

The Harvard Law Professor Who Sat On An Israeli Assassination Target Review Panel

The Jihad of Alan Dershowitz

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If to dispute well is law's chiefest end, Harvard law professor Alan Dershowitz has honed this ability to a stunning craft. In high-profile cases, such as O. J. Simpson, Doctor Dershowitz, a seasoned criminal law jurist, serves as a media-savvy lawyer determined to defend "the guilty." Less well known, however, is that this advocacy Mephistopheles thrives on inventing unpopular, counter-intuitive, and even unjust exceptions to international law--a subject he normally does not teach. These exceptions--mutually folded in each other's orb---allow the torturing of terrorists, the assassinations of their leaders, and the demolition of their family homes. What is most intriguing is the contempt that Dershowitz has for the International Court of Justice (ICJ) and its current President (the Chinese judge) whom he calls a thug, discarding the language of professional courtesy.

Somewhat intrigued by his incendiary views daringly, and sometimes crudely, expressed in books and newspaper columns, I requested to interview Dershowitz, an interview he granted promptly and generously. We both taped the interview, I for no other reason but to save as a souvenir. I came out of the interview with the clear impression that--setting aside the civil liberties concerns that inform his criminal defense rhetoric--Dershowitz concocts these exceptions not merely to embellish his ivory tower but to proactively defend, and sometimes shape, Israeli policies in occupied Palestine.

For example, Dershowitz's contempt for the ICJ has deepened ever since the Court decided to rule on the legality of Israel's separation wall. Comparing the ICJ to a Mississippi court in the 1930s, Dershowitz contends that the ICJ is a credible court

for the rest of the world but not for Israel, just as the Mississippi court was a just tribunal for whites but not for blacks. This argument, in its analogical enormity, paints the ICJ as an exceptionally anti-Israel body. Furthermore, Dershowitz challenges the neutrality of ICJ judges, arguing that they are shameless mouthpieces of their governments. When asked to comment on whether he holds the same view about British and American judges on the Court, Dershowitz stepped back to distinguish between the Court and its judges, now saying that the ICJ is bigoted but many of its judges are not. This distinction made no sense to me, since all judges on the Court, except one, held the separation wall to be illegal.

Dershowitz's exceptional defense of Israel is not confined to academic criticisms of the ICJ (or the International Red Cross or the United Nations). In the interview, Dershowitz, who opposes the death penalty, revealed that he had sat on the Israeli assassination committee that reviews evidence before terrorists are targeted and killed. This "due process" hearing is designed to reduce the raw charge that state-sponsored assassinations are blatantly unlawful. Dershowitz favors targeted assassination of terrorist leaders "involved in planning or approving on-going murderous activities." Under this protean standard, it is unclear whether spiritual and political leaders who favor terrorist violence but do not materially participate in specific terrorist acts may also be assassinated. These niceties aside, the idea of a Harvard law professor sitting on an occupying state's assassination committee would be, to many in the legal academy, a trifle perplexing.

What rattles his many critics the most, however, is the innovative exception Dershowitz draws for the Convention against Torture (1987). The Convention prohibits all forms of torture and provides for no exception. In fact, the prohibition against torture has attained the status of *jus cogens*--the peremptory norms of international law that cannot be abandoned or altered. Dershowitz confesses to know all this. Yet he makes an empirical argument to carve out an exception. Since torture cannot be eliminated in the real world, he argues: "Ay, think so still, 'til experience change thy mind." Dershowitz proposes that the legal system regulate torture by requiring state officials to obtain a judicial warrant before torturing. Despite Dershowitz's connections and influence, Israel refused to launch the proposed torture warrant, although it embraced the idea of exception to the Convention it had signed. However, when more than 90 percent of the Palestinian security detainees began to be tortured, the Israeli Supreme Court put an end to the fledgling exception.

Undeterred by such judicial rebuffs, Dershowitz continues to manufacture legal exceptions to shore up the universally condemned Israeli practices, such as bulldozing the family homes of terror suspects. Calling it property damage, he apparently dismisses the sanctity, the intimacy, and the memories attached to a family home, anybody's family home. As if demolition of family homes is a minor punishment, Dershowitz is willing to pull down even the entire "villages of suicide bombers." He thinks perhaps that it takes a village to raise a suicide bomber. It does. When her entire village has been grabbed by the neck and choked, some kid (a "terrorist") is surely going to be mad as hell.

Despite his legalistic jihad for Israel's security and despite his employment of the Harvard Law School stature to propose questionable exceptions to international law, Dershowitz does not completely throw away the sense of limits. For example, he opposes Nathan Lewin, a prominent Washington lawyer and a federal judge hopeful,

who blatantly argues, contrary to popular feelings of the Jewish community, that family members of suicide bombers be executed.

By no means is Dershowitz an incorrigible ideologue nor is he morally sightless. His reading of international law is most certainly flawed and he needs "to settle in his studies." His intellectual honesty is nonetheless beyond doubt. He is what he thinks. He does not duck hard questions. And he does all this with an inexhaustible capacity to swallow contradictions. At the end of the play, however, when all arguments have been made, when all exceptions have been put to rest, and when the nation that launched a thousand missiles has been defended, Dershowitz relaxes his grip with a disarming sense of humor expressed through borrowed jokes. In his book *Why Terrorism Works* (2002), for example, he tells readers how he, as a boy, pondered over difficult hypothetical scenarios such as this: "If you were up to your neck in a vat of cat vomit and somebody threw a pile of dog poop on your face, would you duck?"

One may relish Dershowitz's for his wits, but only to wonder at the unlawful things he permits.
