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Trends. Implications of War and Peace for the Morality, Ethics, and Legality of Killing and Incarceration

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Abstract: This article provides a perspective for the controversy surrounding the appropriateness of killing and incarceration during a war on terrorism with global reach.

Two salient points of controversy in the war on terrorism with global reach involve the incarceration and the killing of terrorists.

In the former case, there are those who suggest that all who are captured must be legally adjudicated as in peacetime. Explicit charges must be constructed; evidence and sources backing up the charges must be shared with the captive; the captive must have a legal defense team; and habeas corpus rights must be adjudicated.

In the latter case, there are those who suggest that terrorists must not be killed in the field. Instead, they must be captured and then the sequence described above must kick in.

The problem in both cases is that peace and war are being conflated. To many observers, anything other than a conventional war of attrition is still presumed to be not war and, thus, peace. Perhaps, a war against terrorism brings values more salience within the political calculations of many participants in public discourse. Perhaps, a war against terrorism with a small number of enemies, an infrequent number of attacks, and the probability that one can continue to lead one's preferred lifestyle without becoming a physical casualty impedes the sense that there is any ongoing war.

And so the premise that each combatant must be adjudicated in the criminal justice system continues to retain life as does the notion that killing a combatant and those providing operational support in a war is assassination as opposed to killing. The conflation of war and peace is a huge opportunity for terrorists to impede effective counterterror through the nurturing and exploitation of values that they themselves seek to destroy. (See Ambrose, M.L. (2002). Contemporary justice research: A new look at familiar questions. *Organizational Behavior and Human Decisional Processes*, 89, 803-812; Kalma, A. (2002). Review essay: Justice in human and other natures. *Social Justice Research*, 15, 63-84; Letters to the editor. (November 6, 2002). *The New York Times*, p. A22; Tripp, T.M., Bies, R.J., & Aquino, K. (2002). Poetic justice or petty jealousy? The aesthetics of revenge. *Organizational Behavior and Human Decisions Processes*, 89, 966-984.)