

## The Essentialist Terrorist

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*Can the Ethiopian change his skin? The leopard his spots? As easily would you be able to do good, accustomed to evil as you are.*<sup>1</sup>

### I. INTRODUCTION

The essentialist terrorist is a violent monster that the Highly Influential Terrorist Literature (HITLit) has successfully invented and made real and believable. It is the new terrorist. It is dark and evil, part real and part phantom, part human and part animal, part man and part woman, part bearded and part veiled, part strategic and part crazy. A noted trait of this grotesque but cowardly creature is that it kills innocents. But this monster's most defining characteristic is that it is driven to violence by its nature, compelled by an ingrained mental/psychological/cultural/religious formation. Its violence has little to do with any outward political or geopolitical grievances. It hates Israel and America and the West. It loathes democracy and liberties and freedoms. It subjugates women. It is warped and jealous and vengeful. Addicted to violence, this monster resides in sleeping cells, prays to Allah, lurks in tunnels and airports, wears a belt of explosives, and craves traveling in buses, trains, and airplanes. One day it explodes, killing innocents. Amazingly though, even after dying a thousand deaths, it does not die. It constantly reproduces itself into many more similar-looking monsters.<sup>2</sup> It must be obliterated.

The HITLit's essentialist terrorist is the Muslim militant who uses violence to terrorize governments and communities. He is a religious fanatic, raised in fundamentalism, trained in religious schools, made to memorize the Quran by heart, and recruited to unleash violence against the unbelievers—particularly Jews and Christians. He is in spiritual love with violence. The essentialist terrorist is new because he is distinguishable from the conventional terrorist who used violence to gain personal or communitarian goals. Whereas the conventional terrorist uses violence as a means to an end, the essentialist terrorist uses violence as an end in itself. According to HITLit, even when the essentialist terrorist justifies violence in political or geopolit-

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1. *Jeremiah* 13:23.

2. *BLAMING THE VICTIMS: SPURIOUS SCHOLARSHIP AND THE PALESTINIAN QUESTION* 149-58 (Edward W. Said & Christopher Hitchens eds., 1988).

ical terms, the justification must not be taken seriously, for this monster's addiction to violence finds a legion of excuses. This HITLit thesis has been called the "new terrorism."<sup>3</sup> The 9/11 Commission, summoned to study terrorist attacks on the United States, adopted the terminology of new terrorism, thus conferring validity on the HITLit.<sup>4</sup>

The HITLit's new terrorism is intellectualized propaganda. It was written and published in the United States years before the September 11 attacks on the World Trade Center and the Pentagon.<sup>5</sup> It is still being produced and published. The HITLit consists of academic books published by elite university presses, popular books, magazine articles, and syndicated columns. This literature is highly influential in that it shapes, defends, and justifies U.S. government policies towards the Muslim world. As referenced in this article, the 9/11 Report adopted many concepts that the HITLit has been spawning for years.<sup>6</sup>

Most HITLit authors, known as terrorism experts, are research associates with influential think tanks such as RAND and the American Enterprise Institute, and some teach at Harvard University.<sup>7</sup> Some have worked for the National Security Council and the U.S. Defense Department. These authors include Bernard Lewis, Bruce Hoffman, Steven Simon, Jessica Stern, Daniel Benjamin, and Richard Perle.<sup>8</sup> They appear on National Public Radio and major radio and television networks to comment on terrorist events and disseminate their views to the general public. The HITLit themes of the essentialist terrorist are further disseminated through the views of collaborating journalists such as Thomas Friedman, Charles Krauthammer, David Brooks, and William Kristol.<sup>9</sup>

Studied in isolation, each HITLit theme seems credible. Collectively, HITLit themes are perilous propaganda. They are the half-

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3. See WALTER LAQUEUR, *THE NEW TERRORISM* (1999). In 1999, Walter Laqueur conferred legitimacy on the concept of new terrorism with its "pathological complexion" that is inspired by fanaticism and not political motivations. *Id.* at 226; see THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES, *THE 9/11 COMMISSION REPORT* 71 (2004) [hereinafter 9/11 REPORT].

4. 9/11 REPORT, *supra* note 3, at 71. In 2002, the commission investigated facts and circumstances behind the September 11, 2001, terrorist attacks on the United States. The commission released the report in July, 2004.

5. Noted HITLit authors are Walter Laqueur, David Frum, Michael Ledeen, Ruth Wedgwood, and Alan Dershowitz. More radical HITLit authors, such as Daniel Pipes and David Horowitz, who teach at Harvard University, are not discussed in this article because their extreme views seems to have little impact on the U.S. government or the mainstream media.

6. See 9/11 REPORT, *supra* note 3, at 75.

7. HITLit authors use the prestige of premium American universities and their presses to seek legitimacy for their morally dubious and legally questionable theses.

8. These authors are also known as neoconservatives.

9. Other noted journalists spreading HITLit themes are Martin Peretz, Norman Podhoretz, and Judith Miller. They also add empirical news to the HITLit message that Islam is violent. Norman Podhoretz, the grandfather of neoconservatism, supports the preemptive use of force in international affairs. He received a Presidential Medal of Freedom, the highest civilian award, from President George W. Bush. See Michael Janofsky, *A Neocon Is Honored by a President He Reveres*, N.Y. TIMES, June 24, 2004, at B4, available at 2004 WLNR 4537621.

truths that Cass Sunstein, himself a HITLit sympathizer, has in another context called “enclave deliberation.”<sup>10</sup> HITLit authors have pooled their arguments, citing each other’s dubious research, to malign Islam, boldly painting it to be a violent religion, ignoring the canons of interfaith respect for a fourteen-centuries-old religion practiced by more than one billion people in all countries of the world. Yet in doing so, the enclave authors claim they wish to make a better world. The Quran describes such persons as *mufsidun*,<sup>11</sup> which may be translated as mischief-makers. These *mufsidun* have successfully influenced U.S. foreign policy<sup>12</sup> and are determined to further deepen the conflict between the United States and the Islamic world. They use essentialist terrorism as a wedge between civilizations.

The HITLit’s themes, specifically the distinction between conventional and essentialist terrorists, have played a critical role in shaping the George W. Bush Administration’s views with respect to Muslim militants.<sup>13</sup> The rhetoric it employs to describe Muslim militants reveals how the Bush Administration has latched on to the HITLit’s new terrorism. While the conventional terrorist is a moral being, the new terrorist is evil. Repeatedly, Bush officials use the word “evil” to describe Muslim militants who fight U.S. occupation in Iraq and Afghanistan or commit violence elsewhere against U.S. interests.<sup>14</sup> The word “evil” highlights the essentialist nature of the Muslim militant who is evil, not only because of what he does, but who he is. And perchance, the Old Testament furnishes a parallel to the HITLit concept of the essentialist terrorist: just as the Ethiopian cannot change

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10. Cass R. Sunstein, *Deliberative Trouble? Why Groups Go to Extremes*, 110 *YALE L.J.* 71, 119 (2000). “When arguments are skewed toward a particular point of view, group members will move in the direction of that point of view.” *Id.* at 118.

11. *Quran* 2:11-12. “When it is said to them: ‘Make not mischief on the earth,’ they say: ‘We are only ones that put things right.’ Of a surety, they are the ones who make mischief, but they realize (it) not.” *Id.*

12. HITLit authors themselves boast the success of their story. Charles Krauthammer, *The Neoconservative Convergence*, *OPINION J.*, July 21, 2005, <http://www.opinionjournal.com/extra/?id=110006921>. “The remarkable fact that the Bush doctrine is, essentially, a synonym for neoconservative foreign policy marks neoconservatism’s own transition from a position of dissidence, which it occupied during the first Bush [A]dministration and the Clinton years, to governance. Neoconservative foreign policy, one might say, has reached maturity.” *Id.*

13. See, e.g., Elisabeth Bumiller, *Base Closings Will Be Fair, Bush Tells Naval Graduates*, *N.Y. TIMES*, May 28, 2005, at A7, available at 2005 WLNR 8471529; David E. Sanger, *Bombings in London: The President; Bush Vows to Fight Until Terrorists’ Defeat*, *N.Y. TIMES*, July 12, 2005, at A9, available at 2005 WLNR 10878238; Richard W. Stevenson, *The Bombings in London: Summit; Bombings Rewrite Agenda for World Leaders in Scotland*, *N.Y. TIMES*, July 8, 2005, at A13, available at 2005 WLNR 10704859; *The Struggle for Iraq; In Bush’s Words: ‘We Will Stay in the Fight,’* *N.Y. TIMES*, June 29, 2005, at A12, available at 2005 WLNR 10212942.

14. See, e.g., Elisabeth Bumiller, *White House Letter; Recent Bushisms Call for a Primer*, *N.Y. TIMES*, Jan. 7, 2002, at A14, available at 2002 WLNR 4019615 (“‘The evil one’: Mr. Bush has regularly used this phrase to describe Osama bin Laden. Among evangelical Christians, it is an obvious reference to Satan, and appears throughout the Bible.”); see also Elisabeth Bumiller, *White House Letter; Axis of Evil: First Birthday for a Famous Phrase*, *N.Y. TIMES*, Jan. 20, 2003, at A17, available at 2003 WLNR 5219241; David E. Sanger, *Two Years Later: The President; President Urging Wider U.S. Powers in Terrorism Law*, *N.Y. TIMES*, Sept. 11, 2003, at A1, available at 2003 WLNR 5244592.

his skin, and the leopard cannot change his spots, the Muslim militant cannot change his propensity to do evil.<sup>15</sup>

The HITLit's new terrorism is not simply a rhetorical device to engage in a propaganda war against Muslim militants or Islam. It also has serious consequences in the realm of law. The distinction proposes and defends that the law treats Muslim terrorists differently than it treats conventional terrorists. Since the conventional terrorist is a moral being, his rehabilitation through law is possible; therefore, he is entitled to rights and legal protections. The essentialist terrorist has no claim to demand traditional legal rights and protections because he is fundamentally immoral and irredeemable.

Consequently, the Muslim militant is humiliated, tortured, detained without charges or a trial, and even killed without any judicial process. Conventional terrorists are the subjects of the traditional criminal justice system, but essentialist terrorists are unlawful combatants who may be denied protections available under domestic and international law, including the prisoner of war status under the law of war. In addition to government lawyers, a cadre of law professors, such as John Yoo, Ruth Wedgwood, Jack Goldsmith, and Alan Dershowitz, propose and defend morally odious and legally questionable treatments of Muslim militants fighting against occupation, settlements, theft of land and resources, and for the right of self-determination. Although initially muted and bamboozled, the American legal academy has made vigorous protests to Bush officials' lawlessness.<sup>16</sup> The HITLit authors' "clumsy and unconvincing exercise in conjecture,"<sup>17</sup> however, has remained for the most part unexposed.

The HITLit's conjectures and consequent prescriptions are genocidal and generally lawless. One proposed prescription for dealing with Muslim militants is to engage them in battle and kill them.<sup>18</sup> No legal process is recommended to wipe them out. The other prescription is to capture Muslim militants and completely disable them.<sup>19</sup> Disability rather than accountability must be the fate of essentialist terrorists. Accordingly, the Guantánamo prison embodies the concept of comprehensive disability, which suspends essentialist terrorists in legal limbo. Essentialist terrorists are guilty without proof. The proof of their monstrosity is in their being. But in law, they are

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15. See *Jeremiah* 13:23 ("Can the Ethiopian change his skin? The leopard his spots? As easily would you be able to do good, accustomed to evil as you are.")

16. See Jordan J. Paust, *Executive Plans and Authorizations to Violate International Law Concerning Treatment and Interrogation of Detainees*, 43 COLUM. J. TRANSNAT'L L. 811, 850, 861-62 (arguing that Bush officials have committed war crimes).

17. Jonny Burnett & Dave Whyte, *Embedded Expertise and the New Terrorism*, J. FOR CRIME, CONFLICT AND THE MEDIA, May 2005, at 1, 3, available at <http://www.jc2m.co.uk/Issue4/Burnett&Whyte.pdf>.

18. MICHAEL A. LEDEEN, *THE WAR AGAINST THE TERROR MASTERS* 147-48 (2003).

19. *Id.*

neither charged with any crime nor released. They are neither tried in courts, nor declared innocent. They are neither criminals, nor prisoners of war.<sup>20</sup> Their status defies existing legal categories. They are a category of their own. They are *sui generis*. They are unique. Therefore, the law or the lawyer cannot help them, should not help them.<sup>21</sup> As the mantra goes, September 11 changed everything.

The legal outrage over the suspension of civil liberties, as expressed by Professor Erwin Chemerinsky, is often doctrinal.<sup>22</sup> It points out the betrayal of the United States Constitution, specifically the Bill of Rights, and the deeply entrenched case law. Although U.S. courts have begun to review and even modestly slash the president's executive powers to define the law of war on terror,<sup>23</sup> the debate over treatment of essentialist terrorists has barely reached the doors of law. Important legal questions pertaining to treatment of Muslim detainees have not yet been conclusively answered as cases are still evolving and passing through the appellate process.<sup>24</sup> Bush officials continue to argue that they are dealing with a new enemy who falls outside legal parameters of constitutional assumptions and precedents.<sup>25</sup> Their aim is to create new law for the new enemy. They insist that critics and courts are still hanging on to old law and the old paradigm, refusing to appreciate the threat that essentialist terrorists pose to U.S. security at home and its interests abroad.<sup>26</sup>

It remains to be seen how U.S. laws will develop to deal with Muslim militants that the Administration kills or detains without due process. In fashioning appropriate laws, some jurists side with the Bush Administration and some do not; the battle to define the Muslim militant under U.S. laws will be long and tedious. Much depends on

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20. Ruth Wedgwood, *Al Qaeda, Terrorism, and Military Commissions*, 96 AM. J. INT'L L. 328, 335 (2002) (arguing first that the war approach and not the criminal justice approach is the most appropriate for dealing with al Qaeda and other Muslim militants, and second that Muslim militants, including the Taliban armed forces, do not qualify as prisoners of war).

21. See *United States v. Stewart*, No. 02 CR. 396 JGK, 2002 WL 1300059, at \*1 (S.D.N.Y. June 11, 2002) (Criminal defense attorney Lynne Stewart was arrested for communicating with Sheikh Rahman, an Egyptian Islamic scholar who had been convicted for terrorism. Stewart's law office was searched and documents, folders, ledgers, notebooks, address books, calendars, hard discs, and several other items were seized. Later, Stewart was convicted under terrorism laws.); see also Elaine Cassel, *The Lynne Stewart Guilty Verdict: Stretching the Definition of "Terrorism" to Its Limits*, FindLaw's Writ, Feb. 14, 2005, <http://writ.news.findlaw.com/cassel/20050214.html>.

22. Erwin Chemerinsky, *Civil Liberties and the War on Terrorism*, 45 WASHBURN L.J. 1 (2005).

23. See, e.g., *Rumsfeld v. Padilla*, 124 S. Ct. 2711 (2004) (plurality opinion); *Rasul v. Bush*, 124 S. Ct. 2686 (2004); *Hamdi v. Rumsfeld*, 124 S. Ct. 2633 (2004) (plurality opinion); *Detroit Free Press v. Ashcroft*, 303 F.3d 681 (6th Cir. 2002).

