THE EUROPEAN UNION:

*IS DEMOCRACY WORKING?*

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Introduction

Democratic governance constitutes the very raison d’être of the European Union. Although Europe as a historic civilization fostered the idea and practice of democracy since ancient Greece, Europe also spawned tyrannies that, in the 20th century, menaced the world through war and conquest. Spiritually traumatized and physically devastated after World War II, Europe had to come to grips with its own political persona. What is Europe? Perhaps no political group has engaged itself in such soul-searching as the Europeans. The operating assumption, courageous in itself, was that Europeans of all nationalities share a historic legacy and value-system. This assumption seemed certainly counter-intuitive in 1945 after Italy and Germany, in particular, had cannibalized the continent. A second operating assumption appeared similarly counter-intuitive – that Europe could institute peaceful relations through integration economically, politically and socially. The linchpin holding these two assumptions in place was democratic governance – or, more accurately put, the commitment to democratic governance. Democracy incorporates the best European values and, in the spirit of Kant, promotes peace.

Europeans, therefore, have something to say about democracy. It is the subject of an ongoing discussion at all levels of society. The peculiar nature of the European Union has, in fact, forced Europeans to innovate in democratic theory and governance.
I Issues Concerning Democracy in the European Union

Though committed to democratic governance, the European Union, paradoxically, suffers a “democratic deficit.” Issues like citizenship and immigrants in Europe spring to mind as examples of this deficit. In truth, the entire structure of the European Union rests upon a democratic deficit. European integration has been elite-driven; it has not resulted from popular demand. The European Commission, composed of Eurocrats, the Council of Ministers, composed of national ministers and civil servants as well as the European Court of Justice, have been the agencies of change, not the European Parliament.

In this regard the European Union seems to fit within the theoretical framework of the transitional approach to democratization. Transition theory emphasizes political processes with special regard to elite (agency) initiatives and choices in the move (or transition) from authoritarianism to democratization. EU governance has been called “consensus elite governance,” meaning that the characteristic EU incremental approach to change rests solidly upon the consensus of the instrumental elites. Moreover, European integration based upon democratization is a direct response to defeated authoritarianism in Germany and Italy, two states of what is now called “core Europe.” Third wave states like Greece, entering the EU in 1981, as well as post-Franco Spain and post-Salazar Portugal, entering the EU in 1986, required democratization. Since 2002 with the admission of post-Communist East European states, and more to follow (Bulgaria, Lithuania, the Ukraine), the EU is still transitional, suffering, to employ Lenin’s phrase, “uneven
development,” politically as well as economically. Turkey’s possible membership in the EU would require a new phase of transition to European-style democracy.

The European Union, therefore, is a democratic order in the making. Until the 1993 Treaty of the European Union (Maastricht), the objectives of the Common Market, the European Economic Community and the European Community, changing names for an evolving structure, were essentially economic. European postwar reconstruction was accomplished through European economic integration. The culmination of this process was the introduction in January 2002 of the euro. In the almost fifty years since the 1957 Treaty of Rome Europeans have prospered. According to modernization theory a la Seymour Martin Lipset, democracy requires certain social and economic prerequisites (he emphasized per capital income) to take-off. European integrationists delivered the goods and made the process of democratization, despite its growing pains, highly attractive. Why else would a state like Turkey seek admission?

Europeans seem similarly disposed, however, to viewing this European order as “fragile.” In the words of Umberto Eco, “...Europe will either become European, or it will fall apart.”1 Enlargement strains the purse strings, the institutions and the cohesiveness of Europeans. Europe is a going concern but it is not a “done deal.” Although there are signs of impatience within the citizenry for more participation, more transparency, more oversight, there is also the fear that opening the floodgates of democracy could boomerang. Too many actors might lead to fragmentation. In the words of Albert Weale, “…There may be a potential conflict between the

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demands of European integration and the requirements of democracy.”² Weale raises questions about the political legitimacy of the EU and points particularly to the *acquis communautaire* or the domain of sovereignty of the EU to which individual member states have ceded some of their power. He argues that renegotiating the balance-of-power between the EU and the member states, though crucial to achieve greater political legitimacy, might, at the same time, impede integration. Thomas Christensen asserts that “…the critique of the EU’s ‘democratic deficit’ for further democratization of the EU is only credible if it is based on an affirmation rather than a rejection of the integration process. Dismissing the European project because of a perceived lack of democratic procedures is, consequently, misplaced.”³

