

THE THREEPENNY REVIEW

The Law's Infamous Delay

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Source: *The Threepenny Review*, No. 89 (Spring, 2002), pp. 32-33

Published by: [Threepenny Review](#)

Stable URL: <http://www.jstor.org/stable/4385130>

Accessed: 22/06/2014 05:26

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The Law's Infamous Delay

Javier Marías

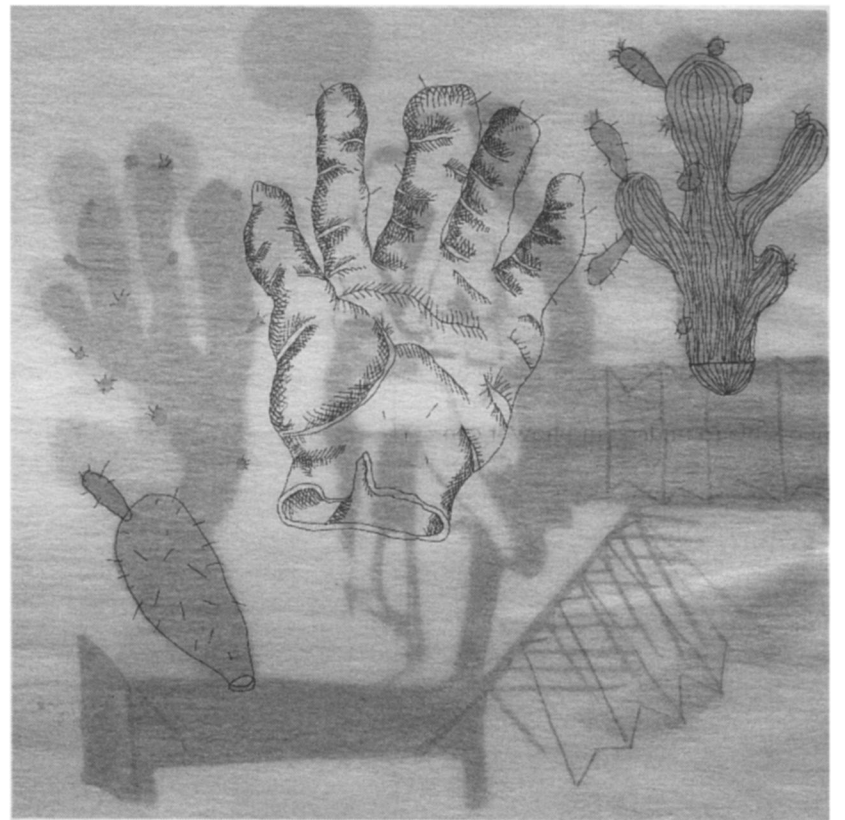
WE EUROPEANS, or most of us, are scandalized and indignant that in the United States, a country which inevitably is close to us—often closer than we would like—the death penalty continues to exist, and has even become a prime political instrument by which those who are or aspire to be in power “prove” their firmness, strength of character, devotion and commitment to the law, unyielding stance on crime, and even—in a mad inversion of values that speaks volumes about our era—their “courage.” Meanwhile, other traditional virtues—benevolence, clemency, good faith, reasonable doubt, prudence, and the fear of error in questions of life or death, for example—seem to have been banished from the society, packed away in some attic that is filled with a highly varied jumble of things, but on whose door is a single leveling rubric under which everything to be avoided is grouped: “Weaknesses.”

Still, neither the brutal perpetuation of the death penalty nor the indecent and more or less brazen custom of using it as a bargaining tool, taking advantage of it for other ends or burdening it with meanings and messages that are extraneous to the punishment of crime (“By carrying it out, I demonstrate the steadiness of my pulse to the electorate”) is unknown or unheard of in Europe. The death penalty has existed in all our countries—in some of them, such as Spain, until very recently—and every European country has had its politicians or monarchs who did not limit themselves to using the death penalty to teach a lesson or give an example, but, like many of those currently in power in North America, took advantage of it to chisel an image of their character, their fame, their terribleness, their legend. This may never before have been done as openly or systematically—or have been so widely accepted by any citizenry—but the existence of the death penalty and of people who use it to their direct or indirect advantage is not foreign to European history. That, I suppose—and because hardly anyone dares speak a word against the United States—is why the continual executions we hear news of, especially in Texas, but also in Florida and in too many other states (fortunately not all of them), strike most of us in Europe as a cruel atrocity, a grave and irreparable mistake, a legalized form of murder, and whatever else you like. But not, in the strictest sense, an infamy. The etymology of that word is clear yet ambiguous, and this isn't the place to go into it; furthermore, the word has been overused and has consequently become opaque and confused, sometimes sounding exaggerated, at other times insufficient, depending on the context and what it refers to. To my mind, not all atrocities or murders

are also infamies, and while we may describe certain murders and atrocities as “infamous,” we cannot say it of all of them without distinction.

