Journal of Forensic Sciences And Criminal Investigation
ISSN: 2476-1311

Juniper Publishers key to the Researchers

Case Report
Volume 18 Issue 4 - September 2024
DOI: 10.19080/JFSCI.2024.18.555995

J Forensic Sci & Criminal Inves

Truth in Criminal Procedure: A Comparative Study

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Submission: July 29, 2024; **Published:** September 19, 2024

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Abstract

Different understandings of the truth lead to different opinions about truth in different legal systems. Whether the purpose of the criminal procedure is to seek the truth depends largely on the definition of the word "truth". Whether in the adversarial or inquisitorial procedure, judicial truth is neither a philosophical truth nor historical truth. Judicial truth is only a solution to disputes concerning forms of procedure that bypass the unattainable absolute truth. The forms of procedure are different in the adversarial and inquisitorial procedures, such as a unanimous decision vs. majority decision or beyond a reasonable doubt vs. intime conviction. The judicial truth is related to discourse, and the trial in any mode of procedure is the field of direct application of discourse. However, in different modes of procedure, the subjects of discourse are different, and the time and place of discourse are different. The pre constitution of documentary evidence in the inquisitorial procedure and the immediate orality of the adversarial procedure each serve the truth that must remain a quest.

Keywords: Judicial truth; Adversarial procedure; Inquisitorial procedure; Verisimilitude; Discourse

Introduction

The traditional concept of criminal justice in China is to pursue the "objective truth". Based on criticizing the doctrine of truth in capitalist countries, the term "objective truth" was first put forward by scholars of the former Soviet Union after the victory in the October Revolution [1]. However, this term can neither place truth on the level of objective existence nor eliminate the experiential nature of truth [2]. The concept of objective truth has brought about the recognition of the inerrability of the judiciary, leading to such judicial concepts such as "murder cases must be solved", "mistakes must be corrected" and a "lifelong accountability system for judges". In recent years, with the research and analysis of the nature of truth by Chinese scholars, the traditional concept of objective truth has been gradually abandoned. As Professor Zhang Baosheng has argued, truth is the product of the process of cognition, so it is necessarily relative and contingent [3]. Bringing the question of truth back to the category of epistemology, on the one hand, will help correct the traditional Chinese judicial ideas and, on the other hand, will make the Chinese people of law treat the question of truth in criminal procedures more rationally and facilitate dialogue with legal scholars and practitioners in other countries.

In Western democracies, truth in criminal procedures has long been discussed. The question of truth is sometimes presented as a key point that distinguishes an inquisitorial procedure from an adversarial procedure. The inquisitorial procedure seeks the truth, but the adversarial procedure abandons the truth. Daniel Soulez-Larivière, a French lawyer, systematically explains this opinion, stating: "the French investigating judge *(juge d'instruction)* is the grand inquisitor. With the help of the prosecutor, he is responsible for discovering the treasure hidden at the end of the garden: the truth" [4]. In one of his early books, he praised the benefits of the American procedure, which does not seek the truth but rather applies the procedure to determine guilt [5]. Some scholars of common law hold similar views on the purpose of the adversarial procedure. Pollock argued that "the business of the court is to find the truth…This is the biggest fallacy" [6]. According to Morgan, "A lawsuit… it is not primarily a truth-finding process. It is essentially a process for the orderly resolution of disputes between parties" [7].

However, there is another opinion: the ultimate goal of all kinds of criminal proceedings is to find the truth, whether in civil law or common law countries [8]. As the French jurist Mireille Delmas-Marty explains, "if the exercise of doubt founds the ethics of the criminal judge, it is because the reference to the truth, and to the uncertainties that inevitably accompany it, remains at the heart of criminal justice" [9]. Some jurists in common law countries have a similar view, that the basic purpose of a trial is to

find the truth. In Funk v. the United States, the American Supreme Court declared, "all rules of evidence – if they are to be based on reason – must rely on one foundation that they are suitable for successfully finding the truth" [10]. According to Lord Dunedin, the law of evidence is "truly nothing more than a set of practical rules, experiences have shown that it is suitable to elicit the truth" [11].