Moreover, as the European integration process intensified over the last half century, European decision-makers defined new objectives for integration. The Common Market had economic integration as its immediate and long-range goal. Maastricht Europe has now set political objectives for itself. The euro has an obvious economic function but, as a common currency within Europe, it also carries with it political significance. Giving up a national currency connotes giving up an aspect national sovereignty as well as of national identity. Over and beyond the euro, Maastricht commits the EU to a new political responsibility – a Common Foreign and Security Policy. The CFSP represents an ambitious goal for it rests upon Europe’s ability to speak in one political voice to the external world. Clearly, the CFSP, should it happen, would indicate the Europeanization of European

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nation-states and would admit the increased power potential of the EU. For this reason Jacques Derrida and Juergen Habermas urged Europeans, in a joint statement issued after the United States’ invasion of Iraq, to forge such a common foreign policy: “At the international level and in the framework of the UN, Europe has to throw its weight on the scales to counterbalance the hegemonic unilateralism of the United States. At global economic summits and in the institutions of the WTO, the World Bank and the IMF, it should exert its influence in shaping the design for a coming global domestic policy.”

Commentators on the European Union recognize that the shift from strictly economic goals to those that include political responsibilities is not simply a shift in degree but a shift in kind. Andreas Fallesdal elucidates this difference well: “As long as the explicit aim of the EU was economic, increased efficiency was easily interpreted as Pareto-improvements within a utilitarian setting. …. The EU now has much broader political aspirations. Its objectives, criteria of efficiency, and the role of majoritarian mechanisms must be considered accordingly. The choice of means becomes more important as economic benefit is supplemented by other political goals. Transparency and the rule of law, majority rule, distributive justice, and human rights all become central issues. They cannot be regarded merely as ideals to be pursued on a par with economic efficiency, but are conditions of justice if the EU indeed is to become and appear legitimate.”

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By what standards should the democratic substance of the European Union be judged? What standards, in fact, were used in assessing the “democratic deficit?” Andrew Moravcsik, Director of the European Union Center at Harvard University, claims that “most critics overlook the relatively optimistic conclusions to be drawn from the evidence because they analyze the EU in ideal and isolated terms. …The use of idealistic standards no modern government can meet obscures the social context of contemporary European policy-making – the real world practices of existing governments and the multi-level political system in which they act. This leads many analysts to overlook the extent to which delegation to insulated non-majoritarian bodies such as constitutional courts, central banks, regulatory agencies, criminal prosecutors and insulated executive negotiators is a widespread trend in modern democracies which must be acknowledged on its own terms. Moreover, it is a tendency with a great deal of normative and pragmatic justification. In this regard, moreover, most analysts view the EU in isolation and thus fail to fully appreciate the symbiotic relationship between national and EU policy-making – a division of labor in which commonly delegated functions tend to be carried out by the EU, while those functions that inspire and induce popular participation remain largely national. This gives observers the impression that the EU is undemocratic, whereas it is in fact simply specializing in those aspects of modern democratic governance that tend to involve less direct political participation.”

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Moravscik does not do justice to his own argument. He argues that EU critics do not put the EU in its full context but then proceeds to obscure that context himself by comparing the EU with other modern democracies. The EU simply cannot be compared to other democracies. It exists *sui generis*. The model for other democracies is the nation-state. The European Union is not, however, a nation-state. Standards applicable to national democratic states need to be rethought in terms of the multi-level governance, national and supranational, characterizing the EU. Moravscik veers away from this important aspect of his argument. This multigovernance raises questions of *legitimacy* of the European Union. Niels Petersent succinctly states this problem:

> In the European context, the question of the subject of legitimacy has consequences for the institutional design. A state-oriented collectivist approach has to be reluctant with regard to any further step of integration. The decision-making competences have to remain as much as possible with the national parliaments. …. On the European level, the Council of Ministers as an intergovernmental organ must play a crucial role. From an individualistic standpoint, the European Parliament as the ‘voice’ of the European citizenry is the main organ procuring democratic legitimacy.7

Which model, the collectivist or the individualist, is most applicable to Europe? Just as democratic theory had to make adjustments in the transformation of democracy from city-states to nation-states, so, it is argued, it must now make adjustments if European integration is to be properly assessed normatively.