24. See, e.g., *Padilla*, 124 S. Ct. at 2711; *Rasul*, 124 S. Ct. at 2686.

25. Memorandum from Alberto R. Gonzales to the President (Jan. 25, 2002), available at <http://www.nytimes.com/ref/international/24MEMO-GUIDE.html>; Memorandum from John Yoo & Robert J. Delahunty to William J. Haynes II, General Counsel, Department of Defense (Jan. 9, 2002), available at <http://www.nytimes.com/ref/international/24MEMO-GUIDE.html>.

26. See *supra* note 25.

whether there would be another massive attack on U.S. interests here or abroad. A security-conscious Congress has extended the life of the Patriot Act, which shows that the old law of civil liberties might have changed forever, formalistically for everyone, even though Muslims are the law's primary targets.<sup>27</sup>

In addition to explaining HITLit theses girding the concepts of new terrorism and the essentialist terrorist, this article provides a historically-informed critique of the concepts. Note, however, that essentialist agendas have had a checkered history. In the United States, essentialist arguments were made to justify laws of slavery, segregation, and persecution of African Americans. The genocide of indigenous populations, labeled savages, and the theft of their land had essentialist dimensions. Likewise, under the inherited common law, the subjection of women was essentialist since laws reflected the fundamental "nature" of women. Globally, the Nazi philosophy grew from essentialist visions of racial superiority and Jewish stereotyping. HITLit authors are working hard to paint Muslims as Nazis and communists, and Islam as a murderous ideology.<sup>28</sup> They have popularized the term "Islamism" that rhymes with Nazism and communism.<sup>29</sup>

## II. PROFILING ISLAMIC TERRORISM

Essentialist theories often rely on nature, genes, hard wiring, or innate formations to associate specific traits to specific groups. Aristotle, who was perhaps the first to articulate the concept of essentialism, relied on nature to argue that some persons are born as natural slaves, some as natural masters. Slaves, said Aristotle, are born with sturdy bodies to perform physical tasks; they also lack mental abilities to undertake complex intellectual functions.<sup>30</sup> This description of the natural slave is an example of pure essentialism under which social factors play no role. The HITLit does not advocate a genetic view of Muslim terrorists for obvious difficulties;<sup>31</sup> more than one billion Muslims, belonging to hundreds of racial, ethnic, and cultural groups, carry diverse genes, and not every Muslim commits terrorism. Furthermore, new converts to Islam do not automatically resort to vio-

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27. Girardeau A. Spann, *Terror and Race*, 45 WASHBURN L.J. 89 (2005).

28. DAVID FRUM & RICHARD PERLE, AN END TO EVIL 43, 277-78 (2003); LEDEEN, *supra* note 18, at 148-52.

29. DANIEL BENJAMIN & STEVEN SIMON, THE AGE OF SACRED TERROR 172 (2003); 9/11 REPORT, *supra* note 3, at 562.

30. ARISTOTLE, THE POLITICS 69 (T. A. Sinclair trans., Penguin Books 1992).

31. Alan Dershowitz denies that pro-Israeli advocates believe that Arabs and Muslims have terrorism in their genes. However, he claims that the Palestinian political and religious leadership glorify terrorism as part of their culture and religion. "They are responsible for its proliferation." ALAN DERSHOWITZ, THE CASE FOR ISRAEL 129 (2003).

lence.<sup>32</sup> To the contrary, many hard-core criminals reform their lifestyle after converting to Islam.<sup>33</sup> In the absence of these facts, the essentialist theory would have gathered credibility by establishing a connection between genetic inclinations to violence and attraction to Islam. HITLit authors are therefore restrained in labeling Muslim militants as genetic terrorists.<sup>34</sup>

HITLit authors, however, do argue that Muslim terrorists are the products of essentially violent Islamic teachings, culture, theology, and pathos. They malign the aggregate, not just the individual. An essentialist terrorist derives his addiction to violence primarily from Islam, and not necessarily from his genes or individual life experiences. His essentialism is rooted in the teachings of Islam. The closer he gets to the puritanical version of Islam, the more likely he will embrace terrorism as an essentialist response to feelings of frustration and maladaptation. This is the core thesis that each HITLit author advocates from a different perspective.

HITLit authors offer numerous psychoanalytical perspectives to manufacture the essentialist terrorist.<sup>35</sup> These themes deny the obvious that Muslim militants are fighting occupation, alien domination, hegemony, settlements, colonization, and the denial of the right of self-determination. Instead, they find fault in Islamic civilization, in Muslim cultures, and in calls for faith that invite Muslims to embrace the Quran and the Prophet's traditions. HITLit authors have invented the essentialist terrorist to divert attention from festering re-

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32. Despite negative portrayal of Islam in the media, a growing number of middle class, educated Britons are converting to Islam. See Jonathan Petre, *Lengthy Queue to Join Religion that Offers 'Sense of Direction,'* DAILY TELEGRAPH (London), Aug. 1, 2005, at 18, available at 2005 WLNR 12058190.

33. Rachel Zoll, *Muslims Practicing Faith Behind Bars*, DESERT MORNING NEWS, June 11, 2005, at E03, available at 2005 WLNR 9269646. Islam was introduced to the prisons by the Nation of Islam. Recently, however, most inmates are embracing Orthodox Islam. *Id.*

34. See WALTER LAQUEUR, NO END TO WAR 23 (2003). Laqueur leaves an impression with readers as if there might be a genetic basis for violence. He mentions, though disapprovingly, Klinefelter's syndrome, a term that has been discarded in medical literature but refers to persons born with an extra chromosome. Studies show that children born with the extra chromosome may suffer depression, scholastic failure, and lack of energy, but few show any inclination for violence. *Id.*

35. Carl Goldberg, *Terrorism from a Psychoanalytic Perspective*, in TERRORISM, JIHAD, AND SACRED VENGEANCE 212, 213-15 (Jerry Piven, Chris Boyd, & Henry Lawton eds., 2004). This essay argues that Islamic fanatic violence is generated by self-hatred, feelings of worthlessness and inner evil. These people commit terrorist acts because they want to sacrifice their worthless lives for "good" and go to the promised paradise. *Id.* Jerry Piven argues that "Islamic terrorists often suffer from the absence of empathic psychological structures usually developed with loving and nurturing maternal care." Jerry S. Piven, *The Psychosis (Religion) of Islamic Terrorists and the Ecstasy of Violence*, in TERRORISM, JIHAD, AND SACRED VENGEANCE, *supra* at 62-63. Joan Lachkar argues that Islam is an "orphan" society in search of an idealized father, God. Joan Lachkar, *The Psychological Make-Up of a Suicide Bomber*, in TERRORISM, JIHAD, AND SACRED VENGEANCE, *supra* at 127. "To escape the abandoned orphan syndrome," Lachkar concludes, Muslims become suicide bombers and terrorists. *Id.* Ruth Stein argues that Muslim terrorists are not pursuing secular political action, but are engaging in a mystical experience that turns "self-hatred and envy into love of God." Ruth Stein, *Evil as Love and as Liberation*, in TERRORISM, JIHAD, AND SACRED VENGEANCE, *supra* at 45.

gional disputes. They range from the superficial to the deep, from Muslims' concrete grievances to their alleged mystical propensity towards violence. Their themes, as the following discussion demonstrates, denigrate Islam as a religion—unleashing powerful propaganda that an unknowing but trusting public embraces—and provide democratic support for proposed policies to wage war. The following discussion also shows how HITLit authors orchestrate their “findings” to assert that Muslim terrorists are the product of a defeated Islamic civilization and an intolerant and violent faith. Ironically, these authors prescribe exactly what they condemn. They prescribe violence to overcome violence. They propose to defeat a supposedly defeated civilization.

### A. *Islamic Defeatism*

Eighty-six-year-old Bernard Lewis, the so-called doyen of Middle Eastern studies, has nurtured the ground for blossoming HITLit theses.<sup>36</sup> Lewis, a prolific writer, has studied the interaction between Islam and the West for nearly sixty years, often finding faults with Arab and Muslim cultures. He presents a broad thesis, though cleverly interwoven with *mal fide* compliments, that Islamic civilization is profoundly ill at its heart.<sup>37</sup> It is Lewis who coined the famous phrase “the clash of civilizations” that Samuel Huntington borrowed and made popular.<sup>38</sup> Lewis presents the Muslim world as a defeated civilization that resents Judeo-Christian “Western paramountcy.”<sup>39</sup> Lewis conjectures that all “these alien, infidel, and incomprehensible forces” such as loss of domination, “invasion of foreign ideas and laws,” and “emancipated women and rebellious children” generate rage among Muslims, who express it through violence.<sup>40</sup> Thomas Friedman, an influential journalist and HITLit disseminator, splashes Lewis's thesis across the world through various media outlets, suggesting that Muslim violence has little to do with occupation, hegemony, theft of land, and killings, but rather is caused by something deeper within Muslims' own “sick” socio-psychological formation.<sup>41</sup>

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36. Born in England, Lewis turned to the Middle East through learning Hebrew for his own bar mitzvah. Emily Yoffe, *The Islam Scholar U.S. Politicians Listen To*, SLATE, Nov. 13, 2001, <http://slate.msn.com/?id=2058632>.

37. Edward Said, a Christian Arab, was a vigorous critic of Lewis's historical scholarship, calling Lewis “a prolific neoconservative . . . polemicist” and his scholarship “shoddy” and “sleazy propaganda.” EDWARD W. SAID, *THE POLITICS OF DISPOSSESSION* 337-40 (1994).

38. Yoffe, *supra* note 36; see SAMUEL P. HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* (1996).

39. Bernard Lewis, *The Roots of Muslim Rage*, ATLANTIC MONTHLY, Sept. 1990, available at <http://www.cis.org.au/policy/summer01-02/polsumm01-3.pdf>.

40. *Id.*

41. Thomas Friedman of the *New York Times* recently wrote an opinion piece, echoing Lewis's thesis.

In his popular book published after the September 11 attacks, Bernard Lewis provides a framework, a psychoanalytical narrative, a deeper understanding, for Americans and other readers to think about Islam. The rise of Islamic fundamentalism, proclaims Lewis, is a sour reaction to defeats that Muslims suffered at the hands of Western powers, on the battlefield as well as in the marketplace.<sup>42</sup> The gradual demise of the Ottoman Empire forced Muslims to ask a basic question: “What did we do wrong?”<sup>43</sup> The diagnosis that “still command[s] wide acceptance in the Middle East” is that Muslims have been defeated and have declined because they turned away from Islam and world domination.<sup>44</sup> The corresponding prescription dictates that they can restore “the good old ways” by “a return to them.”<sup>45</sup> Lewis’s thesis, which was adopted in the 9/11 Report, asserts that Islamic militancy against the West is Muslims’ pathological nostalgia for old glory.<sup>46</sup> Lewis’s thesis also argues that Muslims hate the United States because of its leadership of the West.<sup>47</sup>

The implications of Lewis’s psychoanalytical thesis of Islamic defeatism, which analyzes the past to explain the present day behavior, are clear: (a) Muslims are envious of the United States because it embodies the highest achievements of the Western civilization; (b) the defeated, belittled, and humiliated Muslims have turned to Islam in search of old glory; (c) Islamic fundamentalism teaches violence against Jews and Christians; and (d) terrorism is the enraged response of Muslim militants. This mischievous thesis purports to furnish historical motivations for present day violence against the West and Israel. In his warped conception of the Judeo-Christian West, Lewis overlooks the expulsion of Jews from Spain, their massacre in the crusades, and their genocide as recent as sixty years ago. He fails to mention that there is little Islamic violence against most countries of “the West,” including Canada, Germany, Greece, Italy, Austria, and Eastern Europe (except Russia, which occupies Chechnya).

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Some of these young Muslim men are tempted by a [Western] civilization they consider morally inferior, and they are humiliated by the fact that, while having been taught their faith is supreme, other civilizations seem to be doing much better . . . . When the inner conflict becomes too great, some are turned by recruiters to seek the sick prestige of “martyrdom” by fighting the allegedly unjust occupation of Muslim lands and the “decadence” in our own.

Thomas L. Friedman, *A Poverty of Dignity and a Wealth of Rage*, N.Y. TIMES, July 15, 2005, at A19, available at 2005 WLNR 11102169 (quoting Raymond Stock, the Cairo-based biographer and translator of Naguib Mahfouz).

42. BERNARD LEWIS, WHAT WENT WRONG: WESTERN IMPACT AND MIDDLE EASTERN RESPONSE 15 (2002).

43. *Id.* at 23.

44. *Id.*

45. *Id.*

46. See 9/11 REPORT, *supra* note 3, at 48.

47. LEWIS, *supra* note 42, at 153.

More importantly, Lewis refuses to credit present day causes for present day violence.<sup>48</sup> He does not mention that Muslims are angry over the colonization of their lands and resources. He does not acknowledge that Muslims are irate because the United States has aided and funded the forced settlement of European immigrants in Palestinian towns and villages. He does not indicate that the United States has invaded and bombed major cities in Libya, Sudan, Afghanistan, and Iraq, spawning Newtonian terrorism.<sup>49</sup> Finally, he does not point out that Muslims in Palestine, Iraq, Iran, Pakistan, and other Muslim nations want to determine their own political destiny without alien domination, occupation, foreign intervention, and U.S. sponsored puppet regimes. Going for contrived depth at the expense of what is obvious is neither respectable history, nor is it believable psychoanalysis.

### B. *Islamic Intolerance*

Whereas Lewis diagnoses the ills of a defeated Islamic civilization, other HITLit propagandists claim that Islamic societies are violent and intolerant. Walter Laqueur,<sup>50</sup> who greatly admires co-historian Lewis, and who popularized “new terrorism,” provides truncated empirical evidence to assert that “[a] review of wars, civil wars, and other contemporary conflicts shows indeed a greater incidence of violence and aggression in Muslim societies than in most others.”<sup>51</sup> He recounts several incidents occurring after 1945 to support his claim. For example, according to Laqueur, the bloodiest war has been between two Islamic countries, Iran and Iraq, and the bloodiest terrorist campaign took place in Algeria between government forces and Muslim militants. His claim, however, excludes millions of soldiers and civilians killed in two world wars and in genocides in Cambodia, Vietnam, and Burundi. Furthermore, Laqueur contends that Muslim states are hostile to minorities; Muslims find it hard to live as minorities; and even when Muslims are aggrieved populations—such as Chechens, Palestinians, and Kashmiris—the moment they get the opportunity, they turn against suppressive states with greater injustice.<sup>52</sup>

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48. Like Lewis, Benjamin Netanyahu refuses to credit present day causes of violence. In his book, he argues that “[t]he root cause of terrorism lies not in grievances but in a disposition toward unbridled violence.” Benjamin Netanyahu, *Terrorism: How the West Can Win*, in *TERRORISM: HOW THE WEST CAN WIN* 199, 204 (Benjamin Netanyahu ed., 1986).

