The more intractable political problems always seem to have an ethical component — abortion, affirmative action, capital punishment, to name just three.

In each case, different views on what ought to be public policy are driven by differing ethical judgments about right and wrong. That makes the problems difficult to resolve politically. How can we compromise on what is ethical without being unethical?

The moral imperative behind the drive for capital punishment is that those who take lives forfeit their own right to life. Yet, opponents argue, how can we be ethical and do to a convicted murderer what we are punishing the murderer for doing?

We seem to reach here an ethical stalemate, but, as usual in intractable political problems that are also ethical, things are more complicated than they appear. At least one other ethical aspect of capital punishment needs to be considered in weighing our current system ethically.

Our criminal justice system is an example of imperfect procedural justice. We have a procedure — a charge by a prosecutor, a trial, a determination of punishment — that fails to sort out all and only those who have committed a crime. We have designed our procedure to protect the innocent, to keep to a minimum those falsely found guilty. But we can fail in achieving that end. When over half of those on death row in Illinois are found to be innocent of the crimes which put them there, something is terribly wrong.

We know that an imperfect proce-


dure may sometimes lead to someone innocent being found guilty, but we now know that our criminal justice system can more often than not lead to someone innocent being sentenced to death. The system is not just imperfect, but perverse — committing us to take an innocent life for a life.

Such a result is encouraged by our having a procedure where money matters. Those who can afford the best lawyers stand a far better chance of acquittal than those who cannot. Our criminal justice system is not only imperfect, but unfair. A fair system would not let guilt and innocence be determined by how much money an accused can bring to bear on the system. Indeed, because we know the system is imperfect and by its very nature risks convicting the innocent, we ought to be especially sure that no one is disadvantaged by factors not relevant to determining guilt and innocence — like money.

Even if we think those who kill deserve death, we ought at least be reluctant, ethically, to commit to death those convicted through an imperfect and unfair procedure.

I am not arguing for or against capital punishment. Other ethical considerations need to be addressed — racism in the justice system, for instance — before we can come to a reasoned conclusion about what is right and what is wrong. I am arguing that we need to cast a skeptical mind on those claiming “the moral high ground” on such issues. We need to explore ethical issues fully, wherever that may take us, before coming to an ethical judgment — especially judgments with such consequences as those regarding capital punishment, abortion and affirmative action.

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