

## Memorial Day: When Killing Is More Than Theory

Ken Briggs | May. 26, 2013 NCR Today

Memorial Day salutes sacrifice for country and for that reason also offers itself as the most comprehensive anti-war event on our annual calendar. Other occasions come close, but this is the grand communion between the living and all the country's war dead. Alongside the tributes to valor lies the inescapable message that war exacts a horrible price to real people in real towns and cities. Whatever misplaced idealism and romance quickly fade. "It is well that war is so terrible," said Confederate Gen. Robert E. Lee, "otherwise we would grow too fond of it."

Exposure to the real thing naturally has a restraining effect, prodding us to find other ways. So it is deeply troubling that since World War II so few politicians whose heated rhetoric declares war have fought in any of them. Experience is the great teacher; both voters and elected officials lack the experience of killing and that makes it much easier to confuse moral abstractions and blind resentments with a grasp of the horrors of having another human being in our cross hairs. The same can be said for the dangers of other moral absolutes like condemnation of homosexuality and reproductive rights. Having a gay son or daughter or friend can change a person's basic outlook beyond the simplistic exhortation. Discovering that a loved one has had an abortion has been shown to have a moderating effect on beliefs about abortion.

The spectacle of the Jodi Arias murder trial in Arizona illustrates the theory-practice gap in another way. Arias was found guilty of shooting and stabbing her boyfriend to death in a courtroom drama that took more than four months. The death penalty was on the table. Though every juror had assured the court that they had no objection to the death penalty, the jury deadlocked. Though no one from that jury publicly defined the division of opinion that divided them, some sources said as many as four of the jurors could not bring themselves, for whatever reason, to put the 32 year old woman to death.

A lawyer who commented on the case for HeadLine News emphasized that the specter of putting someone to death nearly always raised extraordinary "moral questions" whatever jurors may think they believe beforehand.

Interviews with jurors who had been faced with capital punishment decisions in the past stressed the difference between applying a formula sentence to lesser crime and approaching the awesome task of deciding life or death. One who favored the death penalty for the convicted murderer said she'd become acutely aware of the "severity of putting someone to death." She continued, "No matter what you signed up for say you're able to make that decision, when you're faced by the challenge it's on a different level."

The other former juror said one woman had held out against imposing death but was "finally convinced after we went over and over and over what the man had done to this little boy [five years old]." Though she said she "never had any doubts herself" that the accused deserved death, still, 30 years later, she had "lingering, haunting feelings" that she had "been one of those responsible for sending this man to death." After the verdict had been delivered, she said, she had explained it to her young daughter who had been deeply troubled that her mother had sentenced someone to death. Asked how the daughter feels about it more than three decades later, the former juror said she hadn't asked her about it and allowed that it had been a "burden."

The somber tone of these two actual participants in death penalty proceedings contrasted with an outburst of anger from the television reporters, whose excitement of audience passions seemed to be a main goal. The undertone was that the family of Arias's dead boyfriend had gotten a raw deal that could only be satisfied by the death penalty. Vengeance was in their air.

A new jury will be summoned to choose life or death. If the cautions of the former jurors apply, the new collection of 12 men and women will have to cross that divide between what they have theorized or emoted about the ultimate punishment and the hard fact of ending the life of a particular person. It will transport them to a realm beyond ordinary, pragmatic court deliberations. Given that it's a not a difference of degree but of kind, doesn't that put it outside justifiable legal ground and into the realm of moral jeopardy? Isn't placing someone in that position, whatever they'd thought previously, subject them to the moral risk of collaborating in "cruel and unusual punishment?"

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