

## THE TRUTH OF THE LAW. REFLECTIONS IN THE MARGIN OF A FRIEDRICH DÜRRENMATT'S SHORT STORY

Luigi Pannarale

Università di Bari

[l.pannarale@lex.uniba.it](mailto:l.pannarale@lex.uniba.it)

### Abstract

The following reflections are inspired by a short story by Friedrich Dürrenmatt (1921-1990), who is unanimously considered, together with Brecht, as the greatest dramatist in Germany of the second post-war period. There is, however, an important difference that sets him apart from Brecht and this is despite the fact that Dürrenmatt did study and, in fact, ended up sharing many of Brecht's theories on epic theatre. This difference stems from the unforeseeability and unconventionality of Dürrenmatt's work that contributed, on a par with one of his countrymen, Max Frisch, to a radical renewal of dramaturgy written in Germany and which offered, in a somewhat grotesque way, a disturbing picture of the shabbiness hiding behind the appearance of respectability of the society in which he lived.

### Key Words :

Law; Literature; Dürrenmatt; Justice; Grotesque.

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## THE TRUTH OF THE LAW

### REFLECTIONS IN THE MARGIN OF A FRIEDRICH DÜRRENMATT'S SHORT STORY

by Luigi Pannarale

The following reflections of mine are inspired by a short story by Friedrich Dürrenmatt (1921-1990), who is unanimously considered, together with Brecht, as the greatest dramatist in Germany of the second post-war period. There is, however, an important difference that sets him apart from Brecht and this is despite the fact that Dürrenmatt did study and, in fact, ended up sharing many of Brecht's theories on epic theatre. This difference stems from the unforeseeability and unconventionality of Dürrenmatt's work that contributed, on a par with one of his countrymen, Max Frisch, to a radical renewal of dramaturgy written in Germany and which offered, in a somewhat grotesque way, a disturbing picture of the shabbiness hiding behind the appearance of respectability of the society in which he lived. Frisch, however, was obsessed with questions pertaining to identity, to rationalism, and to relationships between men and women. He was, so to speak, "a sceptic humanist", an expression he particularly liked to use to define himself. Dürrenmatt, on the other hand, while characterised by his sarcastic exuberance that tends to overwhelm his interlocutor through fierce and pitiless taunting, has always a "Christian foundation", as Frisch himself used to say, or, to be even more precise, a "Calvinist foundation" because of its eagerness to look for answers to questions about grace and justice and to deliver from the top its judgement about human foolishness through the "grotesque" that always seems to touch on the excessive but that is, at the same time, very distant from the measure of the other.

Our world has led to the grotesque and to the atom bomb, both, just as Hieronymus Bosch's apocalyptic paintings are also grotesque. But the grotesque is only a tangible expression, a tangible paradox, the shape of the shapeless, the face of a faceless world, and just as our thinking seems no longer able to get by without the concept of the paradoxical, so also art and our world, which continues to exist only because the atom bomb exists: out of fear of the bomb<sup>1</sup>.

It follows from it that the grotesque representation combines with, and is instrumental to, the one based on the paradox, to the search of a hitch, of a contradiction that no dialectics is capable of overcoming. In this way he can compare philosophical speculation to scientific research or even literary imagination since they all, in their own way, represent the coherent development of a creative thought that

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<sup>1</sup> F. DÜRRENMATT, *Theater Problems* [1954], in *Selected Writings. Volume 3 – Essays*, Chicago – London: The University of Chicago Press, 2006, pp. 155-156 (German edition: *Theaterprobleme*, Zürich: Arche, 1955).

encompasses also the fragile fantasies of the artist in an experiment inclusive of both observation and description of reality.

*Traps. A Still Possible Story*<sup>2</sup> is a particularly successful example of his original strategies as narrator and playwright to adapt a story to the stage. It is a short novel, set in Switzerland in the 1950's. Apart from the book, there is a somewhat more concise radio version preceding the novel which was broadcast for the first time on the 17th January 1956 by the Bavarian radio. There is also a dramatization, partly different in its content, which was played for the first time on the 13th September 1979 at the Comödienhaus Wilhelmsbad/Hanau directed by the author himself and published in 1980. There is also a film by Ettore Scola, produced in 1972 and freely readapted, especially when it comes to the ending, which is even opposed to the one contained in the novel, because Scola not only Italianizes the main character played by Alberto Sordi, but also accentuates his comical aspects.