These two opposing opinions are rooted in different understandings of the truth. Therefore, only after having defined which type of truth we are talking about can we determine why truth is at the heart of criminal trials in various countries, while judicial truth is not the real truth. After that, we can ask ourselves another question that explains many controversies: how can this truth appear, and especially, when can it appear? We will see that the questions posed by those who despise the truth in criminal trials are more concerned with criticizing the place and time of truth-producing than the principle of truth-seeking itself.

What Kind of truth?

If truth is at the heart of the criminal procedure, it is because, in any procedure, truth is decisive for distinguishing between truth and error. History can help us understand the evolution of the question of truth.

The truth at the heart of the criminal procedure

As Pierre Goldman said, "Truth is not to know if the being is or is not what it was, but more simply or more dramatically, to know if I'm guilty or innocent" [12]. This sentence seems to explain it all. Faced with a trial during which the judges try to examine the defendant's personality, his motives, and his past political commitments, Goldman observes that we are more interested in the defendant than in his acts: "during my trial, there was this kind of paradox: they talked about me – to a certain extent, they talked more about me than the facts – and I had absolutely refused to talk about myself… I wanted to be judged on the facts. I refused to allow anyone to claim to deduce the facts from my supposed personality" [13].

If the so-called truth-seeking refers to an accurate understanding of the causes of the behavior, the conditions for the completion of the behavior, and the consequences of the behavior for the victim, the perpetrator, and the society, then this truth is not the truth discussed in this paper. The truth of being is not the objective of criminal justice. This does not mean that criminal justice is not interested in the truth of being. The truth of being is the goal of criminal justice only when it is consistent with judicial truth. Moreover, the truth of being is more knowledge than a truth. "All truth, even partial truth, is infinite; all knowledge, by definition, is finite. In addition, that forbids taking certain knowledge as truth. All truth is infinite, all knowledge is finite, and no knowledge is truth" [14]. In reality, this truth does not even allow the judge to verify assertions by comparing them to facts "because of this irritating problem of the irreversibility of time" [15].

Historians, like judges, study facts. For example, there is a truth to Genghis Khan's death. However, this does not mean that there is only one explanation for his death. Historians have come up with a variety of explanations: death by illness, death by homicide, death by lightning, or death by poisoned arrows. In this sense, any explanation that is considered the historical truth may not be the real truth. The so-called historical truth is, therefore, not the absolute truth. The scientific truth is similar to the historical truth. Some scientific propositions may initially have been thought to be true and later proved to be false [16]. Thus, historical truth or scientific truth is only the temporary truth or pending truth until later research can clarify, improve or refute the "acquired truth".

Unlike historians and scientists, a judge's time is limited, and he or she must make a verdict that has the force of res judicata within a fixed trial period; otherwise, the judge will be guilty of a failure to judge. Therefore, we say that res judicata contributes to the truth. As Nietzsche wrote, "it is necessary… that things held to be true are not true things" [17]. Truth in criminal procedures is a simpler truth; that is, the truth that distinguishes guilt from innocence.

Truth and history

In ancient Greece, a history of truth was already written in the Iliad. Homer stages a chariot race between Menelaus and Antilochus. It is a round trip after bypassing a terminal near which there is a witness. Antilochus cheats and wins the race. Menelaus challenged his victory. However, this dispute is settled not by the testimony of an eyewitness who is near the terminal but by oath. "Lay your right hand on your horse's forehead, hold your whip with your left hand and swear before Zeus that you have not committed any irregularity", says Menelaus. "Faced with this challenge, which is a test, Antilochus renounces the test, renounces taking the oath, and thus recognizes that he has committed the irregularity. The ultimate truth-finding rests with the gods" [18]. Then, it is not a question of restoring the past as past: "there is no trace of a positive notion of proof: to submit to judgment is to enter the realm of the most fearful of religious force. The truth is established through the proper application and ritual fulfillment of procedures. On the level of thought, the truth is therefore always linked to certain social functions; the truth is inseparable from certain types of people, from their qualities and the dimension of reality defined by their functions in Ancient Greek society" [19]. This truth is assertoric: "no one disputes it, no one demonstrates it", as Marcel Détienne writes [20].

