

**TRANSATLANTIC RELATIONS AND THE DEATH PENALTY:  
GETTING BEYOND “EXCEPTIONALISM”**

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I am grateful to Stephen Silvia and Aaron Sampson for their criticism and extension of my comparative analysis of US and European policies toward the death penalty. They rightly challenge existing work as insufficiently comparative and point out correctly that in global perspective, Europe is as “exceptional” as the US. To explain European policy, Silvia and Sampson look to the process of European Union (EU) enlargement. Core EU members, they conjecture, imposed abolition on new members like Spain and Portugal, and were thereby trapped by their own rhetorical denunciation. The so-called “European values” on the death-penalty issue were socially constructed by European integration.

On three aspects, we agree more than Silvia and Sampson acknowledge. First, there is no doubt that EU conditionality has helped to extend *de jure* death penalty abolition more quickly than might otherwise have been the case. Second, we agree that without comparative analysis we cannot know much about what drives the policy of one country or region. It is a bit odd that Silvia and Sampson view this as a criticism of my article, the explicit purpose of which was to present a simple comparative analysis and to encourage more. Yet it is nonetheless heartening to read such a rapid response. Third, Silvia and Sampson partially endorse what I have termed a “republican liberal” explanation of international human rights regimes. In this view, international human rights commitments reflect the interest of transitional regimes in “locking in” democratic institutions. Thus new post-authoritarian democracies tend to be the catalysts for strong international enforcement, while established democracies support such efforts more reluctantly, as a function of their desire to promote a “democratic peace.” This set of motivations, I have argued elsewhere, accounts for the original founding and the recent extension of the European regional human rights system, and it plays an important role (as the second of four factors) in my account of “American exceptionalism.”<sup>2</sup> Again, Silvia and Sampson incorrectly present this view as somehow contrary to my own, but for my part, I remain pleased to see that their understanding so closely parallels my own.

Yet three remaining aspects of Silvia and Sampson’s account weaken its authority, and demonstrate that it is by no means the final word on transatlantic disagreements about the death penalty.

First, Silvia and Sampson cannot explain the global reach of the abolitionist movement. While they are correct to call for comparative work rather than single-country studies, they immediately violate their own principle and treat Europe as an isolated regional phenomenon to be explained by idiosyncratic regional factors. (The fact that European policy has changed and the US has not does not, as they imply, render this method

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<sup>2</sup> Andrew Moravcsik, “The Origins of International Human Rights Regimes: Democratic Delegation in Postwar Europe” *International Organization* (Spring 2000).

legitimate.) As a result, Silvia and Sampson take no notice of what has happened elsewhere. Since France abolished the death penalty in 1981, the worldwide tally of abolitionists has increased by 74 nations, of which over half lie outside Europe, broadly defined.<sup>3</sup> Advanced industrial or newly industrializing democracies like Canada, Australia, New Zealand, Brazil, and Argentina are particularly consistent abolitionists. The scope of the trend not only calls into question Silvia and Sampson's assertion that Europe rather than the US is exceptional among developed nations, but also undermines their idiosyncratic regional explanation for the differences between them.

Second, no clear causal or theoretical logic undergirds Silvia and Sampson interpretation. They tell us little about how, why, and when are governments "trapped by their own rhetoric." Not only does the absence of theory limit our ability to consider other continents—again in violation of their injunction to be comparative—but weakens their explanation of contemporary European policy. As with many contemporary constructivist work in international relations, the observable implications of their account are difficult to distinguish their account from those of one in which structural factors—e.g. economic and political development, social and Christian democracy—account for changes in both rhetoric and policy.

Third, Silvia and Sampson's empirical account neglects the historical roots of European "exceptionalism." By focusing on formalistic *de jure* criteria (e.g. the signing of international covenants, the formal abolition of the death penalty) rather than *de facto* criteria (the extent to which the death penalty is actually imposed), Silvia and Sampson overlook the critical fact that European exceptionalism predates EU involvement in the issue. By the period they consider critical, they concede, "most European countries had not used the death penalty for decades"—in striking contrast to the US, Japan, and other retentionists. The factors I stress in my initial article—such as long-established democracy, decentralized domestic institutions, and cultural conservatism—better account for both the timing of change and the earlier *de facto* abolitionism.

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<sup>3</sup> Silvia and Sampson employ Amnesty International data, which would have permitted them to note this limitation. The only West European democracies that had, at the time of abolition, executed anyone since the early 1950s, were Britain, France and Luxembourg.