It is a work that shows wonderfully the use of the paradox by the Swiss-German writer, who, ever since his debut drama *Es steht geschrieben* (It is written)<sup>3</sup>, has drawn attention to his extraordinary ability to enjoy himself with his readers and his audience, to arouse their bewilderment, if not outright scandal, through the continuous stinging blows to their however minuscule percentage of conformist common sense.

In the first chapter, resembling almost a prologue, Dürrenmatt faces a frequently recurring problem in the literature of the years right after the terrifying experience of the Second World War: even for a writer those dramatic events constitute a point of no return that make it impossible to still find something to say about grand sentiments, morality and the highest systems. It seems much more appropriate to show only the superficial face of things or to change profession. There is, however, one task that simply cannot be forgone: to unmask every possible attempt to once again establish faith in ideology, even if it was precisely the end of the ideologies, together with the rubble that resulted from them, that reduced the human being into a creature which is frightened, preoccupied, disoriented by events and more terrified of machines than of divine intervention, and which is convinced by now that the end of the world will be caused by a short circuit rather than by heavenly doing. In short, there is not anymore an almighty God that watches over the world, or, for that matter, a providence, however inscrutable, that governs it. Everything is governed by chance, by fatality and by banality of accidents that can often produce disproportionate and disastrous effects.

Alfredo Trap's tragicomic adventure is well placed inside this "broken-down" world. He is an insignificant little man, whose condition, page after page, appears more and more determined by chance. The chance in his adventure, though, does not refer to an objective encounter, independent from any other actor or from any

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<sup>2</sup> F. DÜRRENMATT, *Traps. A Still Possible Story*, in *Selected Writings. Volume 2 – Fictions*, Chicago – London: The University of Chicago Press, 2006 (German edition: *Die Panne. Eine noch mögliche Geschichte*, Zürich: Arche, 1956), pp. 193-229.

<sup>3</sup> F. DÜRRENMATT, *Es steht geschrieben*, Zürich: Arche, 1965.

other ability to act and to be subjected by an active or passive subject (what Aristotle would have described as αὐτόματον), it is rather a fortuitous encounter (by a stroke of luck or by pure chance) in reference to a subject - active or passive - and considered based on his abilities, i.e. the Aristotelian τύχη.

Traps is a salesman dealing in textiles who is forced to an unwanted stop in a small village because his car, a splendid Studebaker, has broken down. This breakdown, in all honesty, does not bother him too much, because he hopes that a night out might always provide him with an opportunity for an amorous adventure. However, the house where he is staying, will shatter his expectations. Looking for help, instead of running into some female companionship, our protagonist finds hospitality in the villa of an old judge, who is more than happy to welcome him so much that the unaware guest will end up taking part in a very peculiar dinner indeed. And, in fact, it is one of the judge's habit to organise weekly convivial meetings with some of his good old friends, who are retired as well, and during which their shared experience in legal circles together with the diversity of their professional positions held earlier (we have, in fact, a Public Prosecutor, a lawyer, and an executioner) will come in handy as old trials to famous personalities such as Socrates, Jesus, Joan of Arc, Frederic the Great are recalled or even as fictitious trials are celebrated to occasional guests who, allured by delicious and abundant libations, are more than happy to answer the need.

Our Traps does not dare to decline the invitation so as not to appear rude toward his generous host and accepts with faked enthusiasm to take it upon himself to play the part of the defendant during one extremely long and refined dinner that, through the following of one course with another, ends up cadencing the various phases of the trial, from the preliminary investigation up until the sentencing. The initially playful tones are gradually replaced, however, by an atmosphere that is becoming more and more disturbing, also because the very light-hearted character of the evening induces the protagonist to self-assured revelations about his personal life, something that with most probability he would have never done before a true tribunal and which reveal unexpected implications of a mediocre and miserable existence, made up of small bourgeois secrets, miseries and grudges. The playful and warm-hearted climate held by his hosts, in fact, rids Traps of reserve and any inhibition: «in the company of such understanding friends, shame becomes ridiculous, unnecessary»<sup>4</sup>. After all, «a crime can always be found»<sup>5</sup> and Traps has really committed a crime.

Through a skilful interrogation conducted by an ex Public Prosecutor a doubt gradually worms its way that both human and professional paths of the salesman, together with his economic success, seemingly so clear and linear, hide something else, perhaps even a murder. His crime, however, is a perfect one, «not just an ordinary murder, but a superb piece of work, committed without bloodshed, without

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<sup>4</sup> F. DÜRRENMATT, *Traps*, op. cit., p.220

<sup>5</sup> *Ivi*, p. 201.

poisons, pistols, or anything of the sort»<sup>6</sup>. The good old Alfredo had, in fact, seduced and transformed into his lover a young and charming wife of his boss with the premeditated intention of making her husband, who suffered from a serious heart-related illness, die of a heart attack once he learnt of their relationship by one of his narrow-minded and jealous work colleagues, had been induced to denounce the relationship by Traps himself.

