

The New Abolitionism: American or European Exceptionalism regarding the Death Penalty?
Stephen J. Silvia and Aaron Beers Sampson, American University

Andrew Moravcsik's essay on the death penalty in the September 2001 issue of the *European Studies Newsletter* is a welcome contribution to an increasingly turbulent debate in transatlantic relations. In the essay, Moravcsik uses "American exceptionalism" in an attempt to explain continued U.S. reliance on capital punishment. In the end, however, he concedes his results are "inconclusive." We argue that Moravcsik fails to explain why the U.S. practices capital punishment while Europe does not because he is looking at the wrong side of the Atlantic. The source of the disparity lies not in American peculiarities, but in the process of European enlargement. This reply consists of two parts. First, it points out methodological shortcomings in Moravcsik's analysis. Second, it sketches an alternative causal mechanism to explain the divergence in European and American policies toward the death penalty.

The methodological construction of Moravcsik's argument is flawed because it selects a case that has *not* changed rather than one that has. This makes it impossible to show cause and effect. Moravcsik attempts to surmount this problem with a cross-national comparison. This fails, however, because it is still based on the assumption that the explanation lies in the United States. A superior approach focuses on Europe, where policy toward the death penalty has changed. Before World War II, capital punishment was the norm throughout Europe. Yet by 2001, only four of 48 European countries (i.e., eight percent) retained the death penalty.¹ In the Americas, Africa and the Asia/Pacific region, on the other hand, the percentage of countries that retain the death penalty is 41, 64 and 59 respectively. Thus, it is Europe that stands out as "exceptional."

The contemporary drive to eliminate capital punishment has multiple stimuli. Many emerging European democracies, for instance, abolished capital punishment after replacing repressive regimes that abused the death penalty. Yet this explanation fails to explain European exceptionalism because democratization has not been confined to Europe and numerous non-European democracies retain the death penalty. A second influence is Pope John Paul II who has all but forbidden capital punishment. But this doctrinal shift does not explain European abolitionism because contemporary Europe is extremely secular and one would expect Roman Catholic doctrine to have an even bigger impact in other parts of the world (e.g., the Americas). A third influence comes from medical, human rights, and academic communities that have increasingly defined the death penalty as inherently cruel and prejudicial. Yet this trend should also have a worldwide impact, at least among democracies.

So why is European abolitionism exceptional? The answer lies in the process of European Union enlargement. During successive rounds of enlargement, European policy-makers have gradually developed lengthy admission criteria called the *acquis communautaire*. During the first round of enlargement in 1973, capital punishment was not an issue—even though Denmark and Ireland still allowed the death penalty for "ordinary" crimes—for two reasons. First, several European Community members retained capital punishment. Second, each enlargement candidate was a well-established democracy.

Capital punishment became an issue during the second and third rounds of enlargement when the candidate pool consisted of emerging democracies. There was cause. Spain's hasty execution of several Basque separatists during the final days of the Franco regime in 1975 provoked massive protests throughout Europe and an official denunciation by the EC.² As a result, restrictions on capital punishment figured significantly as a measure of human rights probity during accession negotiations. This set a precedent for subsequent accession talks.

Ironically, the incremental and at first somewhat unintentional construction of a set of “European values” sometimes caught older EC members off-guard. Although most European countries had not used the death penalty for decades, in 1977 only three of nine EC members had officially abolished capital punishment. By 1983, the number of abolitionists for “ordinary” crimes had risen to seven. In the same year, the Council of Europe passed Protocol No. 6 to the European Convention on Human Rights, which mandated the elimination of the death penalty. Consequently, abolitionism became part of the *acquis*. The EU, now fully abolitionist, explicitly demands dropping the death penalty as a prerequisite to accession. The preponderance of aspirants to EU membership have already complied.

In conclusion, the evidence shows that Europe, and not America, is exceptional when it comes to abolition of the death penalty. The process of EU enlargement produced this outcome. The EU is the only entity with an explicit project to define regional values backed by significant material incentives.

The extent to which the exercise of defining a distinct set of European values has promoted a positive European identity, more democracy, and a greater adherence to human rights both inside and outside of the EU is to be applauded. Yet claims of “exceptionalism,” whether American or European, can be destructive and dangerous when equated with exclusionary notions of cultural or moral superiority. Policy-makers and scholars should therefore take considerable care to use the emerging notion of European values, including the abolition of the death penalty, as benchmarks rather than dividing lines.

¹ All death penalty data are from Amnesty International, “Abolitionist and Retentionist Countries,” Website Against the Death Penalty, accessed 11 October 2001.

² *New York Times*, 1 October 1975.