49. Ali Khan, *Do Our Bombs Follow Newton's Law?*, WICHITA EAGLE, Aug. 3, 2005, at 7A, available at <http://www.kansas.com/mld/kansas/news/editorial/12286299.htm>.

50. Walter Laqueur is a prolific writer who has written extensively on European and Jewish history. His best-known work is *The Terrible Secret*, a book that urges the world to properly disseminate the available information on the Holocaust. Philip Joseph, *A Generation in Exile Finds Its Boswell in Historian Walter Laqueur*, FORWARD, June 22, 2001, available at <http://www.forward.com/issues/2001/01.06.22/arts3.html>.

51. LAQUEUR, *supra* note 34, at 19.

52. *Id.* at 19-20.

For example, according to Laqueur, the Palestinians want to destroy Israel.<sup>53</sup> Laqueur seems to suggest that aggrieved Muslim populations should not be released from their oppression because their freedom poses a great threat to suppressive states. Charles Krauthammer, a HITLit opinion maker, spreads Laqueur's thesis to the general public through pages of the *Washington Post* in the following words: "From Nigeria to Sudan to Pakistan to Indonesia to the Philippines, some of the worst, most hate-driven violence in the world today is perpetrated by Muslims and in the name of Islam."<sup>54</sup>

The way Laqueur measures Islamic violence shows the bias of his thesis. He excludes millions of soldiers and civilians killed in deadly wars of the twentieth century. For example, the massacres in Vietnam, Korea, Cambodia, Laos, Angola, and Rwanda had nothing to do with Islam or Muslims. The nuclear annihilation of Nagasaki and Hiroshima was anything but Islamic. To win his spurious argument, Laqueur even excludes the genocide of six million Jews, a staggering number when compared to deaths in Muslim nations. Even if all Islamic violence of the last one hundred years is measured and counted, it would be much smaller than the violence perpetrated in Europe during the First or the Second World War. Ignoring facts and introducing arbitrary cut-off lines in the assessment of violence, Laqueur appears to have a different agenda. As a result, he discredits an entire Islamic civilization and denigrates the entire religion of Islam.<sup>55</sup>

In what appears to be orchestrated propaganda, Steven Simon<sup>56</sup> and Daniel Benjamin,<sup>57</sup> two cardinal HITLit authors, reinforce Laqueur's thesis by arguing that Islam carries the seeds of violence. They contend that jihad is no spiritual undertaking as Islamic revisionists would have us believe, but that it is primarily warfare against the

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53. *Id.* at 20.

54. Charles Krauthammer, *Violence and Islam*, WASH. POST, Dec. 6, 2002, at A45, available at <http://www.benadorassociates.com/article/154>.

55. Edward Said has criticized terrorism scholarship that uses truncated evidence. He asserts that such scholarship is spurious scholarship. In other words, it is disingenuous and inauthentic. According to Said, "[m]ost writing about terrorism is brief, pithy, totally devoid of the scholarly armature of evidence, proof, argument." *BLAMING THE VICTIMS*, *supra* note 2, at 150.

56. Steven Simon is a senior analyst with RAND, a non-profit research organization in Washington, D.C. Prior to that, he worked at the International Institute for Strategic Studies in London. He also served as the Senior Director for Transnational Threats on the U.S. National Security Council, coordinating U.S. military operations in the Middle East and terrorism policy and operations. Simon worked at the State Department for twenty years in several high-profile positions.

57. Daniel Benjamin, a well-connected journalist, opinion-maker, and terrorism expert, is a Washington, D.C. insider. He has held several positions in the federal government. He has published articles in major newspapers, including the *New York Times*, *Washington Post*, *Los Angeles Times*, *Financial Times*, and *New York Review of Books*. From 1994-97, he served as special assistant to President Bill Clinton and as National Security Council director for speech-writing. From 1998-99, he served the council as a counter-terrorism director, dealing with international threats to U.S. security. Benjamin frequently appears on major news networks to disseminate his views on Islamic militancy. As of 2005, he is a senior fellow at the Center of Strategic and International Studies (CSIS).

unbelievers.<sup>58</sup> “Bernard Lewis made this case most famously,” say the authors.<sup>59</sup> Simon and Benjamin attack Islamic theological history by arguing that Muslims who follow the teachings of Ibn Taymiyya (1263-1328) and Sayyid Qutb (1906-66) are anti-Semitic and prone to violence.<sup>60</sup> They conveniently assume that all Muslim militants who resort to violence are what they call the children of Ibn Taymiyya.<sup>61</sup> Perhaps under the influence of Simon and Benjamin’s distorted theological discovery, even the 9/11 Report scapegoats the thirteenth-century Ibn Taymiyya—a century when neither Israel, the United States, nor even a formidable Europe existed—as the source of modern Islamic extremism.<sup>62</sup>

Distorting Taymiyya’s and Qutb’s complex theological works and reducing their comprehensive teachings to the singular concept of anti-West and anti-Jewish military jihad, Simon and Benjamin construct the following even more absurd thesis: the military jihad against unbelievers is the most important pillar of the Islamic faith, even more important than the traditional five pillars of the declaration of faith, prayer, charity, fasting, and pilgrimage.<sup>63</sup> According to the authors, this obligation to engage in military jihad, which Taymiyya allegedly extracted from the scriptures, as if it were hidden, came to fruition when Qutb and other modern Islamic scholars provided the targets: Jews and the West.<sup>64</sup> This thesis claims to locate the mysterious loaded gun in search of a target, and argues that Islamic terrorism is an ideology that has nothing to do with social, political, or geopolitical grievances, but that it is an ideology to fight the unbelievers and by force impose the Islamic way of life on them.<sup>65</sup>

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58. BENJAMIN & SIMON, *supra* note 29, at 55 n.\*.

59. *Id.*

60. Ibn Taymiyya and Sayyid Qutb are revered theologians, but in the rich scholarly history of Islamic civilization, no single author has determined the course of events. The scholarly history of Islam is a constant struggle to go back to original sources. All Islamic political revolutions are towards the center and not away from it. Scapegoating any one or two scholars for modern ills of terrorism is a profound misreading of Islamic ethos. In Islam, all Muslim scholarly works are commentaries on the Islamic Basic Code consisting of the Quran and the Prophet’s Sunna. Non-Muslim scholarly works on the Basic Code have had almost no influence. In Islam, all Muslim and non-Muslim commentaries are dispensable, particularly if they veer off the track. In Islam, all roads lead back to the Basic Code. See generally Ali Khan, *The Reopening of the Islamic Code: The Second Era of Ijtihad*, 1 U. ST. THOMAS L.J. 341 (2003) (explaining that several distinct schools of law and jurisprudence have been derived from the same Basic Code comprised of the Quran and the Sunna).

61. BENJAMIN & SIMON, *supra* note 29, at 38-94. The authors list a number of Islamic theologians and reformers as the children of Ibn Taymiyya.

62. 9/11 REPORT, *supra* note 3, at 362.

63. BENJAMIN & SIMON, *supra* note 29, at 48-49.

64. This thesis has made its way into journalism. See Dan Murphy & Howard LaFranchi, *Special Briefing: How Radical Islamists See the World*, CHRISTIAN SCI. MONITOR, Aug. 2, 2005, available at <http://www.csmonitor.com/2005/0802/p04s01-wogi.htm>.

65. See David Brooks, *The Culture of Martyrdom*, ATLANTIC ONLINE, June 2002, <http://www.theatlantic.com/doc/prem/200206/brooks>, available at <http://www.netanyahu.org/culofmar.html>. David Brooks, a HTLit opinion-maker, also writes opinion pieces in the *New York Times* to further disseminate the Islamic ideology of violence.

While the Bush Administration distinguishes Muslim militants from the majority of Muslims, Simon and Benjamin refute the Administration's "politically correct" distinction meant to appease the Islamic world.<sup>66</sup> The Bush distinction states that although Islam is a peaceful religion and its followers are also predominantly peaceful, Muslim terrorists who constitute a minority are evil and are corrupting mainstream Islam. It is unclear whether the Bush Administration believes in the distinction or disingenuously draws it for pragmatic reasons. In its war on terror, the Bush Administration seeks support from Muslim states. The distinction provides a saving face for cooperating Muslim states and comforts Muslims in general. It would be a tactical mistake to connect terrorists with the essentialist violent nature of Islam. For in that case, friendly Muslim governments would refuse to cooperate with U.S. armed and intelligence forces that hunt, capture, and kill Muslim militants. Simon and Benjamin understand the utility of the distinction that the U.S. government draws for geopolitical reasons.<sup>67</sup> They nonetheless want to tell the "truth" that Muslim militants are the product of an essentialist violent theology.<sup>68</sup>

Whereas Simon and Benjamin dress their dubious thesis in veiled language, David Frum and Richard Perle, two neoconservative propagandists of the American Enterprise Institute, write the same thesis in a more robust prose aimed at winning over the general public. They argue that "militant Islam" is the cause of violence against Israel and the United States.<sup>69</sup> These authors see symbiotic connections between Muslim militants and the larger Islamic world, thus refusing to draw what they perceive is a "politically correct" but bad faith distinction between militant and moderate versions of Islam.<sup>70</sup> "And though it is comforting to deny it," they say, "all the available evidence indicates that militant Islam commands wide support, and even wider sympathy, among Muslims worldwide."<sup>71</sup> Frum and Perle ridicule the United States and world leaders who "dread pronouncing out loud the enemy's name."<sup>72</sup> The enemy, in their view, is Allah's radical Islam.

By shifting the spotlight from victims' grievances to victims' religion, Frum and Perle see Islam as the source of essentialist terrorism. They reject the notion that Muslim militants are fighting to liberate occupied Palestine from Israel's iron clutch or that they are fighting U.S. occupation of Iraq, a war that these authors actively advocated.

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66. BENJAMIN & SIMON, *supra* note 29, at 38-41.

67. *Id.* at 39.

68. *Id.* at 38-41.

69. FRUM & PERLE, *supra* note 28, at 41.

70. *Id.* at 42.

71. *Id.*

72. *Id.*

Instead, Frum and Perle argue that militant Islam is striving “to overthrow our civilization and remake the nations of the West into Islamic societies, imposing on the whole world its religion and its law.”<sup>73</sup> But to do so, Muslim militants have no plans to ignite an intellectual debate in which they would highlight Islam’s virtues and the West’s moral decadence. They are not planning seminars to propagate puritanical Islam. “To achieve [their] cosmic ambitions,” say Frum and Perle, “Islamic terrorists wish—and are preparing—to commit murder on a horrific scale.”<sup>74</sup> In militant Islam, the authors assert, lies an “aggressive” and “opportunistic” ideology, no less perverted than that of communism or Nazism.<sup>75</sup>

### C. *Addiction to Violence*

Relying on themes fabricated by the Lewis-Laqueur enclave, other HITLit propagandists inform the world that Islamic violence is sacred and addictive. Bruce Hoffman, whom the media has portrayed as a world-renowned terrorist expert, traces the historical evolution of the definition of terrorism to conclude that religious terrorists are unique.<sup>76</sup> While in his major HITLit work he does not single out Muslim militants as unique religious terrorists,<sup>77</sup> his writings as a whole are devoted to analyzing Islamic terrorism. Hoffman offers a basic distinction between “secular” and “religious” terrorists. He seems to have a soft corner for secular terrorists and daringly posits the thesis that originally secular terrorism has been “closely associated with the ideals of virtue and democracy.”<sup>78</sup> One essential characteristic of secular terrorists is that they use violence to obtain political objectives. Even ethno-nationalist/separatist terrorism, some inspired by Marxism, and some supported by the Soviet Union during the Cold War era, was secular in nature and driven by the ideals of territorial and economic independence.

The anti-colonial terrorism against the British for the creation of the state of Israel, according to Hoffman, is the example of idealistic, secular, and “successful” terrorism.<sup>79</sup> Furthermore, secular terrorists

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73. *Id.*

74. *Id.*

75. *Id.* at 42-43.

76. BRUCE HOFFMAN, *INSIDE TERRORISM* 13-44 (1998).

77. *See id.* at 15. Bruce Hoffman is the Director of RAND’s office in Washington, D.C. He has worked for the U.S. Department of Defense and the U.K.’s Ministry of Defense. He writes extensively in popular journals to disseminate his views and regularly appears on the U.S. electronic media to comment on terrorist events.

78. *Id.*

79. *Id.* at 56, 64-65. Hoffman’s doctoral dissertation at Oxford University explored more deeply Jewish terrorist activities against the British between 1939 and 1947. Hoffman also argues that the Palestinian Liberation Organization (PLO) has been a secular independence movement supported by the Soviet Union. Hoffman nonetheless notes a number of treacherous flaws in the PLO’s organization and operations. The PLO actively pursued the accumulation of capi-

are not indiscriminate killers on a massive scale because such carnage is “not consonant with their political aims and therefore [is] regarded as counterproductive, if not immoral.”<sup>80</sup> They terrorize in a measured manner to make political points, since their objective is not to kill but to realize political dreams.

In contrast to secular terrorism, Hoffman contends, religious terrorism is inspired by theological demand and not by political concerns. Religious terrorists see violence as a “sacramental act or divine duty.”<sup>81</sup> Whereas secular terrorists have an external audience, including aggrieved populations on behalf of which they are fighting against colonial or oppressive regimes, religious terrorists are their own audience. They speak to no human constituency but to God. They need no approval from external constituencies since they are spiritually self-sufficient. They can both perpetrate violence and justify it. And because they have no external audience, they are not restrained in the use of force. According to Hoffman, “[t]his sense of alienation also enables the religious terrorist to contemplate far more destructive and deadly types of terrorist operations.”<sup>82</sup> Another characteristic of religious terrorists is their open-ended definition of the enemy; they would strike anyone who in their fancy is God’s enemy.

While these core characteristics are common to religious terrorists of all faiths, Hoffman argues that they are “most closely associated with Islamic terrorist groups.”<sup>83</sup> He traces the roots of modern Islamic terrorism back to the 1979 Iranian revolution that overthrew the Shah and installed the Shia theocracy. The rhetoric that the Iranian revolutionaries used to justify and perpetuate the establishment of the Islamic state was unfailingly universal in that the concept of “One Muslim Community” is vital to the teachings of Islam, regardless of Shia/Sunni cleavage.<sup>84</sup> To this extent, Hoffman’s assessment is accurate. But from the universal rhetoric of Iranian revolutionaries, Hoffman concludes a remarkable non-sequitur: “Violence and coer-

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tal and wealth as a priority, which it did by mentoring terrorists for other nations. *Id.* at 80-84. The PLO has violated its declared commitments not to expand the theater of violence beyond occupied territories. *Id.* at 85.

80. *Id.* at 94.

81. *Id.*

82. *Id.* at 95.

83. *Id.* The other religious group that Hoffman highlights is “American Christian White Supremacists” who use religion for racist and anti-Semitic purposes. Such American groups, says Hoffman, are bound together by vilification of Jews; they believe in the conspiracy theory that Jews control the government, banks, and the media; and they aim at overthrowing the U.S. or Zionist Occupation Government. They also mistrust state and federal governments and are obsessed with racial purification. *Id.* at 111. Hoffman also briefly examines Jewish terrorism, primarily focusing on Rabbi Meir Kahane’s “virulent hatred of Arabs.” *Id.* at 100-01.