The four elderly and a bit old men who surround Traps, that is the judge Werge who is also the landlord, Mr Pilet - a former executioner, Public Prosecutor - Mr Zorn and the lawyer - Mr Kummer, make him realise the seriousness of his misdeed, because the four old men «had illuminated his world with the pure ray of justice»<sup>7</sup>: a strange and grotesque justice, but justice all the same! Even in the most abnormal caricature of justice our ingenuous and a bit unsettled protagonist still believes to catch a glimpse of some superior entity that, while passing a condemning judgment, at the same time converts his insignificant life into an existential experience that is worth the highest consideration. The fierce faces of the four pensioners favour the progressive materialising of pangs of his conscience and induce him to fully accept the responsibility of his criminal act: «I feel understood and am starting to understand myself, as if I were meeting a person who is myself and whom I used to vaguely know as a sales manager in a Studebaker, with a wife and children somewhere»<sup>8</sup> - ponders the unfortunate protagonist. His act is the fruit of a mind so criminal as to give the appearance of innocence (at least in this similar to Moosberger of Musil)<sup>9</sup>, capable of such wickedness that is original both in the sense that it refers to the biblical beginnings of the man and original as in novel or inventive, and that makes him amoral and free from any sense of guilt, at least until someone else's intervention that makes him realise that in fact the opposite is true and makes him to resurface from his self-assuredly set-aside past.

The predominant theme of the short story is, in fact, that of the conflict of the individual with a world that is intimate, monstrous and at the same time unknown: everyone - we are being warned by Dürrenmatt - guards in his or her own life certain secrets, irrelevant to those from outside, negligible and insignificant details that sleep buried in an untidy drawer of our memory and which, in some cases, have produced devastating consequences in someone's life. These can resurface accidentally during a night of high spirits, where a high blood alcohol content and the choiceness of food make it easier to confess, all the more when one finds oneself in front of perfect strangers.

In the short story the grotesque never really invalidates the substance of the trial, even if it worms its way in an exhilarating way in all the aspects of the procedure. The trial moves to and from between play and reality, «the game

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<sup>6</sup> *Ivi*, p. 216.

<sup>7</sup> *Ivi*, p. 227.

<sup>8</sup> *Ivi*, p. 220.

<sup>9</sup> R. MUSIL, *The Man Without Qualities*, New York: Knopf, 1995 (German edition: *Der Mann ohne Eigenschaften*, Reinbek bei Hamburg: Rowohlt, 1978).

threatens to flip over into reality»<sup>10</sup> - observes Traps with the enthusiasm of a neophyte - and, as it goes on little by little, the guests become ever so euphoric because of the astounding sincerity of the defendant, who, in turn, behaves totally contrary to normality, congratulating his accuser and, instead, parading signs of annoyance towards his defending counsel, who tries, in vain and against his own will, to save him from the terrible catastrophe, which he is unconsciously gravitating towards.

The result of the trial is inevitable: the death sentence represents at the same time the just punishment for the atrocity of the crime, but also a due «homage»<sup>11</sup> to its grandeur and ingeniousness. The only thing is that Traps, perhaps because unprepared psychologically to fully distinguish playful fiction of that trial and of the respective death sentence from real consequences of a real trial, either because he is oppressed by the weight of his own responsibilities that he simply cannot go on ignoring or simply because he is drunk, decides to carry out himself the real execution of the verdict and hangs himself in the panel of the window in the room, where he is staying that night.

An ending that is the exact opposite and mirror-like to the one offered by Dürrenmatt himself in his most famous novel *The Execution of Justice*<sup>12</sup>, in which Isaak Kohler, a rich and powerful canton councillor, kills a man in the middle of a very popular restaurant, not without having first cordially greeted him before, only to meekly let himself be arrested, praises the judges for the received sentence to 20 years in prison, is quite happy to go to prison, where he becomes a model prisoner but without ever revealing the reasons behind his act. But it is precisely from the prison that he starts to make his first bold moves and instructs certain men, amongst which the protagonist of the story, a penniless lawyer called Spät, whom Kohler surprisingly asks to re-examine his case beginning with the hypothesis that he is not the real killer. It is a challenge that apparently has no sense whatsoever, since all the numerous regular customers present at that time in the restaurant have seen him shoot the deceased, but that, in fact, proves to be successful and eventually leads to his acquittal, the suicide of another possible culprit and a multitude of other murder victims.

