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Abstract: How can it be possible that the law stays powerless after political violence? How can it be possible that a nation looks at the future without sealing the wounds of victims and coming to terms with its past? However, the expression transitional justice is often only a euphemism; when dealing with crimes that involve whole communities, the law experiences great difficulty, if not inability, to face and explain the immensely complex issue of justice. Furthermore, the judicial process of the past shows its various limitations, due to the tragic nature of such political crimes. In this contribution through an ethnographic observation of the trial procedures, is analyzed the role of mnemonic narrations in the reconstruction of truth in a specific criminal trial highlighting the divide of the judicial reality, the epistemological dichotomy between the victim's and the executioner's narrations and, finally, the gap between historical and judicial truth, represented by the operative part of the judgment.

Keywords: trial narratives, transitional justice, political tragedies, memory, human rights

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Political tragedies and transitional justice

How can it be possible that the law stays powerless after political violence? Why is it neutralized by the selfsame politics which it is supposed to judge? How can it be possible that a nation looks at the future without *sealing* the wounds of victims and coming to terms with its past?

We first interrogated on these matters nearly twenty years ago: it was the year 2002 and we were in Chile, during the thirtieth anniversary of the coup d'état by Pinochet and the murder of the then Socialist President Salvador Allende. We worked for a local NGO that dealt with projects for the social inclusion of the Mapuche indigenous communities, in the shantytowns on the outskirts of Temuco. That NGO was chaired by Fresia Cea Villalobos, a woman – we realized later on – who was profoundly marked by dictatorship: her husband, Omar Venturelli – a man of Italian origin – was one of the thousands of people tortured and *desaparecidos*. Our passionate interest in social research stemmed from that context; it was also nurtured by Salvador Allende's ideas of equality and marked forever by the tragic narratives made by Fresia and many other victims of the dictatorship, people still suffering from the vivid and vibrant trauma, but bravely persisting to fight and obtain justice. A word, the latter, that all the victims lamented to have disappeared from the name of *Comisión Nacional de Verdad y Reconciliación*, established in 1990, after 17 years of dictatorship, in order to find *political* solutions to tragedies caused by politics.¹

However, the Chilean tragedy is only one of the many tragedies performed on the stages of recent history, indelibly marked by Shoah, the mother of all contemporary tragedies. Once brought the curtains down on the Nazi-fascist “show”, the world discovered itself significantly changed by a tragedy, whose echo keeps on wandering about like a *specter*, like the “long shadow of World War II” (Judt, 2005). Nonetheless, whereas the law uses memory in order to avoid this specter to become tangible again, it is as if Shoah has occupied almost all the stages and media that the humanitarian rhetoric may devote to memory, to indignation and to the need to react. In fact, it can be assumed that transforming the tragedy of the Holocaust into a specter and relegating it into the past is the greatest *hybris* of our times, the modern arrogance that monumentalizes the tragedy while continuing to replicate it under different name, with new actors. Thus, as already assumed by Primo Levi, Auschwitz “has never ceased to take place, it is always

¹ The NGO where we worked, *Casa de las Mujeres*, provided us with the chance to come in contact with the major associations of family members of the disappeared and, through them, to get informal talks and narrative interviews to privileged witnesses mainly linked to the period of dictatorship. The interviews have been gathered in a socio-visual documentary under the title of *Le bende del jaguaro* (Punzi & Vignola, 2003).

already repeating itself” (Agamben, 1999, p. 101). In fact, after Auschwitz and the Nuremberg Trial, politics has banished international tragedies, but welcomes them within national borders, as if they were the evidence of an inaccessible private show. Therefore, the second half of the 20th century continued to represent “low-intensity” tragedies (and democracies), *civil* wars that, at an international level, have continued to highlight the economic and political problem of *After violence* (Triulzi, 2005), rather than highlighting the ethical and legal problem of violence (and of justice). The second half of the 20th century can be interpreted as a long *Postwar Period* (Judt, 2005), in which the political and economic issue of coming back to democratic normality is enhanced by the expression *transitional justice*, which conversely seems to refer exclusively to the judicial and social processes by which societies are *coming to terms with the past* (Portinaro, 2011), i.e., with atrocities that are to be faced in order to try to guarantee justice for the victims of that barbarity and to be able to *transit* from a period of war to a period of peace, from a form of government (dictatorial) to another (democratic)².

However, the expression *transitional justice* is often only a euphemism; when dealing with crimes that involve whole communities, the law experiences great difficulty, if not inability, to face and explain the immensely complex issue of justice. Furthermore, the judicial process of the past shows its various limitations, due to the *tragic* nature of such political crimes. In fact, it is no coincidence that we have repeatedly used the word *tragedy*. The first limit for the judicial capability is shown by the fact that, like in Greek tragedies, these are crimes that “overcome the tolerated level”, thus becoming hard to be judged (Portinaro, 2011, p. 9). On the one hand, in fact, the truth of tortures suffered, of murdered or disappeared relatives “appears to the survivors as the only true thing, and, as such, absolutely unforgettable; on the other hand, this truth is to the same degree unimaginable, that is, irreducible to the real elements that constitute it. Facts so real that, by comparison, nothing is truer; a reality that necessarily exceeds its factual elements - this is the *aporia* of Auschwitz” (Agamben, 1999, p. 12).

But this is also the *aporia* of each political tragedy and “historical knowledge: a non-coincidence between facts and truth, between verification and comprehension” (Agamben, 1999, p. 12). Furthermore, soon after World War I, Benjamin (1936) underlined how *inaudible* traumatic experiences of the survivors were; not because the witnesses were unable to narrate, but for the lack of an audience willing to pay attention to them, capable to understand and imagine the unimaginable. If the testimony contains a *lacuna*, something that cannot bear witness to (Agamben, 1999) the judgment is conse-

² Literature on transitional justice is huge. Focusing on the most topical debate, for an introduction, see: Ambos (2009), Elster (2004), Lollini (2005), Monateri (2013), Orrù (2010), Teitel (2000), Quinn (2009).

quently *full of lacunas*. In fact, in almost all political-humanitarian tragedies those are *Crimes that cannot be punished nor forgiven* (Garapon, 2002). After all, tragic heroes are both guilty and innocent (Hegel, 1967) and this tragic dimension seems to represent a safe haven for the executioners, who, like Oedipus, wish to appear as unwillingly and unconsciously involved in awful misdeeds. Yet, whereas the tragic hero does not see this as an evidence of his/her innocence³, the modern executioner denies his/her guilt, justifying himself/herself with *Befehlnotstand*, the “state of compulsion following an order”: in this way, the executioner seeks to conceal his/her own responsibilities hinting at an alleged tragic conflict. A *topos* of tragedy is also the *collective* dimension of guilt, that denies the idea itself of “individual will” (Ost, 2007, p. 91); but, if the infringement becomes collective and/or unintentional, the weapons of criminal law are defused, since they can be activated only by the concept of individual guilt and responsibility (Portinaro, 2011).