Roman law experienced the same evolution as ancient Greek law, but it was also "forgotten" for many centuries. In the early years of the first millennium of Germanic society, conflicts were resolved by fighting and compromise. Finding the truth was a battle that did not require the presence of an impartial third

How to cite this article: Vikram A D, Bhausaheb P M, Apurva D D, Rajendra D B. Systematic STR DNA Profiling of Chillum Links the Burglar. J Forensic Sci & Criminal Inves. 2024; 18(4): 555994. DOI: 10.19080/JFSCI.2024.18.555994

party. The medieval era did not seek the truth in itself. Conflicts were always settled by tests. Finding the truth is sometimes a question of arguing in good order and not omitting anything from a ritual formula. In the feudal trial, "the accuser made his claim verbally without omitting any necessary words, without making any mistake which would have enabled his adversary to take him to the point, that is to say, to have his claim declared invalid. The accused must respond immediately; his silence amounts to a confession" [21]. An oath is a guarantee of the veracity of a witness's testimony. It does not guarantee the truth of facts that have or have not been accomplished but is the truth of an individual's own words. In divine judgment, it is not the truth that emerges but the designation of a winner. Michel Foucault writes, "the winner is not required to prove the truth of his claim" [22]. In this sense of the term, there is no technical or positive evidence.

The inquisitorial procedure was born "with the modern State at the turn of the Middle Ages; it provided royal absolutism with the transcendence necessary for symbolic mechanisms; it inaugurates a new justice in which the quest for truth replaces the search for appeasement" [23]. Oaths, ordeals and magic words gave way to evidence and reason. Truth was no longer produced by sacramental words that did not seek to convince but rather to impose. The introduction of the inquisitorial procedure corresponds to the rediscovery of Roman law in the Middle Ages. The inquisitorial procedure was initially applied only to crimes of lèse-majesté but was later extended to all other cases. The investigation then appears as a characteristic form of the search for and reconstruction of the truth. For Michel Foucault, an investigation is a political act, a form of management, a form of exercising power, which has become in Western culture a way of authenticating the truth of acquiring things that will be considered true through the judicial institutions [24]. An investigation is equally important in fields such as geography, astronomy and knowledge of climates.

The investigation of evidence is commissioned before the trial to a magistrate, known since the French Revolution as the "investigating judge" *(le juge d'instruction)*, although this magistrate existed under the Old Regime and was referred to as the "*lieutenant criminel*". Robert Jacob writes, "in continental Europe, and especially in France, where the influence of the Romano-Germanic model was most noticeable from the outset, the magistrate, minister of truth, concentrates in himself all the majesty and all the divinity of judgment" [25].

The truth then passes through the confirmation of the words of the accused: the confession is the complete evidence, which requires the passage in writing, but in most cases needs to use secret tortures. "The profound originality of such a procedure resides in the privileged or exclusive relationship between confession and truth. The truth sought by a judge is obtained in the confessions" [26]. It is therefore important that the evidence collected during the investigation, which is confidential to all, and in particular to the accused, be coupled with a ritual recognition. The written evidence is the most economical in the lawsuit; only an act of sovereignty can prove the truth it produces [27].

Another profound reform was the establishment of the system of *l'intime conviction* in France which was a reaction to the system of legal evidence of the old regime that had been strongly criticized by Voltaire. The judge could give whatever force he wishes to any kind of evidence that is lawfully presented to him. There is no evidence except that which expressed the decision of the judges. Thus, the judicial truth is not the truth.

The judicial truth

The judicial truth is nothing other than the solution brought to the dispute by the judges. Despite their apparent differences, the actual standards for determining the truth in the procedure with an inquisitorial tendency and the accusatory procedure are not that distinct.

The judicial truth: the solution to the dispute

The judicial truth is only the solution brought to the dispute, and this solution is the result of a mode of production of evidence and a mode of assessment of this evidence. If "the litigants can consider themselves entitled to expect that the judgments of evidence are only the expression of the truth" [28], the evidence is not called upon to define truth but to convince the judge or the jury of a real or supposed reality. It is this conviction that matters in the legal debate. The trial does not aim to recreate the whole reality; the truth is amputated, and it remains partly veiled. Whatever the system of criminal procedure, the rules of admissibility of evidence prevent the full discovery of the truth. This is an obstacle for the judge; not forced to show that the truth has been reached, the judge is only accountable for respecting the legal path that might lead to it.