84. Ali Khan, *Constitutional Kinship Between Iran and the Soviet Union*, 9 N.Y.L. SCH. J. INT’L & COMP. L. 293, 297 (1988) (discussing “the bringing together of all Islamic societies to join them into one grand Islamic community”). The concept of “One Muslim Community” is contained in the word *Ummah*.

cion are not only permissible to achieve the worldwide spread of Islamic law, but a necessary means to this divinely sanctioned end.”<sup>85</sup> That the revolutionaries aim at spreading Islamic *law*, rather than Islamic *faith*, is a bizarre conclusion, in part because Islamic law to some extent has always been cultural and varies from nation to nation, and in part because Islamic law cannot exist without Islamic faith.

Hoffman’s view of Shia Islam is historically and theologically inaccurate because the Quran clearly states, “let there be no compulsion in religion.”<sup>86</sup> Assuming, for the sake of argument, that Hoffman’s claim that Shia Islam sanctions violence for its own dissemination is theologically or historically correct, the claim refutes Hoffman’s previous assertion that religious terrorism is an end in itself and that it pursues no objective goal. If Shia militants are using violence to “achieve the worldwide spread of Islamic law,” their violence is didactic, purposeful, a means to an end.<sup>87</sup> Ignoring these contradictions, Hoffman wants to have it both ways. On the one hand, he asserts that Muslim terrorists engage in violence for no other reason but to get a spiritual high.<sup>88</sup> But he also wants to alarm the world that Shia terrorists are vying for world domination.<sup>89</sup> It appears that he really wants to paint Iran-supported Shia militant groups, particularly the Hezbollah, which resists Israel in Lebanon, as illegitimate, cold-hearted killers.<sup>90</sup>

Despite his focus on Iran as the theological source of modern Islamic terrorism, Hoffman also examines Sunni terrorism and zeros in on the Hamas, an Islamic militant group that resists Israeli occupation in the West Bank and Gaza. He points out that Hamas is committed to the extinction of Israel and that its leaders employ grandiose rhetoric of exterminating Jews from Palestine. These Hamas “commitments” are consistent with Hoffman’s archetypal religious terrorist who is always over-inclusive in defining the enemy. Just like the Iranians, says Hoffman, Hamas also wishes to establish an Islamic state in occupied Palestine. Hoffman seems to believe that Muslims who wish to establish an Islamic state are inherently prone to violence.

In discussing suicide bombings that Hamas has introduced in the Israeli-Palestinian conflict, Hoffman describes religious motives for which young Palestinian men and women die and kill Israelis. Embracing the HITLit’s favorite thesis of ridicule, Hoffman argues that suicide bombers embrace death for pleasures of the afterlife, including alcohol and sex with virgins that Islam promises to martyrs.<sup>91</sup> This

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85. HOFFMAN, *supra* note 76, at 96.

86. *Quran* 2:256.

87. HOFFMAN, *supra* note 76, at 96.

88. *Id.* at 99-100.

89. *See id.* at 96.

90. *See id.* at 96-97.

91. *Id.* at 99-100.

ridiculing thesis discounts Israeli occupation as the primary source of violence in the occupied territories. It ignores a simple fact that many Palestinians kill and die because occupying soldiers in Gaza and the West Bank have brutalized their families. Ignoring grievances, Hoffman goes for a deeper explanation. It is the attraction of getting drunk and having sex in the afterlife, he concludes, which motivates religious terrorists to die and kill.<sup>92</sup> This caricatured view of Islam is most surprising, coming from a “world-renowned” terrorist expert who has free access to U.S. media, the U.S. Defense Department, and academic circles.

Jessica Stern<sup>93</sup> is another enclave author. She dutifully toes the line that Laqueur, Benjamin, Simon, and Hoffman have drawn in the sand. She uses vivid language to describe Muslim militants as irrational pursuers of violence. The titles of her essays and articles—*Caliphate of Terror*, *Terrorism’s New Mecca*, and *Explaining the Addiction to Jihad*—reveal the deeper connections she wants to interweave between violence and the Islamic faith.<sup>94</sup> Affirming the HITLit thesis, Stern argues that Muslim militants are not just fighting for political goals, but they are responding with anger to “values like tolerance and equal rights for women that are supremely irritating to those who feel left behind by modernity.”<sup>95</sup> This picture of the Muslim militant as the guardian of backwardness minimizes the value of solving geopolitical oppressions and occupations—for the leopard cannot change his spots—and emphasizes the cultural re-engineering of Islamic societies.

Stern’s explosive language of smear, along with that of the other HITLit authors, is highly influential because such language causes a visceral reaction among readers and listeners. As Said observed, terrorism has “spawned uses of language, rhetoric and argument that are frightening in their capacity for mobilizing opinion, gaining legitimacy and provoking various sorts of murderous action.”<sup>96</sup> The unnecessary but lethal war in Iraq, which HITLit authors actively promoted, demonstrates that the use of murderous language was highly purposeful.

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92. *Id.*

93. Jessica Stern is a lecturer at Harvard University’s John F. Kennedy School of Government. Under the Clinton Administration, Stern served at the National Security Council where she invented policies designed to reduce the threat of nuclear smuggling and terrorism with regard to Russia. She has written extensively on Muslim militancy.

94. Jessica E. Stern, *Caliphate of Terror*, HARV. MAG., July-Aug. 2004, at 26, available at <http://www.harvardmagazine.com/on-line/070480.html> [hereinafter *Caliphate of Terror*]; Jessica Stern, *Explaining the Addiction to Jihad*, DAILY STAR (Lebanon), Feb. 5, 2004, available at [http://www.dailystar.com.lb/article.asp?edition\\_ID=10&article\\_ID=197&categ\\_id=5](http://www.dailystar.com.lb/article.asp?edition_ID=10&article_ID=197&categ_id=5) [hereinafter *Addiction to Jihad*]; Jessica Stern, *Terrorism’s New Mecca*, GLOBE & MAIL, Nov. 28, 2003, at A23, available at [http://www.ksg.harvard.edu/news/opeds/2003/stern\\_mecca\\_gm\\_112803.htm](http://www.ksg.harvard.edu/news/opeds/2003/stern_mecca_gm_112803.htm).

95. *Addiction to Jihad*, *supra* note 94.

96. BLAMING THE VICTIMS, *supra* note 2, at 149.

Introducing a little twist, Stern concedes that a Muslim militant group might start with a moral purpose, but once in business the group becomes “professional.”<sup>97</sup> Muslim terrorist organizations, Stern stresses, “alter their missions in many ways. Some find a new mission when the old one is completed. Some broaden the mission to make it attractive to a wider variety of potential recruits.”<sup>98</sup> In this sense, jihad is an end in itself and Muslim terrorists are no longer fighting just for aggrieved populations. They resent modernity, Western domination, and humiliation. After interviewing Muslim militants,<sup>99</sup> Stern pretends to anchor her findings in facts and empirical knowledge that she correctly believes is more respectable than mere analytical inferences. But empirical knowledge is no conversational quackery. It is not talking to a few chosen terrorists. Undeterred by the frivolity of her methodology, Stern is determined to “find” something hidden in the terrorists’ hearts. Fusing jihad with violence, she shares with the readers that “one of the most chilling things [terrorists] have told me is that jihad becomes addictive.”<sup>100</sup> This addiction to violence is so compelling and irresistible that “any action becomes acceptable, including cooperating with enemy terrorist groups and criminal rings, killing innocent Muslims, or attacking friendly forces.”<sup>101</sup>

Just like Hoffman, Stern asserts that religious terrorists are more violent than their secular counterparts.<sup>102</sup> As an alarmist, Stern warns that Muslim militants are also more likely to use weapons of mass destruction.<sup>103</sup> The ultimate terrorists are thus Muslim fanatics<sup>104</sup> who, addicted to jihad, would kill for the sake of killing, and the more they can kill, the more their addiction is deepened, until they can kill

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97. *Addiction to Jihad*, *supra* note 94.

98. *Id.*

99. Stern interviewed “retired” terrorist, Firdous Syed, who once fought for the liberation of Kashmir. JESSICA STERN, *TERROR IN THE NAME OF GOD* 134-37 (2003). According to Stern, the retired terrorist realized the “spiritual error” of helping the Muslim community. *Id.* at 137. He seemed to reject the faith of Islam, since it failed to make him understand the sufferings of all peoples. This retired terrorist admitted that Muslim militants initiated violence and destruction in Kashmir. He made the sweeping conclusion that “[w]ith each generation Islamic fundamentalism becomes uglier.” *Id.* at 136. He also said, “[t]o hate is venom. When you hate, you poison yourself. This is the typical mentality of the fundamentalist movement today.” *Id.* at 137.

100. *Caliphate of Terror*, *supra* note 94.

101. *Id.*

102. JESSICA STERN, *THE ULTIMATE TERRORISTS* 8, 17 (1999). Hoffman’s *Inside Terrorism* and Stern’s *The Ultimate Terrorists* were published in close proximity in time. Their discussion of the historical evolution of the definition of terrorism is similar, as is their treatment of Muslim and Christian terrorist groups. HOFFMAN, *supra* note 76, at 13-44, 88, 111-20; STERN, *supra* at 11-30, 86-88.

103. In 1999, long before the U.S. invasion of Iraq, Stern made a case that Iraq possessed weapons of mass destruction, that it would likely use them perhaps against Israel or the United States, and that Iraq sponsored terrorism outside its borders. STERN, *supra* note 102, at 107-09. These are the same arguments that President Bush made to justify the invasion.

104. Stern not only singles out ad hoc groups of radical Muslim fundamentalists, but also “Christian Patriots” as the most dangerous in that they would not hesitate to use weapons of mass destruction. STERN, *supra* note 102, at 85-86.

with massive doses of chemical or biological weapons.<sup>105</sup> This doomsday scenario is probable because Muslim fanatics possess the right recipe: they can obtain the weapons of mass destruction, they are addicted to violence, they are motivated by revenge, and they believe that God is with them.<sup>106</sup> As is common in the HITLit enclave, Stern also believes that pure Islam is inherently violent. She compares “today’s violent Islamist extremists” with Muslim assassins of past centuries (1090-1275) and concludes that a common thread binding these killers is their desire “to spread a purified version of Islam.”<sup>107</sup> To make matters sound worse, Stern further insists that this purist, violent, and dangerous conception of Islam is infested with greed, power, and attention.<sup>108</sup> According to Stern, Muslim militants are fighting to promote and defend a “backward” way of life, and not to reverse occupations, settlements, theft of land, or military hegemony.

Promoting the enclave theme that Islam is a violent religion, Michael Ledeen,<sup>109</sup> a relatively less erudite but pungent HITLit author, draws his inspiration from Walter Laqueur, whom he calls “one of the most astute analysts of terror,”<sup>110</sup> and from Bernard Lewis, whom he describes as “the greatest Western expert on Islam.”<sup>111</sup> Ledeen alleges that Islam draws an ideological border between the world of Islam and the rest of the world; one is sacred and the other is profane.<sup>112</sup> This allegation is problematic to the extent that Islam treats Judaism and Christianity with high respect and does not consider these faiths as profane.<sup>113</sup> Assuming that Ledeen’s charge is accurate, the distinction that Islam allegedly draws is not unique in that all ethical and moral systems draw lines between adherents and non-adherents. What Ledeen asserts further, however, contributes to the HITLit thesis that Islam is inherently violent and its followers are accordingly addicted to violence. Whereas Jessica Stern identifies puri-

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105. *Id.* at 48-68; *Addiction to Jihad*, *supra* note 94.

106. STERN, *supra* note 102, at 8, 9, 80.

107. *Id.* at 15.

108. Building on this assumption, Stern argues that suppressive states should “sow discord, confusion, and rivalry among terrorists and between terrorists and their sponsors.” STERN, *supra* note 99, at 282.

109. Michael Ledeen was the first executive director of the Jewish Institute for the National Security Affairs, an organization that describes him as “one of the world’s leading authorities on contemporary history and international affairs.” Right Web, <http://rightweb.irc-online.org/ind/ledeen/ledeen.php> (last visited Oct. 30, 2005). Ledeen actively supports a regime change in Iran and has co-founded another organization called Coalition for Democracy in Iran. As of 2005, Ledeen is a resident scholar at the American Enterprise Institute. The Bush Administration has regularly consulted Ledeen for advice on foreign affairs. Jim Lobe, *Veteran Neocon Adviser Moves on Iran*, [http://www.atimes.com/atimes/Middle\\_East/EF26AK03.html](http://www.atimes.com/atimes/Middle_East/EF26AK03.html) (last visited Oct. 30, 2005).

110. LEDEEN, *supra* note 18, at 2.

111. *Id.* at 19.

112. *Id.*

113. *Quran* 2:1-3 (describing that the Quran is a book of guidance for those who believe in this revelation and the revelation before, a reference to Old and New Testaments of the Bible).

tanical Islam as the source of violence, Michael Ledeen's Islam is "bloodthirsty" in all its forms and sects.<sup>114</sup> He quotes Elias Canetti,<sup>115</sup> whom he calls "one of the great thinkers of the last century," to assert that Islam is a religion of war.<sup>116</sup> He quotes Bernard Lewis to make an unsupportable claim that there exists only one verse in the Quran that praises peace and peacemakers, implying that the rest of the Quran supports warfare.<sup>117</sup> This war-mongering ideology of Islam, contends Ledeen, forces Muslim militants, Shia and Sunni, to hate and kill Jews and Christians.<sup>118</sup> Just like other HITLit authors, Ledeen does not believe that Muslim militants are fighting to reverse theft of land and resources, settlements, invasions, and occupations.

#### D. Denial of Grievances

The denial of others' suffering is perhaps a common defensive strategy. In offering intellectual profundity and psychoanalytical explanations, HITLit authors, who rightfully resent Holocaust denial and call it bigotry,<sup>119</sup> vociferously deny that Muslim militants are fighting for concrete grievances such as theft of land, hegemony, and occupation. By painting Muslim militants as essentially violent crazies, having "religious grievances,"<sup>120</sup> who are constantly looking to murder innocent victims, the HITLit minimizes the importance of political and geopolitical objectives for which Muslim militants are fighting. As mentioned above, the metaphor of addiction that Jessica Stern uses to describe Islamic militancy captures the HITLit linkage between essence and excuse. Essence comes from within, the excuse from without. Essence propels action, and excuse provides the exterior rationale. That Muslim militants are fighting to restore human dignity of the Palestinian people who have been dispossessed of their properties is an excuse. That Muslim militants are fighting to participate in the Algerian democratic process from which they are forcibly

114. LEDEEN, *supra* note 18, at 20; STERN, *supra* note 99, at 68.

115. Elias Canetti (1905-1994), a Noble Prize Laureate in Literature, was a Jewish/German/English novelist. He was, however, no expert in Islamic history, theology, or law.