Being aware of these judicial limitations in elaborating a traumatic past, politics has chosen and implemented, throughout history, different forms of *transitional justice* (Elster, 2004). There are four main forms, respectively classified into two judicial and political models: the restorative paradigm, including amnesty and the Commissions, and the retributive paradigm, including revenge and trials. Until the 20th century, almost exclusively two directions were followed: the brutal reckoning through revenge or amnesty. Undoubtedly, prior to the idea of justice, the choice of a specific option is determined by the role that politics intends “to give to truth, wiping it out or making it become a right, giving priority to oblivion and memory” (Rodotà, 2012). In fact, each of the four transitional forms establishes a discontinuity with the past regime directly proportionate to the importance attributed to the right to memory and truth. Essentially, a real political change as well as a real reckoning with the past are not likely to occur without questioning the previous political regime that is above all a regime of veridiction, in which the definition of reality might have been produced and imposed even by force of arms (Berger & Luckmann, 1966). For this reason, the connection established by transitional justice with memory and truth gains even more importance.

In order to prevent to be considered as guilty and judged by courts in the future, the soldiers of South American dictatorships have always protected themselves, issuing precautionary amnesty decrees, that is, a sort of future

³ For the Greek, in fact, the tragic action is always based on two reasons: on the one hand, it is determined by *ethos*, that is, by the character and personal disposition; on the other hand, by *daimon*, that is, by the divine force that moves the individual from outside. In their culture, however, “there is no contradiction between the two levels: the individual can act voluntarily, yet be determined by external forces” (Ost, 2007, p. 141). Hence, if there is no contradiction, similarly the access to justice is not defused, contrary to what often occurs in contemporary law.

impunity and amnesia, forms of denial of truth and memory. Consequently, after the collapse of dictatorships, the new democracies have paved a third way between the *minimalism* of amnesty and the *maximalism* of courts, in order to prevent brutal revenge and to facilitate the process of *state-building* (Olsen, Payne & Reiter, 2010): the National Commissions for Truth and Reconciliation, a kind of amnesty and amnesia, in which impunity is essential to recognize memory and truth. Basically, renunciation to justice is traded for a grain of truth and memory. Thus, while experiencing a shift from ethical and legal needs to economic and political needs, it is stated that the major function of the third way is *Nunca Mas*, according to the title of the report by the Argentinean Commission: e.g. to prevent future tragedies from happening again, by reconstructing crimes perpetrated by dictatorships through the survivors' narrative. In this way, it is affirmed that a therapeutics of the social body is desirably implemented, by restoring dignity to victims and recognizing rights to (their) memory and truth: memory "becomes a social practice that identifies the narration of the past, proposing itself as a call for control and *synchronization of individual and collective temporality*. [...] what changes first is the valorization of discourses, of what is untruth and was previously truth and becomes truth, and was previously untruth" (Demaria, 2012, p. 159-160). Nevertheless, the Commissions do represent a "flexible, politically correct alternative to a politics of impunity" (Portinaro, 2011, p. 196): they are institutions which aim at elaborating guilt at a *collective* level, neutralizing its legal and political effects. Evil, in fact, is seldom personified by individuals, but by *acts* deprived from their agents and ruled by a vague historical context. For these and other reasons, the slogan of the South African Commission - *Revealing is Healing* - is seldom truthful, since for victims there is no satisfactory treatment of pain without justice. After all, Commissions cannot be fully ranked among the forms of *transitional justice* because, like amnesty, they are primarily *political* solutions; so much so that they may be referred to as *transitional politics* or, more provocatively, *transitional injustice*.

However, even if belatedly, in Argentina and Chile the first trials against the soldiers of the dictatorship were initiated in the 2000s. Even in Italy, in Rome, under art. 8 of the Italian Criminal Law, two important trials for the disappearance of South American citizens of Italian origin were held⁴: from 2005 to 2007 the Condor trial, against South American soldiers accused for the disappearance of 23 Italians during the dictatorships (the trial ended

⁴ In literature, these trials cannot be classified under *transitional justice*, since they neither belong to justice in the countries involved in the tragedy nor to International justice; nonetheless, these are perceived by victims, if not by Commissions, as forms of *transitional justice*, as historical and juridical judgments allowing them to deal with the past and pass through the future.

with 19 acquitted and 8 sentenced to life imprisonment, though all of them *by default*); from 2009 to 2011, the trial against the Chilean military prosecutor Alfonso Podlech, arrested at the airport of Madrid and extradited to Italy under art. 8 of the Italian Criminal Law, charged with “having committed, by many enforcement measures of the same criminal intention, [...] acts intended to threaten, in order to murder, an uncertain number of people” and, especially, having submitted the Italian-Chilean citizen to illegitimate detention, to frequent questioning under torture and, finally

“Having seemingly ordered Venturelli’s release, who was “officially” detained in the prison of Temuco only since 25.9.1973, under injunction n. 52 of the military Fiscalía on 4.10.1973; for having, conversely, surrendered Venturelli to the “Caravan of Death” led by General Sergio Arellano Stark⁵; for having murdered Venturelli concealing his dead body.”

Seven years after our work experience in Chile, reading by chance a local newspaper article, we discovered that Podlech was being tried before the First Roman Court of Assize, and Fresia and her daughter Pacita were participating in the trial as civil parties. We did not hesitate to go to Rome in order to obtain the first legal files: after many years, we met Fresia and Pacita again, visibly astonished and glad to see us, but also deeply stressed and nervous because the trial was going to start. For the first time, they could have pointed at an executioner and nail him down to his responsibilities. We aimed to carry out an ethnographic and socio-visual observation⁶ of the trial procedures (Garapon, 2007), in order to analyze the role of mnemonic narrations in the reconstruction of truth in the criminal trial. This is also the major objective of this essay: in fact, the Podlech trial shows the divide of the judicial reality, the epistemological dichotomy between the victim’s and the executioner’s narrations and, finally, the gap between historical and judicial truth (Ferrajoli, 1989), represented by the operative part of the judgment. In fact, the law observes reality from its particular and selective perspective: “prior to the rule, it is the fact that must be legally interpreted” (Ferrari, in Di Donato, 2008, p. 12). The truth in a trial is not the truth *emerging* from reality, but it is a truth *constructed* by narrative and “shaped by procedures”, as a summary and selection of different narrations, antagonistic between each other:

⁵ General Sergio Arellano Stark was one of the accused in the Condor Trial, but he died during the trial.

