

What Justice Would Demand

By David Kraemer

As the days of America's war against terrorists in Afghanistan stretch into weeks, I have found myself asking to what degree the operation is motivated more by vengeance and politics than by self-defense or even "justice."

There has been, in Bush administration statements from the beginning of this crisis until this day, a sense of righteous indignation. Though some thoughtful advisor quickly pointed out to the president how unfortunate was his use of the term "crusade" to describe the American response that would follow the attacks, there is no question that he still thinks – and speaks -- in these terms. Thus he continues to describe our enemies as "the evil ones" and the American people as the righteous ones; moreover, as President Bush proclaimed so grandiloquently in his speech before Congress, there is no question which side "God prefers."

Furthermore, though military action did not commence for several weeks, it seems clear now that this period was devoted primarily to positioning our forces and to making the public case for the guilt of bin Laden, al Qaeda and the Taliban. A covert intelligence operation intended to locate the perpetrators and their networks--and to bring them to justice--would have taken much longer. But the American public was getting impatient, and the administration sensed that the time had come to act or else risk a loss of political support. Is this war, for these reasons, the one we should be fighting? I am not sure.

Self-defense is a good reason to fight a war. In fact, in his systemization of Jewish laws of war, Maimonides describes a war for self-defense as a *milhemet mitzvah*--an obligatory war, a *mitzvah*. It is even reasonable to construe the notion of "self-defense" broadly, that is, to apply it to future as well as present dangers. In this spirit, we could easily justify actions intended to destroy the terror apparatus at its source. If such actions indeed prevented future attacks, they would be fairly described as acts of self-defense. In the world after Auschwitz, the exercise of power in defense of one's own life and liberty is not merely ethically defensible, it is ethically necessary.

But there are serious doubts as to whether the current American operation is self-defense in the sense just described. The perpetrators of the crimes of September 11--and others like them--are genuinely motivated by these Koranic words: "Know that your worldly possessions and your children are just a temptation, and that God [Allah] has greater rewards with Him" (8:28). If this world is merely a temptation, and if true reward will be found in the World to Come, then there is little reason to fear death. On the contrary, if death comes through the service of God -- as they understand it -- then death is to be welcomed, particularly if it occurs in the course of battling infidels, the enemies of the true God and His revelation. Thus, it is likely that incursions onto Muslim soil, and the taking of innocent Muslim lives (all Muslim lives

will be believed innocent in this case), will only inspire new warriors for Allah. Indeed, there is reason to believe that for each warrior now eliminated, several will arise to take up the battle. The response of the "Muslim street," in Pakistan and elsewhere, leaves little question about this. Of course, the battle of these new warriors will also take place here, on American soil, in skyscrapers and government offices and mailrooms and media rooms. In light of these realities, it is difficult to defend the notion that this is a war of self-defense.

Self-defense, coolly considered, would require very different actions. It would require minimalist operations, preferably covert, directed at the capture of the central terrorist network. It would require minimal presence on Muslim soil, and only modest displays of American power. And it would require the suppression of exaggerated rhetoric and bluster. Only in this way could we minimize the risk that our actions will call forth another generation of hijackers.

There is also serious doubt as to whether the operation once labeled "Operation Infinite Justice" is about justice. Again, let us construe the term "justice" broadly. In a situation like the present one, justice would reasonably mean holding *all* those who perpetrated the crimes of September 11 responsible for their actions. "All," in this case, means not merely those who directed the planes to their lethal dooms, but all those who aided and abetted the actual perpetrators, from those who trained them and funded them to those who provided the ideological justification.

But justice, to be justice, requires process and deliberation. Justice cannot be rushed. Ideally, a purported perpetrator or accessory would be captured and brought to trial; Israel's trial of Eichmann -- despite problems of jurisdiction -- provides an excellent model for this approach. To do justice in this fashion, the U.S. would conduct, first, an "intelligence war," precisely as government spokespeople originally indicated. If careful, patient intelligence could locate bin Laden and his cohort, then the next goal would be to capture them and bring them to trial. If they refused to surrender, choosing instead to defend themselves with live arms, then aggressive and even fatal actions would be justified. But this would be a "fall-back" position, not the preferred outcome. "Dead or Alive" is the cry of vigilantes, not of those interested in genuine justice.

Now, I am not so naïve as to think this would be easy to accomplish. Nor do I think that the Taliban, who have harbored and supported the terrorist networks, are innocent. But not every wrong should be redressed. A strategic response requires the careful consideration not merely of present grievances, but also of future consequences. Justice is justifiable, but only when executed in the most just manner possible, with due consideration of the circumstances. Otherwise, our first and most urgent concern must be our future safety. And, as I said, it is not clear whether the present military operation best serves that interest.

The vast majority of people would agree that a military response is justified in self-defense, and many would agree that it is justified to "bring justice." But if these are

the only legitimate justifications of war, then we must at least question the nature and scope of America's present operation, for, as I have argued, it is not obvious that either self-defense or justice are best served by the actions in which we are now engaged.

All of this having been said, I want to underscore that in my opinion the war in which we are presently engaged is ultimately devoted to a good purpose. And now that we are involved in this war, I have no choice (for the present) but to support it. But I do question whether this was the best way to go, both strategically and morally. Yes, a war may have been necessary, but not this war.