Whatever the system of procedure, there are legal presumptions that stand in the way of complete truth-finding. Thus, in the French system, the search for the truth comes up against the prescription that prohibits the search for the reality of facts that are too old or certain legal or factual presumptions that reverse the burden of proof or prohibit the burden of proof of proving certain facts; thus, the proof of the truth of a defamatory fact is prohibited when the imputation affects the private life of the person concerned. Judicial correction, which willfully forgets certain aggravating factual elements to allow for faster hearings and a less restrictive procedures, is also contrary to the truth.

In adversarial proceedings, the whole trial depends on the position adopted by the accused from the start. Especially in the American trial system, the choice of the plea bargain is crucial. If the accused pleads guilty, he or she will not have the right to trial. The trial is reserved only for those who claim to be innocent. By pleading guilty, the defendant exempts the prosecution from providing the evidence of guilt. Plea bargaining, which is the

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negotiation between the prosecution and the defense on the admission and the sentence, is used in approximately 95% of cases. However, the deal between the two parties is unrelated to the truth. The rules of admissibility of evidence are strict. They can also be considered an obstacle to total truth-finding.

Therefore, in inquisitorial or adversarial procedures, truth finding is hampered by essential procedural rules.

The notions of speed and legitimacy must also be discussed. Legitimacy is important because the truth "cannot be obtained at any price but only by means that are not only legal but also legitimate" [29]. The speed of the procedure is also a very topical factor that puts the truth in the background. If it is not essentially contradictory to the truth, the speed of the procedure often makes so-called simple procedures possible, in which what is sought is more a solution that protects the interests of all the parties involved than representing the truth. The standards for assessing the truth, in common law and civil law are different. The truth would be opposed to verisimilitude, l'intime conviction to beyond reasonable doubt, the qualified majority to unanimity.

Truth or verisimilitude?

In their important book Judging in America and France (Juger en Amérique et en France), Antoine Garapon and Ioannis Papadopoulos distinguish between the two concepts of truth and verisimilitude. "The legal culture of the civil law seeks the substance of truth by attempting to establish an official narrative through the pronouncement of judgment by a magistrate, the legal culture of the common law, on the contrary, organizes the confrontation of two versions to make the most plausible version publicly triumph" [30]. Common law would, therefore, be less interested in the truth itself than in the method of arriving at it. The fifth amendment to the United States Constitution, which allows a defendant to not incriminate him or herself, signifies the acceptance of the loss of the truth since "he who is suspected of knowing it may not say it and accept that justice is the result of a system of representation resulting from the procedure" [31].

These analyses are particularly enlightening. However, Antoine Garapon and Ioannis Papadopoulos also point out that "the ideal of truth remains the same in both cultures, but the modes of production of truth are very different in both cultures" [32]. Thus, John Spencer affirms that "a single goal hides behind the divergences between the systems of evidence: the search for the truth" [33].

These nuances are not small. Except to consider that the adversarial procedure does not care about the guilt of the accused, we can only dispute the conclusion that all truth has deserted the American courtrooms. To say that the procedure is fundamental is not to say that American justice does not care about the truth. In addition, when this procedure is too far removed from the question of truth, when even factual innocence seems insufficient to modify the court's decisions, this type of procedure, then, seems to us to be highly questionable [34].

It is also uncertain whether the French jurists are capable of conceiving graduations of truth. Admittedly, civil fault and criminal fault are almost identical in French law, and there is no risk of finding situations similar to that of the OJ Simpson trial: a criminal acquittal followed by civil compensation because the standards of proof are different [35]. However, the French jurist is perfectly accustomed to the development of the degree of plausibility [36], which varies according to the stage of the criminal proceedings. The plausible reasons are necessary and sufficient to place the accused in custody, the examination of evidence requires significant or corroborating evidence, and the transfer of someone to a trial court requires sufficient charges. This is also an assessment in concerto of the elements of immutability brought together against a person who is sufficient or who does not take such a coercive measure. These elements will be successively assessed as plausible reasons, serious or concordant indications or charges. They form steps on a graduated scale of truth.

L'intime conviction or beyond a reasonable doubt?

