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THE PURSUIT OF TRUTH AND THE JUSTIFICATION IN LEGAL FACT-FINDING: A COMPARATIVE ANALYSIS OF BENTHAM, LAUDAN, AND DAMAŠKA

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ABSTRACT: This paper examines the philosophical and legal foundations of the principle of free proof in criminal adjudication through a critical analysis of the theories of Jeremy Bentham, Larry Laudan and Mirjan Damaška. While Bentham and Laudan support the broadest possible inclusion of evidence to promote truth-seeking and reduce judicial error, Damaška emphasizes the institutional, structure and cognitive constraints that limit evidentiary reasoning. Through comparative legal and epistemological inquiry, the paper challenges the assumption that admitting more evidence necessarily advances to discovery of truth. It argues that, although conceptually aligned with the truth-seeking, the free use of evidence is constrained in practice by human biases, procedural safeguards, and epistemic limitations. The study advocates a shift from the uncritical expansion of admissible evidence toward a standard of justified fact-finding where factual conclusions are rationally and legally grounded within a procedurally legitimate framework. Ultimately, the papers calls for a reorientation of evidentiary theory that integrates epistemic justification with the institutional design, ensuring both fairness and the responsible approximation of truth in criminal trials.

KEYWORDS: free evaluation of evidence; admission of evidence; Judicial epistemology; justification of the fact-finding; rules of evidentiary evaluation and judgment rules; exclusionary rules.

1. INTRODUCTION

The pursuit of truth is widely acknowledged as a central aim of criminal adjudication. Among the mechanisms that serve this objective, the principle of free proof, allowing fact-finders to consider nearly all relevant and lawfully obtained evidence, has gained renewed attention, particularly in inquisitorial systems where judges play a central role in evaluating evidence. In contrast, the principle of regulated proof, which restricts admissibility to protect procedural fairness and prevent bias, reflects a more cautious understanding of rational adjudication. The tension between these two models encapsulates a broader philosophical question: whether truth is better pursued through freedom or through regulation.

This paper revisits the principle of free proof, exclusionary rules, and evidentiary admissibility through the perspectives of Jeremy Bentham, Larry Laudan, and Mirjan Damaška. Bentham, the philosophical founder of free proof, maintained that broad evidentiary inclusion maximizes rational inquiry and aligns adjudication with the discovery of truth. Laudan, a contemporary epistemologist, reformulates this pursuit as an institutional problem of minimizing errors, seeking to design procedural systems that optimally balance wrongful conviction and acquittal. Damaška, in turn, highlights the structural, psychological and epistemological limits that shape how truth is constructed and interpreted within adjudicative institutions.

Despite their shared commitment to truth, a central question remains unresolved: does admitting more evidence necessarily bring us closer to it? Comparative analysis suggests that while the principle of free proof broadens the evidentiary landscape, it does not, by itself, ensure epistemic accuracy or procedural legitimacy. Even in systems where all evidence is freely considered, truth may be reached only by chance or distorted through epistemic and institutional constraints. The problem, therefore, lies not merely in what evidence is admitted, but in how factual conclusions are justified.

Accordingly, this paper argues that the debate on the law of evidence must move beyond the question of admissibility toward a more fundamental inquiry into the

nature of legal proof itself, specifically, what it means for a fact to be legally and epistemically justified. The focus should not rest on whether evidence may be admitted, but on how the fact-finding can be rendered both rationally warranted and procedurally legitimate within the structure of criminal adjudication.

To this end, this study proposes an integrated framework that situates evidentiary reasoning within the broader context of epistemic justification. By placing the works of Bentham, Laudan, and Damaška in dialogue, it argues that the legitimacy of fact-finding depends less on the liberalization of evidentiary rules than on the epistemic form and justification of the facts established. This reorientation, from admissibility to justification, and from individual rationality to intersubjective epistemic reasoning, provides the conceptual foundation for the argument developed in the following chapters.

2. THE EPISTEMIC FOUNDATIONS AND EVOLUTION OF EVIDENTIARY RULES

> The founders (of evidence law) were unaware of limitations on human knowledge, we are told, and believed that certain types of evidence reveal objective truth (Damaška, 2019, p. 27).

According to Damaška (2019), the basic idea behind late medieval rules of evidence rested on two core principles. First, there was a belief that fact-finders could accurately determine objectively occurring facts from the past. Second, there was confidence that certain types of evidence could directly reveal these objective facts. The rules of evidence during this period did not sufficiently consider the rationality or epistemological limitations of fact-finders and assumed that truth could be proven through authoritative rules. Although modern evidence rules face epistemological critiques for obstructing the pursuit of truth, their original intent was to promote truth discovery.

This foundational belief in the possibility of accessing objective truth through certain types of evidence gave rise to a hierarchical structure of evidentiary value. In the medieval era, eyewitness testimony, particularly the testimony of two unimpeachable eyewitnesses (*testes omni exceptione majores*), was regarded as the most reliable form of evidence, treated as definitive rather than probabilistic. Similarly, a defendant's confession, even one obtained under torture, was seen as absolute proof of guilt. Following these were the testimony of a single eyewitness and, lastly, circumstantial evidence, which occupied the weakest position in the hierarchy (Damaška, 2019, pg. 35).

Such hierarchical thinking did not emerge in isolation but rather evolved from longstanding legal traditions (pg. 35-36). Notably, a similar structure can be found in Roman law, where direct evidence was prioritized over circumstantial evidence. The logic was straightforward: while circumstantial evidence required interpretation, direct evidence appealed to the senses and was presumed to mirror reality more

faithfully (p.18; p. 36).[1] For instance, while the presence of a knife in a victim's home might suggest but not prove guilt, a credible eyewitness's account of the crime was considered to offer stronger inferential certainty. These categorizations aimed to reduce the margin of error in the judicial process.

Closely aligned with this evidentiary hierarchy were the methods of trial by ordeal and trial by combat, which were also understood as mechanisms for uncovering truth.[2] These procedures were justified through theological reasoning that presumed divine intervention: God would grant victory to the righteous and expose falsehoods through suffering (Haack, 2014, p. 2). Thus, the judicial process was not only evidentiary but also cosmological, rooted in metaphysical assumptions about divine justice. These practices reveal how medieval legal epistemology was embedded in a worldview that denied the very possibility of uncertainty. Truth was conceived as singular, absolute, and divinely accessible. Accordingly, medieval evidence law did not aim at an approximate or probabilistic understanding of facts but sought to identify the precise sequence of past events through authoritative or divinely sanctioned means.

As legal systems entered the modern era, however, this worldview began to change. Courts and scholars gradually acknowledged the limits of procedural mechanisms and of human epistemic capacity. This acknowledgment did not create a new concept of truth but transformed its meaning: truth came to be understood not as divine certainty but as the most accurate reconstruction of past events that is humanly and institutionally attainable. This paradigmatic shift was not merely theoretical; it had direct implications for the structure of evidence law. As rationalism and empirical thought gained traction, so too did skepticism toward irrational forms of evidence.[3] Practices such as confession under duress, divine judgment, or deference to the social status of a witness lost legal and moral credibility. In their place emerged a growing emphasis on logical coherence, empirical verification, and procedural transparency,

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[1] Damaška, M. (2019). *Evaluation of Evidence: Premodern and Modern Approaches*. Cambridge University Press p. 18, p. 36. Katherine Tachau cites Ockham's razor to point out that perception shows objects more directly than inference. "Yet the very point of his [Ockham's] insistence that all adjudicative and abstractive cognitions presuppose intuitions is that the latter allow us to know—immediately and with certitude—that an object exists, rather than merely to infer it". See Tachau K. (1988).

[2] See Neilson, G. (1890). *Trial by Combat,* Williams and Norgate. According to Susan Haack, "to pick up a ring from the bottom of a cauldron of boiling water, and his arm would later be checked to determine whether it had healed cleanly or had festered—which supposedly showed that he was guilty; in trial by combat, the two parties to a case would literally fight it out".

