The number of executions has fallen sharply and more states have gotten rid of capital punishment. Is the death penalty on its way out? BY PATRICIA SMITH

Everyone watching the execution of Clayton Lockett last April knew immediately that something had gone terribly wrong. Lockett was strapped to a gurney in the death chamber of the Oklahoma State Penitentiary and had been given an injection when he started to convulse, twitching and then writhing in agony.

Lockett, who had been convicted of shooting a 77-year-old woman and burying her alive in 1997, had been sentenced to die by lethal injection, but the intended drug combination of a sedative and paralyzing agent had failed. Thirty minutes later, it looked like a death penalty.

"It looked like torture," says Lockett's lawyer, Dean Sanderson.

Then in July, it took Arizona nearly two hours to execute Joseph R. Wood by lethal injection; a reporter counted at least 640 gasps before the convicted murderer finally died.

The botched executions horrified many Americans and breathed new life into the long-running debate about the death penalty: Should the government put people to death? Does the Eighth Amendment to the Constitution allow it? Does the death penalty deter crime? Does it discriminate against minorities? What about the possibility of mistakenly executing innocent people? Conversely, are some crimes so horrific—mass murder or acts of terrorism, for example—that any punishment short of death is simply inadequate?

Opposition to the death penalty in the U.S. is growing. Eighteen states have abolished capital punishment, including New Mexico, Illinois, Connecticut, and Maryland in the past two years. Another 11 states are debating whether to end it. For some, the high cost of carrying out death sentences has been a factor.

The number of annual executions in the U.S. has declined from 98 in 1999 to 39 in 2013, with Texas and Florida accounting for the vast majority.

Even in death penalty states, governors have begun taking matters into their own hands. The governor of Washington
Most lethal injections are given in a three-drug combination: first an anesthetic or sedative, then a drug that causes paralysis, and finally a drug that stops the heart.

METHODS OF EXECUTION

There have been more than 15,700 executions in America since 1700. Here’s how they break down.

Hanging 9,183
From the early 1600s through the 1910s, this was by far the most common way to execute criminals.

Electric Chair 4,439
The first electrocution was in 1890. By the 1920s, it was the most common method of execution.

An electric chair delivers 500 to 2,000 volts, basically burning the body from the inside out.

Lethal Injection 1,205
First carried out in 1982, it’s now the primary execution method.

Gas Chamber 593
Introduced in 1924, it fell out of favor in the 1960s.

Burning/Shooting 205
People were periodically put to death by burning through the 18th century, and by firing squad through the 19th century.

Other 102
More obscure methods include "pressing," in which weight was applied until the person was crushed to death, and "gibbeting," in which the condemned was placed in a cage and left to die of thirst.

SOURCES: ESY FILES, DEATH PENALTY INFORMATION CENTER

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State declared in February that no executions would take place while he remained in office, following a similar move by the governor of Oregon in 2011. Last year, Colorado’s governor issued an indefinite reprieve in the only case on his watch.

Internationally, 98 countries—including all of Europe except Belarus—have abolished the death penalty. Another 35 countries still have capital punishment on the books but haven’t executed anyone in more than 10 years. Even China—which executed an estimated 2,400 people last year, more than any other country—is putting fewer people to death than in previous years.

‘Significant Problems’

Sixty-three percent of Americans still back the death penalty, but support has fallen significantly from a high of 80 percent in 1994, according to Gallup.

“The death penalty really is declining and on its way out,” says Diann Rust-Tierney of the National Coalition to Abolish the Death Penalty. “It’s inconsistent with basic American values.”

But that’s not how death penalty supporters see it.

“They are some crimes for which any lesser punishment is not justice,” says Kent Scheidegger of the Criminal Justice Legal Foundation, a victims’ rights group.

President Obama has long said he supports capital punishment for the most heinous crimes, but after last spring’s botched execution in Oklahoma, he called for a national review of how the death penalty is applied.

“We have seen significant problems—racial bias, uneven application of the death penalty . . . situations in which there were individuals on death row who later on were discovered to have been innocent because of [new] evidence,” Obama said. “And all these, I think, do raise significant questions about how the death penalty is being applied.”

In recent years, the U.S. Supreme Court has issued several rulings restricting the death penalty (see key rulings, p. 10). In 2002, the Court ruled 6 to 3 in Atkins v. Virginia that the Eighth Amendment, which prohibits “cruel and unusual punishments,” bars the execution of the mentally disabled.