The evidence is evaluated by the judge or the jury according to apparently different principles. In France, the Court condemns the defendant on "*intime conviction*"; in the United States, the Court must be convinced of the guilt of the accused beyond a reasonable doubt. *L'intime conviction* is not intimate certainty but a deep and individual (intimate) appreciation of the evidence (conviction), that is, of probative value. The evidence can make an impression on reason. *L'intime conviction* is the supplement of the principle of freedom of evidence, which contrasts with the legal evidence system in the old regime. The judge is free to evaluate the evidence submitted. Conviction must prevail over doubt.

In countries with adversarial proceedings, the prosecutor must prove, at the time of the trial, that the elements of the crime are complete and that this crime is attributable to the defendant beyond a reasonable doubt. According to Lord Denning, "it is not necessary to achieve certainty, but it is necessary to achieve a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of a doubt. The law would not protect society if it allowed imaginary possibilities to pervert the course of justice. If the evidence against the accused is made so far as to leave only a remote possibility in his favor, which corresponds to the phrase 'of course it is possible but it is not at all probable', the cause is proved beyond reasonable doubt" [37]. "The share of subjectivity inherent in dialectical logic must therefore be understood about criminal judicial conviction, as a contribution of conscience to compensate for the insufficiency of formal logic, this method only allowing access to existence of more or less important probabilities … in terms of dialectical logic, the term probability never refers to a mathematical quantity; it only expresses the presence of a possibility endowed with a very great

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plausibility according to the motives or the causes which found it"[38]. This is true regardless of the model of the procedure.

In an inquisitorial or adversarial proceeding, it is not the absence of doubt that is in question. As Jean Carbonnier wrote, "Judgement is a doubt that decides; the trial, the institution of questioning with a decision at the end" [39]. Doubt remains; it is linked to our condition as human beings who cannot claim to reach an infinite truth. "Like English judges, this is the reason that French judges have to appeal to assess the evidence brought against the accused. In the absence of a more precise indication in either system, we must admit that although the wording of the two systems is different, there is virtually no difference in the degree of certainty of conviction, and conviction depends more on the composition of the court, in particular, the role of jurors and lay judges" [40].

Qualified majority or unanimity?

In different systems, the decision to condemn or not to condemn and the choice of the sentence are the responsibilities of one or more people according to a principle of majority or unanimity. In France, juries try only the felony cases and deliberate cases with professional judges [41]. Juries are not used in certain criminal cases, such as cases of aggression against the national interest, terrorism, or drug trafficking. In the United States, the jury is the rule, and the jury only deliberates on the question of guilt. In most cases, jurors must unanimously decide someone's guilt or innocence [42]. In cases in which a jury is unable to reach agreement, a second trial is possible. Whether the decision is made by professional judges is not without interest. However, whether a decision is made by a majority or unanimously does not seem to make any significant difference. Is a decision obtained after five days the culmination of a process of conviction? Did the jurors change their minds? Or is it a change of position due to fatigue or pressure from the majority? If a jury can't reach an agreement after often weeks of trial, hundreds of thousands of dollars will have been spent for nothing. This moral constraint is also important.

Moreover, in French law, the secrecy of deliberation covers dissenting opinions, which is not the case in the United States or in the judgments of European courts, such as the European Court of Human Rights, which follows the statements for dissenting opinions of judges who may disagree on both the solution and its reasons. The democratic principle that requires the decision to be made by a simple majority *(tribunal correctionnel)* or a qualified majority *(cour d'assises)* is accompanied, in France, by an opacity on the reasons that led to such a decision. The secrecy of the deliberation does not have the same value either in France as in the United States, where the jurors are regularly interviewed after the deliberations, and where one knows which arguments were used and which were not effective. The French truth ignores opposing views and forbids members from expressing any dissent. In France, it is the court, not the individuals who compose it, that expresses its view.

The Emergence of Judicial Truth

In a criminal trial, the truth is a matter of words, which are those of the accused, of the victims and of the witnesses. How do you listen to them? What is the use of listening to words? For Nietzsche, to hear words is to partially retain what someone has said, allowing us to creatively fill in the rest. What do the jurors retain from the long statement of facts? What creative interpretations do they make of the facts rendered by the spoken word? This is where the two kinds of procedures took radically opposite paths. These words are perhaps as important in the adversarial procedure as in the inquisitorial procedure in which confession is most often stigmatized. However, the difference is the way the words are produced; they are not necessarily from the same person, and they are not necessarily from the same time.