[3] For example, the practice of evaluating the value of testimony differently based on the social status or gender of the witness does not meet reasonable standards. It is no longer reasonable to consider the testimony of male witnesses as stronger evidence because women are deemed less capable than men in providing eyewitness testimony. The argument that male testimony is more credible than female testimony can be found below. Damaška (2019, p.61) adds examples to support this argument, considering several conflicting testimonies. He cites cases where the testimony of a woman who is a respectable property owner but lives a wicked life conflicts with that of a man of low status but virtuous character, and cases where the testimony of three men conflicts with that of four women. In fact, in Saudi Arabia, male testimony is considered twice as important as female testimony. See Haack (2014, p. 3).

elements foundational to modern rules of admissibility. The intellectual underpinnings of this shift were heavily influenced by modern philosophy, particularly Enlightenment rationalism and empiricism (Damaška, 1997, p. 20). Thinkers such as Jeremy Bentham played a critical role in challenging the validity of traditional evidentiary hierarchies. Bentham condemned blanket rules that assigned predetermined weight to specific types of evidence, arguing that such practices were arbitrary and obstructed the rational understanding of individual cases (Damaška, 2019, p.1). As belief in divine truth waned, faith in human reason as the primary instrument of legal truth-finding took root.

This evolution also led to the recognition that modern legal systems must pursue truth within the constraints of fairness, institutional capacity, and human rights. Evidence law began to incorporate non-epistemic goals alongside the pursuit of truth: ensuring due process, safeguarding dignity, promoting procedural efficiency, and maintaining public trust in the legal system. Rather than conflicting with the goal of truth discovery, these secondary aims were increasingly seen as reinforcing its legitimacy and reliability.

From the medieval reliance on divine revelation to the Enlightenment's faith in rational evaluation, the history of evidence law traces humanity's shifting conception of truth. As procedural formalism gave way to the ideal of free proof, reason replaced revelation as the foundation of legal epistemology. Yet this transformation did not abolish uncertainty, it merely relocated it. Modern law now recognizes that truth-seeking is inseparable from fairness, institutional design, and cognitive limitation. The challenge for contemporary evidence theory is therefore not simply to expand evidentiary freedom, but to determine how factual conclusions can be responsibly justified within these human and procedural constraints.

3. BEYOND RATIONAL OPTIMISM: COMPETING CONCEPTIONS OF TRUTH IN LEGAL EPISTEMOLOGY

The history of evidence law reflects a persistent tension between the aspiration to discover truth and the acknowledgment of human and institutional limits. Against this backdrop, the following sections examine three distinct responses to the problem of truth in adjudication. Jeremy Bentham represents the classical rationalist faith in evidentiary freedom, the conviction that reason, if unshackled from formal constraint, will naturally converge upon truth. Larry Laudan reformulates this ideal through a pragmatic and probabilistic lens, transforming Bentham's rationalism into an empirically grounded project of error reduction. Mirjan Damaška, in contrast, challenges both by situating legal truth within the institutional conditions of justified belief. Together, these thinkers trace the movement of legal epistemology from the optimism of pure rationality to the realism of epistemic justification.

This chapter therefore explores not only competing conceptions of truth but also competing visions of legitimacy in adjudication. For Bentham, legitimacy derives from the rectitude of decision, the factual accuracy of verdicts. For Laudan, it stems from procedural efficiency in minimizing error. For Damaška, it lies in the rational justifiability of belief within institutional and moral constraints. By comparing these frameworks, the chapter seeks to illuminate the broader transformation of legal epistemology: from a system devoted to truth as certainty to one grounded in justification as responsibility.

3.1. Bentham's Reform: Rational Evaluation as a Substitute for Certainty

The modern transformation of evidentiary thought began with a decisive break from the hierarchical formalism that had governed medieval and early modern law. Jeremy Bentham (1843) denounced this system as irrational for its reliance on rigid categories of proof and predetermined evidentiary weights. In his utilitarian reform, Bentham replaced divine certainty with the authority of human reason. All relevant evidence, he argued, should be admissible and freely assessed by the fact-finder, whose rational deliberation would serve as the principal mechanism for truth discovery. For Bentham (, as cited in Twining, 2019, p. 27), justice depended not on the social status of witnesses or the ritual of procedure but on what he termed the *rectitude of decision,* the factual accuracy of judicial outcomes. Excluding probative evidence, in Bentham's view (Bentham, 1847, p. 384), was tantamount to excluding justice itself. A decision is just only insofar as it corresponds to substantive truth; any rule that obstructs access to relevant facts therefore undermines the very objective of law. Procedural fairness that impedes truth-seeking represents, for him, a corruption of utility (Haak, 2014, p.5). He famously likened such fairness to "the foxhunter's reason", (Bentham, 1827) arguing that granting procedural advantages to defendants through rigid exclusionary rules was akin to giving a fox a head start from hunters. If the ultimate purpose of adjudication was the discovery of truth, then shielding relevant evidence under the guise of fairness merely served "Injustice and her handmaid Falsehood" (Bentham, 1827).

According to Bentham, "the direct end of adjective law is rectitude of decision, that is, the correct application of valid laws (presumed to be consonant with utility) to true facts" (Bentham, as cited in Twining, 2006, p. 41). While a distinction may be drawn between rectitude of decision and the delivery of just outcomes, Bentham (Bentham, as cited in Twining, 1985, p. 28) regarded them as inseparable: justice required that facts be accurately established and that legal consequences applied to them be fair and proportionate. Rigid evidentiary rules, he argued, were counterproductive precisely because they excluded probative material *a priori* without meaningful examination. This subverted the trial's purpose and limited the fact-finder's capacity to determine the truth. As he observed, any system that excludes potentially relevant

evidence merely because it belongs to a "category of imperfect evidence" is irrational and detrimental to justice (Schauer, 2009). All relevant material, he insisted, should be presumptively admissible, and exclusion justified only to prevent greater injustice, such as excessive delay or expense (Schauer, 2009, p. 22). Categorical exclusionary rules and precedent, which he called the "path of constant error", (Bentham, 1843) replaced reasoned utility with mechanical ritual. The law, he maintained, must remain empirical and utility-oriented, not formalistic or precedent-bound.

Bentham's theory of evidence thus marked a decisive break from the hierarchical structures of proof that had characterized premodern jurisprudence. Rejecting predetermined evidentiary weights, he maintained that all relevant material should be admissible and freely assessed by a rational fact-finder. Within his utilitarian framework, justice could be achieved only when factual conclusions corresponded to reality, for factual correctness constituted the moral foundation of legal utility. His reform aimed to transform adjudication from a ritualized formality into a rational and empirical inquiry: where medieval epistemology sought divine revelation, Bentham sought verification through human reason.

His faith in unrestrained rationality reflected the broader epistemic optimism of the Enlightenment (De Champs, 2015). Rationalism and empiricism together cultivated the belief that disciplined observation and logical analysis could reconstruct reality with precision (Twining, 1985, pg. 3).[4] The fact-finder, modeled on the Enlightenment scientist, was imagined as an objective observer capable of processing information without distortion. This intellectual climate replaced divine infallibility with the supposed infallibility of reason. The Enlightenment slogan *sapere aude*, "dare to know", embodied a new confidence in human rational agency. Enlightenment epistemology thus replaced the theology of revelation with what might be called the theology of reason, exchanging one form of certainty for another. This rationalist heritage reached its fullest legal expression in the modern principle of free proof, particularly influential in continental systems, which empowers judges to admit and evaluate all relevant evidence without formal restriction. It rests on two assumptions: that factual reality is fully accessible through evidence, and that unrestrained rational evaluation can reliably uncover it. This model clearly bears Bentham's imprint: adjudication reimagined as a reason-based process unburdened by ritual hierarchy or procedural formality.

Yet this rationalist optimism also carried a critical blind spot. The doctrine of free proof overlooks the epistemic, moral, and institutional limits that shape human judgment, assuming that unregulated reasoning is inherently self-correcting when in fact it often amplifies bias and uncertainty. Modern evidentiary law, particularly within adversarial systems, has since tempered this optimism by embedding procedural safeguards, rules of admissibility, exclusionary doctrines, and standards of proof. These mechanisms are not merely moral constraints but epistemic structures

[4] Bentham's system of procedure are based on utility, empiricism, and common-sense reasoning.

designed to preserve the integrity of judicial reasoning. Excluding coerced confessions, protecting the right to silence, and suppressing unlawfully obtained evidence serve not only fairness but truth itself, ensuring that conclusions remain rationally defensible within human limits.

At the core of Bentham's framework lies the principle of rational inclusion, (Bentham 1827) the belief that truth emerges from the comprehensive evaluation of evidence. Yet behavioral decision research has demonstrated that human reasoning is vulnerable to bias, overconfidence, and cognitive overload.[5] Unrestricted evidence can therefore diminish, rather than enhance, accuracy. Bentham's reform thus replaced one absolutism with another, substituting formal hierarchy with faith in reason while neglecting the need for epistemic justification: a structured account of how conclusions can be warranted within institutional and cognitive limits. His model promised liberation from formalism but failed to recognize the realities of adjudication, where rational evaluation alone cannot guarantee truth.

