

“Veriphobia” and process: after all, we must still be old-fashioned purists¹ _____

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Abstract

The main objective of this critical review is to evaluate how the concept of truth is interpreted and used by procedural doctrine. As a rule, based on common sense, legal authors mistakenly use the expression, which causes phenomenon called Veriphobia. Seeking the contribution of epistemic concepts, in which the expression of truth has a character of mere propositional value, we will seek to give a new function of rationality to the term in the process. It is possible, from the link between a supposed “sick ambition for the truth” and violations of citizens’ guarantees and rights – as if the latter were a necessary prerequisite for achieving the former – to find the most varied examples that demonstrate the inconsistency of existing terms and concepts in the debate. I will face, fundamentally due to the limitation of the present study, only two of them, however, the adopted logic can be transferred to the others without major damages. The objective, in fact, will be to demonstrate that, despite the legitimate concerns with procedural formalities and guarantees, the idea of searching for the truth seems quite distorted by its opponents.

Keywords: *Epistemology; Process; Truth; Propositions; Justice.*

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I. A Brief Introduction

In Brazil, but not only here, especially in the criminal sphere, but not restricted to it, the theme of the search for truth has fomented heated debates. Some texts, contrary to the idea that it embodies a procedural objective, structure arguments by placing the afore-mentioned investigation as the fundamental basis of authoritarian systems, typical of procedural orders averse to individual guarantee (Vargas, 2012: 237-265).

One of the reasons given for the fact that there are still defenders of the truth as the scope of the process, say their opponents, would be an optical clouding of the investigative/accusatory phenomenon, since pro-truth analysts would continue “seeing the criminal process with the myopic view of the civil process”, especially those who embrace “Taruffo and/or the Spanish school of test epistemology”, even if they are “serious and well-prepared people” (Lopes, 2020).

I confess that, except for the “well-prepared people”, I have the myopic view of civil procedure, I ignore, in fact, most of the “fundamentals of criminal procedure” – something that I cannot get rid of, unfortunately, for the time being -, well as I am a graduate of the Girona school of test epistemology and, for a time, I was mentored by Michele Taruffo in Pavia.

Despite of all this, I believe that there is no objective impediment to shedding light on some concepts that have remained quite confused in the texts of some authors opposing the search for truth in recent times. At the outset, it is essential to eliminate – and the scientific method advises so – dubious terminologies. As it is possible to notice, in order to make an unconditional defense of the position contrary to the search for truth, expressions of little technical precision and with meanings of quite questionable conceptual density are used, which are, as a rule, filled in according to its users’ argumentative convenience. that have a high rhetorical content, such as “authoritarian process”, “statism”, “publicism” etc.

II. Dubious Terminologies and the *Veriphobia*

Although it is not possible here to draw deeper observations on such terms, as it would require very broad digressions on social and political sciences that the present space does not allow me to do, the fact is that, in addition to the academic dishonesty of the method itself, the comparison remains compromised by the own lack of precise conceptualization of each of them. There is no doctrinal consensus on what the essential elements would be for qualifying a process as adversarial or



inquisitorial. In addition, paragoning the two categories as if they were exclusive constitutes yet another technical error. This is due to the simple fact that no system is purely adversarial or exclusively inquisitorial. Whatever the content given to the expressions, it's clear that the orders have characteristics that can be attributed to both types, all of which are therefore mixed.

The basic rule for the applicability of the extensionality axiom is that the elements are clearly defined. However, about the subject, "It should be remembered that the doctrine of civil law countries also tends to allude, in this context, to the 'inquisitive principle' (or 'inquisitorial') and the 'device principle'. In fact, similar expressions are used, quite equivocally, in relation to heterogeneous issues, such as the initiative to initiate the act, the delimitation of the object of the judgment, the possibility of ending it through a unilateral or bilateral act of composition of litigation, the scope of the devolutionary effect of the appeals (...) making it difficult, not to say making it unfeasible, to adopt such a comparison mechanism" (Barbosa Moreira, 2007: 42).

As if the comparative methodological inconvenience mentioned above were not enough, another point, now of a practical nature, points to a relational inconsistency between adversarial (or predominantly adversarial) proceedings and observation of guarantees /inquisitorial process (or labeled as such) and violations of fundamental rights. There is no direct and mandatory link between the adoption of a system and the achievement of frequently invoked values. Just as an example, the Innocent Project of the United States of America demonstrates how a system considered adversarial can become an instrument of false factual settlements and, consequently, of great injustice, being, above all, authoritarian precisely because of the misunderstandings and lack of controls objectives about decisions about facts (www.innocenceproject.org/all-cases/).

In more pragmatic terms, authoritarianism in a given legal system cannot be analyzed in the abstract, but one must, punctually and concretely, investigate the institutes and legislation separately. Furthermore, it would be superficial to attribute, *a priori* and in a general way, the characteristic of authoritarian to a certain judge only and only for participating in the judiciary of a State that adopts this or that system. By analyzing the subject in this way, it would be labeling magistrates almost in a deterministic way.