Discourse comes from different subjects

In America, a guilty plea is crucial: it determines the entire procedure. It is indeed a discourse, even a confession, that is in question. By pleading guilty, the accused deprives himself of a trial, a judgment of his peers, and a public discussion of the evidence; the accused only has to wait for the sentence. Previously, the accused had negotiated charges and penalties with the prosecutor in a plea bargain, which, as we have already mentioned, is also far from the spirit of truth, and is conducted in secret. In Anglo-Saxon law, the accused has the right to remain silent. In the United States, a constitutional principle establishes that individuals cannot be forced to incriminate themselves, but it is less common in other countries of the same culture as that of the United States. Thus, even if the right to silence remains in place in the UK, it may have adverse consequences for the accused, which is not officially conceivable in the United States. In Italy, the accused may not testify or make spontaneous statements that will not be questioned.

However, discourse is much more important than in the inquisitorial trial since the principles of oral and immediacy of the evidence make it the core tenet of the trial. Although the accused may not testify, many witnesses are questioned – anyone, including experts who have this status, from a telephone operator who receives the first call reporting the crime, to a police officer who participated in the investigation and the witnesses *stricto sensu*. Without underestimating the importance of the scientific aspects, the words of witnesses are essential, and we know that they can be far from the truth. Thus, in 2007, in Chicago, Jerry Miller was declared innocent of a crime committed in 1981. In this case, he had been sentenced to 45 years in prison, after being formally implicated by the victim and two witnesses [43]. When we deprive the accused of using words, we will look for the words elsewhere!

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Discourse appears at different times

In France, people try to find the truth in detention centers or offices of the investigating judge. In Anglo-Saxon law, people try to find the truth at trial. In China, people try to find the truth in police stations or detention centers. Certainly, laws vary from country to country. The possibility of the pre constitution of evidence is more or less widely accepted. However, the truth must appear at trial. The trial takes place in a known form, and we will not insist on this form: cross-examination, examination-in-chief followed by cross-examination, presentation of prosecution witnesses and defense witnesses, registration of evidence submitted by each party, and a judge who pronounces the law and delimits the acceptable evidence. There is no doubt that the clash of arguments makes "another truth " more possible and more obvious. The coherence of a witness's speech, likely to be taken as true during the initial interrogation (examination in chief), can be deconstructed during cross-examination.

Although the procedure of the French felony court *(cour d'assises)* presents a much more oral character than that of the correctional court (*tribunal correctionnel*), the documentary evidence that consists of the pretrial file [44] remains the basis of the proceedings. First, the indictment is read, and the trial begins. This decision is made by the investigating judge at the end of the preliminary hearing [45] and is based largely on the prosecution's evidence on which the order was transferred, sometimes merely a copy of the prosecutor's final complaint. Many foreign judges attending felony court trials have this strange feeling of hearing the sentence before the trial has even begun. This observation is sufficient to characterize the wide gap between adversarial trials and the trial in French felony court. Moreover, although certain rules are different from those applicable to the correctional court *(tribunal correctionnel)*, the president of the felony court *(cour d'assises)* is always the first accuser. Admittedly, witnesses give their initial testimony without any questions being asked. However, as soon as the period of free statements is completed, the president must speak first to obtain clarifications and justifications of the differences, and explanations of the contradictions. Therefore, there is a confrontation between the defense lawyer and the president as soon as the latter takes into account the indictments and only them. As Henri Leclerc wrote, "before making a decision, the defense is obliged to confront the president who is, in fact, leading the prosecution" [46].

The truth is constructed and emerges from debate in the American trial system. However, in the French trial system, the story that is supposed to contain the truth is already written and only requires a final confirmation. The exception is the Outreau trial. How many still doubt the acquittal decisions finally obtained? Because it has already been written. What has been written is almost unanimously confirmed. Although the debates of the so-called Outreau parliamentary commission have highlighted certain benefits of the hearing and the risks of written, secret, cabinet procedures, in the law of March 5, 2007, the legislator found it to be a solution to improve the pretrial stage. More complete, more closed on itself, more bearer of truth [47]? What is the point of accumulating within a confidential investigation the maximum number of formals guarantees whose effectiveness remains to be proven? The combination of the secrecy of the investigation and an overly systematic pretrial detention makes it difficult to avoid the alternative between a ceremonial trial or a scandalous trial.