Bentham's utilitarian rationalism therefore marks both the culmination and the limit of Enlightenment epistemic optimism.[6] While it freed evidentiary reasoning from dogmatic hierarchy, it overlooked the fragility of human judgment. A contemporary philosophy of evidence must thus move beyond this rationalist legacy, seeking not unbounded freedom of proof but a system of justified fact-finding, one that aligns truth-seeking with epistemic responsibility while preserving the moral and institutional integrity of law.

3.2. Laudan's error-reduction pragmatism and the problem of justification

Larry Laudan represents one of the most sophisticated modern defenders of the epistemic ideal underlying the principle of free proof. In *Truth, Error, and Criminal Law* (Laudan, 2006), he reinterprets Bentham's rationalism through an empirically grounded model of error reduction. For Laudan, the criminal trial's primary purpose is not the ceremonial enforcement of procedural fairness but the epistemic task of distinguishing the guilty from the innocent. A legal system that tolerates wrongful convictions or acquittals without actively seeking to minimize them, he argues, cannot command moral or epistemic legitimacy. Accuracy in adjudication, rather than procedural observance, determines whether a verdict deserves public respect (2006, p. 1-2).

In this framework, the criminal trial becomes an epistemic engine designed to optimize the ratio between true and false outcomes (Laudan, 2006). The value of any procedural safeguard, evidentiary rule, or exclusionary doctrine must therefore be assessed by its contribution to truth discovery (Laudan, 2006, p. 29). This stance

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[5] See Kahneman. (2011).

[6] We can even find a utilitarian rational in *On Crimes and Punishments of Beccaria*. See, Beccaria. (1995). §4, p. 16).

echoes the dictum of the U.S. Supreme Court that "the fundamental purpose of the trial is the search for truth" (Tehan vs U.S. 1966). Rules that do not improve accuracy should, in his view, be revised or discarded. Procedural fairness, for Laudan, is not an independent good but an instrumental one, justified only insofar as it promotes epistemic accuracy.

He is particularly critical of rules that exclude highly probative evidence in the name of fairness. Like Bentham, Laudan views such exclusions as epistemic obstacles disguised as moral safeguards. The right to silence, for example, prevents fact-finders from considering relevant behavioral evidence, thereby limiting their capacity for rational inference (Laudan, 2006, p.117). Before Griffin v. California (1965), juries were free to draw inferences from a defendant's refusal to testify (Laudan, 2006, p.170). The Court's ruling that such inferences violate the Fifth Amendment, Laudan argues, compels jurors to suppress reasoning that would otherwise occur naturally. The prohibition thus represents an epistemic loss rather than a moral victory: it enforces blindness where epistemic evaluation should take place. By shielding defendants from the epistemic consequences of their own choices, the system sacrifices rational transparency for symbolic fairness.

This criticism extends to exclusionary rules more generally. Laudan questions whether doctrines that bar relevant evidence, such as certain forms of hearsay, truly serve justice when they obstruct the fact-finder's access to truth. Under the guise of protecting rights, these rules often produce the perverse effect of protecting the guilty as well as the innocent. The result, in his view, is less truth and more error. Bentham had made a similar point two centuries earlier: when the objectives of fairness and accuracy conflict, the principle of utility should decide in favor of rectitude of decision. Laudan updates this utilitarian logic for modern epistemology, arguing that procedural safeguards must be weighed against their epistemic costs. If a rule increases the risk of false acquittals or convictions, it cannot claim unconditional moral authority.

To adjudicate such trade-offs, Laudan develops what he calls a meta-epistemology of criminal law: a higher-order framework of meta-rules that determine whether legal procedures contribute to or detract from epistemic goals.[7] A meta-rule, as he defines it, provides a criterion for assessing the truth-conduciveness of procedural norms. The fundamental concept of meta-rules is based on the following idea:

> Having settled on the appropriate level of bias, however, we should let the rest of the system function as an epistemically respectable engine, that is, as a viable, error-reducing, distributionally neutral tool for investigation that tries unstintingly to find the truth (Laudan, 2006, p. 144).

Rather than taking rules as axiomatic, Laudan urges that they be tested empirically: do they increase or decrease the probability that verdicts correspond to reality?

[7] Laudan. (2006). "(…) any given procedure or evidence-admitting or evidence-excluding practice does, in fact, further epistemic ends or whether it thwart them".

In this sense, the meta-epistemology of criminal law replaces dogmatic adherence to legal tradition with an empirically informed form of epistemic governance. Procedures are legitimate only insofar as they demonstrably reduce error while maintaining minimal moral constraints.

Central to this framework is Laudan's proposal for quantifying the relationship between epistemic and social values through his Standard of Proof (SoP) formula: SoP = 1 / (1 + 1/n) (Laudan, 2006, p. 72). Here, *n* represents the relative moral severity that society attributes to wrongful conviction compared with wrongful acquittal. The higher the moral cost of convicting the innocent, the greater the evidentiary threshold required to convict. If society regards wrongful conviction as ten times more serious than wrongful acquittal (*n = 10*), the standard of proof adjusts accordingly. Through this model, Laudan operationalizes moral aversion into procedural calibration. The appropriate level of bias is thereby determined by social consensus rather than metaphysical certainty. Once that bias is fixed, he insists, "the rest of the system should function as an epistemically respectable engine, that is, as a viable, error-reducing, distributionally neutral tool for investigation that tries unstintingly to find the truth" (2006, p. 72).

This model introduces a form of institutional realism absent in Bentham's thought. Whereas Bentham presupposed ideal reasoners capable of objectively processing unlimited evidence, Laudan grounds epistemic ambition within epistemic, moral, and institutional limits. He recognizes that truth-seeking must be balanced against the capacities and constraints of real institutions: the bounded rationality of jurors, the asymmetry of appellate review, and the moral costs of judicial error. For instance, Laudan emphasizes that most legal systems allow appeals from convictions but not from acquittals, creating a structural bias toward false acquittals over time (2006, p. 14). This asymmetry, he argues, gradually erodes the system's capacity to discover truth, as errors of acquittal accumulate unchecked.[8] The legitimacy of criminal adjudication therefore depends on a continual re-evaluation of its institutional biases (2006, p.141).

Despite these advances, Laudan's framework remains incomplete at the level of epistemic justification. By equating truth with error minimization, he transforms epistemology into a managerial science of uncertainty. His meta-rules explain when procedures are efficient but not why the beliefs they generate are justified. Truth, though necessary, is not sufficient for epistemic justification. A verdict may be accurate by coincidence yet still lack rational warrant.

This limitation reveals a deeper continuity with Bentham. Both conceive rationality instrumentally rather than normatively: as a means of producing correct

[8] Although Laudan did not mention it, the tendency to hand down not guilty verdicts more easily than guilty verdicts in court is also related to the economics of litigation. When a defendant is found not guilty, the overall litigation costs for a case are lower than when a defendant is found guilty, as the defendant cannot appeal.

outcomes, not as a standard for justified belief. Bentham sought truth through unrestricted inclusion; Laudan seeks it through calibrated optimization. In both, reason functions as an epistemic mechanism rather than a justificatory practice. The result is what may be termed epistemic instrumentalism, the view that truth matters only as procedural efficiency, detached from the rational warrant of belief. Recognizing this limitation reorients legal epistemology from procedural efficiency toward epistemic responsibility. The legitimacy of adjudication cannot rest solely on reducing error; it must also rest on the rational warrant of its conclusions. A judicial system that merely manages uncertainty does not necessarily produce justified beliefs about the past. The central question, therefore, is not how to make verdicts more accurate, but how to ensure they are epistemically justified.

Laudan's contribution, in this sense, serves as a bridge rather than a destination. His empirical realism provides the groundwork for an epistemically responsible theory of adjudication, but his framework remains procedural and instrumental. The next step must move beyond the management of error toward a conception of institutional epistemology that treats justification, not mere accuracy, as the foundation of legitimacy. It is precisely this transition that Damaška's model, and the argument developed in the next section, seek to accomplish.

3.3. Damaška's institutional epistemology as a response to both

Mirjan Damaška offers a fundamentally different vision of legal epistemology one that departs equally from Bentham's rationalist optimism and Laudan's procedural instrumentalism. While both thinkers locate truth in the rational or procedural capacities of fact-finders, Damaška shifts the focus to the epistemic architecture of adjudication itself. Legal truth, in his account, is not the product of unbounded reasoning or statistical calibration but a form of institutional justification: a process through which fact-finding acquires justification within epistemic, procedural, and moral limits.

