sillages Critiques*, 17, 2014 (<http://sillagescritiques.revues.org/3496>).

<sup>3</sup> *The Water Cure* is not Everett's first rewriting of the *Alice* stories. His post-apocalyptic novel, *Zulus*, follows the story of Alice Achitophel on a fantastical adventure of rebellion which revisits both Dryden as well as the The Old Testament (Book of Samuel). Everett, Percival. *Zulus*. New York: Permanent Press, 1990.

<sup>4</sup> For a thorough history of the birth of human rights, including their relationship to torture, see Lynn Hunt's *Inventing Human Rights: A History*. New York and London: Norton, 2008.

<sup>3</sup> 2016 marked the 11<sup>th</sup> consecutive year that freedom and democracy retreated, with 2000 marking democracy's peak. See Puddington, Arch et al, "Populists and Autocrats: The Dual Threat to Global Democracy." *Freedom in the World, 2017*, Freedom House. [www.freedomhouse.org](http://www.freedomhouse.org). Last accessed, 4<sup>th</sup> May 2017.

<sup>6</sup> For a detailed exploration of how the American Constitution has always already meant that making the law means breaking the law see Michael Halley (2007) 'Breaking the Law in America', *Law & Literature*, 19:3, 471-512.

<sup>7</sup> The rehearsing of a utilitarian case for the limited use of torture is not new to the war on terror, of course, with Jeremy Bentham's being remembered as the most forceful justification of the use of torture in order to prevent crime and, indeed, has resulted in him being named the father of the ticking time bomb scenario thought experiment.

<sup>8</sup> 2005 – 63% of American public support the use of torture in the fight against terrorism and crime more generally. The latest Pew research Centre results show that American support for torture is clearly divided on partisan lines where 73% of Republicans think that torture is justified when someone is suspected of terrorism compared to 46% of Democrats. 'America's Place in the World' Pew Research Centre for the People and the Press. <http://pewrsr.ch/1Rm59yq>. Last accessed June 11<sup>th</sup> 2016.

<sup>9</sup> General Treaties which prohibit torture: A5 of UDHR (1948); A7&10 International Covenant on Civil and Political Rights (1966); A3 of ECHR (1950); A5(2) American Convention on Human Rights (1978); A5 African Charter on Human and People's Rights (1981). Specific Treatise which prohibit torture: UN Convention Against Torture (1984); The European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (1987); Inter-American Convention to Prevent and Punish Torture (1985).

<sup>10</sup> Dershowitz's idea of a torture warrant first came to popular attention following the publication of an article, 'Want Torture? Get a Warrant', in the *San Francisco Chronicle* on January 22<sup>nd</sup> 2002.

<sup>11</sup> The fact that CIA officials indicated that torture was an effective means of intelligence gathering is particularly troubling since their own earlier handbook, the *CIA Human Resource*

*Exploitation Manual*, from 1983 clearly stated that the use of physical torment prevents the acquisition of reliable information.

<sup>12</sup> McCain reiterated this almost word for word after the execution of Osama Bin Laden in a Washington Post Op-Ed, 'Bin Laden's Death and the Debate over Torture,' *The Washington Post*, May 11, 2001. [https://www.washingtonpost.com/opinions/bin-ladens-death-and-the-debate-over-torture/2011/05/11/AFd1mdsG\\_story.html?utm\\_term=.7e8e36ea51cd](https://www.washingtonpost.com/opinions/bin-ladens-death-and-the-debate-over-torture/2011/05/11/AFd1mdsG_story.html?utm_term=.7e8e36ea51cd) (last accessed May 4 2017).

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