⁶ In order to carry out a more detailed analysis of the material collected, we decided to shoot the trial: part of the trial shooting represented the core element of the documentary *Fresia* (Punzi, 2013). The film, produced by Marco Bechis, won the *Festival de Cine de los derechos humanos* in Bogotá.

“The truth is the statement that triumphs, that successfully exceeds the fire of contradiction. Whereas historians assert that the truth is constituted through a positive method, justice proceeds by elimination, through a negative method. [...] Historians and the judges wish to understand what happened, but for different purposes. Historians try to grasp the reasons, judges dig up the past in order to characterize it from a juridical point of view, that is, to integrate it into existing categories. [...] The judge can never be free to seek the truth: s/he has the task to set up a correspondence between facts and the model of juridical qualification” (Garapon, 2002, p. 163).

If the Commissions have the function of seeking a coincidence between historical and procedural truths, as grounded on basically genuine and non-hostile narrations (insofar as they are the result of a prior agreement that renounces charge and punishment) (Lollini, 2005), “legal proceedings have a narrative structure, an antagonistic essence, intrinsically rhetorical purposes and are understandably exposed to suspicion” (Bruner, 2003, p. 49). Like any literary narrative, also the trial court narrative – be it the witnesses’, the lawyers’ or the judge’s, is not “a transparent window on reality”, but “a mold that imposes its shape” (Bruner, 2003, p. 7), since meanings do not pre-exist to narration: the stories construct the fact they include (Longo, 2016). And in fact, although jurists learn “at university that the law arises from fact [*ex facto ius oritur*] [...], it would rather be said that *ex fabula ius oritur*, it is from the narrative that the law arises” (Ost, 2007, p. 25).

Therefore, within the consolidated analogy between *Law and Literature*, it can be stated that the trial procedure represents a metanarrative, an observer that observes other observers and re-describes their descriptions. Then, let’s try to scrutinize, within the Podlech trial, the victim’s and the executioner’s narratives and how the law selects the elements of the narration that are part of its selective view: ultimately, how the law re-narrates, through the judgment, the narrative of the Chilean tragedy of Omar Venturelli and his wife Fresia Cea Villalobos. Let’s open, then, the stage of law, the space where the law reunites again the victim and the executioner to “offer a way out through catharsis, that is the purgation through representation” (Garapon, 2002, p. 193).

The victim narrative: the testimony of Fresia Cea Villalobos

You are Omar Venturelli Lionelli’s widow and you have been following this case as of your husband’s detainment, which led to ascertain his disappearance from the Temuco prison. Will you be able to exhaustively tell the trial court what happened from that moment on? Please, be as much exhaustive as possible; if necessary, I will ask you precise questions.

Fresia gently lays a black-and-white photo portraying her husband, enveloped with care in a plastic folder and hung around her neck; like in every hearing of the trial, she mainly communicates by means of her body, emphasizing the presence of an absence and creating an emotional link with the trial Court. The answer to the prosecutor's question is far from being a detailed narrative:

My husband showed up on 16 September 1973, at Tucapel barracks in Temuco, it is the only barracks in my town, that is the ninth region of Chile, a region that has been included in Chile after the war of the Pacific [...] so it is the last region, the last territory to become Chilean territory; the reason why it has become Chilean territory so late is because that territory belongs to, and they consider it as their land, an indigenous population, the Mapuches that means "people of the land".

The Mapuche people is often mentioned by witnesses and other actors during the hearings and this is significant for the whole trial. "Man of the land", Fresia says: this is the meaning of the word *mapuche*. It is named after the combination of the words *mapu* (land) and *che* (man). The "men of the land" speak *Mapudungun* (the language of the land), because their sustenance and all their lives depend on it. Now the most numerous indigenous communities are concentrated in the area of the city of Temuco where the facts referred to the trial took place. (Vignola, 2009). The closeness that Fresia claims to indios, once she is at the witness stand, marks a strong identity and political belonging typical of young activists of the Chilean left wing in the 1960s and 1970s⁷. The military regime severely hit not only the Mapuches but also those who supported their claims. Since her first testimony, Fresia's ostensible digression is legitimated by her will to clarify the reasons why both of them were wanted by the dictatorship:

I am saying this because I believe that the reason why my husband was tortured, disappeared and murdered is because he has always been, together with me and many other Roman Catholic like me, at the indigenous people's side in order to retrieve the land which belongs to them.

In a few words, Fresia immediately places herself within a social group, reaffirms her role as a victim and provides the trial Court with a precise motive for her husband's murder.

The night of 11th September 1973 my husband slept near the kitchen's door, of the third house where we lived, because he said: If they come I am sure that they come to seize me, so they seize me immediately and will not shoot you and will not go to the second floor where you

⁷ For further details on social policies implemented by the Allende's government to solve the *indigenous issue* and the subsequent repression of the dictatorship, see Garretón (1983).

are. The day after we decided that the one who stayed alive would have escaped from Chile with the baby, once found out that the other one was dead. He made me swear on this, we both swore. And it was me who had to escape with the baby. The morning of 12th September 1973 we took a taxi and Omar asked to be dropped off near the Universidad Católica. When we arrived, he told me: All right, my dear, I get off here, do not forget what we promised. I have never seen him again from that day, so today it's 36 years and six months I have not seen my husband.

Fresia does not count only years, but also months separating her from the last time she saw her husband. She does not speak of death. Similarly, other family members of *desaparecidos* hardly speak of death. The absence of a body, of a space, of a time does not allow the bereavement process, thus making it permanent, insurmountable, blending in daily life.