Unlike Bentham, who trusted in unrestricted access to evidence, or Laudan, who sought to minimize error through procedural optimization, Damaška treats evidentiary rules as epistemic instruments.[9] They structure and discipline reasoning rather than impede it. The central question is not how much evidence can be admitted but under what conditions belief-formation can remain rational and justified. Fact-finders are bounded agents whose reasoning must be shaped and constrained by institutional design.

In *Evidence Law Adrift* (Damaška, 1997) and related works, Damaška reconceptualizes adjudication as a form of institutional epistemic decision-making. Truth in law depends not only on individual rationality but on the system that organizes

[9] See Damaška, 2019, (ch. 2).

and validates that rationality (p. 5). Procedural rules, standards of proof, burdens of persuasion, and exclusionary doctrines perform epistemic functions: they preserve the integrity of reasoning against distortion and bias. The law of evidence constitutes a system of epistemic calibration, a framework for structuring judgment so that belief-formation within the institution remains both rational and legitimate.[10] This reconceptualization reframes adjudication as a process of justified belief-formation rather than absolute truth-seeking. Since no epistemic system can guarantee truth, the trial's legitimacy depends on whether its conclusions are rationally and institutionally justified (Damaška, 1997, p. 121-123). Truth becomes a regulative ideal, guiding inquiry while acknowledging fallibility. The task of adjudication is therefore to produce beliefs that are not only accurate but epistemically defensible.

Damaška's view highlights the dual nature of the law of evidence: it is both epistemic and normative. Its aim is to ensure that conclusions are justified under human and institutional constraints. Excluding coerced confessions or unlawfully obtained evidence, for example, is not merely a moral act but an epistemic one: such evidence undermines the very conditions of trustworthy belief-formation.[11] Procedural safeguards thus embody epistemic humility, the recognition that cognition must be disciplined by structure to remain rational.

Critics of exclusionary rules argue that they obstruct truth by limiting available information. From a Benthamite perspective, more evidence means more truth. Damaška, however, contends that this view oversimplifies the epistemic landscape. The problem is not whether evidence is admitted or excluded but how all evidence, lawful or unlawful, inevitably shapes the reasoning process. Even when judges exclu-

[10] "But the internal fission of the tribunal explains more than the need for formal instructions in advance of jury deliberation. Under the loupe of comparative analysis it soon becomes clear that this fission also explains several striking features of common law evidence that have remained unidentified so far. This is most clearly the case with much of the law of presumptions, as well as with several doctrines governing the burden and the standards of proof. In all Anglo-American jurisdictions, these subjects are deeply entangled in normative webs. But where common law goes into Lilliputian detail, Continental law employs mostly broad regulative principles — especially in the sphere of criminal justice. To a degree, this contrast can be attributed to the already mentioned disparities in ordering the law that prevail in the two branches of the Western legal tradition. And, as I shall argue in Chapter 4, the contrast is also related to different patterns of allocating control over procedural action. A factor of immediate interest, however, is the unequal difficulty faced by unitary and bifurcated courts in attuning amateur adjudicators to prevailing fact-finding methods and conventions" (Damaška, 1997, p. 53).

[11] "More peculiar and also more important are common law rules rejecting probative material on the theory that it might be overestimated or on the theory that its probative value is overshadowed by its "prejudicial" capacity — its capacity to unfairly predispose the trier of fact toward a particular outcome. The hearsay rule is by far the best known example of exclusion on the first of these two grounds. Although countries outside of the common law's compass are not unaware of hearsay dangers, their reaction to them seldom assumes the form of exclusionary rules.22 Where it does, as is sporadically the case in criminal procedure, the embrace of the exclusionary option is rooted as much in due process values as it is in the desire to protect the adjudicator from unreliable information" (Damaška, 197, p. 15).

de inadmissible material, its cognitive imprint may persist.[12] Hence, the real challenge lies not in regulating access to evidence but in understanding how reasoning itself is influenced and justified within procedural form.

To illustrate, Damaška (2022, p.199) describes the dilemma of the "hypothetical judge". Even when a judge correctly excludes illegally obtained but highly probative evidence, prior exposure to it may unconsciously affect evaluation of the remaining record. The decision must be justified as if the tainted evidence were unseen, yet the mind cannot fully unsee it. This example exposes a fundamental epistemic tension: compliance with form cannot ensure epistemic purity. Human judgment is inherently holistic and context-sensitive, vulnerable to bias and contamination despite rational discipline.

This insight undermines both Bentham's and Laudan's assumptions that either rational inclusion or procedural optimization can secure truth. Neither free nor constrained proof escapes the fact that legal truth is the product of bounded human reasoning. The search for truth must therefore be reconceived as the justification of belief within cognitive and procedural limits. Rules of evidence are not external constraints but integral components of this justificatory structure. When a court excludes probative yet tainted evidence, it enacts epistemic self-restraint, an acknowledgment that some information, however revealing, cannot ground justified belief without compromising moral or cognitive integrity.

The core issue, then, is not whether free proof or regulated proof is superior, but how reasoning can remain epistemically accountable within institutional boundaries. For Damaška (2022), the legitimacy of verdicts depends less on their correspondence to reality than on their capacity for rational and public justification. Legal truth is always partial and constructed: an approximation achieved through disciplined reasoning under constraint. This shift from truth-seeking to justification-seeking marks Damaška's major contribution to legal epistemology. Against Bentham, he rejects the fiction of the omniscient fact-finder; against Laudan, he rejects the reduction of epistemology to probabilistic management of error. Instead, he envisions adjudication as a moral-epistemic practice of responsible belief-formation. The legitimacy of law thus depends not on the unbounded pursuit of truth or the efficient reduction of error but on the cultivation of epistemically justified belief within structured institutions.

Damaška's institutional epistemology provides the conceptual foundation for the broader argument of this study: that the legitimacy of adjudication rests on epistemic justification, not evidentiary freedom. By embedding reasoning within procedural form, he reveals that epistemic integrity arises not from the quantity of evidence admitted but from the quality of reasoning permitted. Legal truth, in this light, is

[12] Research related to the influence of illegal evidence can be found in the following source (Damaška, 1997, p.15). See also Stably, *et al.* (2006) p. 469-492.

not an unfiltered mirror of reality but a disciplined construction, an aspirational yet justified belief that honors both fairness and the limits of human cognition. Only when legal systems internalize these limits can they achieve genuine epistemic responsibility.

3.4. Comparative synthesis: from truth-seeking to justification-seeking

The preceding discussion traces an intellectual trajectory in the epistemology of legal proof, from Bentham's rationalist optimism, through Laudan's pragmatic instrumentalism, to Damaška's institutional realism. Each thinker addresses a distinct epistemic challenge: Bentham the arbitrariness of formal proof, Laudan the inefficiency of procedural moralism, and Damaška the illusion that reason or procedure alone can guarantee truth. Collectively, they mark the transition from truth-seeking as the central criterion of evidentiary legitimacy to a more complex ideal of epistemic justification within institutional limits.

Bentham's project begins with liberation. Rejecting the hierarchical formalism of medieval law, he envisioned adjudication as a rational and empirical process freed from ritual and authority. By allowing all relevant evidence to be heard, he sought to democratize fact-finding: truth, he believed, would emerge from the open contest of facts. Yet this rationalism rested on an idealized fact-finder, one immune to bias[13] and cognitive limitation.[14] In reality, unbounded evidence can overwhelm reasoning and reinforce preexisting beliefs. Modern insight reveals that Bentham's faith in rational inclusion risks substituting one form of absolutism for another: the infallibility of reason for the infallibility of divine order.

Laudan inherits Bentham's commitment to truth but transforms it through empirical realism. For him, the trial's purpose is to minimize epistemic error rather than to secure absolute truth. His meta-epistemological framework measures the value of rules and procedures by their capacity to reduce wrongful convictions and acquittals. In this model, procedural fairness is instrumental, justified only insofar as it contributes to epistemic accuracy. By formalizing trade-offs between moral and epistemic costs, Laudan introduces a pragmatic system of calibrated truth-seeking. Yet this very calibration transforms truth into a probabilistic ideal, something managed statistically rather than justified rationally. The legitimacy of verdicts becomes a matter of efficiency rather than epistemic warrant.