116. LEDEEN, *supra* note 18, at 19-28.

117. *Id.* at 19-20. There are several verses that encourage Muslims to stop fighting when the enemy has stopped fighting; so either Ledeen misquoted Lewis, or Lewis was mistaken. *See, e.g., Quran* 2:190 ("Fight in the cause of Allah those who fight you but do not transgress limits; for Allah loveth not transgressors."); *id.* 2:193 ("And fight them on until there is no more persecution and the religion becomes Allah's. But if they cease, let there be no hostility except to those who practice oppression."); *id.* 8:61 ("But if the enemy incline towards peace, do thou (also) incline towards peace, and trust in Allah: for He is the One that heareth and knoweth (all things)."); *id.* 4:90 ("Therefore if they withdraw from you but fight you not, and (instead) send you (guarantees of) peace, then Allah hath opened no way for you (to war against them)."); *id.* 4:90 ("Except those who join a group between whom and you there is a treaty (of peace), or those who approach you with hearts restraining them from fighting you or fighting their own people.")

118. LEDEEN, *supra* note 18, at 1-52.

119. DERSHOWITZ, *supra* note 31, at 210-11; LAQUEUR, *supra* note 34, at 151.

120. STERN, *supra* note 99, at 3.

excluded is an excuse. That Muslim militants are fighting to resist U.S. occupation of Iraq is an excuse. That they would fight anyway against anyone is their spiritual essence. Their compulsion to fight is inexhaustible. Muslim militants' need for violence is unlimited.

Driven by this profound essence, the HITLit maintains, Muslim militants continue to find excuses to feed their murderous instincts and when none are left, they begin to manufacture them. This compulsive behavior to seek violence is no different from that of a cocaine-addict who needs the fix come rain or shine.<sup>121</sup> Journalist David Brooks, a HITLit disseminator, articulates the charge as follows: "Suicide bombing is the crack cocaine of warfare . . . it intoxicates the people who sponsor it. It unleashes the deepest and most addictive human passions—the thirst for vengeance, the desire for religious purity, the longing for earthly glory and eternal salvation."<sup>122</sup> This is perfect imaging of the essentialist terrorist and consummate denial of the terrorist's personal and group grievances. Brooks denies that a Palestinian suicide bomber dies and kills because Israeli tanks have decimated her family or her village.

The HITLit's essentialist terrorism benefits suppressive entities, such as Israel, for it diverts attention from oppression to resistance. Instead of condemning the occupier, it finds faults with the occupied. It minimizes the significance of injustice but highlights the cruelty of violence against injustice. It stands the issue on its head. It supports Israeli governments when they come under severe attack for their treatment of the Palestinians. It disagrees with the world community when it condemns Israel's extra-judicial killings of Palestinian political and spiritual leaders. It blasts the International Court of Justice when it declares that the Separation Wall that Israel has built is contrary to international law. It finds faults with human rights groups that are highly critical of the mistreatment of Palestinians at checkpoints. It dismisses the grievances that Palestinian militants invoke to justify their armed resistance. It pollutes the air of sympathy for the Palestinians. It even criticizes Israeli allies, including the United States, when they muster the courage to show disapproval of Israeli mistreatments of an occupied population. It charges the critics of Israel as anti-Semites.

The essentialist terrorism is designed to minimize the impact of these injustices. If the HITLit can successfully persuade the world

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121. The American Psychiatric Association defines addiction as a "chronically relapsing disorder" that exhibits three characteristics "(a) compulsion to seek and take the drug, (b) loss of control in limiting intake, and (c) . . . a negative emotional state when . . . the drug is [unavailable]." Christine Farrenkopf, *Cocaine and the Brain: The Neurobiology of Addiction*, SERENDIP, <http://serendip.brynmawr.edu/bb/neuro/neuro01/web1/Farrenkopf.html> (last visited Oct. 30, 2005).

122. Brooks, *supra* note 65.

that Muslim militants fighting oppressive infrastructure in occupied Palestine or Iraq are crazies who need violence to satisfy their essence, then the world's focus might begin to shift toward the condemnation of compulsive terror. After all, the HITLit's strategy is to shift the focus from oppression to terror. It is unlikely that the world would simply forget or forgive Israeli atrocities perpetrated on the Palestinians, but it would begin to sympathize with the argument that no final settlement of the Palestinian problem can be reached unless crazies are first completely crushed.

The HITLit's denial of grievances is often accompanied by a related phenomenon, which may be called loss exceptionalism. All injury to noncombatants, including civilians, is unjustified. However, suppressive states minimize the injury inflicted on an aggrieved population and highlight a similar injury suffered by a suppressive state's own civilians. Palestinians often complain that the Western media allocate much less coverage to the injury they receive from Israeli occupying soldiers than to the injury that Muslim militants cause to Israeli civilians, which is splashed on the front pages of major newspapers.<sup>123</sup> Likewise, the September 11 attacks on the United States in which two huge buildings collapsed and around 3,000 civilians died, though shocking and reprehensible, have nonetheless been immortalized as an exceptional loss, one that changed the world. This is true even though since then, the U.S. armed forces have destroyed scores of buildings and houses, and killed many thousands of innocent civilians in wars against Afghanistan and Iraq. A skewed measuring of loss and injury, though natural to some extent, as each injured group highlights its own injury, adds to the logic of violence.

### III. HITLIT INFLUENCE OVER POLITICAL RHETORIC

The influence of HITLit theses over political rhetoric is vivid and tangible. Speechwriters for the U.S. president and cabinet secretaries employ terrorism vocabulary that promotes and voices HITLit ideas. The U.S. official political rhetoric paints Muslim militants as heartless, immoral murderers and worse. The rhetoric is designed to defend aggressive policies against Muslim militants both at home and abroad. Official words prepare the public to think about Muslim militants as an unprincipled enemy who relies on a decadent version of Islam to attack the West's modern, civilized, and innocent way of life.

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123. Tarek Beydoun, *Group Promotes Accuracy in Media*, ARAB AM. NEWS, May 28, 2005, at 15, available at <http://www.arabamericanews.com/newsarticle.php?articleid=2477> (“[T]he networks covered the Israeli deaths at a much higher rate than the Palestinians, when the reality is that many more Palestinians have been killed. Is Palestinian life worth less?”).

President Bush employs the word “evil” to describe Muslim militants.<sup>124</sup> Most often in his speeches, he uses the word evil as a noun and not as an adjective, implying the character and the internal formation of Muslim militants, and not their acts.<sup>125</sup> Muslim militants are therefore inherently evil, and not merely because they commit evil acts. In his speech at the 2002 Graduation Exercise of the United States Military Academy at West Point, President Bush captured the morality of the war on terror in the following words: “We are in a conflict between good and evil, and America will call evil by its name.”<sup>126</sup> Muslim militants are evil, the president said in this speech, because they target innocent civilians for murder and commit brutality against women.<sup>127</sup> The charge that Muslims oppress women, a well-accepted thesis in the Western world, accentuates the moral depravity of “puritanical” teachings of Islam. It furthers the HITLIt thesis that Muslim militants resort to violence because they oppose universal values of the modern world.

The focus of political rhetoric is not limited to “crazy militants.” It also highlights the murderous ideology<sup>128</sup> that supposedly inspires Muslim militants to die and kill, a theme that the more radical HITLIt authors, such as Perle and Frum, advocate.<sup>129</sup> Speaking to soldiers at Fort Bragg, President Bush repeated the HITLIt thesis in the following words: “The terrorists who attacked us and the terrorists we face murder in the name of a totalitarian ideology that hates freedom, re-

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124. PETER SINGER, *THE PRESIDENT OF GOOD AND EVIL: THE ETHICS OF GEORGE W. BUSH* 1 (2004).

125. *Id.* at 2. In his speeches between the time he assumed the presidency and June 16, 2003, President Bush “use[d] the word ‘evil’ as a noun far more often than he use[d] it as an adjective—914 noun uses as against 182 adjectival uses.” *Id.* Singer concludes that even if Bush’s moral language is taken seriously at face value, his policies do not measure up to what he is saying. *Id.* at 224-25.

126. President George W. Bush, Graduation Speech at West Point (June 1, 2002), available at <http://www.whitehouse.gov/news/releases/2002/06/20020601-3.html>. Although the president did not use the words “Muslim militants” in his speech, the reference is obvious. The part of the speech that articulates the concept of good and evil runs as follows:

Some worry that it is somehow undiplomatic or impolite to speak the language of right and wrong. I disagree. (Applause). Different circumstances require different methods, but not different moralities. (Applause). Moral truth is the same in every culture, in every time, and in every place. Targeting innocent civilians for murder is always and everywhere wrong. (Applause). Brutality against women is always and everywhere wrong. (Applause). There can be no neutrality between justice and cruelty, between the innocent and the guilty. We are in a conflict between good and evil, and America will call evil by its name. (Applause). By confronting evil and lawless regimes, we do not create a problem, we reveal a problem. And we will lead the world in opposing it. (Applause).

*Id.*

127. *Id.*

128. FRUM & PERLE, *supra* note 28, at 48 (“murderous hatred”); *id.* at 58 (“Islam as an ideology”); *id.* at 60 (“murderous rage”); *id.* at 97 (“extremist Islamic ideology”). It is unclear what these terms mean. They could refer to Islam, puritanical Islam, a perverted version of Islam, or Islamic fundamentalism. Whatever their specific reference, they refer generally to Islam.

129. See FRUM & PERLE, *supra* note 28.

jects tolerance and despises all dissent.”<sup>130</sup> This was a reference to militant Islam that Frum and Perle and other HITLit authors have espoused in their books and articles. Furthermore, the president also embraced HITLit ideas that essentialist terrorists murder the “innocent,” despise free societies, and wish “to remake the Middle East in their own grim image of tyranny and oppression.”<sup>131</sup> This portrait of the essentialist terrorist shifts the entire blame to the teachings of militant Islam as portrayed in the HITLit, and it refuses to recognize that Muslim militants might be fighting for less grandiose causes, such as occupation, theft of land, settlements, home demolitions, or grief over the “collateral damage” that occupation forces have caused in Tikrit, Baghdad, or Falluja.<sup>132</sup>

Believing that Muslim militants resort to violence because they are essentially evil, Secretary of State Condoleezza Rice embraces the HITLit thesis of grievances denial. “When are we going to stop making excuses for the terrorists and saying that somebody is making them do it? No, these are simply evil people who want to kill . . . . This isn’t about some kind of grievance. This is an effort to destroy, rather than to build.”<sup>133</sup> However, she does not advocate that Muslim militants are indeed inspired by Islam. Instead, she embraces what the HITLit describes as “politically correct” language. Namely, that Muslim militants “want to kill in the name of a perverted ideology that really is not Islam, but they somehow want to claim that mantle to say that this is about some kind of grievance.”<sup>134</sup>

The HITLit theses have begun to shape some foreign leaders’ political rhetoric as well. Reacting to the July 2005 bombings of London, Prime Minister Tony Blair stated, “It is important . . . that the terrorists realize our determination to defend our values . . . is greater than their determination to . . . impose their extremism on the

130. President George W. Bush, Speech at Fort Bragg (June 28, 2005), available at <http://www.cbsnews.com/stories/2005/06/28/national/main704936.shtml>. Such rhetoric is not confined to the Bush Administration. Senator John McCain used similar rhetoric in condemning the London attacks in July of 2005. He referred to “this cruel and despicable enemy” who wants to “destroy not only America but the West and our values and everything we stand for.” *McCain Shares His Thoughts on London Attacks* (MSNBC television broadcast July 7, 2005), available at <http://www.msnbc.msn.com/id/8499086/>.

131. President George W. Bush, Speech at Fort Bragg (June 28, 2005), available at <http://www.cbsnews.com/stories/2005/06/28/national/main704936.shtml>.

132. According to one study done by the United Kingdom’s leading medical journal, over 100,000 civilians have been killed in Iraq as a direct consequence of the U.S. invasion. Les Roberts et al., *Mortality Before and After the 2003 Invasion of Iraq: Cluster Sample Survey*, LANCET, Oct. 29, 2004, available at <http://image.thelancet.com/extras/04art10342web.pdf>. This figure excludes Falluja, a city where civilian casualties were extremely high. *But see* Editorial, *The Lancet’s Politics*, WASH. TIMES, June 23, 2005, at A20, available at 2005 WLNR 9937363 (stating that the death figures in Iraq were politically motivated).

133. *Newsmaker: Condoleezza Rice, NewsHour with Jim Lehrer* (PBS television broadcast July 28, 2005), available at [http://www.pbs.org/newshour/bb/white\\_house/july-dec05/ric\\_7-28.html](http://www.pbs.org/newshour/bb/white_house/july-dec05/ric_7-28.html).

134. *Id.*

world.”<sup>135</sup> This characterization of violence (assuming that the bombings were indeed the work of Muslim militants, for which no credible proof existed at the time of Blair’s statement) casts the bombing in grandiose terms. When translated, the statement means: Muslim militants bombed London because they desire to impose an extreme, purist version of Islam on the world. This characterization, which appears to be a non-sequitur, provides only the remotest accusatory logic to the effect that Muslim militants foolishly believe that the world, or London, would embrace puritanical Islam through sheer fear. It declines to acknowledge more mundane explanations for the bombings, such as that the militants were unhappy about the United Kingdom’s participation in the U.S. invasion of Iraq. It completely ignores Osama bin Laden’s famous statement: “If you bomb our cities, we will bomb yours.”<sup>136</sup>

While political leaders continue to equate Islamic violence to Islam’s puritanical rooting, some U.S. military generals have taken the rhetoric even further. After the September 11 attacks, some American military generals launched a campaign of propaganda, using religious, national, and racial contempt to prepare soldiers to fight hard in Afghanistan and Iraq, and to win the support of Christian conservatives who see Islam as a global threat to notions of goodness and American power. General William Boykin, who believes God chose Bush for the White House to fight evil,<sup>137</sup> attacked Islam in the clearest possible words. Speaking to a congregation of Baptists in Florida, the general narrated the story of a Muslim warlord in Somalia, who had boasted that Allah (God) would shield him from American soldiers. “I knew . . . my God was bigger than his. I knew that my God was a real God, and his was an idol,” General Boykin said.<sup>138</sup> This religious contrast was drawn to persuade Christian conservatives that the war on terror is against the false faith of Islam. This was not just a one-time slip of the tongue. Beginning in January 2002, General Boykin traveled the nation in dress uniform, addressing religious-oriented events, staging a slideshow, displaying pictures of Osama bin Laden and Saddam Hussein, and saying to the audience, “Satan wants

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135. Michael Barone, *Cultures Aren’t Equal*, U.S. NEWS & WORLD REP., Aug. 15, 2005, at 26, available at 2005 WLNR 12604252.

136. Robert Fisk, *Terror in London: The Reality of This Barbaric Bombing*, INDEP. (London), July 8, 2005, at 33, available at 2005 WLNR 10706248. Osama bin Laden’s Newtonian terrorism does not waiver HITLIt authors. Suppressing political leaders who disseminate the HITLIt thesis continue to believe that the coalition of suppressive states does not target civilians, but the coalition of Muslim militants does. Stated differently, the coalition of suppressive states is fighting with terrorists within the bounds of law, whereas the coalition of terrorists has no such legal constraints.