The civil party lawyer, then, tries to understand what has happened to her immediately after her separation from Omar and how she comes into contact with Podlech. Fresia starts a long narrative; she clarifies that on 13th September an announcement is issued with a list of people that should have had to show up at the Tucapel barracks to be questioned. As agreed with Omar, she first shows up and there she meets Alfonso Podlech, the military prosecutor:

On the 13th I showed up. There was a soldier who took our identity card and registered us, then they took us into a small room where there was another soldier who questioned us. At some point el fiscal Podlech came in, while the other soldier was questioning me he told him to move over 'cause he would have questioned me. He opened the drawer where he had my badge as an activist of the communist party and photos portraying me while participating in the occupation of the land in Lautaro, and he told me that it would have been better for me to collaborate, otherwise he should have to impose martial law. Later they took me to the courtyard, there was a group of 8 to 10 guys, they had been cut their hair and were barefoot, their eyes were black, their noses bled. [...] I realized that it was the entire directorate of the communist youth to be tortured. There I also saw the conditions of the natives when they arrived on the landholders' trucks: they were pushed to jump off the trucks and were told to "run towards the island" and they were shot in their backs. We heard shouts and I thought there were cows going to give birth to their calves because we could see the buildings down there in the island that looked like cattlesheds. Instead, later we realized that people shouted because they were tortured.

Then Fresia explains that they let her go away from the barracks where, from 20th September on, she continues to go every day, when a friend tells her that Omar has been arrested and is in inhuman conditions:

On 20th September 1973 professor Pablo Bercenko came to my place and told me that he met my husband in Tucapel barracks and that my husband was in very unsafe conditions: it was clear that he had been hit, tortured, his face was swollen, he was hardly standing up and speaking.

In spite of the strict control and the impossibility to entertain contacts with the outside, Fresia states that she has received some notes from Omar allowing her to communicate with him.

My husband enjoyed Italian western movies very much, when we had time we went together to the cinema to watch Italian movies, in that note he wrote that Westerns films were nothing if compared to what was happening within that place, think, he wrote that he had his fingernails ripped off.

The narrative of the tortures suffered becomes shocking in contrast with the daily and peaceful memories of their life as a couple, abruptly interrupted by the dictatorship entering like a laceration into the family intimacy, thus transforming the memory of a happy experience into a nightmare, leaving its permanent marks. This is a *sad tale* (Scott & Lyman, 1968), that Fresia uses to affirm her subjectivity as a victim, aiming at placing the accused in a bad light. She does it very often in her testimony, lingering over seemingly insignificant details from a judicial point of view, but essential to consolidate and make her version of the past plausible, thus strengthening the negative image of the “executioner”. Sometimes, these details mark their belonging to a community of suffering and bear a consolatory and therapeutic power, other times they bear an explicit accusatorial character. The trial becomes a tribune for the sorrow of the survivors as well as a basic element of their acknowledgement as victims, restoring their right to speak and transforming them into “acting” subjects. The testimony does not only ascertain facts, but provides a living evidence that “the victims’ word is effective again” (Garapon, 2002, pp. 133-134). These narratives oblige the Courts of justice to explore obscure zones, going far beyond their usual ground.

There is no hint of the notes that Omar and Fresia managed to exchange, because Fresia chewed and swallowed them in order to make them disappear, as she explains during the hearing: another dreadful detail of the terror in which victims and their family members lived. Only one of these notes has not been destroyed and is read in the courtroom, used as a documentary evidence. While Podlech’s lawyer asks to acquire it in order to carry out an handwriting examination so as to assess its truthfulness, the reading of this

last message that Omar addressed to his daughter becomes one of the most touching moments of the trial:

Temuco 30th November 1973. Dear Pacita, this letter is for you and to tell you that I love you so much and I recall you very often, I know that you love me and you like to play with me. Pacita we have not been together enough, certainly when we meet again you will have already learned so many new things and we will invent new games, we will go out for shopping and walks in many places. Pacita you must know that your dad loves you and wants to see you very soon, mum will keep this short letter so that you will read it next year. Behave yourself, don't be naughty and don't scream. Signed: dad.

After thirty years, an object of memory presentifies in an Italian court through the translator's voice, reaching the hands of the judges. Pacita bursts into tears, due to her father's words. This moment marks a further divide between victims and executioners, between the inside and the outside. The entire testimony by Fresia is a sort of contraposition between *we*, intended as *victims* and *they* intended as *executioners*. This is a dualism between good and evil, between the absence of good (Omar) and the presence of evil (Podlech), both of them necessary, in the judicial narrative, to load the representation of the past not only with a plausibility structure but also with feelings of empathy and solidarity, often inevitable in the victim's version. It is through the mediation of social frameworks of memory in the present that the individual defines the "plausibility" of what he thinks to remember and is likely to become an instrument of subjectification functional to one's own version of the past (Halbwachs, 1992).

Every human remembrance is a fragment, a synthesis of what was perceived - that is already a selection - of what motivates the act of remembering in the present [...] the witness represents a social memory which gives order to time, defines what plausibly happened, and confirms or denies the identity constructed by the subject (Jedlowski & Rampazi, 1991, p. 25).

Fresia continues her emotional narration, aimed at underlining the victims' humanity:

He told me what he did together with other prisoners, how they organized themselves when prisoners came back from the torture sessions, he told me that he slept next to doctor Jorge Barudi, because doctor Barudi's father was authorized to bring a mattress and I was never allowed to bring a mattress, I was only allowed to bring blankets, so they arranged to sleep together.

This story emphasizes the feeling of solidarity - despite the dungeon in which the victims were obliged to live - in contrast with the violence of

dictatorship and the authoritarian power perpetrated by those who managed that hell-like place. A similar mechanism leads her to provide a positive image of Omar to the Court, with plenty of irrelevant details for the trial; a cheerful Italian, a good father, a loving husband, a politically active professor, an activist close to the natives and needy persons, willing to do anything to save her and their daughter:

He was very devoted to his daughter and, as soon as he could, he held her in his arms, played, and he taught to love the land, her grandparents work in the fields. In spring five calves were born and Pacita received them as a gift. He wished that the natives retrieved their land, because he was strongly tied to the land, he understood its meaning and during university breaks we went to the grandparents' place; there I discovered – because I did not know before marrying him – that my husband played the accordion and sang in Italian: *Mamma son tanto felice*.

Fresia's voice trembles and her body shakes and unveils before the Court. Remembering is painful:

The recognition of evil is lived and retraced, "mimed" in each phase [...] the register is mainly passionate affecting a non-rational adhesion, precondition for a common conscience and consequence of an essentially emotional transformation (Demaria, 2012, p. 139).

Everyone is visibly involved by this narrative in the courtroom. "The witness no longer plays an ancillary role; he chairs the trial" (Garapon, 2002, p. 140). In this kind of trial, there are many normative precepts tending to cloud over and mitigate; the witness becomes a narrator of injustice, acquiring some sort of sacralization and the testimony becomes narrative; very seldom the witness is interrupted and invited to answer a precise inquiry by the trial Court, whose members more often act as the audience. The narration of the injustice suffered gives rise to a relationship between the witnesses, the audience and the trial Court, in which emotions become visible signs of the collective dramatization of a trauma.