Damaška transcends this tension by shifting attention from outcomes to the structure of justification itself. Neither unbounded reasoning nor optimized procedure, he argues, can yield justified belief unless institutional conditions make re-

[13] Guthrie., Rachlinski and Wistrich. (2001, p. 777-830).
[14] See Busey & Loftus (2007, p. 111-117).

asoning itself accountable. His concept of institutional epistemology redefines adjudication as a structured practice of belief-formation that accepts human fallibility while imposing procedural safeguards to sustain rational defensibility. Evidentiary rules, on this account, do not merely regulate access to information; they stabilize reasoning, ensuring that verdicts remain justified both epistemically and normatively. Truth here functions as a regulative ideal, an aspiration pursued through disciplined, public reasoning rather than an endpoint to be reached.

Seen together, Bentham privileges epistemic access, Laudan epistemic optimization, and Damaška epistemic justification. This movement, from inclusion to calibration to justification, mirrors a broader philosophical shift from Enlightenment rationalism to modern epistemic fallibilism. Where rationalism sought certainty through method, fallibilism seeks legitimacy through justification. Adjudication, accordingly, must integrate truth and fairness within a framework of epistemic responsibility: it must produce not only accurate outcomes but beliefs that can be rationally defended within epistemic and institutional limits.

In this light, the pursuit of truth becomes an ethical as well as an epistemic commitment. The law's integrity lies not in achieving perfect correspondence with reality but in reasoning well within its own constraints. The historical movement from Bentham to Laudan to Damaška thus signifies more than a change in evidentiary doctrine, it marks a transformation in the very conception of legal truth. The ideal of absolute discovery yields to the discipline of justified approximation, and epistemic integrity replaces epistemic optimism as the defining virtue of modern adjudication.

4. THE DUAL AIMS OF LEGAL EPISTEMOLOGY: FROM TRUTH TO JUSTIFICATION

The doctrine of free proof emerged as an Enlightenment project to liberate legal reasoning from dogmatic formalism and to empower the fact-finder's rational autonomy. It promised that the freer the use of evidence, the closer justice would come to truth. Bentham and, later, Laudan, each in their own way, sought to realize this aspiration, Bentham through utilitarian rational inclusion, Laudan through an empirically grounded epistemology of error reduction. Both regarded the legitimacy of adjudication as dependent on the accuracy of its outcomes.

This chapter builds on, rather than rejects, that project. Laudan's insistence that legal epistemology be assessed in truth-conducive rather than moralistic terms was a decisive corrective to earlier proceduralism. Yet epistemic justification cannot be exhausted by accuracy or error management. It also depends on how factual beliefs are formed and justified within the epistemic and institutional limits of adjudication. The shift, therefore, is not away from truth but toward a richer conception of justification, one that measures legitimacy by the quality of reasoning rather than by outcomes alone.

The central claim advanced here is that the legitimacy of adjudication rests on epistemic justification: the disciplined process by which factual conclusions are warranted within human and institutional constraints. Truth remains the ultimate aspiration, but justice demands more, it requires that the pursuit of truth proceed under the conditions of reasoned justification. The following sections develop this argument by reframing evidentiary freedom, cognitive limitation, and procedural fairness as instruments of justified belief rather than as obstacles to truth.

4.1. Truth and the Ideal of Free Proof

Proponents of the free use of evidence ultimately seek to discover the truth about the past events of a trial. While "truth" is theorized in different ways, it generally denotes a comprehensive and accurate understanding of the relevant facts, including not only whether a criminal act occurred but also why the defendant acted, the circumstances of decision-making, and any preparatory conduct. Truth, so conceived, cannot be reduced to identifying the "true culprit"; it requires a nuanced, context-sensitive reconstruction. At the same time, the fact-finder, positioned as a third party reconstructing past events from the parties' submission, can never attain absolute certainty. Accurate fact determination (the "discovery of truth" in Bentham's and Laudan's sense of probabilistic terms (Laudan, 2006, p. 20-21)) is an epistemically demanding enterprise irrespective of the governing rules of evidence. For that reason, the pursuit of truth in criminal adjudication is best understood as an ultimate, though often unattainable, ideal.

Whether sweeping away admissibility constraints *increases* truth discovery remains contested. A common claim is that rational deliberation fares best when the tribunal sees the whole picture. Yet comparative practice gives no clear confirmation. Systems influenced by free-proof traditions (e.g., France or South Korea) empower judges to admit and weigh nearly any relevant item; U.S. courts, by contrast, deploy dense admissibility doctrines tied to lay-jury fact-finding. Differences in appellate asymmetries (routine appeals from convictions but rarely from acquittals), investigative powers, standards of proof, and decision-maker type (jury versus professional judge) make reliable cross-system comparisons elusive. In this methodological fog, the syllogism "more admissible evidence → more truth" is unproven. At most, free proof is not a necessary condition for discovering truth.

A familiar illustration refines this point. In a slightly modified version of Michael Pardo's example (2005, p.322), two police officers secretly place cocaine in a car and later perjure themselves at trial, claiming they found it with the driver's consent. The defendant, fearing sentence enhancement if his record is exposed, declines to testify. The fact-finder convicts based on the officers' testimony. Ironically, the defendant did in fact possess cocaine, but only he knew this. The trial disclosed a distorted causal narrative built on false testimony that happened to coincide with the true conclusion. Although the verdict ("the defendant possessed cocaine") was accurate,

its accuracy was accidental and thus epistemically indistinguishable from error. The belief was true but unjustified; it rested on unreliable inferences from tainted testimony rather than on warranted reasoning from admissible, trustworthy evidence.

If the defendant had simply testified truthfully, the epistemic problem in Pardo's example would not arise, suggesting that Laudan's epistemological program remains intact. However, this misses the central claim of the present argument: the issue is not whether Laudan's framework is mistaken, but whether his conception of epistemic rationality should remain confined to the cognitive domain of individual reasoning. The proposal here is to extend Laudan's epistemic project toward intersubjective justification, a model in which the justification of factual conclusions is not only internally rational but also externally shareable, publicly assessable, and communicatively legitimate within the legal forum.

It is therefore essential to evaluate not only whether a conclusion is accurate, but also the legitimacy of the established facts, the validity and manner of using evidence, and the role of chance. In scenarios like Pardo's, a conscientious fact-finder may reasonably credit police testimony and draw an inference of possession; the defendant may exercise the right to remain silent for independent reasons[15]; and the physical presence of cocaine in the car is, on its face, strongly probative. A conviction might appear "justified" in a narrow, record-bound sense. Yet, because the route to that conclusion was epistemically defective, resting on perjury and contaminated inference, the result lacks justificatory legitimacy even if it is descriptively correct. Accuracy without warrant is not an epistemically acceptable endpoint for adjudication.

This reframing has two immediate consequences. First, the central inquiry shifts from *what* enters the record to *how* reasons derived from that record can be made publicly defensible against challenge. Second, exclusions and reliability screens are no longer cast as moralistic obstacles, but as instruments that stabilize reasoning under cognitive and institutional constraints. Even in open regimes, fact-finders see only party-selected slices of reality; they confront asymmetric resources and strategic curation. Human judgment is further bounded by bias, overconfidence, and cognitive load. Without guardrails, more evidence can cause noise, amplify anchors, or create spurious coherence.

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[15] Salinas v. Texas (2013). This case concerns whether silence during a police interview is protected under the Fifth Amendment right against self-incrimination. Salinas, a suspect in a murder investigation, was questioned by police without being in custody and without receiving a Miranda warning. Although he answered most of the questions, he remained silent when asked whether shell casings found at the crime scene matched his firearm. At trial, the prosecution introduced his silence as evidence of guilt. Salinas's defense objected, invoking the Fifth Amendment, but the U.S. Supreme Court, in a 5–4 decision, rejected the claim, holding that a suspect must explicitly invoke the right against self-incrimination in order to be protected by it. The Court concluded that the Fifth Amendment does not prohibit the prosecution from using a suspect's silence as evidence of guilt unless the suspect has affirmatively asserted the right. Thus, under this ruling, remaining silent without an explicit invocation of the Fifth Amendment does not shield the suspect from adverse evidentiary use.

For that reason, rules of evidence do not merely obstruct truth; they frequently protect the conditions under which justified belief becomes possible. In the U.S., the elaboration of detailed evidentiary rules is closely connected to the jury institution and to worries that lay decision-makers may overvalue some forms of proof while undervaluing others (Schauer, 2009, p.208). Wigmore (1983), though a rationalist successor to Bentham, recognized that jurors' zeal for truth can heighten vulnerability to prejudice and misinterpretation.[16] Exclusions and limiting doctrines, even when they screen out probative items, can operate as cognitive safeguards that prevent distortion and preserve rational assessment (Schauer, 2009, p. 208).