137. Bob Herbert, *Shopping for War*, N.Y. TIMES, Dec. 27, 2004, at A17, available at 2004 WLNR 14878671.

138. *AU Urges Defense Dept. to Send Religious Right General Boykin Packing*, CHURCH & ST., Oct. 1, 2004, at 20, available at 2004 WLNR 11602157.

to destroy this nation, he wants to destroy us as a nation, and he wants to destroy us as a Christian army.”<sup>139</sup>

Boykin’s speeches drew unprecedented media attention for a number of reasons. He was the general charged with hunting Osama bin Laden and reforming Abu Ghraib prison. He also allied himself with the Faith Force Multiplier, a conservative group that advocates applying military principles to evangelism. Boykin’s sermons were perhaps designed to cheer American soldiers and their families into believing that they were fighting a dangerous faith, Islam, and that they were destined to prevail. It is unclear, however, how Boykin’s speeches were supposed to affect Muslims who serve in the U.S. armed forces.<sup>140</sup>

The demonization of Muslim militants and the concomitant rhetoric continues to flow into the news, affirming the fact that the HITLit has penetrated deeper into the military. During a panel discussion in San Diego, General James Mattis, who commands the First Marine Division in Iraq fighting insurgents and who also fought in Afghanistan, said he relished the opportunities to kill people.

Actually, it’s quite fun to fight . . . you know. It’s a hell of a hoot . . . . You go into Afghanistan, you’ve got guys who’ve slapped women around for five years because they didn’t wear a veil. You know, guys like that ain’t got no manhood left anyway, so it’s a hell of a lot of fun to shoot that.<sup>141</sup>

The general’s message replays the HITLit thesis that puritanical Islam, which the Taliban was allegedly enforcing, produces impotent fighters who assert their manhood through the oppression of women. It also prescribes that such men may be eliminated without any moral quandary.

Political speeches made in the United States demonstrate that the HITLit theses have penetrated deeply into political consciousness. The public has been mobilized into believing that Islam preaches violence and that its followers hate the United States for its glory and dominance. The next step is to wipe out Muslim terrorists, dismantle governments that pay stipends to families of suicide bombers, forcibly change Islamic cultures, shut down parochial Islamic schools, and put an entire population of one billion Muslims on the defensive.

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139. Sidney Blumenthal, *The Religious Warrior of Abu Ghraib*, GUARDIAN, May 20, 2004, available at <http://www.guardian.co.uk/comment/story/0,,1220622,00.html>.

140. Commenting on Boykin’s statements, Secretary of Defense Donald Rumsfeld remarked that individuals are entitled to their views as “[w]e are free people.” *Rumsfeld Defends General Who Commented on War and Satan*, ASSOCIATED PRESS, Oct. 17, 2003, available at <http://www.cnn.com/2003/US/10/16/rumsfeld.boykin.ap>. However, on the recommendation of the Pentagon Inspector General, appropriate corrective action was taken against Boykin. Douglas Jehl, *Report Urged Action Against General for Speeches*, N.Y. TIMES, Mar. 4, 2005, at A18, available at 2005 WLNR 3286779.

141. *Rumsfeld Gives Press Briefing—Part 1*, CNN NEWS, Feb. 3, 2005, available at 2005 WLNR 1513355.

#### IV. HITLIT PROPOSALS TO COMBAT MUSLIM MILITANCY

The HITLIT proposes new approaches to combat Islamic militancy. Most proposed solutions carry an aura of lawlessness. Lawless responses—such as illegal war, extrajudicial killings, detention without trial, degrading treatments, torture, the suspension of client-attorney privilege, and renditions—to combat Muslim militancy are justified on the theory that essentialist terrorists are unique. It is asserted that conventional law-based approaches would not work. Karl Rove, President Bush's top advisor, summed up the new approach in the following words: "Conservatives saw the savagery of 9/11 and the attacks and prepared for war; liberals saw the savagery of the 9/11 attacks and wanted to prepare indictments and offer therapy and understanding for our attackers."<sup>142</sup> Rove's remarks ignited a huge controversy. Liberals insisted, though defensively, that they were not soft. The liberals' defensiveness has further empowered the HITLIT idea that "indictments" of militants and "understanding" of causes of their militancy are woefully inadequate responses to Islamic terrorism.

Before September 11, the United States employed the criminal justice approach to capture, indict, and punish terrorists both at home and abroad. For example, Congress enacted a broad hostage-taking statute to punish terrorists who seize any person, not just U.S. nationals, whether inside or outside the United States, to compel the behavior of a third person or a governmental organization.<sup>143</sup> The statute impinges upon the sovereignty of foreign states and asserts criminal jurisdiction over hostage takers who perpetrate their crime on foreign soil against foreign nationals. In light of this statute, the FBI engaged in international abductions to capture terrorists abroad.<sup>144</sup> Despite its jurisdictional overreaching, the statute nonetheless offers a legal approach to dealing with terrorists, an approach that assures a traditional trial within the framework of criminal justice restraints and defendants' rights. U.S. courts upheld the validity of this overreaching statute on the theory that if a foreign state is unwilling or unable to prosecute terrorists, "it is left to the world community to respond and prosecute the alleged terrorists."<sup>145</sup>

The HITLIT authors, such as Ruth Wedgwood, seemed unsatisfied with the criminal justice approach with its inherent restraints and

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142. Raymond Hernandez, *Democrats Demand Rove Apologize for 9/11 Remarks*, N.Y. TIMES, June 24, 2005, at A16, available at 2005 WLNR 9981138.

143. See 18 U.S.C. § 1203(a) (2000).

144. Under this statute, Fawaz Yunis, a Lebanese who hijacked a Jordanian airline, was arrested abroad in an FBI sting operation and brought to the United States. U.S. v. Yunis, 681 F. Supp. 896, 898, 903, 905-06 (D.D.C. 1988).

145. *Id.* at 907.

rights.<sup>146</sup> They urged the United States to adopt more aggressive policies, such as the ones that Israel has used in combating Palestinian resistance and terrorism.<sup>147</sup> Even though they had been arguing the case for some time, the September 11 attacks furnished a perfect opportunity for HITLIt authors to offer the closing argument.<sup>148</sup> A sympathetic Bush Administration, baffled by the enormity of the attacks, succumbed to the HITLIt advocacy. It embarked upon “a new paradigm”<sup>149</sup> that would generate increasingly lawless policies, as one lawless policy triggered another, and yet another. Soon, the Administration was engaged in a questionable war in Iraq. It defied world opinion, mocked the United Nations, invaded Iraq, and ignored the U.N. Charter rules on the use of force.<sup>150</sup> Ignoring prohibitions on extra-judicial killings, it began to murder suspected terrorists, even if they were U.S. citizens.<sup>151</sup> Muslim prisons were set up in Iraq, Afghanistan, Guantánamo Bay, and at secret places where detainees were interrogated contrary to customary and treaty-based international law.<sup>152</sup> Some detainees were rendered to friendly Muslim nations for interrogation by means of torture.<sup>153</sup> In Iraq, Muslim prisoners were tortured in a U.S.-operated prison.<sup>154</sup> At home, hundreds of Muslim immigrants and citizens were detained without any

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146. Ruth Wedgwood, *After September 11th*, 36 NEW ENG. L. REV. 725, 727 (2002) (arguing that “lawyers have a vested interest” in the criminal justice approach, but that war is more appropriate to deal with Muslim terrorists).

147. BENJAMIN & SIMON, *supra* note 29, at 406.

148. See John C. Yoo & Will Trachman, *Less than Bargained for: The Use of Force and the Declining Relevance of the United Nations*, 5 CHI. J. INT’L L. 379 (2005) (arguing that national security concerns may force the United States to ignore the U.N. Charter rules on the use of force).

149. Memorandum from Alberto R. Gonzales to the President, *supra* note 25 (arguing that the September 11 attacks force upon the United States a new paradigm, under which old laws, such as the Geneva Conventions on the law of war, are no longer appropriate).

150. U.N. Charter art. 2, para. 4.

151. Dana Priest, *CIA Killed U.S. Citizen in Yemen Missile Strike; Action’s Legality, Effectiveness Questioned*, WASH. POST, Nov. 8, 2002, at A01, available at <http://www.commondreams.org/headlines02/1108-05.html>; see also Alan Dershowitz, *They Don’t Have to Wear Combs to Be a Fair Target*, TIMES (London), Apr. 22, 2004, available at 2004 WLNR 5495079.

152. Vanessa Blum, *JAGs Fought DOJ on Terror Memo*, LEGAL TIMES, Aug. 1, 2005, available at <http://www.kuwaitifreedom.org/media/pdf/Legal%20Times%20August%201,%202005.pdf> (“In a series of memos . . . the military lawyers predicted that adopting more aggressive interrogation techniques to fight the war on terror would undermine America’s relationships with allies, hurt the reputation of the military, and possibly put U.S. troops in harm’s way.”).

153. Liaquat Ali Khan, *Friendly Renditions to Muslim Torture Chambers*, COUNTERPUNCH, June 6, 2005, <http://www.counterpunch.org/khan06062005.html>; cf. John Yoo, *Transferring Terrorists*, 79 NOTRE DAME L. REV. 1183, 1184 (2004) (arguing that the law of war permits army commanders to “dispose of the liberty” of prisoners, but withholding views on whether such a policy should be adopted).

154. U.S. military lawyers were vigorously opposed to interrogation techniques chosen by the Bush Administration. See Neil A. Lewis, *Military’s Opposition to Harsh Interrogation Is Outlined*, N.Y. TIMES, July 28, 2005, at A21, available at 2005 WLNR 11822160.

legal process.<sup>155</sup> Some were beaten in detention.<sup>156</sup> Others were deported on technical violations of immigration laws.<sup>157</sup> These stories were no different from the ones originating in Israeli-occupied territories, where Palestinian militants have been detained, tortured, killed, and expelled. The United States was being re-made in the image of Israel. But this was no mere coincidence; it was the result of the hard work that HITLit authors have put in for years.<sup>158</sup>

Moreover, when the Bush Administration adopted legally questionable policies at home and abroad, a slew of legal experts began to defend these policies as legal and mandated by the new paradigm. Professors John Yoo, Ruth Wedgwood, Jack Goldsmith, and others published law articles in prestigious law journals defending violation of the U.N. Charter on the use of force, resorting to war, refusing to apply Geneva Conventions to captured Muslim militants, renditions, and even suspending civil liberties in the United States. These experts made the legal case for the justification of a questionable practice, but stated that they were not recommending that the U.S. government adopt the policy. Yoo, for example, argued that the United States may lawfully transfer detainees to foreign countries for interrogation, but would not say whether the government should indeed adopt the policy.<sup>159</sup> The message of U.S. government lawyers, including John Yoo, Jay Bybee, and Robert Delahunty, was something like this: do it if you want to; we have done our job by making it sound legal.<sup>160</sup>

#### A. *Proactive Aggression*

The invasion of Iraq was no sudden, existential leap of faith. For years, HITLit authors have been advocating proactive aggression to crush Muslim nations that support militancy against Israel and the United States. Arguing that essentialist terrorists cannot be reformed through punishment or rehabilitation, these authors have been proposing to kill them.<sup>161</sup> The best way to kill Muslim militants is to engage them in wars fought in Muslim lands. These wars are proposed

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155. *U.S. Senator Arlen Specter (R-PA) Holds Hearing on the USA Patriot Act*, 109th Cong. (2005) (statement of Sen. Patrick J. Leahy), available at 2005 WLNR 759853.

156. Edward Alden, *U.S. Watchdog Criticises Round-up of Aliens*, FIN. TIMES (London), June 3, 2003, at 1; *Lawsuit Alleges Abuse of Muslim Detainees Caught in September 11 Sweep*, AGENCE FR. PRESSE, May 3, 2004.

157. Anwar Iqbal, *Jailed Pakistanis Seek Help to Leave U.S.*, UPI, Mar. 4, 2003, available at LEXIS, News; Michael Kirkland, *Commentary: A Fair Appraisal of Ashcroft*, UPI, Nov. 11, 2004, available at LEXIS, News.

158. See Jackson Nyamuya Maogoto, *Countering Terrorism: From Wiggled Judges to Helmeted Soldiers—Legal Perspectives on America's Counter-Terrorism Responses*, 6 SAN DIEGO INT'L L.J. 243, 245 (2005). The United States and Israel were turning towards a new paradigm of dealing with terrorists. *Id.*

159. Yoo, *supra* note 153, at 1184.

160. *See supra* note 25.

161. *See Wedgwood, supra* note 20, at 329; Wedgwood, *supra* note 146, at 727.

not only to kill militants, but also to dismantle regimes that support Muslim militancy. President Bush has embraced the HITLit prescription of proactive aggression as follows: "U.S. troops are fighting to defeat these killers abroad before they attack us at home."<sup>162</sup> HITLit legal experts defend proactive aggression, turning lawlessness into law.<sup>163</sup>

Michael Ledeen proposes proactive aggression and "massive defeat of the forces of Islamic fundamentalism throughout the Middle East."<sup>164</sup> If Iraq, Iran, and Syria are crushed and pro-Western governments are installed, says Ledeen, it would "have a decisive effect on the thinking of Islamic leaders and on the passions of the Islamic masses."<sup>165</sup> Ledeen's proactive and effective aggression prescribes a complete behavior modification of Muslim militants, their leaders, and the masses from which they emerge. After defeating governments and killing militants, Ledeen proposes that the United States use democratization as a tool to change Islamic culture and puritanical versions of Islam, including Saudi Arabia's Wahabbism, just as the United States rooted out the Nazi ideology from the German culture after defeating Hitler.<sup>166</sup> And if radical Muslims seize Saudi Arabia, war may be extended to the Arabian Peninsula "because the West needs Saudi oil."<sup>167</sup>

Ruth Wedgwood, commenting on the HITLit thesis that Muslim militants have no programmatic demands as conventional terrorists do, but rather fight to seek martyrdom, concludes that these operators "cannot be deterred in an ordinary fashion."<sup>168</sup> "We face an adversary," she writes, repeating the HITLit mantra, "who really does not seem to care about earthly things, only about the triumph of an eschatological ideology."<sup>169</sup> Criminal justice that looks backwards and presupposes that deterrence is possible is therefore inadequate to deal with Muslim militants. "We need to think about the anticipatory moves that one makes in war."<sup>170</sup>

Victor Hanson, who advises the U.S. Department of Defense, argues that war must be lethal and conclusive.<sup>171</sup> Leaving aside moral questions from the equation, Hanson studies the effectiveness of war

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162. *President Marks One-Year Anniversary of Transfer of Iraqi Sovereignty*, U.S. FED. NEWS, June 29, 2005, available at 2005 WLNR 10291382.

163. John Yoo, *War, Responsibility, and the Age of Terrorism*, 57 STAN. L. REV. 793, 820 (2004).

164. LEDEEN, *supra* note 18, at 208.

165. *Id.*

166. *Id.* at 214-16.

167. *Id.* at 208-09.

168. Wedgwood, *supra* note 146, at 726.

169. *Id.*

170. *Id.* at 727.