Later I arrived here [Italy] with my daughter, on 5th February 1974. Since then, I never gave up to search for my husband anywhere on earth: I went to talk to the Assembly of the United Nations to ask for help in having his news, but my attempt was unsuccessful. In my region there is a conspiracy of silence, no one wants to reveal anything, rather everyone tends to turn the page. This is what has happened to me.

After this statement, Fresia bursts into tears, and in the courtroom emotions are hardly suppressed, as if "the victims' versions of the past always

contain[ed] a moral tension that cannot be ignored” (Jedlowski & Rampazi, 1991, p. 27).

Despite the conspiracy of silence and the difficulty she encounters not only to find someone willing to help but also to *hear* her, she addresses deep gratitude towards the Italian Embassy in Chile for its humanitarian role carried out during the first period of repression and, above all, for the chance to be heard and believed:

In that period there were many of us at the embassy, more or less 380; all of us were at the ambassador’s place. There were Italians and Chilean who asked for refuge and protection; there were lawyers who immediately started to collect everyone’s stories and press charges to the United Nations. They heard us. They heard our stories.

In her autobiographical narrative finally she finds someone willing to welcome her story alongside those of other family members of *desaparecidos*. The importance of the interlocutors, Primo Levi’s nightmare (1989) not to be heard (and not only to be disbelieved), often keeps happening in the case of family members and survivors of South American dictatorship. Some crimes are so brutal that they seem to be unreal; and in this sick game the oppressors, guilty of terrible violence, bury the memory of the oppressed, interrupting their narrative and hearing. This is most evident in the answer that Fresia provides to the insinuating, provocative and allusive questions of Podlech’s defense lawyer on the reason why she makes up her mind to narrate her and his husband’s stories only in that moment and in that courtroom, after 36 years:

“You did not release anything in Chile. Today you have recounted what would have happened to you and you did have not told ever before in 36 years, have you recalled it today?”
Fresia: “I usually do not speak of tortures of all terrible thing happened to me. I am in the only place in the world where I can be heard and I feel a bit confident and peaceful to narrate. I speak when I feel at ease and able to do it!

Fresia assumes an attitude of deep indignation and anger towards the lawyers’ insinuating questions. The dispute between them is interrupted by the President of the Court, who, welcomingly and respectful of the physical and emotional conditions of the witness, explains that it is the “role-playing in the trial”:

I must exhort you, for the sake of your health, not to get heated so much because this is, let’s say, the role-playing of the trial, it is the way the defense has to play his role, so, please, do not consider them as incitements, this is the moment for the defense to highlight potential contradictions, it is the defense job.

However, the reason for her silence until the Roman trial has multiple explanations, all of them understandable on a psychological and social level. The feeling of guilt to be survived, the feeling to be walking tightrope between two worlds, the need to isolate herself: these are all reasons that seize into silence the victims - as well as their families - of such shocking traumas. And then the fear comes, even after violence. "Silence is health" was a spell of blindness and resignation on which the Chilean authoritarian power was based. The denial of horror produced a paralysis in public and private narratives by family members also under democracy. This is what happens to Fresia, as she recalled during an interview we conducted in Chile in 2002:

It is very painful when you go to the supermarket and while you are picking up fruits you notice that the one who is buying fruit next to you is a torturer and you recognize him and you must grind forward. You feel as if you were in a land that is not yours, because in the land you lived and dreamed and for which you have fought it would never happen that you are invaded by fear while you are in the supermarket... because even though you know you are no longer under totalitarianism and that the soldiers no longer have the power they had before, being forced to share something with the torturers, breathing the same air your torturers breathe, is an additional torture (Punzi & Vignola, 2003).

The bodies of the tortured and disappeared were subjugated by weapons and force; the remaining population was invested by a microphysics of power that did not make use of physical violence. It was a terror system that immobilized society trying to inscribe a new regime of reality also into democracy. After all, during all the South American dictatorships, attempts of rewriting reality were discourse practices functional to the system, intended as to convince family members that their relatives had not disappeared into thin air, but had voluntarily moved away from home because they had become clandestine as members of alleged terrorist organizations or, more trivially, they had run away with a lover. Fresia clearly narrates it in her testimony:

Someone told me and my sister that Omar had gone away from Chile to Argentina with his lover. But I immediately said that it was not true, because those were the same things that they recounted to all women when they were queuing up outside the prison asking for their husbands.

It was thanks to the constitution of a narrative community that the attempt to construct another regime of truth was demolished by counter-narrations of family members who found themselves, day by day, outside these factories of torture and lies reestablishing another discourse order and an-

other truth, partially recognized by the Commissions of Truth and Reconciliation.

Beyond the ending of any trial, Fresia's and other family members' narratives prove that the forms of collective counter-memory are not only capable to resist to the dominant representations of the past, but over time they can become memory, truth and official history. Narrations of traumatized memories play, as a result, a crucial role to allow subsequent generations to preserve memory of the past events.

The executioner's narrative: Alfonso Podlech's testimony

The trial is not only a representation of the victims' past through their memory and their narrative; it is also the social construction of the executioners' past. The issues of memory and testimony also regard the persecutors:

“For those who committed and those who witnessed them, forgetting crimes does not only mean to provide a certain version of the past: it is properly guilt, a guilt that doubles the one committed. [...] In this perspective, the value of the testimony does not limit itself to the “knowledge” of the past, but also regards the future itself: not forgetting the crime is the only way that allows its overcoming, oriented to sorrow, expiation and prospective forgiveness. It is not possible to compensate the evil accomplished: by recalling it, however, it is possible to tackle with its roots” (Jedlowski & Rampazi, 1991, p. 27).

The perpetrators of crimes against humanity “must not be neither demonized nor pushed outside mankind, but judged. The trial [...] is a call for recognition not only for the victim, who acknowledges his/her own suffering, but also for the accused, to whom a faculty of acting and using his freedom is recognized” (Garapon, 2002, p. 148). In this way the law restores its primary significance: refusing the logic of revenge, its action becomes humanizing not only towards the victim but also towards the perpetrator of severe violations of human rights, to whom the chance to keep distance from his/her act is offered, expiating his/her punishment and entering again the community from which s/he had been expelled alongside the victim. Naturally, this process of recognition and expiation by the criminals, who can reject the Courts' judgment and their legitimacy or deny their responsibility denying reality, might not take place. This very option can be referred to Podlech case.