Eyewitness testimony exemplifies these risks (Loftus and Green, 1980). Once hailed as the *regina probationum*, it is now known to be fragile: perception is fallible, memory is reconstructive, confidence can be socially inflated, and jurors often mistake confidence for accuracy. Unrestricted admission of such testimony may distort rather than clarify judgment. Calibrated corroboration requirements, expert framing of reliability, lineup protocols, and targeted exclusions can therefore *improve* truth-seeking by ensuring that reliance on eyewitnesses is earned by method, not granted by tradition.

A parallel caution applies to "big-evidence" optimism. Digital trails, sensor logs, and high-volume forensic outputs do not automatically raise epistemic quality. Without validated methods, disclosed error rates, and principled aggregation rules that address dependence and confounding, large heterogeneous datasets can manufacture the appearance of convergence. Quantity is not a substitute for warrant; what matters is whether a competent community of reasoners could share, test, and endorse the inferences drawn.

Taken together, these considerations suggest that the relationship between free proof and truth turns on three interlocking conditions: First, evidential base: what actually reaches the tribunal, given party selection, investigative design, and admissibility constraints; Second, standards of appraisal: how the tribunal must reason from that base (standards of proof, burdens, instructions, corroboration and counter-explanation duties), so that conclusions are rationally warranted ex ante rather than merely fortunate *ex post*; Third, epistemic humility, recognition that no accumulation of items guarantees access to objective reality; bounded rationality and institutional design must be accounted for and mitigated. Under these conditions, the free use of evidence can never, by itself, ensure truth. It may raise the opportunity for discovery, but it does not determine the quality of justification. Conversely, well-designed exclusions and reliability screens can raise justificatory quality without abandoning truth as law's telic value.

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[16] "The rules of evidence are mainly aimed at guarding the jury from the overweening effect of certain kinds of evidence" (wigmor, 1983, §8a, p. 62).

The practical upshot is an integrated approach that links freedom to responsibility. The use of evidence should be structured so that, while respecting prevailing legal standards (rules of evidence, procedural rights, and legitimacy requirements), the fact-finder is prompted to (a) articulate probative links, (b) confront obvious defeaters (contrary evidence, methodological limits, procedural irregularities), and (c) present reasons in a form that other competent reasoners could recognize as adequate. In short, the operative standard, "the established fact must be sufficiently justified by legally adequate evidence", is best understood as an epistemological task carried out within existing legal norms, not as a license for unbounded inclusion.

On this view, truth remains the aim that tells us what to believe; justification supplies the public reasons that tell us why we are entitled to believe it. Only when evidentiary freedom is disciplined by intersubjective justification does the pursuit of truth become a practice fit for adjudication.

4.2. Strict rules of evidence: a non-determining factor in fact-finding

Critics of exclusionary rules contend that truth is best served by maximal evidentiary openness and by granting fact-finders wide latitude to decide for themselves what to discount. On this view, rules that bar probative material are epistemic obstacles masquerading as fairness. Yet the strictness (or looseness) of admissibility rules is not dispositive of epistemic quality. What ultimately determines the legitimacy of fact-finding is how institutions manage exposure, sequencing, and the intersubjective justification of belief under conditions of bounded cognition. In short, whether a system proclaims "free proof" or "regulated proof," admissibility doctrines alone do not fix how well a tribunal comes to know (Damaška, 2022, p. 199).

Mirjan Damaška helps explain why. He shifts attention away from yes or no questions of admissibility to the psychological and epistemic processes through which evidence is actually evaluated (Damaška, 2022). Modern evidence law, he argues, is evolving beyond authorization and prohibition toward an understanding of "the character of psychological operations involved in evidence processing", (2022, p. 129) fact-finders reason holistically: some items strongly support a proposition, others weakly support or defeat it; and people rarely assign weights monadically and then compute a sum. Wigmore's (1983) analytic chart sought to discipline this complexity by mapping sub-premises and inferential links, "link[ing] a method of reasoning with masses of mixed evidence to a theory of evidence" (Leclerc, Vergès, Vial, 2022). But, as Damaška emphasizes, empirical work shows that it is hard for judges and jurors to disentangle the value of discrete items from global impressions. The aspiration to rational synthesis collides with the realities of human cognition (Damaška, 2022, p. 199).

These cognitive limits become most acute where inadmissible but probative information enters the picture. Damaška's illustration makes this clear: "It is true that

when properly obtained evidence is clearly insufficient for conviction, the law's mandate to exclude illegal but reliable evidence can be effective: judges must acquit. But when properly obtained evidence is compelling, they face a predicament: unless they recuse themselves, they must imagine what a judge uncontaminated by illegal information would decide". Damaška's well-known "hypothetical judge" dilemma captures the problem: if properly obtained evidence is meager, courts can exclude illegally obtained but reliable proof and must acquit. When properly obtained evidence is already compelling, however, exclusion does not erase the mind's prior exposure to the tainted material; the judge must now decide as if she had never learned it. Exclusion preserves procedural integrity but does not, by itself, secure epistemic insulation. Once contamination occurs, the counterfactual basis for justification, what an uncontaminated, trained reasoner would conclude on the admissible record, becomes opaque (Damaška, 2022, p. 129).

A compact hypothetical sharpens the point. Suppose A is found dead. Legally obtained evidence shows that B sent threats to A, was near A's home at the relevant time, and bought a knife matching the murder weapon a week earlier. During an unconstitutional search, police also discover A's bloodstained knife in B's house. The knife is excluded. Even if the judge sincerely resolves to ignore it, exposure to that fact can subtly shape her assessment of the remaining, admissible record - tightening perceived coherence, lowering the salience of defeaters, and raising confidence beyond what the admissible evidence alone would warrant.[17] The verdict might still be accurate, but if the route to it passes through epistemic contamination, its warrant is compromised.

These dynamics challenge the traditional framing of the debate as a contest between strict and liberal regimes. The core question is not which set of admissibility rules is "truer," but how either regime can sustain justified belief given human cognitive architecture. Unchecked truth-seeking can exacerbate bias once illicit yet persuasive information is in play; conversely, exclusion that comes too late, or without shielding, may protect procedure while leaving the epistemic status of the conclusion under-determined. What matters is not whether the final outcome happens to align with reality, but whether the process can be defended as epistemically responsible.

Practically, three levers matter: (a) Sequencing & shielding. Minimize premature exposure to potentially inadmissible material (segmented records, robust suppression hearings, sealed proffers, staggered rulings). Structure the order of proof to reduce salience effects and anchoring; (b) Holistic-but-disciplined evaluation. Use reason-giving templates that map each asserted fact to admissible support, identify defeaters, and explain why those defeaters are neutralized or outweighed, so holistic judgment is constrained by explicit justificatory links rather than impressionistic coherence alone; (c) Intersubjective warrant. Require that (a) an uncontaminated, trained re-

[17] And also, in justifying his decision, he would not explicitly acknowledge that he had been influenced by the illegally obtained evidence. Research related to the influence of illegal evidence can be found in the following source. See Stably, *et al*. (2006*,* p. 469-492).

asoner could reach the same conclusion on the admissible record, and (b) the court can publicly explain that conclusion in terms that are accessible to other competent reasoners. This sets the stage for the standards developed later like intersubjective propositional justification, explanatory coherence, and discursive warrant.

Seen this way, exclusionary rules are not merely moral brakes; they are epistemic safeguards designed to preserve the conditions under which belief can be justified. But they must be embedded in procedures that address exposure and sequencing, or else they risk becoming clean hands over a contaminated mind. The evaluation of evidence is thus not a purely procedural question but an epistemological exercise: the operative standard is that "the established fact must be sufficiently justified by adequate, admissible evidence," where sufficiency is measured against the capacities of bounded reasoners working within an institution that makes reasons shareable and contestable.

This perspective also clarifies the relation to familiar thought experiments. If, in Pardo's scenario, the defendant had testified truthfully, the epistemic problem would not arise, and one might think Laudan's error-minimization program remains intact. The point, however, is not that Laudan is wrong about accuracy, but that rationality must be assessed at the level of publicly shareable and communicatively legitimate justification, not merely at the level of private cognition. Outcomes that are true by accident, or true via contaminated reasoning, fail the justificatory test even if they pass the accuracy test.