The opposite ending does not stop the basic message of these two stories to be identical, because the coincidence between appearances and reality is represented as a possibility, that is no more and no less probable than the others and that comes true only if and when it manages to come true, but the conditions for it to happen are so many and so uncontrollable that nothing and nobody can guarantee it. Furthermore, even in *The Execution of Justice*, both divinity and justice are totally desecrated: god is now nothing else but a man, sure, a very benevolent man, although rather unknown, and whose existence is far from guaranteed and justice,

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<sup>10</sup> F. DÜRRENMATT, *Traps*, op. cit., p. 211.

<sup>11</sup> *Ivi*, 216.

<sup>12</sup> F. DÜRRENMATT, *The Execution of Justice*, New York: Random House, 1989 (German edition: *Justiz*, Zürich: Diogenes, 1985).

even if perhaps a bit oppressive, has taken on her sleepy features. Even in this short story everything seems to be dominated by chance or chaos (a true Leitmotiv of the whole body of works of Dürrenmatt's), the rational does not prevail at all over the random, or, at least, not inevitably, because life often behaves like a bad novelist.

As has already been mentioned at the beginning, the ending of *Traps* is modified in the radio play and in the theatrical version.

In the radio play Traps wakes up the following morning, take his luxurious car, that in the meantime has been repaired by a local mechanic, and goes on a usual selling trip, making a statement in this way of the fact that he is not repentant of his crime and that he is not, therefore, cured from his mediocrity and amorality. To be perfectly honest, the elimination of the suicide from the radio play seems to betray a bit the Calvinist spirit, which the story is steeped in and where it is taken to the extreme. It seems, therefore, that it is a fruit of a censored intervention by the Swiss Radio rather than of an explicit will of the author.

And, in fact, in the theatrical version the protagonist commits suicide once again, but his tribunal is made up of formerly corrupt people, thus devoid of that even grotesque dignity of elderly judges present in the short story, and Traps, while still retaining all his petty vileness, is unequivocally innocent of the crime that has been attributed to him since his antagonist, Gygax, is stricken by a heart attack while flirting with Traps's wife. As if that were not enough, Gygax is only too well used to his own wife's infidelities to feel sorry. Even more than in the short story, the confession of guilt appears the fruit of the defendant's self-glorification, perhaps even a product of his fantasy. The tribunal, therefore, passes a singular, double and specular verdict of both acquittal and conviction: the first of the two a legal one, while the second a metaphysical one. The idea behind the escamotage of the double verdict is not so much to help the judge out of the trouble of choosing between the Public Prosecutor's arguments and those of the defending counsel's, but rather to put him in the position to clearly distinguish what would have been the behaviour of a real tribunal that, bound to consider exclusively the arguments of a purely legal nature, would have had to release Traps («your will has come off without any involvement from your part») and that of a philosophical-literary tribunal, unbound and unrestricted in its operations, that would simply have had no choice but to convict him.

Both the situation and the characters of this short story make any reference to Kafka and his *Der Prozess* (The Trial)<sup>13</sup> almost taken for granted. But Kafka was substantially expressionist, while Dürrenmatt is much more down-to-earth, just like Dino Buzzati. Alfredo Traps, a successful vendor, is not a mysterious Mr K., rather it is an every man, an average man per excellence; just like the court room where the trial takes place is not that of a condominium of a chaotic suburb and a bit dilapidated, but a cosy Swiss villa with wicker furniture and airy curtains. Furthermore - and this is the most important difference - in *The Trial* Mr K.'s count of

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<sup>13</sup> F. KAFKA, *The Trial*, New York: Knopf, 1937 (German edition: *Der Prozess*, Frankfurt, a. M.: Fischer, 1990).

indictment remains unknown until the very end, in *Traps* the beauty of the story can be also found in the emergence of an extraordinary crime in the middle of a world made up of banality and everyday life.