The defendant's testimony is preceded by a significant clarification provided by the President of the Court, who invites all the actors in the courtroom to abstain from potential comments against the accused. This clarification shows again the difficulty to keep emotions away from this trial.

In most of his narration, Podlech adopts a “politics of denial”:

“Not recognizing that the genocide has occurred. [...] Denying facts of the genocide transforming them into another kind of event. Portraying the offenders as victims and the victims as offenders (or “victims to a lesser extent compared to others). [...] Persisting as much as possible on the fact that all data are not available, that the charges are mystifications and fakes and that further research is needed and/or new research invalidates the charges of genocide. Blocking out the past: all happened a long time ago, today there is a new generation of (guilty) people, why don't we let that wounds heal over?” (Cohen, 2010, p. 186).

This is what a Government accomplishes when it chooses a “state of denial”, when it decides to remove an event which has produced forms of extreme violence in society. And this is what the insignificant bureaucrat of the Chilean dictatorship, placed at the head of an illegal torture and detention centre, chooses to mastermind before the Italian Court of Justice:

At that time there was war; [...] I repeat and reiterate: just wish that in Italy you never have a situation like this because it was a very delicate situation, there were terrorists that acted within a civil war.

He never speaks of “coup d'état” but “civil war”, he denies most of the historical events connected to the dictatorship, he contradicts victims (although addressing feelings of solidarity and pity), he represents himself as a victim, denouncing false charges aimed at discrediting him.

It is not only the refusal of the past but a counter-narrative of reality which still today most of the Chilean soldiers use as a source of legitimization as well as justification to impose their own version of history, although the coup d'état, the dictatorship and the violation of human rights represent a stabilized public memory.

It is evident that Podlech's narrative is linked to the collective memory of a specific group (the same applies to Fresia); this connection clarifies how the processes of institutionalization of remembrance and its objectification into cultural forms are the result of the influence and control operated by different social groups in reconstructing the past within the public space, being it not a neutral place, but an arena in which a plurality of conflicting, rivaled and persistent memories confront between each other.

Things went in a certain way at that time. What happened in that period cannot be understood if one does not realize how the Chilean criminal trial worked: a clear questioning trial, in which the prosecutor, who played the role of the judge, received the denunciations with the files and analyzed them together with his/her staff, providing suggestions for the questionings.

In attributing poor knowledge of information on the Chilean historical context to the Court, Podlech establishes a defense strategy by which he replies to the pressing questions of the Prosecutor regarding his decisional role within the barracks: from questioning to tortures, to his awareness of the final fate of the detained, once the so-called “statement of release” is signed. Podlech does not deny some facts emerged during the hearings of the witnesses, but he claims his lack of connection with those facts, the lack of responsibility when the crimes are ascribed to him. In fact, his defense is all based on his subordinate and subsidiary role to a major called Jofre Soto, who was allegedly the chief of Tucapel barracks when Omar was detained, tortured and disappeared: “at that time, I was sub-lieutenant, some witnesses wrongly talk about major Podlech who has nothing to do with the rank of sub-lieutenant”.

In addition to his mystification of past events, in order to reject his perception as a persecutor, Podlech constructs his subjectivity often insisting on his neutral and morally flawless conduct:

I am a lawyer, I have a son who is a lawyer, I have Brothers who are lawyers, my father was a lawyer; [...] I have been a lawyer for fifty years, twenty years of which spent as a University scholar and I have never been subject to any kind of charges, not even by the municipal police. [...] I am not a landowner, I am respectful and close to the Mapuche farmers: I have many friends who are Mapuche-chiefs and I have no problem with them, they deserve much respect from me; [...] I have covered the role of electoral judge both with right-wing and left-wing governments, because judges must always act unbiased by their political beliefs.

Then, thanks to his defense lawyer’s questions, his biographical narrative unravels in contrast with the one constructed by the witnesses. To the direct question whether he had or not known the victim Omar Venturelli, he promptly replies: “No, never, and I am very sorry for what happened to him”; then, directly addressing Fresia: “I tried to knock on all doors to know something about her husband, it seems humane to me”; and also: “I am very sorry for the situation she is experiencing, but I am stranger to this. And I am sorry especially for her daughter, who is an innocent victim”.

In addition to denying facts, he seems to take on a welcoming, empathic and compassionate attitude towards the victims, his accusers and witnesses. It is a clear defense strategy, aimed to exclude every possible motive.

Podlech owns a great judicial expertise and familiarity with the trial procedures, which enables him to use a specialized language, which, although full of cliché, sounds very adequate and convincing to the situation:

It is her word against mine. [...] they are unreliable witnesses; most of these people are deposing only for resentment, because they have

been judged and sentenced by the Council of War; as a consequence, they are witnesses who do not have the necessary impartiality; [...] concerning tortures, it is widely known that in the year 2003 a supreme decree was issued, allowing people who had been victims of tortures and coercion to claim compensation; why these witnesses did not pursue that? [...] those testimonies derive from resentful people and they are not true.

He has a full command of his trial narrative. He knows words, strategies and timing; he enters and moves in the stage of law with self-confidence, constructing a monolithic defense discourse with no uncertainty, contradictions, emotions. The President of the Court addresses a question to him that seems to be quite rhetorical and highlights the constant dichotomization of truth in the trial arena: “now you should do a clarification. Or your role of legal advisor of major Jofré was not needed at all or all that people who came here and declared to have been repeatedly tortured is false. Which of the two ones is true?” Podlech’s fairly expected reply is: “since I have managed to receive an order on the prosecuting attorney’s office and from the staff suitable to questioning, regarding what witnesses have said, I refer to what I have previously said according to which it is very easy to invent a situation to involve a person after so many years”.

The president of the Court insists and puts him again in front of two contrasting versions of facts and truth emerged during the trial with regard to the execution of tortures in the barracks: the version of events provided univocally by all witnesses (i.e., the detained were usually and methodically tortured during their questionings) and his lonely and antithetic version that denies every kind of violence: “In conclusion, [...] all those who told us about the tortures suffered, also with descriptions of those tortures, about the application of electricity and other torture methods, did they totally invent anything?”. The reply cannot but be in line with the image that Podlech constructed about himself so far; hence, even though he did not directly accuse anyone of the witnesses and did not explicitly deny the possibility that “those situations can be real”, the defendant addresses the Court stating that: “some witnesses have really declared the truth, and others have simply reported situations that can be real, but totally alien to military prosecutor’s office”.