Accordingly, justification asks not "Was the result correct?" but "Were we justified in concluding?" It requires cognitively responsible reasoning within evidential and institutional constraints and an epistemically humble posture toward bias and fallibility. Freedom without regulation degenerates into subjective belief; regulation without freedom collapses into mechanical formalism. Truth is the aim; justification is the legitimate path. Legal institutions earn epistemic authority only when their procedures reliably produce publicly defensible reasons for believing established facts.

In sum, even perfect freedom of proof cannot overcome human fallibility. Fact-finding is not a quest for omniscient truth but a practice of constructing justified belief under constraint. Institutions should be judged by how well they prevent or quarantine exposure, discipline holistic reasoning through explicit reason-giving, and anchor verdicts in intersubjective justification. These commitments set the stage for the operative standards that follow, intersubjective propositional justification, explanatory coherence, and discursive norms, as criteria for evaluating the epistemic legitimacy of legal proof.

5. FURTHER DIRECTIONS: FROM INDIVIDUAL RATIONALITY TO INTERSUBJECTIVE JUSTIFICATION

The preceding chapter showed that the opposition between Bentham's evidentiary liberalism, Laudan's epistemic instrumentalism (including his SoP approach), and Damaška's institutional realism cannot be resolved by merely dialing admissibility rules up or down. Each captures a distinct dimension of fact-finding like rational inclusion, error-minimizing design, and structural limits on cognition, yet they converge on a common difficulty: the epistemic status of the facts that courts finally certify. Even if rules were perfectly calibrated to balance truth and fairness, the legitimacy of outcomes would still turn on the justificatory pathway from evidence to conclusion. The familiar Pardo-style scenario already makes the point: a verdict may coincide with the truth while lacking warrant. This does not negate Laudan's truth concerns; it marks the limit of truth as a stand-alone criterion of legitimacy.

Building on this insight, the present chapter shifts from admissibility to the epistemic foundations of legal proof. The guiding question is not which regime best promotes truth in the abstract, but how conclusions can be rationally and publicly justified within adjudication, how institutions can generate reasons that competent others could endorse on the admissible record and that can withstand critical scrutiny. The analysis is comparative in spirit yet agnostic about system-level rankings; the target is the form of justification any system can reasonably demand.

The central move, then, is not to reject Laudan but to extend his program from individual rationality to intersubjective justification. The question is no longer only whether a reasoner could privately minimize error, but whether the conclusion is justified in a way that is (a) reachable by an idealized, uncontaminated, well-trained reasoner on the admissible record, and (b) explainable in public reasons that identify salient defeaters and show why they are neutralized or outweighed. Outcomes that are true by accident, or true via contaminated reasoning, fail this justificatory test even if they pass the accuracy test.

The remainder of the chapter operationalizes these ideas. Section 5.1 articulates Intersubjective Propositional Justification (IPJ) as the baseline: a proposition is justified when it belongs to the decision-maker's evidential base, an idealized trained agent could form the belief on that base, and there are no undefeated, intersubjectively evident defeaters. Section 5.2 adds two complementary standards: explanatory coherence (the verdict must integrate the evidence into a stable, non-ad hoc explanatory structure) and discursive warrant (the court must be able to say why to an appropriate audience, meeting the context-sensitive norm for warranted assertion). Together these standards recast the pursuit of truth from a purely outcome-oriented aspiration into a responsibility-based practice of public justification.

2Legal fact-finding, though epistemically motivated, operates under institutional and communicative constraints that differ from the idealized pursuit of truth in

science or mathematics. The epistemic goal of the legal process is not to achieve certainty but to approximate truth through reasoned deliberation over admissible evidence. To clarify what this entails, it is useful to draw upon the distinction between objective and intersubjective propositional justification, as developed by Silvia De Toffoli (2022) in the philosophy of mathematics. Although De Toffoli's conceptual framework was not designed for legal epistemology, it provides a productive analogy. Just as a mathematical theorem must be justified in a manner comprehensible and verifiable by a community of mathematicians, a proven fact in law must be justified in a manner acceptable to a community of legally competent reasoners. The analogy illuminates a shared structural demand: justification must not only be logically valid but also socially accessible.

According to De Toffoli, objective propositional justification (OPJ) refers to the logical relation between a body of evidence and a proposition it supports.[18] In this framework, justification depends solely on whether the evidence entails or probabilistically supports the proposition, independent of the subject's cognitive limitations or belief state. If all individuals had access to the same evidence and reasoned correctly, they would all share OPJ for the same proposition. However, as De Toffoli (2022, p.246) notes, OPJ alone risks collapsing justification into mere logical entailment, devoid of understanding or explanatory depth. The danger of such objectivism, in her view, is that it strips knowledge of its cognitive and communicative dimensions, it reduces justification to a structural relation rather than a human epistemic achievement.[19] For that reason, she reverses the traditional hierarchy and argues that doxastic justification, justification grounded in a subject's actual belief-forming processes, doxastic justification, should take precedence over propositional justification (De Toffoli, 2022, p. 249).

In contrast, I contend that in the context of legal fact-finding, propositional justification must remain primary. The reasons-first view articulated by Silva and Oliveira supports this position: epistemic reasons, not belief states, are what justify factual conclusions in a public and institutional setting.[20] Legal reasoning, unlike personal conviction, must be articulated in propositional terms that others can evaluate. A fact-finder's justification is legitimate not because it reflects a private mental state but because it can be expressed, examined, and defended in public reason-giving.

To illustrate, consider the case of a jury deliberating on whether a defendant intentionally administered arsenic to a victim. Even if jurors lack specialized chemical

[18] "Now consider a case in which I believe some complicated logical theorem T on the basis of sheer guesswork. If T is true, then I have propositional justification to believe that T is true" (Smithies, D. 2015, p. 2783).

[19] De Toffoli indeed agrees with Kornblith in asserting that if propositional justification is regarded as more fundamental than doxastic justification, this leads to skepticism. See Kornblith, (2017, p. 63-80).

[20] "The reasons-first picture characterizes propositional justification in terms of epistemic reasons and doxastic justification in terms of propositional justification" (De Toffoli, 2022, p. 242).

knowledge, they can still possess propositional justification for the claim "arsenic causes death," based on expert testimony or documentary evidence. Their conclusion can be justified even if their personal belief is shallow or incomplete,[21] because what matters in legal epistemology is not the intensity of conviction but the structure of justification. De Toffoli's objection, that justification without understanding is epistemically hollow, raises a legitimate concern. Yet in legal adjudication, the level of understanding required is functional rather than absolute. The law's concern is whether a proposition can be justified to the standard of a reasonable fact-finder, not whether it can withstand ideal philosophical scrutiny. The cognitive depth demanded of the fact-finder is bounded by procedural rationality, not epistemic omniscience.

To bridge the gap between pure objectivity and unbounded subjectivity, De Toffoli introduces the Idealized Capacity Principle (ICP), according to which justification is achieved when an idealized, well-trained human agent could form a justified belief based on the available evidence.[22] This principle has obvious resonance with the legal notion of the reasonable person or reasonable juror. Both invoke an idealized epistemic agent capable of reasoning responsibly within human and institutional limits. Still, ICP faces a further difficulty in complex, adversarial contexts: even idealized agents may disagree on how to interpret competing evidence.

For that reason, De Toffoli (2022, p.258) refines her model into *Intersubjective Propo11sitional Justification* (IPJ), according to which a proposition p is justified for S if and only if (1) the evidence belongs to S's evidential base, (2) an idealized, trained agent would be able to form the belief that p based on that evidence, and (3) the evidence does not admit intersubjectively evident defeaters that remain undefeated. IPJ offers a conceptual key for understanding what it means to prove a fact in law. It articulates a standard that is both epistemic and social: justification requires that the reasons supporting a factual claim be recognizable to others as valid, and that potential defeaters, contrary evidence, counterarguments, or procedural irregularities, be addressed or neutralized. This structure maps directly onto the dynamics of trial deliberation. Judges and juries routinely engage in a collective process of assessing defeaters, weighing competing narratives, and converging toward propositions that can withstand public scrutiny.

At this point, the contrast with Laudan becomes clear. Laudan's model, though epistemically rigorous, remains centered on minimizing error within an individual rational calculus. IPJ, by contrast, relocates epistemic justification into the public domain: the locus of legitimacy is no longer the isolated reasoner but the intersubjective process through which reasons are exchanged, tested, and defended. Intersubjective

[21] See "problem one" (De Toffoli, 2022, p. 249).