Michael Seward comments:

> The EU is labeled post-national because it is an entity *sui generis* with sufficient independence to require a more direct mode of legitimacy beyond that conferred upon it by the Member States. What is emerging in Europe is a multi-levelled, highly fragmented system in which polich ‘develops’ but is beyond the firm control of any single authority. It is a system which to a

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large extent is premised on preferences and interests, not as exogenously fixed or set but rather an endogenously shared through complex patterns of interaction. Preferences are moulded and reinforced in the political process. Here there is a structurally and procedurally induced possibility of overriding national self-interest, which is supportive of and also requires communication processes. This also helps to shed light on the normative aspect of the EU puzzle. Because the EU is not a fixed entity, it should not be evaluated on the basis of established notions of democratic legitimacy, which up till now have been derived from entities such as the city and the nation-state.  

II. The European Union: What is it?

With the exuberance characterizing his book, *Why Europe Will Run the 21st Century*, Mark Leonard states unequivocally that “The European Union is a laboratory for reinventing democracy.” Leonard admits that “there is still some way to go in creating a ‘public space’ to debate and resolve pressing problems, where political majorities can emerge, and solutions at the European level can motivate EU citizens. But though Europe’s current system of government could be better, it is still the most exciting experiment in democracy in the world.” References to the EU as a “laboratory” for democracy or an “experiment” in democracy abound. Why?

Structurally, the EU is a supra-state organization but not a super-state. It has elements of a confederacy insofar as it rests upon the separate constitutional orders of its member states. Democratic governance is the *sine qua non* of membership. Moravscik rightly states that “the most fundamental source of EU legitimacy lies in

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the democratic accountability of national governments.”

For Germany such accountability involves special, historically-reflexive responsibility. The Grundgesetz (Basic Law) commits the German state to democracy “in perpetuity.” The German Constitutional Court had to rule, therefore, on the Maastricht Treaty of European Union which would bind Germany to greater economic and political union. Could the German Law of Accession to the Union Treaty, passed by a majority of the Bundestag in 1992, be reconciled with the demands of democratic accountability contained in the Grundgesetz? The Court ruled in the Brunner case that the suprastatism involved in the First Pillar of the Treaty (the Common Foreign and Security Policy) is provisional, that sovereignty is delegated and not surrendered. The Treaty is acceptable as long as the ideals of the Grundgesetz are upheld. What are the criteria for judgment? The common use of competence (i.e., aquis communautaire) must be marginal to the overall functioning of democracy and the manner in which competence is exercised must be predictable.

The Court coined a term to designate the European association – Staatenverbund. It is thereby neither a Bundesstaat (a federal state like Germany) or a Staatenbund (a federation of states). The Staatenverbund, according to the Court, shares a community law and has an asymmetrical power relationship, meaning that a state, in this case Germany, permits itself an element of suprastatism despite the fact that it does not secure democratic accountability. Crucial to the Court’s argument here is that sovereignty is not surrendered or “alienated.” Were, in other words, the European Union to stray from democratic governance, the Federal Republic of Germany could secede from the Union. In a federal state or a federation...

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of states, there exists, by contrast, a symmetrical power relationship in that there is a balance between suprastatism and democratic accountability.

How realistic is the Court’s ruling? Is secession a plausible option? Most, if not all, European analysts today argue that the European Union has become so economically intertwined that it is no longer economically feasible for a member state to think of extricating itself. What this means, in turn, is that national governments like Germany have a vested interest in European Union oversight. Moreover, Leonard is correct is stating that “Because of the European Union, national governments were being held to account in an entirely new way: their performance is compared with that of their neighbours.”\textsuperscript{12} He makes an excellent point in claiming that “By giving national governments a voice in the world, the European Union has saved national democracy from becoming a mere talking shop that comments on global events while the real decisions are taken elsewhere. The European Union is the only way that small countries can have a measure of control over global markets. …. The European Union allows you access to a huge market without tariffs and puts you in a strong negotiating position with the rest of the world. But it leaves the really important decisions to national politicians. …. The EU creates wealth and the ability to shape events, empowering national politicians – and their citizens – to decide what kind of country they want to live in.”\textsuperscript{13}