As I see it—and my sense of language is as personal and nontransferable as my fingerprints—something is infamous when it is considered to be cruel, appalling, and unjust, but is deliberately stripped of those qualities when pre-

engage in this practice should be condemned on a daily basis: those North American states, that is, which execute prisoners for crimes they committed as minors, when they were teenagers or almost children. And I hasten to add that, great as it is, the greatest infamy is not the execution of a teenager or a child for barbarous or despicable acts which had mortal consequences, because there have been times when we, too, saw such executions here in Europe, primitive and impetuous times that horrify us now—but we must keep in mind that the United States is, right now, in its retention of the death penalty and other forms of punishment, a primitive and impetuous country, appalling, misguided, cruel, and unjust. However, what truly makes some of its states infamous is the fact that they *never* execute criminals who are teenagers or children; they execute the adults those children always become, or



Contradance: *The Wound*

sented to the society and carried out. It is presented “without fame”—that is, without its ill fame—as if it were a thing that, though unpleasant, is in no way cruel or appalling or unjust, but only the fulfilment of a harsh duty. And so entirely devoid of ill fame is the death penalty in the United States right now that politicians there boast of each new execution as a “bitter badge of honor,” esteemed all the more by the public when accompanied by some hypocritical lament to give it further luster. How touching it always is when someone murmurs, “With pain and sorrow, I accept this burden...”

But though there is much that is infamous about all of this, it is undoubtedly not the greatest infamy.

The greatest infamy is one concrete and particularly slippery, fraudulent, and calculating form in which the death penalty is applied. Those states which

that they are always forced to become.

This is hypocrisy of the highest caliber. One—not even the principal one—of the many arguments against the death penalty is that, given “the law's delay” which Hamlet was already bemoaning, the person who is executed has often become a very different man or woman from the one who committed murder. This argument is plausible, if somewhat debatable, but what cannot be debated is that a child or teenager is always, necessarily, different (whether better or worse) from the adult he comes to be, for we all believe that the teenager or child isn't yet grown up, is still informed, incomplete, unfinished, and this conviction is translated into our way of treating them and considering them in all spheres of existence. In almost all of our laws, a line is drawn (arbitrary and variable, perhaps, but that matters lit-

tle, every border or limit is an approximate convention), and only beyond that line does someone attain his or her legal majority. It may be a convention, but this line is not merely rhetorical or symbolic; on the contrary, it marks the moment when a child cannot yet or can at last make decisions without being prevented by parents or guardians; he or she can leave home, marry without asking anyone's permission, take any job, travel freely, vote, pay taxes, be drafted and forced to go to war, have sexual relations with any consenting adult, drink alcohol and smoke cigarettes. In some American cities, including Washington, D.C., curfews have been imposed on those who haven't yet crossed this line; minors who were in the streets after a given hour were taken to the police station and their parents were fined. In fact, no other country in the world is more obsessed with its minors, or more disproportionately protective and oppressive of them; the United States is at the forefront of the "sanctification of childhood" that the West is going through today, with some good consequences and others that are disastrous. And no doubt for that very reason, the United States cannot allow itself to be accused of putting teenagers and children to death. They put them in handcuffs and send them to jail, but they don't kill them. And that, finally, is the infamy: they don't kill them *yet*, but they *decide* to kill them. The teenager is sentenced to death, but the sentence waits, hypocritically, to be carried out when the prisoner-child has crossed the famous line to become a prisoner-adult. The maneuver is so crude and obvious that it's impossible to understand how it can be allowed to pass, except under one of two suppositions: either this is further proof that the greater the lie or deception the more likely it is to be accepted; or North American society—and in part European society, as well, because it does not relentlessly harass the states that are guilty of legal infanticide—takes the infamy for a good thing and becomes its accomplice.

My inclination is to accept the first explanation and perhaps I'm right; the pretext is so blatant that it probably succeeds for that reason alone. "Look, we don't put minors to death," those who inflict this penalty are saying, "we only put adults to death, we're not monsters." With that, they think they've appeased their consciences and offered the world an image of themselves that is not heartless, when this forced and calculated wait is the most heartless aspect of the whole thing. Because the minor is allowed to become an adult, he is forced to become different from what he was, to grow up (as our various laws recognize in all spheres), but only in order then to be killed, perhaps once he truly understands and can mourn his distant crime. The adult is executed, not for anything he did as an adult, after crossing the decisive line, but for what he did as a child, before crossing it, when he was without doubt different from what he is now. To the implicit reassurance of these states, "We don't execute children, we only execute adults," the response should always be, "Not true. You execute children for what they did as children and only for that. Waiting until they are adults to put them in the