[22] "X provides S with propositional justification for p only if an idealized human agent with the appropriate training would likely be in a position to form a doxastically justified belief that p on the basis of X" (De Toffoli, 2022, p. 252).

justification thus preserves Laudan's epistemic ambitions while integrating the procedural and communicative dimensions that his framework leaves implicit.

5.2. Explanatory Coherence and the Discursive Norm of Assertion

If IPJ specifies when a proposition is justified, it leaves open the question of how such justification should manifest in communicative practice. In legal adjudication, justification is not merely held; it must be asserted, explained, and defended. This communicative dimension brings into view the epistemic role of explanation and coherence. Paul Thagard's theory of explanatory coherence offers a framework for understanding this. According to Thagard (1989, as cited in Amaya, 2015), beliefs and hypotheses are justified when they cohere through explanatory relations, when they collectively account for the observed phenomena in a consistent, parsimonious, and mutually supportive way. The more a set of propositions explains and unifies diverse evidence without contradiction, the greater its coherence and, by extension, its justificatory strength.

Amalia Amaya (2015) has applied this model to legal reasoning, arguing that fact-finding in trials operates as a form of coherence-based justification. Legal proof, on this view, consists in weaving together evidence, testimony, and inference into an integrated explanatory structure. Coherence, rather than probability alone, provides the normative metric for justification: it reveals why a conclusion follows from the evidence, not merely that it does. This approach illuminates the epistemic norm underlying the assertion of facts in trials. A judge or juror must be able not only to state a conclusion but also to explain it in a manner consistent with the totality of admissible evidence. Explanatory coherence thus transforms justification from an individual cognitive act into a public, discursive performance. It demands that each asserted fact fit coherently within the broader evidentiary mosaic, forming what Amaya calls the tapestry of reasoning. The strength of this model becomes evident in comparative contexts. When two parties offer competing explanations, one asserting p, the other ¬p, the coherence of each account can be assessed through its capacity to integrate evidence without contradiction or ad hoc supplementation. The more comprehensive and economical the explanation, the higher its epistemic standing. This renders coherence an intersubjectively assessable criterion: it allows participants and observers alike to evaluate the reasonableness of competing factual claims within a shared rational space.

Yet coherence alone cannot account for the social dimension of justification, the fact that legal reasoning unfolds within a communicative forum aimed at persuasion and accountability. For that, Mikkel Gerken's (2012) notion of discursive justification provides a crucial supplement. Gerken argues that assertion, like action, is subject to epistemic norms that depend on context. His Warrant-Assertive Speech Act Principle (WASA) holds that one may assert p appropriately only if one's warrant for believing p is adequate relative to the conversational context (p. 378). In trials,

this means that the epistemic standard for asserting a fact depends on the deliberative context of the courtroom: the presence of adversarial scrutiny, the legal consequences of the claim, and the social expectations of justification. Gerken's framework further refines this through the Discursive Justification-Assertion Principle (DJA), according to which an assertion is justified only if the speaker can articulate the reasons that warrant belief in p to a degree adequate for the discursive context (p.379).

This discursive dimension is integral to legal adjudication. Judges, juries, and lawyers do not merely believe facts, they assert them under institutional conditions that demand reason-giving. A verdict, therefore, is not just a conclusion but a communicative act governed by norms of discursive justification. When a fact is asserted in court, its legitimacy depends not only on its internal coherence (as in Thagard's sense) but also on its capacity to withstand intersubjective evaluation in the communicative space of legal discourse.

Discursive justification also clarifies the distinction between personal belief and institutional assertion. A juror may privately believe a defendant guilty based on intuition, but unless that belief can be discursively justified, explained and defended within the constraints of admissible evidence, it cannot be legitimately asserted in deliberation. Assertion, as Gerken emphasizes, is hearer-directed: it is performed with the expectation that others can understand, evaluate, and potentially accept the reasons offered. This communicative accountability transforms subjective belief into intersubjective epistemic justification. At the same time, being hearer-directed does not mean conforming to audience expectations. An assertion is justified not when it pleases the audience but when it provides reasons that others can rationally endorse.[23] This distinction is vital in legal contexts, where public opinion or political pressure may diverge from epistemic warrant. The integrity of fact-finding depends on maintaining this boundary between persuasion and justification.

When applied to the courtroom, discursive justification reveals how law institutionalizes epistemic responsibility. The trial, as a structured form of public reasoning, compels participants to articulate and defend their factual claims under shared rules of inference and admissibility. These procedural constraints are not impediments to truth-seeking but the very conditions that make intersubjective justification possible. Through them, the epistemic norm of assertion is transformed into a civic practice of accountability.

[23] "Typically, the speaker who makes an assertion has hearer-directed *intentions* in performing a speech act. The speaker may intend the hearer to come to believe something or other about the speaker, or about something else, or intend the hearer to come to desire or intend to do something" (Pagin et Neri, 2021).

5.3. Conclusion: Intersubjectivity as an Epistemic and Civic Norm

Intersubjective propositional justification, supported by explanatory coherence and discursive norms, offers a framework for reconciling truth and fairness in legal proof. It neither abandons Laudan's epistemic ambitions nor returns to Bentham's evidentiary liberalism. Instead, it repositions the epistemic core of adjudication within a communicative and institutional structure of justification. The legitimacy of a verdict, on this view, depends not on the metaphysical truth of its conclusion but on the public reasonability of its justification. Legal fact-finding must therefore be seen as a social epistemic practice, an enterprise of collective reasoning aimed at producing conclusions that are rationally defensible, procedurally valid, and intersubjectively acceptable. Ultimately, this model transforms the pursuit of truth in law into a shared moral and epistemic responsibility. Intersubjective justification ensures that legal reasoning remains both truth-oriented and publicly accountable, sustaining the dual ideals upon which the legitimacy of adjudication depends.

6. CONCLUSION

This article has explored the evolution and limits of truth-seeking in legal adjudication through the comparative analysis of Bentham, Laudan, and Damaška. From Bentham's utilitarian rationalism to Laudan's error-reduction epistemology, both theorists grounded the legitimacy of criminal adjudication in the correspondence between verdicts and reality. Each, in different ways, sought to perfect the fact-finding process by aligning it more closely with truth. Yet their shared rationalist optimism, faith in the capacity of human reason to reach objective accuracy through evidentiary freedom, proves epistemically incomplete.

The assumption that free proof naturally conduces to truth neglects the bounded and situated character of human judgment. Fact-finders do not process information as neutral observers but as cognitively limited agents operating within institutional frameworks. Adjudication, therefore, is not merely a logical reconstruction of past events; it is a structured epistemic practice conditioned by procedural rules, moral commitments, and cognitive constraints. As Damaška's institutional analysis reveals, the architecture of adjudication, the distribution of roles, evidentiary thresholds, and procedural safeguards, fundamentally shapes how facts are constructed and how belief is justified. Truth, in this context, is not simply discovered but institutionally mediated.

Accordingly, this paper has argued that the legitimacy of adjudication cannot rest on accuracy or error minimization alone. It depends on epistemic justification, the disciplined process by which factual beliefs are warranted under human and institutional limits. To know truly in law is not merely to reach the correct result, but to reach it through reasons that are rational, transparent, and publicly defensible. A

verdict that happens to be true but lacks epistemic warrant is normatively deficient; it confuses truth with legitimacy and fact with knowledge.

From this perspective, exclusionary and procedural rules acquire renewed meaning. They are not external constraints on truth-seeking but internal conditions for epistemic responsibility. By disciplining the process of reasoning and ensuring fairness, they transform fact-finding from an exercise in persuasion into an exercise in justification. Legal conclusions must therefore be sufficiently justified by admissible evidence, and that justification must be articulated in forms that are intelligible and contestable within the legal community.

Intersubjective justification thus emerges as the cornerstone of legitimate fact-finding. Legal decisions must be capable of surviving critical scrutiny and rational disagreement, not because they are infallible, but because they are reasonably warranted under shared epistemic and procedural standards. This intersubjective dimension anchors adjudication in a community of reason, ensuring that verdicts rest on communicable and contestable grounds rather than on individual conviction.

Ultimately, this paper proposes a reorientation of evidentiary philosophy: from truth as outcome to justification as process. The law's epistemic ambition should not be omniscient truth, but justified belief within bounded rationality. A legal system committed to epistemically justified fact-finding, one that acknowledges cognitive limitations, values procedural discipline, and institutionalizes shared reasoning, best reconciles the dual aims of justice and truth. Only through such a framework can adjudication sustain both its moral authority and its epistemic integrity.

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