In China, judicial reforms in recent years have tried to strengthen the debate and confrontation in court trials and have put them at the center of criminal proceedings; nevertheless, they have not achieved much. The truth in criminal proceedings has been constructed in the pretrial stage, and the trial stage is only the final confirmation of the truth that has already been constructed. This can be seen in the acquittal rate of the court. In 2021, according to the reports of the Supreme People's Court and the Supreme People's Procuratorate, courts at all levels across the country concluded 1.256 million criminal cases of the first instance and sentenced 1.715 million criminals. Among them, courts at all levels acquitted 511 defendants in public prosecution cases and 383 in private prosecution cases. A rough calculation shows that only approximately three out of every 10,000 cases prosecuted by prosecutors in 2021 will result in acquittal in court. In 2020, 2019, and even the last decade, the acquittal rate in public prosecution cases was approximately 5/10,000.

Truth: Product of debate?

The search for truth in the criminal trials is the attempt to imagine a system that produces the fewest possible wrong cases. In what kind of mode of procedure is the truth more likely to be revealed? Is it in the debate of adversarial trials or inquisitorial investigations? The best approach may be the litigation model somewhere in between. On the one hand, this mode of procedure combines the procedural characteristics of secret documentary evidence and the lack of right of defense; on the other hand, the whole trial procedure is handed over to the parties and is based on the principle of equality of arms. In the UK, "a more active and inquisitorial role to judges, who should no longer passively wait for the evidence gathered by the parties, but more actively investigate the facts themselves" has been proposed. In France, it is suggested that the role of the investigating judge should be re-examined to avoid giving the trial court a closed dossier and opening a trial of adversaries in which prosecutors and defendants are presented with the same evidence. Judges are given an arbitration role by empowering the prosecutor and the defense to examine or counter examine the accused, witnesses, or complainants. In China, suggestions have been made to further promote the substantive reform of court trials and weaken the power of investigation to strengthen the adversarial nature of criminal proceedings.

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In addition, the expressions of arguments are different in the adversarial procedure and the inquisitorial procedure. In the adversarial procedure, the argument is not complete, and the parties can only present their versions of the story. The defense's version (A) differs from the prosecution's version (B). The trial discourse is composed of A+B, and A is the opposite of B. This confrontation is a contest, in which each party is irreconcilable with the other and only one party can win. "In the adversarial procedure, the parties have the exclusive burden of proof of the facts decided by the judge, and the judge's decision is entirely dependent on the probative force of the evidence submitted to him" [48]. The inquisitorial procedure goes beyond the simple duality of opposites. In the speech that emerges from the inquisitorial procedure, the force does not come from confrontation, but from comprehension or extension. The presiding judge who focuses on the discourse and the distribution of discourse is not limited by the duality of the adversarial parties. His discourse exists in the extension that he wants to give it. Nothing obliges him to choose between a thesis and its opposite, based on the following principle that if A is true, then B must be false. In contrast, this discourse is powerful because it extends the field of investigation. In short, in the sense that discourse contains more reality, the more freedom there is, the more truth there is. In Italy, the presiding judge can ask additional questions after the parties ask their questions. This possibility may appear likely to attenuate the disadvantages of the systems.

However, the inquisitorial argument demands more virtue from the speaker. Since the work is solitary and mostly secret, the integrity of the investigator must be very important: virtue encourages the utmost effort to find the truth, rather than merely being content to accept anything that comes to mind as a belief [49]. Resist the pressure of the investigation services, avoid self-intoxication and gratifying illusions, always make a greater effort and do not be satisfied with the first belief but rather accept what disturbs "the beautiful ordering" of the case. What qualities should someone not possess to be the "seeker of truth"?