The character of *Traps* moves to and from between an inaptitude of Svevo's memory and a desire to be the centre of attention of the Dannunzio's sort. On the one hand the simple passing of events one after the other makes our hero successful, but on the other hand the mediocre protagonist goes into raptures at the thought of having been the craftsman of his own fate so much that he accepts the death sentence as a compensation for his own fulfilment, as gratification of his need to feel important at least once in his life. Comparisons with the authors of the Theatre of absurd (especially Samuel Beckett and Eugène Ionesco), where we assist at the representation of a cultured society in a state of deep decay or extreme farce, but never in that sort of universal judgement that so often hovers about in Dürrenmatt's plays. Because of its anti-naturalistic style one can almost perceive the reference to other works, amongst which it is impossible not to remember *Our Town*<sup>14</sup> which in 1938 made Thornton Wilder win his second Pulitzer Prize, and which, as the author himself used to say, is an attempt to find a superior value for all the insignificant events in our everyday life, an attempt to tell of the epic deeds of those human beings of which no trace remains in the world history: a pretence, an attempt to which the author claims to link the need for "the maximum absurdity possible", because its everyday life is never banal or common and when one takes the time to stop by and take a look at what is hiding inside human minds, plenty of manias resurface. But Wilder lacks Dürrenmatt's irony, its restlessness, its open-mindedness, its humour, all at which Dürrenmatt is a master. For this reason it is legitimate to compare him, with an even bigger dose of conviction, to Thomas De Quincey, who considers murder, the grandeur and the desolation of the act of killing, its cruel elegance mysteriously mixed with something tremendously exciting, as something as far from boring as possible, as something that is the exact opposite of tedium and which can even reveal itself to be desperately merry<sup>15</sup>.

This paradoxical conclusion is identical to the one arrived at by the former Public Prosecutor from the novel, when he says:

His deed may be characterized as 'beautiful' in two respects: first philosophically, and second, in praise of its technical virtuosity. You see, my dear friend Alfredo, all of us at this table have shed the prejudice that regards crime as something ugly and terrible, and justice as a thing of beauty, of terrible beauty perhaps, but beautiful nonetheless. No, we realize that there is beauty in crime [...]<sup>16</sup>.

In its most ancient form the absolute good was inseparably made up of justice and beauty. But this bond is already broken, because the aesthetic project has

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<sup>14</sup> T. WILDER, *Our Town: A Play in Three Acts*, New York: Coward McCann, 1938.

<sup>15</sup> T. DE QUINCEY, *On murder, considered as one of the fine arts*, in «Blackwood's Magazine», february 1927).

<sup>16</sup> F. DÜRRENMATT, *Traps*, op. cit., p. 215-216.



got nothing to do anymore with morality, despite Kierkegaard, his first guide, even more so than Brecht in fact.

Moreover, it is unlikely that it is a mere coincidence that both for a crime and for a work of art it is customary to talk about their authors and it was Carmelo Bene, a great writer, accustomed to paradoxes just like Dürrenmatt, who came to judge one of his works entitled *Ritratto di signora, del cavaliere Masoch per intercessione della beata Maria Goretti. Spettacolo in due incubi* (Portrait of Lady of the Knight Masoch through the Intercession of the Blessed Maria Goretti. Performed in Two Nightmares)<sup>17</sup> as “unplayable”, certainly not for reasons pertaining to dramaturgy.

What has just been cited from *Ritratto di signora di Sacher Masoch* cannot be translated into a theatrical play (not after the example of Musset's theatre in an armchair), because fatally destined for typographic bodies and forbidden to that of an actor. It is a material literally unplayable on stage for the simple (though unjust) reason that the penal code does not allow anyone to shatter to a thousand pieces an actress with impunity<sup>18</sup>.

This is, in fact, exactly what, figuratively speaking, Luisolo was determined to do to Semprelei, two main characters in this extremely free tribute by Bene towards the story of Maria Goretti and her executioner Alessandro Serenelli. As a matter of fact this text had not been adapted to theatre up until a young director dared to contradict his master, restoring its intrinsic paradoxicality to the author's affirmation. Thus a crime can become by itself a representation, an artistic form (and even some of the highest ones) without the mediation of its stage “translation”. Not only is the whole distance and the whole difference between a work of art and a crime eliminated, but in some cases the crime becomes a means of expression indispensable to confer maximum incisiveness to the artistic message. Not only the bodies but also the meat makes its appearance on stage with all its incredible dose of beauty and repugnance, because meat exemplifies what is common to all of us, to a being that is at the same time peculiar and ordinary. Up until now only pornography has attempted to go beyond the insurmountable limit between reality and stage pretence, but this limit is not so much linked to considerations of a moral nature, but rather to erotic annihilation inevitably determined by pornography.

While the Eros constitutes delirious conflicts of the ego, porno, on the contrary, is an un-reciprocal objectivity of bodies not disqualified by anyone; an objectivity that goes beyond desire, ob-scenity that cannot be re-presented. Meat with no concept<sup>19</sup>.

We are inevitably faced with the following question: why on earth should an artist care about the difference between what is lawful and what is not, while a judge, in a verdict, can ignore the difference between what is beautiful and what is

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<sup>17</sup> C. BENE, *Opere*, Milano: Bompiani, 2008, pp. 355-419.