The European Union enjoys “pooled sovereignty” with its nation-state members. The principle of \textit{subsidiarity} applies to national competence; the \textit{acquis communautaire} applies to Union competence. Union competence applies to limited

\textsuperscript{12} Leonard, \textit{op.cit.}, p. 94.
\textsuperscript{13} \textit{Ibid.} p. 92.
areas, mainly trade. Leonard could very well be right in asserting that “The reason that people do not turn out in their droves to vote for the European Parliament is not because it has no power. It is because none of the issues in which the EU specializes – trade liberalization, monetary policy, the removal of non-tariff barriers, technical regulation in the environmental and other areas, foreign aid, and general foreign policy co-ordination – appears anywhere on the list of issues that voters care about.”14 This appraisal, however, is reflective, we believe, of the fact that the European Union has not yet stepped up to the Maasticht plate, to use an American baseball expression. In other words, the European Union has not yet assumed its political character. This will come.

III. A Deliberative Democracy?

The prominent difficulties in terms of democracy in the European Union relate to supranational decision-making and national cultural diversity. Are national representatives sufficient and effective in holding supranational decision-makers accountable? Should individual European citizens play a role in this accountability? This latter question brings us to the problem of national cultural diversity in Europe.

A strong argument can be made for the fact that Europeans remain national citizens and impervious to their European neighbors. For one thing they are separated by language. How can a democracy operate without a common base, namely, a citizenship united by language and values? E.W. Scharf argues that multiple languages make opinion-formation extremely difficult and thus common

14 Ibid., p. 97.
political action. Scharf maintains that the European public sphere is weak because there is little agreement on common interests and values, a lack of policy discourse as well as a lack of a European-wide institutional infrastructure that could assure political accountability of office holders to the European constituency.

Europe, however, evolves. In counterpoint to Scharf’s assessment are observations that the European public sphere is developing. New European audio-visual spaces facilitate dialogue. English is becoming the *lingua franca* of Europe. Cross-border social movements and identity politics are emerging. Will there ever be, however, a *single* European identity? Most likely not. In fact, we might argue that European integration has given succor to cultural identities that antedated the nation-state — for example, in the regionalism developing within European, as well as to minorities. The Basque community comes to mind here. With its multiple, overlapping spheres of interaction and identity formation, the European Union has indeed been likened to a form of neo-medievalism.

With its cultural complexity Europe approximates a mini-cosmos or what the world at large looks like in miniature. Democratic innovation in Europe, therefore, might be understood as experimental in terms of cosmopolitan democracy for the entire world. Moreover, European integration has, from its inception, followed the pattern of globalization and stimulated globalizations. In other words, European regional integration has been predicated upon globalization. This argument becomes significant to the analysis of democracy in Europe. Nadia Urbinati asserts that “the political branch of democratic cosmopolitanism is largely European” and that “the moral justification for a global democratic order is derived from the
Kantian premise that a degree of association among the peoples of the world is needed to protect human rights and successfully oppose and prevent their violation,” seeing the “postnational democratic order as the most advanced answer to the challenge posed by the erosion of nation-state sovereignty and the international/domestic order set up by the Westphalia Treaty. …. The European Union is the paradigm of the political approach to democratic cosmopolitanism. …. The institutional and legal networks that have been enveloping European states and peoples since the 1950s have served as the template for a bolder view of transnationality and pacifism. … It is no coincidence that the pioneers of both cosmopolitical and postnational democracy are many European.”

Cosmopolitical democracy, as an idea, has avid supporters as well as virulent critics who have, in turn, spawned robust discussions/debates and a voluminous literature. In its radical interpretation, cosmopolitical democracy connotes world government based upon citizens of the world enjoying democratic rights and entitlements. Restricted for our purposes to the European mini-cosmos, cosmopolitical democracy means that “transnational communities are constructed around shared references and bring to the fore a feeling of belonging to a ‘deterritorialized nation’ with identity claims that are nourished by new expressions of nationalism.” While transnational communities challenge the sovereignty of the nation-state in favor of supranational governance, “for states, transnationalism is a way to include identity issues developed in a minority situation into their political

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strategy and ‘re-territorialize’ actors in order to maintain the loyalty of transnational actors and of any nationalist expression beyond their political border. It becomes for a states a way to integrate into the process of globalization.”\(^{17}\) The European Union exemplifies the possibility, therefore, that transnationalism does not necessarily destroy the Westphalian state but, rather, recontextualizes it functionally. And we are back to the problem of delegated but not alienated sovereignty.