Conclusion

The truth discussed in this article is relative. The relation between relative truth and absolute truth can be explained by the "as if" philosophy proposed by Kant. According to Kant, to give moral meaning, it is not important to determine whether God exists or not, but merely to "seeming" to exist is enough to produce moral meaning. Similarly, an indivisible, universal, absolute truth is unknowable, and it is important to find the meaning of the truth and its implications for human emotion or behavior. Starting with Kant, we can transform our desire to leave this world for another world into a desire to remain in this world: we deal with phenomena, their historicity, their depth and their fragility. Thus, the truth can be phenomenological and creative. Truth is constructed by discourse, and all discourse, being by nature partial, fills in the blanks: truth is first of all explanatory and at the same time, creative. The truth of the story would be no more than a "deferred error"... where the error, in turn, can, at any moment, turn into truth. The strength of judicial truth will fill in this incomplete reality. The judicial narrative is only the narrative produced from another prior narrative that refers to a primary event that nourishes all discourse. Therefore, in the face of facts of the past, the truth is always secondary (that is to say always ultimate). Derrida spoke with the irony of the "first second of the universe" which is impossible to find, and must be content with what happens in the second and beyond...

This also seems to be the basis of the model of the inquisitorial procedure, which considers that the first story, the first version, the one that has already been written, is necessarily the most faithful. The truth becomes closer: the degree of truth seems to have to be measured by the yardstick of temporal proximity to the original events. The "closest" would be endowed with a "supplement of being"! The first words (chronologically speaking) would be true as they immediately follow the event.

We should be soberly aware that there is no first cause because everything is an explanation and not the thing itself! If the truth is that everything is secondary, then the error lies in believing in the primordial truth. Justice would only reproduce this illusion when it posits that testimony, a sort of narrative constructed from the original narrative (constituted by facts that have already been interpreted), is by nature "always-already" out of step with the primary truth of the event. The gap is bound to widen, as truth is lost in imagination or forgotten from story to story. The judge's role, in addition to involving imagination, will resurrect these "first seconds". However, this study of the "first narrative" has a different meaning.

In short, there are two conflicting types of truth. One emphasizes writing and immediacy (for example, in France and China), and the other emphasizes oral and immediacy (for example, in the United States and the United Kingdom). The slightest deviation from this first discourse becomes a subject of debate. Does the witness want to clarify a fact that happened at the hearing? Add a buried memory? A nuance? A retrospective disorder? Too late! Any change of this first discourse, engraved in the marble of the minutes, will henceforth be suspected. In contrast, the adversarial procedure and the system of administration of oral evidence at the hearing consider that the primacy of the discourse depends on the conditions under which it can function, not in front of the police, but in court. The validity of this choice requires that there be temporal proximity to the events.

However, witnesses can be wrong without being contradicted. The "testimony" of the police, that of people testifying against a moderation of their sentence or a reduction in the severity of their prison regime, the arrangements, and negotiations, in the absence of publicity and transparency, the number of judicial errors exposed in the United States, some of which are irreducible, and the criminals having been executed, do not allow any particular

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credit to be given to the value of the discourse collected under these conditions. The truth of the verdict, which tells the truth and puts an end to the debates, will be an "estimable configuration": neither absolute truth nor opinion, but just the measure of things. The truth issued from men cannot by nature be similar to "the heart without trembling of truth in the beautiful circle", reserved for the goddess, as Parmenides says [50]. However, truth is not condemned to be only an opinion without value, with uncertain relativism. Apart from this dichotomy, Parmenides shows us a third way, which is the way of all thought. Thus, if it appears that man becomes the "measure of things", the process of abstraction of thought, the analysis of the extent of discourse, which is also an exploration of reality, causes this man to leave his singularity to rise to the rank of "every man". Judicial truth is the product of discourse that has become common, resulting from a shared and discussed experience.

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41. The conviction is acquired by 8 votes out of 12 in the first instance, and 10 votes out of 15 on appeal.
42. The unanimity rule applies to all federal trials. It can be ruled out at the local level. The number of jurors may be less than 12 but may not be less than 6.
43. After DNA analysis, it was determined that the victim was not the rapist. He is the 200th person in the United States to be exonerated as a result of DNA analysis after a trial, according to the Innocence Project.
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DOI: 10.19080/JFSCI.2024.18.555995

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