



Capital punishment The slow death of the death penalty

America is falling out of love with the needle

Apr 26th 2014 | HUNTSVILLE, TEXAS | From the print edition

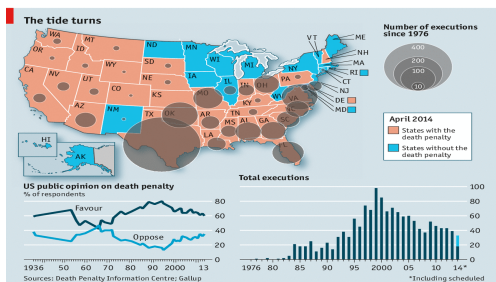
ON THE afternoon of March 19th a ragtag group of protesters gathered outside the Huntsville Unit, home to America’s busiest execution chamber. At 6pm Texas was set to execute Ray Jasper, convicted of murdering the owner of a recording studio. Protesters held up signs (“The Death Penalty: Guilty on All Counts: Shut it Down!”), made statements and read a few poems the condemned man had written. A priest rang a bell 14 times, once for every year Jasper had spent on death row. At 6.34 the prison door opened, letting out a few civilians whom protesters said they recognised as witnesses to the execution.



No one from the prison announced Jasper’s death. A little after 7 the protesters dispersed, stowing signs and megaphones away in their trunks, ready for use at the next execution.

So far this year 19 prisoners have been put to death in America, seven of them in Texas. Another 14 are scheduled to die. According to Amnesty International, America executes more people than any country except China, Iran, Iraq and Saudi Arabia—disreputable peers for the land of the free. But capital punishment is less common and less popular than it was, and concerns over cost, efficacy and execution methods may be hastening its demise.

Even if all the executions scheduled for this year are carried out—which is unlikely—a total of 33 would be the lowest since 1994, and would have fallen by two-thirds from the peak of 98 in 1999 (see chart). In 2013 American juries handed out just 80 death sentences: a slight increase from the previous year, but still close to the lowest level in 40 years. As of October 1st 2013, 3,088 Americans were on death row—down from a peak in 2000 of 3,593.



Several factors have driven death sentences and executions down. The simplest may be that America’s homicide rate has declined sharply—from 10.2 per 100,000 people in 1980 to 4.7 in 2012. With that broader decline has come a fall in the most heinous murders; ie, the sort that earn the harshest sentences. As Bob McCulloch, prosecuting attorney for St Louis County, explains: “In Missouri, most [murders] are second-degree...bar-room brawls, or some guys shooting each other over a bad dope deal.” First-degree murders, he says, “rape and murder, killing a police officer—those are all way down.”

Another shift is that most juries can now impose sentences of life without the possibility of parole. In 1972, when the Supreme Court suspended the death penalty (it was reinstated four years later), only seven states allowed such sentences. Now every state bar Alaska gives juries the option of making sure that a murderer will never be released (perhaps to kill again) without actually killing him.

That makes them wrier of the needle. Texas, for instance, introduced life-without-parole sentences in 2005. "When that happened," says Craig Watkins, district attorney for Dallas County, the state's second-most populous county, "you saw a decrease in prosecutors even bringing death-penalty cases...Now you have a choice. Before, you didn't." And indeed, Texas sentences fewer people to death now (nine in 2013) than in 2004 (23).

Most Americans still support capital punishment. But their majority has dwindled from 80% in 1994 to 60% in 2013, according to Gallup. Separate polls by the Pew Research Centre find that although most old and white Americans support it, young people are less keen and ethnic minorities such as blacks and Hispanics are solidly opposed. Since the young and non-white are America's future, that suggests that demography favours the abolitionists.

Earlier this month a vote to repeal the death penalty narrowly failed in New Hampshire, but similar measures succeeded in six states between 2007 and 2013, reducing the number of capital-punishment states to 32. Among those states, 15 have carried out no executions since 2010. Just four—Texas, Virginia, Oklahoma and Florida—are responsible for roughly 60% of the executions since 1976. Texas alone carried out 37% of the total. Within capital-punishment states, a mere 15 counties are responsible for 30% of executions. (Although capital punishment is state law, generally the decision to seek the death penalty is made by district attorneys at the county level.)

Fans of the death penalty say it deters murderers. The evidence for this is at best equivocal. The number of murders fluctuates each year and has fallen sharply over time, from 24,500 in 1993 to 14,800 in 2012. Many factors affect the murder rate: demography, policing, culture, the job market and so on. No one really knows how much weight to give to each. But it seems improbable that the death penalty has much effect. Murderers are highly unlikely to be put to death (in 2012 there was one execution for every 345 murders). And they are staggeringly unlikely to be put to death before they reach middle age (the average wait on death row is more than a decade).

So when a social scientist claims to have shown that each execution prevents 2.5 murders (as one recent study found), it is reasonable to wonder if he was really able to separate the signal from the noise with such precision. A meta-study released by America's National Research Council in April 2012 found that "research to date...is not informative about whether capital punishment decreases, increases or has no effect on homicide rates."

The abolitionists' most emotive argument is that juries make mistakes. Since 1973, 144 death-row inmates have been exonerated. Death-penalty proponents say this shows that the system is working: that multiple safeguards have prevented anyone innocent from being put to death. But is that true? Although there are no proven cases in recent decades, the Death Penalty Information Centre, an abolitionist organisation, points to ten executed men it suspects were innocent. The case of Cameron Todd Willingham is particularly compelling (see article).

Another reason why some voters are falling out of love with the death penalty is that it now costs much more to execute a killer than to lock him up forever. In Maryland, for example, it cost three times more until last year when the state abolished capital punishment. Governor Martin

times more—than last year, when the state abolished capital punishment. Governor Martin O'Malley cited the cost as one reason for pressing for abolition.

An execution itself is not expensive, but the years of appeals that precede it are. Defendants facing death tend to have more, better and costlier lawyers. Death-row inmates are more expensive to incarcerate, too: they usually have their own cells, with meals brought to them and multiple guards present for every visit. “It’s because of this myth that these people will be executed in a couple of months,” explains Richard Dieter of the Death Penalty Information Centre.

All states that execute people do so principally by lethal injection. Until 2010 most used three drugs: sodium thiopental to induce unconsciousness, pancuronium bromide to stop breathing and potassium chloride to stop the heart. In January 2011, however, the sole American producer of sodium thiopental ceased production, fearing a regulatory backlash in Europe if its drug was used to kill people. European producers have been reluctant to sell to American states for the same reason.

So states have turned to less-tested drugs, sometimes with disastrous results. Michael Wilson complained “I feel my whole body burning” as he was executed in Oklahoma last January with a drug cocktail featuring pentobarbital rather than sodium thiopental. Some states have turned to compounding pharmacies (small firms that cobble together drugs from their active ingredients), and have enacted laws keeping the source of their drugs secret. This month Oklahoma’s Supreme Court briefly stayed two imminent executions, concerned about secrecy. The Supreme Court ruled in 2008 that the three-drug protocol did not violate the constitution’s bar on “cruel and unusual punishments”, but newer injection methods remain legally untested, and have inspired lawsuits against several states.

The courts are unlikely to end the death penalty in America. But legislators and governors might. As Americans’ support for capital punishment recedes, more of their representatives will back abolition. Granted, everything could change if the bad old days of high crime and widespread fear were to return, but that seems unlikely. It may be a long wait, but the death penalty’s days are surely numbered.

From the print edition: United States