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Still Cruel, Less Usual

The tide continued ebbing on the death penalty this year. States are putting fewer people to death, and juries continue to favor the punishment of life without parole over execution when given the choice. A [report](#) released this month by the Death Penalty Information Center counted 46 executions in 2010. That is nearly 12 percent fewer than a year ago, and down sharply from the 85 executions of 2000.

Forty-six state-committed killings are 46 too many, but the drop was even felt in Texas, by far the national leader in executions. It killed 17 prisoners this year, 29 percent fewer than last year. The center, which opposes the death penalty, found that while juries imposed about the same number of death sentences this year as last — 114 in 2010, 112 in 2009 — that rate was still only about half what it was in the 1990s.

The center suggested a number of reasons for the decline, including that prosecutors and the public are grappling with the wrenching problem of innocence. The irreversible punishment of death requires a foolproof justice system, but growing numbers of DNA exonerations in recent years suggest that it is far from that.

What tempers the results is that some of the reluctance had nothing to do with enlightenment. Death rows and executions are expensive, and cash-strapped states seem more willing to investigate alternatives. And executions were postponed or canceled this year in Arkansas, California, Oklahoma, Tennessee and Kentucky simply because of a shortage of a lethal-injection drug.

Still there was good news in 2010. Electoral victories by candidates who oppose the death penalty, like the new governors of California and New York and the re-elected governor of Massachusetts, suggest that it's not a voters' litmus test or political third rail.

A judge in a state court in Texas, of all places, granted a hearing this month on whether the state's capital-punishment law is unconstitutional because of [the high risk of executing the innocent](#). While the hearing has been temporarily halted, prominent former governors, prosecutors and legislators have urged that it continue. And in an essay this month in The New

York Review of Books, John Paul Stevens, the retired Supreme Court justice, argued that capital punishment was neither fair nor an effective deterrent.

We can only hope the country is closer to putting its shameful experiment in state-sponsored death behind it.