In 2005, in Roper v. Simmons, the
Court ruled 5 to 4 that capital punishment for juvenile offenders is unconstitutional. Christopher Simmons was 17 when he and a friend robbed, bound, and gagged a woman in Missouri, then pushed her into a river, drowning her. The justices said Simmons could not be held to the same standard of accountability as an adult.

In 2008, in a 5-to-4 decision, the Court restricted the death penalty to cases of murder or treason, striking down a Louisiana law that permitted capital punishment for raping a child.

The morality and the deterrent effect of capital punishment have been debated for thousands of years. Many death penalty supporters interpret the biblical phrase “an eye for an eye, and a tooth for a tooth” to mean that those who commit murder should meet the same fate.

Other death penalty supporters say that capital punishment serves as a deterrent, stopping would-be killers, since they'd fear the possibility of execution. And many think that putting a killer to death can bring some closure and sense of justice to a victim's family.

Opponents say killing is wrong no matter who is doing it, even if it's the government, and that it's too final a punishment in a world where mistakes can happen. They also point to statistics that indicate the death penalty discriminates against blacks, who make up 12 percent of the U.S. population but about 40 percent of death-row inmates.

The death penalty in the U.S. dates to colonial times, when European settlers brought capital punishment to the New World. For centuries, hanging was the most common method (see "Methods of Execution," p. 9). By the 1950s, most states were using either the gas chamber or electrocution.

In 1972, the Supreme Court seemed to be on the verge of declaring capital punishment unconstitutional, because it said the standards for applying it were arbitrary and inconsistent. Instead, the Court imposed a moratorium on executions until states could ensure that it was being reserved for the worst offenders. The death penalty was reintroduced in 1976. Since then, more than 1,370 people have been put to death, most by lethal injection.

Botched Executions

In recent years, exonerations of death row inmates, based on DNA and other evidence, have led to charges that the death penalty is simply too irreversible a punishment. Since 1973, 144 death-row...
inmates have been exonerated. Then there have been the botched executions. Last January, an Oklahoma inmate being executed said, “I feel my whole body burning.” A week later, an Ohio inmate “struggled, made guttural noises, gasped for air and choked for about 10 minutes before succumbing,” according to The Columbus Dispatch.

There are several underlying factors contributing to these mishaps, death penalty experts say. Because most doctors see participation in executions as a violation of their oath to “do no harm,” many lethal injections are carried out by people with little or no medical training. And it’s become increasingly difficult in recent months for states to get the drugs needed for lethal injection. That’s because the European manufacturers refuse to sell them if they’re being used for executions. It’s forced prison systems to try untested drug combinations and to get the drugs from compounding pharmacies—loosely regulated labs that mix drugs to order. Several states have refused to provide any information about the exact drugs they’re using for executions or their source.

Though most Americans still support capital punishment, the number of death sentences being handed down, even in death penalty states like Texas, has dropped sharply, meaning there will be fewer executions in the future. University of Texas law professor Jordan Steiker says that could force the Supreme Court to reconsider the constitutionality of capital punishment.

“The thing to watch right now is whether these trends continue—whether we see another couple states repeal their death penalties and whether we see the number of death sentences continue to decline,” he says. “Ultimately, the Court will pay a lot more attention to what’s happening on the ground than what’s registering in the polls.”

2003
Roper v. Simmons
Barred the execution of juvenile offenders.
Christopher
Simmons was 17 when he killed a woman in Missouri.

2008
Baze v. Rees
Ruled that execution by lethal injection is not cruel and unusual punishment.

2008
Kennedy v. Louisiana
Restricted the death penalty to crimes in which the victim is killed, or cases of treason.

2014
Hall v. Florida
Found Florida’s standards for determining mental disability of death row inmates too strict; the ruling further restricted the application of the death penalty.
Up Close

To Kill or Not to Kill?

Read the article (on pages 8-11) closely, then answer each question below. Write at least two to five sentences for each response, using evidence from the text to support your answers. Use a separate sheet of paper if you need more space.

1. Identify the article’s central idea. How does the author begin to develop that idea in the first five paragraphs?

2. Cite evidence from the text to support the claim that opposition to the death penalty is growing.

3. Analyze the key arguments for and against the death penalty mentioned in the text.

4. Analyze some of the reasons for botched executions.

5. In the article, Jordan Steiker says, “the Court will pay a lot more attention to what’s happening on the ground than what’s registering in the polls.” Based on the text, what do you think he means?

6. Study the map (on p. 11 of magazine) that accompanies the article. What information does it add to the text?