The verdict: historical and trial truth

11th July 2011 is the day of the verdict. In the findings and conclusions of parties, Fresia’s lawyer and the Prosecuting attorney claim that Podlech is recognized as *military prosecutor* of the prison of Temuco, hence, as responsible for Omar Venturelli’s death, sentenced to life imprisonment. The

Chilean officer's defense lawyer, instead, constructs his closing argument insisting on the difference between historical and trial truth:

The trial is held to ascertain Podlech's responsibility for a given and specific crime, for what is stated in the charge, not for what historically happened in Chile; we have heard about it, we have knowledge of it from other sources. Not in a trial. In the trial we ask: is Podlech, beyond any reasonable doubt, responsible for the charges against him? In order to find Alfonso Podlech guilty, you must, beyond any reasonable doubt, hold to be true that the release from prison has taken place misleadingly, despite the existence of those documents and testimonies, otherwise the initial allegations totally collapse.

Even though Podlech's lawyer vaguely insinuates that his client might - as several witnesses have stated - have *historically* committed serious criminal offenses, he avoids any mention of his innocence or guilt, and reaffirms the insufficient evidence as referred to a specific charge. Prior to the Court is adjourned to deliberate the verdict, also Podlech asks for the floor to address once again an emotional plea to the Court:

We have heard the lawyers' allegations, to which my lawyers have answered back with strong and founded arguments, highlighting that the only solution for this case is the acquittal for lack of evidence. I am 76 years old, lawyer, son of a lawyer who was Judge and President of the Court of Appeal, brother of lawyers, sons and grandsons. Therefore, all the family is devoted to law and justice. Being innocent and having a clear conscience, I have asked the Lord for the Holy Spirit to illuminate you in the thorny function to contribute in ensuring justice.

On the one hand, Podlech asserts he has to be acquitted "for lack of evidence"; on the other hand, he paradoxically affirms his innocence. He too, like Fresia, shows himself as a *victim* - even if not a victim of politics but a victim of law and miscarriage of justice - and, as such, he asks for *justice* to be ensured. Furthermore, in this appeal he addresses the Lord so that he *illuminates* the Court and the Judge, hinting that, unlike the Lord - a supreme and immortal Entity - the Court and the judge are obliged to judge within the *darkness* of mortals, hence, they are exposed to a possible wrong punishment that only God can avoid. In these findings and conclusions, Podlech and his lawyer seem to speak two different languages, to belong to two distinct worlds and eras. In fact, whereas his lawyer asks the Court to judge regardless of history and ethics, Podlech conversely argues as if the law is not completely autonomous and independent: he mentions God and his *clean conscience* and then he legitimizes himself in an ascriptive way. It is as if his social belonging, together with his ethics and religious belief, might serve as an *evidence* - also judicial - of his innocence. In this way, he disregards one of the major evolutionary acquisitions of modernity, since he pretends

not to know that law, ethics and religion are social systems functionally differentiated in democracy. Summing up, it can be assumed that, even in his final plea, Podlech keeps on unconsciously behaving as if he were still under dictatorship, that is, in a society in which the law does not only meet the needs of the licit/illicit code, but can also be *corrupted* by codes of other social systems (Luhmann, 1995).

Although from a diametrically opposite perspective compared to Podlech's, also Fresia expects that the law, in expressing its judgment, may be influenced by other social systems, assuming the truth that has already been established in a clear way both by history and ethics. Nevertheless, the relationship between law and truth or between law and justice is much more complicated compared to what defendants and above all victims think (Rotberg & Thompson, 2001). In fact, their antagonistic call for truth and justice involves a too vast expectation if compared to the scope of the judicial discourse: it is vast because mistaken, since it is based on the "confusion of ethical and judicial categories". Conversely, in the trial, "as jurists well know, law is not directed toward the establishment of justice. Nor it is directed toward the verification of truth. Law is solely directed toward judgment, independent of truth and justice" (Agamben, 1999, p. 18).

Despite the purpose of the trial is not at all to produce truths, the grounds of Podlech's verdict reconstruct the historical truth in a clear way, describing - through several summons of different witnesses - the historical and social content and the causal link which led to the coup d'état and the subsequent barbarism: violence against native Mapuche, Podlech's contiguity with the terrorist organization *Patria y libertad*, his interests as a landowner, his active role as *military prosecutor* during questioning and tortures, as well as the *judicial* evidence of the "defendant's responsibility with regard to the crime of kidnapping for ransom [...] committed to the detriment of Omar Roberto Venturelli Leonelli". Yet, regardless of the finding of evidentiary documents, the trial can neither totally satisfy the call for truth of the civil parties, nor "exhaust the question. [since] A non-juridical element of truth exists such that the *quaestio facti* can never be reduced to the *quaestio iuris*" (Agamben, 1999, p. 17). Indeed, insofar as the focus is on the capability of the trial to restore dignity to victims and satisfy their right to truth and memory through narrative, the task of the trial is above all to evaluate the criminal responsibility of the defendant and not reconstructing the story. In fact, insofar as the trial investigates memory and might establish which narrative - between the two antagonist narratives - has the value of truth, it does not want and cannot be bound by memory, but only by its own rules and codes (Bruner, 2003).

The complexity of the relationship between law, truth and justice is even broader in Podlech's trial, a trial that took place in the absence of the *body* of evidence. In fact, one of the specific features of the tragedy of South

American *desaparecidos* is the spoliation of evidence: the tragedy within the tragedy is the *desaparición* of the truth itself. Like Nazis, also South American dictatorships have adopted a specific *jargon*, i.e., euphemisms aimed at concealing the brutality of their acts, legitimizing them by means of language camouflage (Arendt, 1965, p. 93). Similarly, Podlech's defense could circumscribe the role of his client to a simple "legal advisor" of the prison in Temuco and sustain that the only evidence is Omar Venturelli's *liberation* occurred through a regular "release". Moreover, according to the defense, even assuming that Venturelli is dead, the responsibility is not attributable to Podlech, unless the fact that "the liberation occurred *falsely*" is proved. One of the major problems of the trial is to verify the victims' and their lawyers' narratives, and, in Podlech trial, prove that the crime has been committed but concealed behind *false* acts, specifically constructed to simulate a framework of lawfulness and juridical legitimacy.