Foremost in the discussion of democracy in the European Union is the idea of deliberative democracy. And its foremost spokesperson is Juergen Habermas. Habermas rejects cosmopolitical democracy or a single world order for cosmopolitan democracy or postnational democracy and “poses the problem of how to legitimate postnational democratic decisions and norms without creating a ‘civil [as political] solidarity’ at the global level.”\(^{18}\) “Habermas faces the challenges of globalization from the perspective of the emancipatory experiences ‘articulated in the ideas of popular sovereignty and human rights.’”\(^{19}\) The sources of cosmopolitan democratic legitimacy are democratic states that issue laws and a global public sphere composed of non-governmental actors and a critical public. In Why Deliberative Democracy? Amy Gutmann asserts that “most fundamentally, deliberative democracy affirms the need to justify decisions made by citizens and their representatives. Both are expected to justify the laws they impose on one another.”\(^{20}\) She continues: “But not all issues, all the time, require deliberation.

\(^{17}\) ibid.
\(^{18}\) Urbinati. \textit{op. cit.}, p. 6.
\(^{19}\) ibid., pp. 5-6/
\(^{20}\) Amy Gutmann, Dennis Thompson. 	extit{Why Deliberative Democracy}? N.Y. Belknap Press. 1998., p. 3.
Deliberative democracy makes room for many other forms of decision-making (including bargaining among groups, and secret operations ordered by executives), as long as the use of these forms themselves is justified at some point in a deliberative process. Its first and most important characteristic, then, is its reason-giving requirement.”21

In the deliberative model of democracy “arguing, …, not voting or bargaining becomes the currency of democracy.”22 The more publics there are, the more debate there can be. The more debate there is, the more democracy there is. Habermas locates popular sovereignty in the interplay between institutionalized and non-institutionalized bodies for deliberation and decision-making. The public delegates its sovereign “will” to decision-making bodies but defines the intent of its will through debate. Opinion formation thus resides within the domain of the public sphere while will formation lies within the domain of the decision-makers who alone can act (i.e., the public cannot act).

Communications enables opinion-formation and debate under modern circumstances in which “the democratic state makes solidarity between strangers possible”23 and “citizenship does not presuppose the community of which the citizen is a member, but creates this very community.”24 If we return to our question, How do we evaluate democracy, we now have the beginning of an answer.

Communication networks – distribution of IT, usage, linkages, etc., can be measured. Opinions can be surveyed. Debates can be monitored. Feedback can be

21 ibid.
23 ibid., p.56
turned into statistics. It is no wonder that the European Commission pronounced the year 2006 as the Year of Communications. Of course, this will tell us more about the procedural elements of European democracy than its substantive aspects.

IV. **European Democracy and Human Rights**

In his definition of the state, Max Weber emphasized its monopolization of power. The state, alone, has ultimate authority and power over the individual. Democratic governance does not guarantee individual well-being. Not even liberal democratic governance guarantees such well-being. In both instances “tyrannical” majorities might capture debate and decision-making within the state, subjecting the hapless minority to abuse. Deliberative democracy would appear, therefore, insufficient and in need of a further “prop.” What is really the substantive objective of democratic governance if not human rights? What, however, leverages those rights?