<sup>18</sup> C. BENE, *Autografia di un ritratto*, in C. BENE, *Opere*, op. cit., pp. XXVIII-XXIX (my translation).

<sup>19</sup> *Ivi*, p. XI.

not? No wonder then that it is only our extra ordinem judges that can manage to arrive at a wonderful fusion or *con*-fusion between an aesthetic judgement and a legal valuation so that the death sentence inflicted by them on the defendant, becomes the just recognition of the beauty of the act accomplished by Traps, even more so than that of the seriousness of his crime which, after all, amounts to nothing less than a murder!

Dürrenmatt observes the difficult and problematic relationship between fiction and reality, between reality and a lie, between art and law, through a second-level description because he himself is at the same time a part and a spectator of that paradoxical world described by him.

He who seeks paradox, become paradoxical himself. It's not just that all of a sudden writer of comedies feels the need to be taken seriously. As a dramatist I can depict politics only when I think dramaturgically; but as a political animal, which like every thinking person I also am, I must act politically. This seems to be a contradiction. It is a contradiction.

As a dramatist I depict the world as a questionable thing; as a political creature I am part of this questionable world and therefore questionable myself. As a dramatist, I may legitimately use murder and mayhem to set a plot in motion or bring it to a conclusion; as a political man, I abhor murder and mayhem. On principle, I consider wars to be crimes, and I think the same of many other things that many people do not consider to be crimes<sup>20</sup>.

His characters play with reality, bully it, just like children do with a flame, until they get too close and get burnt, terrorised. Reality, through their inattention, swarms over the stage and they find poor Alfredo's lifeless body loosely hanging in a window panel. At that point there is nothing else left for them to do but to cry in astonishment: «You've ruined the most beautiful gathering we've ever had!»<sup>21</sup>

This tragic and unforeseeable epilogue can insinuate some doubts about whether it is right to look for the truth, always and no matter what; but at the same time it distorts the very methods of such a search.

On the one hand there are good reasons not to look for it until the end, always and at all costs, since the truth and its awareness can become a source of misfortune. All in all, it is preferable to live one's life wrapped up in a veil of ignorance both with respect to oneself and towards others, and to think too much about all the turning points in our existence, about the compromises that we had to accept, about the breaches of the rule for which we are to take the blame, and in general about the faults and the mischiefs, both small and big, that are scattered throughout our existence, can increase the sense of guilt, cause pain and take away the pleasure of having obtained some sort of success.

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<sup>20</sup> F. DÜRRENMATT, *Monster Lecture on Justice and Law, with a Helvetian Interlude. A Minor Dramaturgy of Politics*, in *Selected Writings. Volume 3 – Essays*, op. cit., (German edition: (ed. orig. *Gedankenfuge*, Zürich, Diogenes, 1992), p. 106-107.

<sup>21</sup> F. DÜRRENMATT, *Traps*, op. cit., p. 229.

On the other hand this awareness is one that is unspeakable of: nobody can allow himself or herself to publically admit to prefer ignorance to the truth and, at least in public, search for the truth is proclaimed to be an inalienable good! What's more, some have even conceived a "right to the truth", even if its opposite, i.e. a "right to the lie" has also been conceived.

It is useful to point out, at this point, to an existing contrast between Benjamin Constant and Immanuel Kant. According to the former the truth constitutes a duty, but only towards those who have the right to the truth and, furthermore, no human being can have a right to a truth that could harm another human being; the latter instead seems to be of the opinion that truthfulness in one's every declaration is a sacred commandment of the reason, unconditionally binding and not bounded by any sort of convenience<sup>22</sup>.