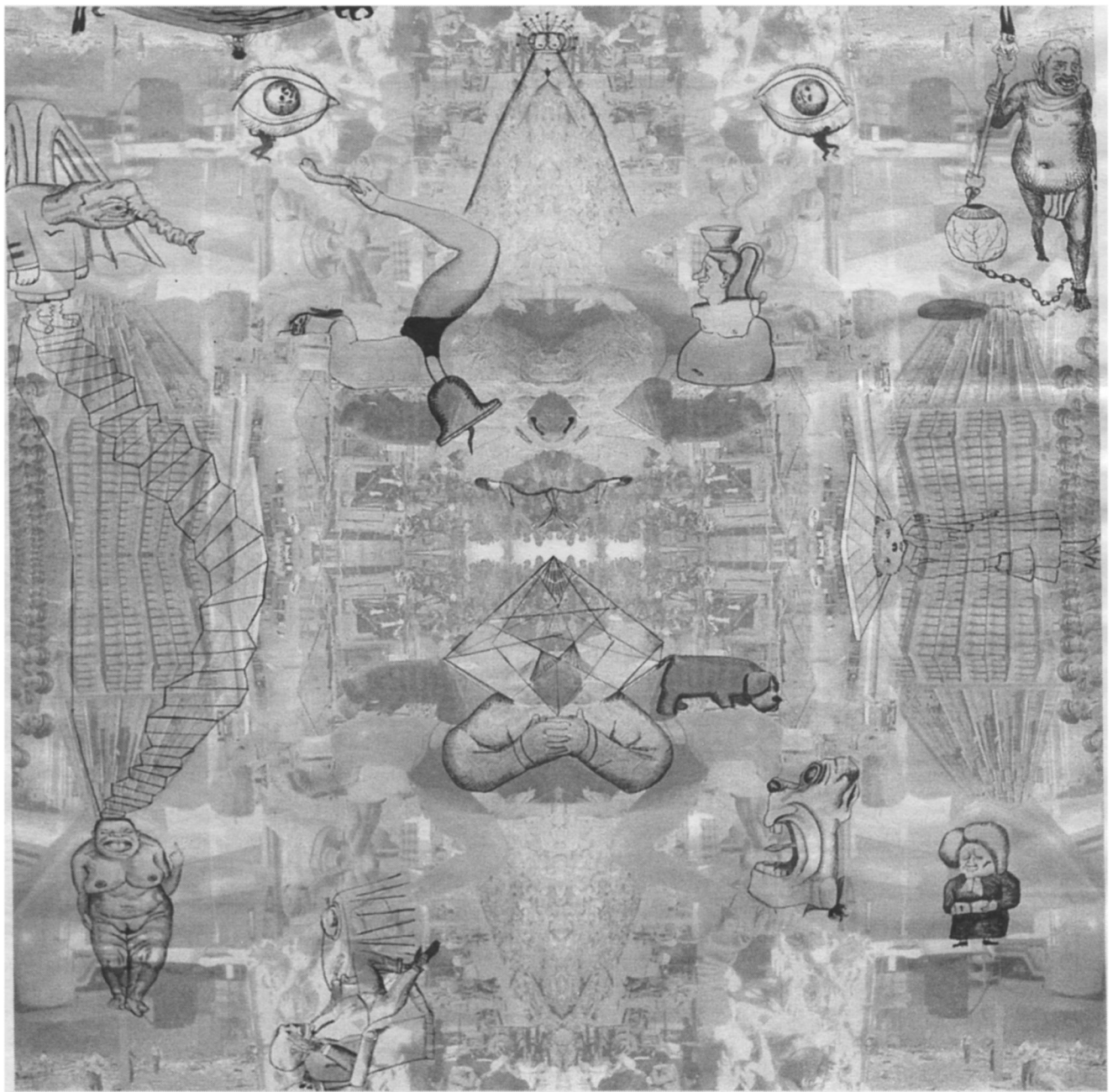
electric chair or give them lethal injections is a perversion of justice that makes your act all the worse: it is the essence of true infamy. The adult pays for the deed of the child he once was, and though the prisoner may be twenty-five years old the day he dies, it is the person who committed a crime that is to be executed, and the adult is no longer that person, not only under our laws but according to what we all know from experience." For we all know and remember what time is like in childhood, and what it is like after-

wards; how a year in the life of a child is endless and seems to encompass everything; and how the next year is a remote and distant thing, so remote that the child can't even imagine what he will be like then or even if he will be different, because for him there is really only the present and his path; he hasn't arrived anywhere yet and he is not yet finished. He is still unformed and his only constancy is change.

If these North American states were to proceed immediately to execute the minors they sentence to death, they

would be committing a brutal atrocity, a cruel injustice, and the entire civilized world would cry out against them. By giving the death penalty to minors, in fact, but with this compulsory, calculated, and deliberate wait to whitewash their action and protect themselves, they add to all the foregoing—which remains true—the infamy of this delay. And the cowardly world watches the charade in silence. □

(Translated from the Spanish
by Esther Allen)



The Temptations of St. Anthony, VI