After the findings and conclusions of the parties, the Court retires to the jury room to decide upon a verdict. The waiting time stretches for some hours in the courtroom, until the silence and anxiety are suddenly interrupted by the sound of a bell. A *carabiniere*⁸ announces the entrance of the Court. In a few seconds, everyone is already standing lined up before the actors of the trial, with Fresia and Podlech waiting for the verdict by those who actually appear as an execution squad for both of them. Fresia's forty year-long fight for justice and Podlech's two year-long trial and detention have been condensed into some hours of reflection to reach a verdict. The lengthiness and nothingness of the judicial procedure are replaced by a quite unrealizable hurry, with Fresia not quite being able to fix herself up before the Court, not quite being able to hear, not quite being able to understand what is taking place. While the bell is still echoing, the judge is already in the middle of the squad to read the verdict:

On behalf of the Italian people, the Roman First Court of Assize, having regard to art. 531 of the Italian code of criminal procedure, declares the failure to proceed against the defendant with regard to the offense referred to in artt. 630 and 61 nn. 1, 2, 4 and 9 of criminal law, because the offense is extinguished due to statute of limitations. Having regard to art. 530 paragraph 2 of the Italian Code of criminal procedure, the Court acquits Podlech Michaud Alfonso from the charge of aggravated murder perpetrated against Omar Venturelli Leonelli for not having committed the fact. The Court determines the immediate release of the defendant if not detained for another cause. Having regard to art 544, paragraph 3 of the Italian Code of criminal procedure, the Court establishes 90 days as the time limit to hand down the reasons for the judgment.

⁸ A member of the Italian paramilitary police.

The reading of the operative part of the judgment comes like an unexpected and rapid hurricane, an event that seems to speak a monotonous, technical and unknown language, an overlapping of numbers and acronyms quite impossible to decode, except when it is all over. Among the ruins of a tragic and nearly 40 year-long storm only a few words echo: statute of limitations, acquits, immediate release. With the same hurry characterizing its entrance, the Court leaves: that rush could actually derive from the embarrassment of those who, although they have moved to tears during Fresia's and other survivors' depositions, has had to judge pursuant to the law. The hurry of the Court is therefore the embarrassment of the Law, embodied by men and women who did not have any reasonable doubt on Podlech's historical guilt, but many more doubts on his responsibility concerning Omar Venturelli's death: "*willing good and doing evil: this is the tragic experience of justice*" (Garapon, 2007, p. 3), that proves the distance between historical and trial truth.

This tragic experience reveals itself clearly also in the reasons for the judgment, that highlight the difference between the historical certainty and the judicial doubt. In fact, on the one hand the reasons seem to reaffirm the historical truth and Podlech's fuzzy responsibility; on the other hand, they clarify the impossibility to determine his guilt beyond any reasonable doubt, since "the only ascertained adhesion of the defendant to the repression of political opponents and his likewise collaboration in managing criminal structures where victims were restricted [...] do not even appear suitable to envisage the existence of a moral complicity in the contested crime [...]."

A narrative flashback leads us to the Roman first Court of Assize when the verdict is pronounced. After the quick reading, Fresia is astonished in the middle of the judicial arena, and moves forward confused towards the prosecuting attorney: "But, what shall I do now? What do I do now?". While the prosecuting attorney does not reply and is only able to look away, Pacita hugs her mother: "What do I do now? What do I do, Pacita?". Fresia's acute weeping is the only possible reply to the last and decisive (non) reply by the law to Fresia's call for justice. Like in Greek tragedy, here the final lament of the victims reverberates in the courtroom, "the minority point of view, *the sorrowful voice of women*, these Antigones, these Elektras and all those who refuse to sacrifice their dead for the reason of State" (Agamben, 1999, p. 15). Suddenly, the verdict entails the implosion of the benefits provided by the public narrative of the trauma and the depletion of the motto *Revealing is Healing*. In fact, it can be assumed that the judicial ritual has triggered Fresia's disease and not her treatment, exerting the death-power already experienced during the dictatorship and now *recalled* and magnified to its highest degree by the operative part of the judgment. Thus, the trial can be more realistically referred to as an autonomous source of evil. "[...] in the so

called political trials [...] seemingly two right elements counteract, [...] distinguish the right from the wrong only forcedly, as well as the accused and the accuser, so that the acquittal of the accused results in a condemnation, often not only moral, of the accuser” (Satta, 1994, pp. 26-27).

Podlech’s acquittal becomes Fresia’s ultimate condemnation, a new torture or, even, a “second death” (Garapon, 2002, p. 141), proving that in modern law justice and violence also coexist, like in the archaic form of revenge.

Therefore, rather than repairing a traumatic memory, the *role-playing* of the trial – as the judge himself has defined it – has only recalled the trauma, without allowing its treatment, but contrarily facilitating the reopening of wounds in a body and a soul even more marked by years of fight for truth and justice. In fact, with no possible reconciliation neither with herself nor with society, a few months later the verdict, Fresia dies, murdered by a tremendous cancer come out a few months before Podlech’s arrest. We recalled one of Fresia’s statements the day of her funeral, celebrated like a feast in which the participants have sung and danced Allende’s songs:

If you ask how Sola Tierra has died, how Gladys Marin has died, how all mothers have died ... how has Omar’s mother died? Omar’s mother died of cancer. All women who have dreadfully experienced dictatorships die of cancer or commit suicide [...]. And this is another crime that nobody takes care of denouncing or claim, do you understand? I would have never imagined that it would have happened to me, because I took care of myself and you have seen in the Center [de las Mujeres] that workshops were held to clean our body, to keep ourselves well and healthy. It did not work ... (Punzi, 2013).

A breakthrough narrative would suggest that as the trauma of dictatorship has contributed to give rise to Fresia’s illness, the trial exerted its entire *death-bearing* power due to its lack of truth and justice.

In conclusion, it is perhaps useful if we scrutinize upon the type of juridical-theatrical representation of Podlech’s trial, assuming that it is paradigmatic of the trial itself. A short story by the Austrian dramatist Thomas Bernhard (1967) can help us find an answer: the narrator-protagonist of the story, engaged in writing an essay on the trial, encounters a strange man wearing women’s clothes, walking ceaselessly before a theatre and wondering - and asking many times - whether “a comedy or a tragedy is being performed in the theatre... This is the first time that I don’t know what is being performed. But *you* must not tell me... No, don’t say what it is! It should not be hard”. Then, after having revealed he murdered his wife, he reminds to the jurist that “The whole world is a jurisprudence. The whole world is a prison. And this evening, let me tell you, in the theatre over there, whether you believe it or not, a comedy is being performed. *Indeed*, a comedy”.

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