A theoretical contrast which is also confirmed by practice. Certain deontological codes (for example that of hospital attendants and medical doctors) assert the existence of a patient's right to the truth and the United Nations has even proclaimed an "International Day for the Right to the Truth Concerning Gross Human Rights Violations and for the Dignity of Victims" celebrated for the first time this year (2011) on the 24th March, day of the anniversary of the assassination of Monsignor Oscar Arnulfo Romero, the archbishop of San Salvador, by the death squads. On a similar note, from the point of view of the consumers, the right to the truth is taken for granted and in fact has often been used to apply sanctions to the so-called misleading advertisements and to make it compulsory to attach small self-adhesive labels with an indication of the ingredients, best-before dates and the place of origin, especially with reference to the food that we buy in various supermarkets. In other circumstances, however, the assertion of such a right has appeared at least more problematic: at least in Italy, for example, the law protects the privacy of those parents who give their children for adoption, but does not recognise, and, therefore, does not protect in any way the right to the truth of the adopted child, even if from 1967 relevant Tribunals have received only 48 motions to communicate the identity of biological parents and respecting what has been recognised as a basic psychological need does not seem to have the feared devastating effects. One should not either ignore that such a right has already been recognised by many legislations (recently by the Catalan Parliament) and is desired for in the Convention on the Right of the Child of 1989 and in the Convention of L'Aja of 1993. Finally, there are also cases where a right symmetrical and opposing to the right to the truth is recognised: the "right to the lie". *Nemo tenetur se detegere*, a standard civil law phrase says, that can be explained with the words of an old commentator: "do not force anyone, not even the most wicked scoundrel, to reveal his misdeed". The right to the lie by the accused is an unquestionable fact in Italian legal system that can be inferred from manifest and clear prescriptive references even of constitutional rank and which has

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<sup>22</sup> B. CONSTANT, *De réactions politiques*, Paris: Mourer et Pinparé, 1797, p. 124; I. KANT, *Über ein vermeintes Recht aus Menschenliebe zu lügen*, in «Berlinische Monatsschrift» 28 (Dezember), 1797, pp. 485-504.

only two limits. The accused is not allowed to lie about his or her personal particulars and cannot wrongfully accuse others because in this way such an action would give rise to slander; such a right is, instead, excluded in other jurisdictions, and, in particular, in that of common law, where the accused who gives his or her consent to the interrogation takes an oath and his or her deposition has weight of full evidence (except for cases where there is a false testimony).

In short - one feels almost like concluding after this brief analysis - the truth can be expected, but only when... it can be expected!

But, even if we want to take it for granted that in the ever so long list of rights, the right to the truth must find its rightful place, be it limited or unlimited, one would still have to ask what conditions are necessary for the legal truth to become The truth assuming that there is in fact a truth to be defended. If you allow me to use a language I am particularly familiar with, trying however not to make the mistake, that so many before me have made, that is to forget the iridescence of the short story that we took as a starting point for these reflections of mine which I believe is actually one of its basic merits, I would like to say briefly that there are two essential conditions: one that is inter-systemic in its nature and the other that is intra-systemic.

The first one is that law can finally rid itself of an old-age slavery vis-à-vis morality, that had reduced it into a condition of imbecility, for its constant need to look for a stick (*baculus*) in morality that would permit it to run away from its responsibilities. Especially after the positivisation of modern law, the bond between law and morality has already become even more implausible (assuming that some sort of plausibility had existed at all before that). Morality and law have already gone separate ways, and, therefore, the moral valuation of a crime is nothing more than a pure accident, one of many possible points of view, though still only one of many and to which no special or privileged standing, above the others, can be given. From a point of view of a complete and exhaustive comprehension of a particular crime economic, sentimental, aesthetic, cultural or political considerations can be as important, and in some cases even more important than moral considerations. They make it possible to go beyond ancient prejudices and to restore dignity to those who committed even the most heinous crimes. We can feel *com*-passion for the delinquent, hold him dearer and nearer to our heart, we can even learn to respect him, «we [...] learn to appreciate the defendant, love him, feel the waves of his sympathy coming toward us»<sup>23</sup> not any more notwithstanding, but precisely because of, his act; it is precisely because of this that we can expect on his part that he respect his own dignity, assumes the responsibility for his actions and, basically, goes the whole hog and pays the full price. Every value judgement disappears so that all the roles become interchangeable and assume the same dignity; after all, aren't the old grand masters of criminal law who have preached ad nauseam that «the judgement has to be made with reference to the crime and not the person who committed it»? As a consequence, the sentence is no longer just a punishment, but

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<sup>23</sup> F. DÜRRENMATT, *Traps*, op. cit., p. 215.

also a just acknowledgement of the greater or lesser grandiosity of the defendant's criminal act, and, therefore, «there can be nothing higher, nobler, more distinguished, or greater than the moment when a man is sentenced to death»<sup>24</sup>. It has no relevance whatsoever that, after all, it is always a person who suffers and sometimes even dies for his or her wrong doing, because the body and the person could not be possibly more distinct and separate. In fact, it is not unimaginable for the criminal himself or herself to wish for annihilation and flagellation of his or her own body as a way to regain his or her own dignity.