171. See VICTOR DAVIS HANSON, *CARNAGE AND CULTURE* 5, 21 (2001).

as a killing machine. “My curiosity is not with Western man’s heart of darkness, but with his ability to fight—specifically how his military prowess reflects larger social, economic, political, and cultural practices that themselves seemingly have little to do with war.”<sup>172</sup> Alexander the Great defeated the Persians because the Greeks were culturally superior. Europeans defeated Asians, Africans, and Native Americans, says Hanson, not because they were smarter or braver but because of “the singular and continuous lethality” of their culture.<sup>173</sup> If the U.S. armed forces are following Hanson’s analytical and ideological models, then many things begin to make sense in the U.S. war on terror. Per Hanson, the war on terror is (and ought to be) amoral. Its focus is (and ought to be) on lethality rather than ethics or law.

U.S. lethality in Iraq has not only been effective in killing, but it has also served militant organizations by recruiting new fighters and suicide bombers. It was correctly anticipated that Muslim militants from all over the world would come to fight troops invading Muslim nations. But consequences of anticipatory moves are less certain. Suppressive states create battlefields to attract militants and to kill them. Muslim militants welcome legally questionable invasions as recruitment opportunities, for they present these invasions as modern-day crusades.<sup>174</sup> Israel tasted a bitter defeat in Lebanon when a coalition of militants from all over the world volunteered their services to fight the invading army. The U.S. invasion of Afghanistan was successful in killing a number of militants, though the best Taliban fighters and the al Qaeda leadership survived the war. The U.S. war against Iraq has been a lethal draw so far. Many militants have been killed, but many more have been recruited because most Muslims believe that the Iraqi war was unjust, and therefore, jihad is obligatory.<sup>175</sup> The Iraqi war further lost its moral grounding when no weapons of mass destruction were found. If HITLit authors are successful in persuading the U.S. administration to invade Syria and Iran, new battlefields are likely to be even more complex and bloody. In all such invasions, the costs that Muslim civilians pay are enormous.

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172. *Id.* at 6.

173. *Id.* at 5, 15.

174. Toppling the Taliban in Afghanistan was considered necessary to uproot al Qaeda, which allegedly perpetrated the 9/11 attacks. Toppling Saddam Hussein was considered necessary to cut off funding to families of suicide-bombers who attacked Israel. Likewise, Syria and Iran are accused of sheltering and supporting terrorists who mastermind attacks on Israel and reinforce insurgency in Iraq.

175. The Quran states as follows:

And why should ye not fight in the cause of Allah and of those who, being weak, are ill-treated (and oppressed)?—Men, women, and children, whose cry is: “Our Lord! Rescue us from this town. Whose people are oppressors; and raise for us from Thee One who will protect; and raise for us from Thee One who will help!”

*Quran* 4:75.

In pursuing the destruction of Muslim militants, HITLit authors care little whether wars are illegal. The U.S. invasion of Afghanistan was legal, but the invasion of Iraq was not.<sup>176</sup> The entire world supported the toppling of the Taliban, who sheltered al Qaeda, but the international community was highly skeptical of both the legality and the wisdom of the Iraqi war.<sup>177</sup> Ignoring world opinion and the rule of international law, HITLit authors and their counterparts in the U.S. government were determined to pursue a policy of proactive aggression against Saddam's Iraq. President Bush originally defended the war as a measure to stop Iraq's dictator from furnishing weapons of mass destruction to terrorists.<sup>178</sup> This rationale was the child of HITLit authors who had persuaded the Bush Administration into believing the following: (1) that Iraq possessed weapons of mass destruction; (2) that Saddam Hussein would supply these weapons to essentialist terrorists; and (3) that essentialist terrorists had no moral qualms about using these weapons against the United States and Israel.

### B. *Extra-Judicial Killings*

Daniel Benjamin and Steven Simon propose that the United States "consider targeted killing" of Muslim militants involved in conspiracies against the United States.<sup>179</sup> The authors approvingly refer to Israel's employment of extra-judicial killings to eliminate Palestinian militants, including political and spiritual leaders of Hamas.<sup>180</sup> In targeted killings, the perpetrator state charges militants with crimes, collects and weighs evidence to prove alleged charges, convicts, and imposes the death penalty. This procedure involves no judicial trial and no opportunity for the targeted person to mount any legal defense. International law opposes extra-judicial killings. Ignoring international legal restraints, these two authors propose that the United States adopt the Israeli practice of targeted killings. They even suggest that such killings fall within the state's right of self-defense.<sup>181</sup> Not totally comfortable with the morality of their proposal, however,

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176. Under the U.N. Charter, only two circumstances exist in which the use of force is permissible: (1) in collective or individual self-defense against an actual or imminent armed attack; and (2) when the Security Council has directed or authorized use of force to maintain or restore international peace and security. U.N. Charter arts. 51 & 41. The U.S. invasion of Afghanistan fell under the second circumstance. However, the war in Iraq meets neither circumstance.

177. John J. Mearsheimer & Stephen M. Walt, *An Unnecessary War*, FOREIGN POL'Y, Mar. 12, 2003, available at <http://www.mtholyoke.edu/acad/intrel/bush/walt.htm>; Ken Roth, *War in Iraq: Not a Humanitarian Intervention*, HUMAN RIGHTS WATCH, WORLD REPORT 2004, <http://hrw.org/wr2k4/3.htm>.

178. Ronald Brownstein, *Bush Retools His Original Argument*, L.A. TIMES, June 29, 2005, at Bus. Sec., available at 2005 WLNR 10200568.

179. BENJAMIN & SIMON, *supra* note 29, at 406.

180. *Id.*; see also Liaquat Ali Khan, *The Changing Law of Assassinations*, BALTIMORE CHRON., Apr. 3, 2004, available at [http://www.baltimorechronicle.com/apr04\\_Assassinations.shtml](http://www.baltimorechronicle.com/apr04_Assassinations.shtml).

181. BENJAMIN & SIMON, *supra* note 29, at 406.

the authors concede that a policy of targeted killings “is unsavory and should be thoroughly debated.”<sup>182</sup> “But in a new strategic context,” they conclude, “unsavory may not be the same as unacceptable.”<sup>183</sup>

Despite this coaxing, the United States has been reluctant to undertake extra-judicial killings as a routine practice. However, the rules have been relaxed. In November 2002, for example, a “remote-controlled CIA Predator aircraft” shot “a five-foot long Hellfire missile” and destroyed a moving vehicle in a desert about “one hundred miles east of the Yemeni capital, Sanaa.”<sup>184</sup> In the vehicle six “terrorists” were incinerated, including one naturalized U.S. citizen. According to U.S. officials, the missile strike was executed with prior approval of the Yemeni government. In this lethal mission, the high value target was a senior al Qaeda leader, Abu Ali al-Harithi, accused of masterminding the October 2000 terrorist attack on the military ship USS Cole. U.S. officials did not admit or deny that CIA operatives knew that one of the passengers in the target vehicle was an American citizen. It is unlikely that any such knowledge would have stopped the deadly strike.<sup>185</sup>

### C. Torture

Universal prohibition against torture has acquired the status of *jus cogens*. The Convention Against Torture is cast in absolute terms, leaving no room for exceptions.<sup>186</sup> Article Four of the Convention specifically states, “Each State Party shall ensure that all acts of torture are offences under its criminal law.”<sup>187</sup> Alan Dershowitz acknowledges the universal and absolute character of the prohibition against torture embodied in the Convention.<sup>188</sup> And yet, he points out that the United States will remain in technical compliance with the Convention obligation if it resorts to mental and psychological torture to save lives, since the Eighth Amendment of the United States Constitution, and not the Convention, provides the ultimate standards of official conduct.<sup>189</sup> Furthermore, Dershowitz challenges the conventional wisdom that torture does not work, arguing that torture has indeed produced truthful information. If torture were ineffective as an investigation tool, nations would have abandoned it long ago, but they have not.<sup>190</sup> Dershowitz recognizes the moral pain that comes with

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182. *Id.*

183. *Id.*

184. Priest, *supra* note 151.

185. *Id.*

186. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, mtg. no. 93, U.N. Doc. A/RES/39/46 (Dec. 10, 1984).

187. *Id.* at art. 4.

188. ALAN DERSHOWITZ, WHY TERRORISM WORKS 135-36 (2002).

189. *Id.* at 136.

190. *Id.* at 136-37.

allowing torture, but he concludes that allowing torture is a tragic choice that “we” will have to make in the age of weapons of mass destruction.<sup>191</sup>

Dershowitz’s logic dictates that state officials may use torture, though it is morally uncomfortable, to seek information from Muslim militants because they will most likely use weapons of mass destruction. In discussing Muslim militants, Dershowitz compares them with Hitler. “There are indeed haunting and frightening similarities between what Hitler said he would do to the Jews and what many Islamic leaders are now saying they intend to do . . . .”<sup>192</sup> This similarity is drawn to highlight the point that Muslim militants will use weapons of mass destruction to kill Jews and Americans because, just like Hitler, Muslim leaders mean what they say. And just as ordinary Germans were responsible for creating and sustaining Hitler, tens of millions of Muslims, says Dershowitz, support militants’ threats “of slaughtering large civilian populations, including children, women, and elderly” as they have already done.<sup>193</sup> In line with his HITLit peers, Dershowitz sees Islam as a basically violent religion in that tens of millions of its adherents support the annihilation of innocents.

In the realm of law, Alan Dershowitz has distinguished himself in promoting HITLit terror-related policies that do not fit with his public image as the protector of civil liberties for all, including the worst criminals. In advocating the HITLit thesis that Muslim militants seek violence for the sake of violence, Dershowitz appears to be less dogmatic than his HITLit peers. He draws a distinction between Palestinian terrorism and al Qaeda terrorism. Palestinians’ terrorism has been changing its objectives to pressure Israel into giving more and more concessions, says Dershowitz, but al Qaeda’s terrorism aims at destroying American symbols of power and the people associated with these symbols. “Like the religiously inspired terrorists of old, the means and the ends seem to be the same: mass murder for its own sake, based on religious zealotry.”<sup>194</sup> This rhetoric has no informative value, except that it puts down Islam as a source of violence and paints Muslim militants as bloodthirsty maniacs.

If Dershowitz is arguing that al Qaeda terrorism has no justification because it has no grievances of its own as Palestinians do, he has a point, though a small one. Even this small point loses significance if al

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191. *Id.* at 139. To limit official abuse of torture techniques, Dershowitz invents the concept of the torture warrant that officials must obtain from a court. *Id.* at 158-63. Torture warrants, he argues, will protect the rights of the suspect. *Id.* He also believes that most people misunderstand his stance on torture. Alan M. Dershowitz, *The Torture Warrant: A Response to Professor Strauss*, 48 N.Y.L. SCH. L. REV. 275, 288-90 (2004).

192. DERSHOWITZ, *supra* note 188, at 224.

193. *Id.* at 225.

194. *Id.* at 95.

Qaeda is seen as an ideological force of solidarity that assists regional Muslim militants fighting for legitimate grievances. It is unclear how Dershowitz would distinguish a coalition of suppressive states, such as the one that occupies Iraq, from a coalition of Muslim militants of different nationalities. Just as some Western states have pooled their resources to invade and occupy Iraq, so too have Muslim militants in resisting this occupation. The fault is not in the idea of coalition; it is in the morality of their action. The international dimension of militancy (terrorism) is viewed with horror because Muslim militants' shared goal of resisting occupation, settlements, hegemony, or alien domination is seen as illegitimate.

#### D. *Suspension of Civil Liberties and Laws of War*

Jack Goldsmith and Cass Sunstein, HITLit sympathizers, take a devious stand on the Bush Administration's suspension of civil liberties. They do not come out and say that the monitoring of attorney-client phone calls, the degrading treatment of the Guantánamo prisoners, the detention of American citizens as enemy belligerents, and the indefinite detentions and deportations of Muslims on technical immigration violations are constitutionally defensible. "We do not express a view on these practices," say Goldsmith and Sunstein.<sup>195</sup> However, they note that "compared to past wars led by Lincoln, Wilson, and Roosevelt, the Bush Administration has, thus far, diminished relatively few civil liberties."<sup>196</sup> That might be so, but instead of appreciating the present legal culture that restrains the executive branch from suspending civil liberties, the authors see "a potential danger" in the revolution.<sup>197</sup> Invoking threats of weapons of mass destruction posed by al Qaeda and other terrorists, they caution against "the gravitational pull" of a liberties-protective legal culture that might "lead some to underestimate the threat we . . . face."<sup>198</sup> Perhaps insensitive to the fact that a counter-revolution in the legal culture of liberties will disproportionately affect minorities, Goldsmith and Sunstein nonetheless are willing to trade off even more liberties for national

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195. Jack Goldsmith & Cass R. Sunstein, *Military Tribunals and Legal Culture: What a Difference Sixty Years Makes*, 19 CONST. COMMENT. 261, 288 (2002). After completing this article, Jack Goldsmith took a leave of absence to serve as Special Counsel at the U.S. Defense Department. In another article that he co-authored after having served at the Defense Department, Goldsmith offers a new approach to justify indefinite detentions of enemy combatants. The traditional law of war requires that captured enemy combatants be released after the war is over. This rule, according to Goldsmith and his co-author Curtis Bradley, must be reread to mean that a captured terrorist may never be released if he continues to pose a security threat to the United States. Curtis A. Bradley & Jack L. Goldsmith, *Congressional Authorization and the War on Terrorism*, 118 HARV. L. REV. 2047, 2124 (2005).

196. Goldsmith & Sunstein, *supra* note 195, at 288.

197. *Id.* at 288-89.

198. *Id.* at 289.

security “in the context of asymmetrical warfare involving suicidal terrorists.”<sup>199</sup>

### E. *Social Engineering of Muslim Societies*

In addition to recommending lawless approaches to crush Muslim militants, HITLit authors strongly advocate that the United States undertake profound social re-engineering of Islamic societies. If the Muslim culture that produces militancy is fundamentally transformed, HITLit authors believe that Islamic terrorism would fall apart. Accordingly, they suggest changes in education, the eradication or dilution of the Quran’s concept of jihad, and exportation of liberal freedoms and liberties. Even the democratization gift to the Islamic world is designed to reduce the influence of religion over Muslim populations. Contrary to the rhetoric that Muslim militants want to impose their values on the rest of the world, HITLit authors themselves are engaged in an ambitious enterprise of remaking Muslim societies through coercion and manipulation.

Daniel Benjamin and Steven Simon propose a “bargain” under which Muslim nations would receive “continued and perhaps expanded economic and military assistance” if they undertake reforms in their educational, economic, and political systems aimed at ending anti-Americanism and anti-Semitism.<sup>200</sup> The authors argue that democratization would lessen the appeal of jihad, and political competition would expose the incompetence of religious parties in running state affairs, since they would be unable to deliver a higher standard of living that citizens demand.<sup>201</sup> Democratization, however, may not be useful for the United States, warn the authors, since it might bring anti-American and anti-Israel parties to power.<sup>202</sup> In prosecuting the war on terror, say the authors, undemocratic regimes in Pakistan, Egypt, Yemen, Jordan, and Saudi Arabia have been highly cooperative in hunting down and handing over terrorists.<sup>203</sup> This might change if governments are more accountable to the people.<sup>204</sup>

Despite these short-term risks, Benjamin and Simon offer a number of strategies to alter the minds of Muslim populations. Pop music, chat shows, propaganda of good Muslim life in America, and news from the Western perspective—strategies adopted under the Clinton Administration—all have failed to mold Muslim opinion in the desired direction, say the authors, because Muslims believe the United

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199. *Id.* at 288.

