

Capital offense: The death-penalty system

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George Ryan, until last month the Republican governor of Illinois, has revolutionized the debate over capital punishment. His genius, such as it is, has been to ignore the great moral and philosophic questions that surround the topic and focus on the pragmatic ones. Ryan's brand of argument has turned the anti-death penalty movement into a nonpartisan cause because, as pundit Glen Reynolds puts it, capital punishment is a government program that doesn't work.

Ryan has never questioned whether murderers deserve to be executed, or whether the state has the right to take human life. He has simply argued that the state's way of imposing the death penalty is so flawed that it must be shut down. The system is haunted by the "demon of error," Ryan said—"error in determining guilt, and error in determining who among the guilty deserves to die."

The demon of error was made vivid to Ryan in 1999 when Anthony Porter was exonerated of his crime 48 hours before he was scheduled to die. Since 1977, 12 people have been executed in Illinois, while 17 inmates on death row have been found innocent and released.

In the waning hours of his governorship last month, Ryan commuted the death sentences of all 167 people on death row in Illinois and pardoned four of them. The death penalty, he explained, has not been imposed fairly and uniformly. He pointed out that defendants who are African-American and who are tried in rural courts are much more likely to get the death penalty. He noted that many death-row inmates have had incompetent attorneys, and that half of all capital cases have been reversed for a new trial or resentencing.

Ryan has rightly put pressure on the state to demonstrate that its system is fair. His objections could be met by reform: insisting on better-qualified lawyers in capital cases, requiring videotaping of confessions, limiting testimony from prison informers, and not basing a death sentence on a single eyewitness. (The Illinois

legislature has not shown an interest in such reform.)

The next step would be for legislators in any state that still exercises the death penalty to consider whether the system can really be sufficiently reformed. Can any human system be free of the demon of error? Can error be tolerated when a human life is involved?