The answer to this question proposed by this paper is: prohibition of the death penalty. Europeans assert that *Europe ends where the death penalty begins.* Why do Europeans so unequivocally rebuke the death penalty? Why has its prohibition become such a powerful European norm -- a norm which separates Europe and the United States? The former American ambassador to France wrote an Op-Ed article in the *New York Times* last year in which he alerted Americans to the fact that they must take the European stance on the death penalty seriously, that it is creating a gulf between the two major democracies of the world. The argumentation extends to the American detention of suspected terrorists in Guantanamo. Judge Baltasar Garzon of Spain, who has spent nearly two decades
building criminal cases against terrorist networks in Spain, recently charged that “a model like Guantanamo is an insult to countries that respect laws. It delegitimizes us. It needs to disappear immediately.”\textsuperscript{25} Recalling that he comes from the country of the Inquisition where victims were told “If you cooperate, we’ll cut off your head, and if you don’t, we’ll burn you alive,” Garzón stated that “we had to learn from experience that torture, and mistreatment and degradation, do not work as investigative techniques.”\textsuperscript{26} Similarly, Armando Spataro, well known Italian magistrate, argued that “We know it’s a great mistake to fight terrorism in this way, the way of Guantanamo, the way of renditions. It’s extremely damaging in all our efforts to integrate our Muslim communities who see these practices as unjust.”\textsuperscript{27}

In reflecting on this problematic, Socrates came to mind and we sought out Plato’s dialogue, \textit{Apology}. In the \textit{Apology} Socrates defends himself before the “men of Athens” or the court which has sentenced him to death for corrupting the youth.

In his defense Socrates, according to Plato, utters these words:

\begin{quote}
 I speak rather because I am convinced that I never intentionally wronged any one, although I cannot convince you – the time has been too short; if there were a law at Athens, as there is in other cities, that a capital cause should not be decided in one day, then I believe that I should have convinced you. But I cannot in a moment refute great slanders; and, as I am convinced that I never wronged another, I would assuredly not wrong myself, I will not say of myself that I deserve any evil, or propose any penalty. Why should I? Because I am afraid of the penalty of death which Meletus proposes? When I do not know whether death is a good or an evil, why should I propose a penalty which would certainly be an evil?\textsuperscript{28}
\end{quote}

\textsuperscript{26} ibid.
\textsuperscript{27} ibid.
Two elements relate Socrates' speech to our concerns. He argues that, had he been in a city other than Athens, an accusation carrying capital punishment could not be decided in one day. Secondly, had he more time, he might have been able to convince the court of his innocence. In other words, the abruptness of the judicial process as well as, certainly, the death penalty itself deprived Socrates of his ability to negotiate his innocence with the state. In foregoing the death penalty, the European Union permits ongoing deliberation – self-defense, argumentation, debate. As long as an individual knows he/she will live, that individual knows that her/his rights can be negotiated. The ability as well as the right to continue to speak anchors all other rights. Abolition of the death penalty becomes the leverage for all human rights. An individual must live to speak and to negotiate.

Abolition of the death penalty is a requirement for all states seeking admission to the European Union which must sign a protocol to this effect. The European Union decided in 1998 to make its anti-death penalty stance a cardinal tenet of its Human Rights position, reaffirming this policy in 2000. Internationally, the European Union actively intervenes in cases involving the death penalty in countries, like the Philippines, India, Indonesia, around the world, including the United States where the European Union has submitted _amicus curiae_ briefs to the Supreme Court. The EU actively campaigns for the universal abolition of the death penalty and at the World Day Against the Death Penalty on 10 October 2003 the Commission stated that “the Union considers that abolishing the death penalty
contributes to the enhancement of human dignity and the progressive development of human rights.”

Transnational, deliberative democracy works only if it rests upon the individual’s survivability. The individual must endure as a voice. As Socrates maintained, time to present the argument may establish the case, may make the difference. Democracy cannot simply mean that the majority rules. It cannot rest only upon the decision of the electorate. The procedural rule of law must embody the substantive right to life. This is the contribution of the European Union to democratic theory and practice.

The European Union may suffer a democratic deficit. In fact, it probably will always suffer a democratic deficit since standards of democracy shift and develop. No state has been or most likely will be “perfectly” democratic. What the European Union contributes to the discourse on democracy is the idea that democracy must not only assure procedural processes like elections and the rule of law; it must also guarantee that the state will ensure the individual a deliberative voice. Socrates was denied time in defending his own life. What could be more precious than the ongoing opportunity to prove one’s innocence? To negotiate one’s interests? To prove one’s point? In prohibiting the death penalty, the European Union has put judgment upon its own past and has set the standard for democratization across the world. It has reconfigured the state as defined by Max Weber, placing the state at the service of the individual and thus breaking its monopolization of power.

29 http://ec.europa.eu/cernal_relations/human_rights/adp/wdayo3htm
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