200. BENJAMIN & SIMON, *supra* note 29, at 480.

201. *Id.*

202. *Id.*

203. *Id.* at 483.

204. *Id.* at 481-83.

States is “under the spell of Jews.”<sup>205</sup> The United States must engage the Muslim world in a more candid dialogue in which both parties can critique each other’s values.<sup>206</sup> After suggesting a more honest approach to problems facing the Muslim world, however, the authors slip back into more manipulative strategies. They suggest, for example, that Washington find “creative ways” to funnel monies to “moderate clerics and mosques” whose “voices we want to amplify.”<sup>207</sup> It is unclear how the authors believe that an honest dialogue can be constructed if the United States is funding views it likes “and disseminating them via cassette and the Internet to increase their audience.”<sup>208</sup>

While Benjamin and Simon are more cautious in their democratization proposals, Frum and Perle are more combative and straightforward. They disagree with Secretary Kofi Annan, who remarked that democracy could not be imposed by force.<sup>209</sup> They give examples of Western Europe and Japan to rebut Annan’s thesis. Outside help, and even outright war, is critical in transforming the Muslim world because “militant Islam is a lie. It proposes to restore the vanished glory of a great civilization through crimes that horrify the conscience of the world.”<sup>210</sup> Once militant Islam is dismantled with force, the authors believe that the road to liberal democracy may be more easily constructed.<sup>211</sup> Ordinary Muslims “want to be like America,” and only Iranian mullahs, Saudi Imams, and Palestinian would-be dictators dread “the excitement and appeal of American life.”<sup>212</sup> At another place in their book, however, Frum and Perle point out that even educated middle-class Muslims—such as diplomats, engineers, and university professors—denounce the United States and show little sympathy for U.S. losses suffered in the 9/11 attacks.<sup>213</sup> Ironically, these authors, who would impose democracy even with guns, “have good reason to pray for Pervez Musharraf,” a military man who overthrew a duly elected government and seized power, because ordinary Pakistanis are anti-America and anti-Israel.<sup>214</sup>

Similarly, Michael Ledeen draws on history to wage an ideological war against Islam. “We defeated the Soviet Empire both militarily and ideologically, and there was a dynamic interplay between the

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205. *Id.* at 486.

206. *Id.*

207. *Id.* at 486-87.

208. *Id.* at 487.

209. FRUM & PERLE, *supra* note 28, at 277. Ledeen also criticizes Kofi Annan for not supporting the war on Iraq and dragging out the process, like Saddam Hussein. LEDEEN, *supra* note 18, at 251-52.

210. FRUM & PERLE, *supra* note 28, at 276.

211. *Id.* at 278.

212. *Id.* at 276.

213. *Id.* at 260.

214. *Id.*

two.”<sup>215</sup> Building on this logic, Ledeen prescribes a combination of war and democratization to challenge the Muslim world. He proposes the following course of action: “hate-preaching schools and mosques must . . . be closed or fundamentally changed;”<sup>216</sup> Iraqi Shi’ism should be used against Tehran for dismantling Iranian theocracy and promoting the separation of church and state;<sup>217</sup> al Qaeda must be destroyed;<sup>218</sup> and pro-Western governments must be brought to power in Syria, Iran, and Iraq.<sup>219</sup> Ledeen is unsure whether democracy can be brought to Saudi Arabia, where puritanical “poison has penetrated very deeply into the body of the nation.”<sup>220</sup> Just like other HITLit authors, Ledeen’s commitment to democracy is not absolute. If radicals win elections and come to power, says Ledeen, we might have to attack Saudi Arabia and defeat the radicals because otherwise they will deprive the West of Saudi oil.<sup>221</sup> To justify this position, Ledeen gives the last word to Machiavelli: “If you win, he tells us, everyone will judge the means you used to have been appropriate.”<sup>222</sup>

Jessica Stern proposes a more passive-aggressive warfare to engineer Islamic societies. Manipulation rather than violence is her preferred method. Instead of killing militants, she wants to sow confusion and conflict among them so that they kill each other. Instead of shutting down religious schools (*madrassahs*), she proposes to establish alternative schools.<sup>223</sup> Stern correctly points out that religious schools are popular among poor Muslims because they provide free education.<sup>224</sup> Whether Western-supported alternative schools providing free education would likewise attract the children of poor families is unclear. But surely, alternative schools will sow confusion in the values of the society.<sup>225</sup> She rightfully points out that some of the values that are being preached to Muslims, such as glorification of vulgarity and violence, are abhorrent.<sup>226</sup> Of all the HITLit authors, Stern appears to be the most respectful of human rights and refrains from proposing crass self-serving agendas. Since Stern is so preoccupied with psychological warfare as the method of transforming Islamic societies, Muslims are unlikely to trust her proposals. For example, Muslim families will not send their children to “alternative schools” that prohibit the study of the Quran.

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215. LEDEEN, *supra* note 18, at 149.

216. *Id.* at 206.

217. *Id.* at 287.

218. *Id.* at 208.

219. *Id.*

220. *Id.* at 207.

221. *Id.* at 208-09.

222. *Id.* at 237.

223. STERN, *supra* note 99, at 293.

224. *Id.*

225. *See id.* at 295.

226. *Id.* at 293-95.

## V. A CRITIQUE OF ESSENTIALIST TERRORISM

### A. *Grievances Matter*

A few select scholars and terrorist experts vigorously dispute the HITLit notion of essentialist terrorism. Michael Scheuer, who served in the Central Intelligence Agency for more than twenty years and was chiefly responsible for tracking Osama bin Laden and al Qaeda, vigorously opposes the HITLit thesis that Muslim militants, propelled by a violent religion, are waging an ideological war against the West. In his books, articles, and media interviews, Scheuer argues that Muslim militants are fighting hostile, exploitative, and disrespectful U.S. policies toward the Islamic world, and not, as the HITLit authors assert, “because Americans vote, have civil liberties, and allow women to drive cars.”<sup>227</sup> In his book, *Imperial Hubris*,<sup>228</sup> Scheuer points out several factors that turn Muslims against the West generally and the United States particularly: the U.S. support for Israel, the invasion of Afghanistan and Iraq, the stationing of troops in Islamic countries, the forcing of Muslim oil-producing countries to extract more oil and sell it cheaply, the U.S. friendship with countries such as Russia and India that deny the right of self-determination to the Muslim populations of Chechnya and Kashmir, and the U.S. support for occupying and dismembering Muslim lands. All these factors paint the United States as a one-eyed giant that has turned its wrath against the Muslim world.<sup>229</sup>

Scheuer is by no means alone in his emphasis on concrete grievances. Robert Pape, in his study of suicide attacks, concludes that concrete grievances rather than mystical addiction to violence drive persons to kill themselves and others. Nearly all suicide attacks are perpetrated to compel foreign military forces to withdraw from the “territory that the terrorists consider to be their homeland. Religion is rarely the root cause, although it is often used as a tool by terrorist organizations in recruiting and in other efforts in service of the broader strategic objective.”<sup>230</sup> Contrast this grievances-centered view to that of the HITLit, which offers a mischievous and scandalous

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227. Michael Scheuer, *Throwing America a Life Preserver*, ANTI WAR, June 10, 2005, <http://www.antiwar.com/orig/scheuer.php> (reviewing ROBERT A. PAPE, *DYING TO WIN: THE STRATEGIC LOGIC OF SUICIDE TERRORISM* (2005)). “It has been, however, an assertion that is easy to protect because its authors simply dismiss their critics by calling them anti-Semites, thereby foreclosing debate.” *Id.*

228. ANONYMOUS, *IMPERIAL HUBRIS: WHY THE WEST IS LOSING THE WAR ON TERROR* (2004) (Michael Scheuer is the book’s author).

229. *Id.* at xviii (summarizing these factors generally); *id.* at 226-30 (blind and expensive support for Israel and charges of anti-Semitism against the critics of Israel); *id.* at xvi-xvii (invasions of Afghanistan and Iraq); *id.* at 12-13 (control of oil); *id.* at 12 (U.S. support of Hindu India in Kashmir, Russians in Chechnya); *id.* at 13 (U.S. support of the dismemberment of East Timor from Indonesia and the occupation of Palestine, Iraq, and Afghanistan).

230. ROBERT PAPE, *DYING TO WIN: THE STRATEGIC LOGIC OF SUICIDE TERRORISM* 4 (2005).

explanation to the effect that Muslim militants seek martyrdom so that they can enjoy sexual pleasure that the Quran promises in the life hereafter. Pape counters another HITLit thesis that Muslim societies ought to be re-engineered so that they discard the jihadist aspects of Islam. He warns that “any policy that seeks to conquer societies in order, deliberately, to transform their culture is folly. Even if our intentions are good, anti-American terrorism would likely grow, and grow rapidly.”<sup>231</sup>

Similarly, Paul Craig Roberts, who served as Assistant Secretary of Treasury for the Reagan Administration, argues that a strategy of denying grievances is counterproductive. “Terrorism requires that grievances be acknowledged and addressed.”<sup>232</sup> He is also skeptical of a military solution to the terrorist problem. “As we are belatedly learning in Iraq, there are no easy military solutions to terrorism. If there were, Israelis would have achieved security many years ago.”<sup>233</sup> Roberts further argues that U.S. military adventures in the Middle East constitute a strategic blunder and that history is unlikely to favorably view Bush Administration neoconservatives (including HITLit authors). “The neocon dream of conquering the Middle East for Israel and destroying Islam as a force is now in history’s trash heap of failed adventures along with such miscalculations as Hitler’s march into Russia and the Japanese attack on Pearl Harbor.”<sup>234</sup>

### B. *The Two Faces of Essentialism*

Essentialist terrorism is new in the sense that it is distinguished from traditional terrorism. But the linkage between essentialism and terrorism was foreseeable because such is human history that almost all major movements come to be defined in essentialist terms. It is perhaps a human desire, a compulsive habit, or an urge to simplify that complex phenomena are broken down into essentialist terms and traits. Slavery, racism, sexism, colonialism, nationalism, discrimination based on sexual orientation, classism, dialectical materialism, and the martial character of a people, to name but a few, have all been explained, defended, and promoted in essentialist terms. Examples of essentialist statements include: slaves are intellectually deficient, whites are beautiful, women are emotional, and the West civilizes the rest.

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231. *Id.* at 245.

232. Paul Craig Roberts, *No Easy Solutions*, WASH. TIMES, Feb. 13, 2004, at A19, available at 2004 WLNR 770516.

233. *Id.*

234. Paul Craig Roberts, *Departing Iraq*, COUNTERPUNCH, July 28, 2005, <http://www.counter-punch.org/roberts07282005.html>.

Essentialism has two faces: self-defining and other-defining. Self-defining essentialism highlights a group's own beneficial traits, demands certain social goods, and justifies certain undertakings. Racial superiority, for example, stems from self-defining essentialism. By claiming superior genes, a racial group may defend its hold on power, land, and other resources. It may justify its domination over other racial groups, and it may resort to abusive treatments of others to maintain its superiority. Other-defining essentialism defines others, mostly negatively. Racial inferiority is an example of other-defining essentialism. No racial group is likely to define itself negatively. By defining native Africans in essentialist terms as intellectually inferior, violent, or lazy, the white minority in South Africa defended its apartheid and justified its domination.

Often, though not always, the two faces of essentialism are congenitally joined. In racism, essentialist superiority demands that racial inferiority also be defined in essentialist terms, for one cannot exist without the other. When women are defined as essentially emotional, it implies that men are not. The HITLit advocates a similar two-faced terrorist essentialism. It defines secular terrorism as rational, purposeful, and limited in violence. By contrast, it defines Islamic terrorism as irrational, addictive, and unlimited in violence. In the HITLit, terrorist violence has two faces: one face is more ugly and lethal than the other.

For a clearer understanding of other-defining essentialism, one might ask who is defining whom, since the definer and the defined are two distinct entities.<sup>235</sup> The thesis that Muslim militants are essentialist terrorists obviously falls into the definition of other-defining essentialism. No Muslim culture, nation, or tribe has defined itself as essentially violent. Nor have they defined Islam as an essentially violent faith. To the contrary, self-defining essentialism of Islam proclaims it to be the faith of peace, an essential meaning of the word "Islam." The HITLit that paints Muslim militants as essentially violent is the literature produced by non-Muslims. Likewise, the HITLit thesis is popular only among non-Muslims. Muslim governments, intellectuals, and lay people, even when they sincerely condemn the violence of Muslim militants, do not accept the HITLit thesis that Islam is essentially violent or that Muslim militants are the products of an essentially violent culture.

Other-defining essentialism is not merely an academic exercise. Nor is it merely political rhetoric. It almost always has concrete purposes. The HITLit's purpose in defining Muslim militants in essentialist terms has two interlocked goals. One goal is to heavily discount

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235. In cases of self-defining essentialism, the definer and the defined are the same entities.

their grievances. The other is to furnish a justification for their harsh treatment in law and reality.

## VI. CONCLUSION

If the HITLit propaganda behind essentialist terrorism were to take a firm rooting, U.S. laws would dilute or abandon many civil liberties and human rights to deal with a fast growing Muslim population in the country. U.S. constitutional law would change fundamentally and for the worse as the paradigm of national security eats at the foundation of law. Even the First Amendment, the citadel of the United States Constitution, might be weakened to punish outspoken critics of the war on terrorism, because critics could be seen as terrorist sympathizers.<sup>236</sup> U.S. Muslim immigrants and citizens might face unprecedented official discrimination and social prejudice, producing more resentments and terrorism. This untoward development can be arrested only if policymakers, legislators, and judges reject the HITLit propaganda mounted behind essentialist terrorism. Regardless of whether the U.S. legal system slides into bias and persecution, Islamic terrorism is unlikely to go away unless concrete grievances are addressed and festering international disputes are resolved. Nothing is farther from the truth than the idea that Muslim militants are addicted to violence or that Islam is an inherently violent religion. By branding Islam, the faith of more than one billion people, as a violent and intolerant ideology determined to destroy Western civilization, HITLit propagandists are forcing the United States to collide with the Muslim world in an apocalyptic war.

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236. University professors have drawn public attention and criticism for their comments. They have called for the death of U.S. troops in Iraq, blamed "American colonialism" for the September 11 terrorist attacks or jokingly praised the attack on the Pentagon. Universities are under government pressure to monitor professorial research before publication, for it might contain "sensitive information." Teresa Watanabe, *Academic Freedom Prevails, Panel Says*, L.A. TIMES, Feb. 17, 2004, available at <http://www.campus-watch.org/article/id/1031>.