The second condition, which we have defined as intra-systemic, is based on the inadequacy of investigative and judicial mechanisms of the state to arrive at the truth, a topic fairly exploited in the dramaturgy and in the literature of that period, even if not always with the same narrative mastery of Dürrenmatt's, who exploits it in many of his works. Certain behaviours, in fact, unanimously considered negative and reprehensible, do not give rise to any sort of sanctions by the so-called justice dispensed in tribunals. Our protagonist is “substantially” guilty, but “apparently” innocent since his crime, in any case, from a purely technical point of view could never be proved making him extremely unlikely to be punished in a real court room. On a much similar note there can be cases in which the accused is “substantially” innocent but “apparently” guilty, just like Dr Benno in *The Execution of Justice*: once at the Supreme Court, the only thesis that is comprehensible for the justice is that Dr Benno cannot be anything but guilty. Only he had a valid motif. Even if he is innocent. Justice cannot be interested in a reality that goes beyond its understanding; appearances can wrongly prevail over reality and become the only possible truth.

It is Zorn himself who, acting as the Public Prosecutor in the simulacrum of the action brought against Traps, states that the crime he committed is «a murder so cunningly prepared that of course it has brilliantly escaped our official system of justice»<sup>25</sup> burdened by the «needless welter of formalities and verbatim reports and scribbles and laws»<sup>26</sup>. Only judging «without regard for law books and legal paragraphs»<sup>27</sup>, it is possible to identify and punish those guilty of perfect crimes; only if free from incomprehensible workings of the procedures and from a thousand quibbles of the trial with its deadlines, its forms, terms, time limitations and preclusions, can one arrive at a truth that is not just a scanty and pointless trial truth. In order to arrive at the Truth, the law has to move freely and to look about in the multiple dimensions of life, to widen its own horizons, otherwise it will continue to build only its own particular truth liable to being contradicted by other points of view.

As far as this second condition goes, personally I have some doubts: I believe that the sin of the form does not stem from the formalism of law, but rather from the formalism of the jurists. Apart from that, I do not expect (nor do I wish for) so much

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<sup>24</sup> *Ivi*, p. 227.

<sup>25</sup> *Ivi*, p. 214.

<sup>26</sup> *Ivi*, 208.

<sup>27</sup> *Ivi*, 208.

perspicacity on the part of the legal norms! In short, it is not the law that is heavy, but rather it is the jurists who make it such whenever they become uninspired bureaucrats, and even art can take a similar chance whenever the artists start taking themselves too seriously and begin to lose that thin veil of irony, or, even more so, self-mockery, that serves to make the lightness of arts bearable. Besides, it was the eclectic Swiss playwright himself who, apart from having met with discrete success as a painter, has even used forms of writing that can hardly be forced into rigid definitions testing himself against short stories-studies, of, if you prefer, studied short stories, when in 1968 he was sent by the University of Magonza to give a lecture on justice and law and ending up giving rise to a staging of thought.

At any rate we are not interested in looking for precise technical and judicial suggestions<sup>28</sup> in the Dürrenmatt's text because a literary work cannot abandon its language and contains, as such, diagnoses rather than therapies.

[...] Like the criminal, the playwright is content to supply the lawyers with material for thought and classification. [...] Therefore, to ask a playwright to supply the legal profession with anything more than material is unjust. After all, one doesn't require a criminal to be conversant with the problem of justice and law; he has the freedom and the right to commit his crimes in complete naïveté, a rule that applies to all criminals except those whose crimes would not be possible without legal expertise: such crimes are of course less frequently committed by playwrights than by members of the legal profession<sup>29</sup>.

What we are, instead, interested in is the basic conclusion that can be drawn from this short story: justice on earth is possible, but she arrives in the most unexpected ways and at the most unexpected moments, taking substance in the most dubious and ambiguous forms in such a way that she herself turns into a breakdown.

Putting it even more nastily: there is no such thing as a just social order, because if man seeks justice, he is justified in finding every social order unjust, and if he seeks freedom, he is justified in finding every social order unfree<sup>30</sup>.

But will it be ever possible for jurists to become aware of such reality ridding themselves of the delirium of omnipotence and of the frustrations of impotence that so often grip them that takes them through their everyday journey? In order to do it, perhaps they should stop being jurists once and for all.

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<sup>28</sup> G. ARZT, *Bemerkungen zu Friedrich Dürrenmatt 'Die Panne' - aus strafrechtlicher Sicht*, in «Schweizerische Zeitschrift für Strafrecht», CVI, 1989, pp. 1-14.

<sup>29</sup> F. DÜRRENMATT, *Monster Lecture on Justice and Law, with a Helvetian Interlude*, op. cit., p. 74.

<sup>30</sup> *Ivi*, p. 102.