A study focused on a preponderance of despotic positions on the part of judges and other authorities in a given legal culture, at least in our eyes – myopic, as others said -, would have more fruitful results and adherent to reality if carried out in frank dialogue with history and sociology. To attribute to procedural rules the responsibility for a predominance of an authoritarian character of its operators is to grant procedural science a much more important role in the cultural life of a society than it actually has. It seems contradictory to me to believe that someone,

an operator of the law, will be compelled to be authoritarian just because the procedural system adopted was X or Y.

The causes for a magistrate or any other person who holds power to behave with abuse are, in fact, very more complex. Just as a suggestion, assuming that authoritarianism could be contained by the simple adoption of adversarial rules, or, on the other hand, that a judge linked to full respect for constitutional and individual guarantees would be forced to dictatorial conduct only and only because he appears as an actor in a system that seeks to settle correctly the facts, as reality itself shows us, seems to me a generalizing simplification without any adherence to reality (Adorno, 2019).

What moves the Brazilian debate on the search for truth, in reality, as it happens in other areas of knowledge, especially in those so-called socio-political ones, is the game of argumentative convenience, which takes place through the use of an abstract and ideal frame of the ideologically pre-selected model, comparing it with the concrete problematic experiences of the opposing system that one wishes to combat. The consequence of this, as is easily deduced, are exaggerations that tend to change concepts and ideas, equating different things and distancing similar issues, imposing, moreover, almost insurmountable obstacles to a frank debate. However, it stands out, although they almost never appear as explicit premises, which would be academically desirable for a satisfactory critical analysis developed by the legal community, the fact is that the objection to the search for truth occurs, as a rule, from a perspective clouded by individual options, which generate an almost automatic challenge to terms and positions contrary to the proposition initially assumed, causing distortions in paths and concepts, as already mentioned, and jeopardizing the improvement of the state method of dispute resolution, including with regard to the observation of guarantees.

It is possible, from the link between a supposed “sick ambition for the truth” and violations of citizens’ guarantees and rights – as if the latter were a necessary prerequisite for achieving the former – to find the most varied examples that demonstrate the inconsistency of existing terms and concepts in the debate. I will face, fundamentally due to the limitation of the present study, only two of them, however, the adopted logic can be transferred to the others without major damages. The objective, in fact, will be to demonstrate that, despite the legitimate concerns with procedural formalities and guarantees, the idea of searching for the truth seems quite distorted by its opponents.

The first case that I would like to invoke is that of forced confessions, notably those obtained in investigative phases.

According to its scholars, the assumption of the accused, based on bluff and psychological manipulation (Moscatelli, 2021: 387-388), is nothing more than the result of a procedure that arrives “very quickly to a suspect of the crime (...)”



and “as has been observed since the first ethnographic studies carried out on the subject in Brazil: first, the suspect is identified and then his guilt is reconstituted” (Vargas, 2012: 25).

Now, for the epistemological doctrine that was dedicated to the theme of pseudo-investigations: what happens in cases like the one mentioned is nothing more than feigned reasoning (“sham reasoning”), in which the pseudo-investigator defends the “truth” of a previously established proposition, with the which, therefore, he had previously committed himself to (Haack, 2011: 59).

The applicators of methods that aim at a confession at any cost, in other words, are not “sick for the search for the real truth”, using the expression coined by others elsewhere, but rather are eager for the corroboration of their own versions, formulated who knows how, regardless they find support in the phenomenal plane. The search for the truth, in these cases, understood in a conceptually correct way, would not only open new investigative fronts, but would also be able to contribute elements that would corroborate the exclusion of false hypotheses, including a potential untrue confession.

The second example I would like to borrow from opponents of the search for the truth is the one in which a judge in a very important case in Brazil would have told the accuser that “The defense has already put on its little show (Lopes, 2019). After having his messages leaked, it is possible to suspect that the magistrate, in collusion with the accusing body, ignored the defense posture precisely because he had previously been linked to the condemnatory hypothesis. There are those who even claim that the option for conviction, regardless of what happened in the process, was guided by the magistrate’s personal interests.

Without making further value judgments about the case, what I try to highlight is that there was never, in concrete, assuming that the suspicions are true, the search for the truth. There was, however, a pseudo-investigation of the type of false reasoning or “fake reasoning”, in which the pseudo-investigator believes that a certain proposition will benefit him by formulating eloquent defenses of an idea “surprisingly false or impressively obscure” (Haack 2011: 59).

In every area of knowledge, therefore, in order to make significant advances, it is essential to face the chosen object with scientific aptitude, exactly the element that is absent in the examples brought by the afore-mentioned opponents of the search for truth. Susan Haack, in introducing his study called “Confessions of an Old-Fashioned Purist”, quoting Charles Sanders Peirce, states that: “*to reason well it is absolutely necessary to possess... such virtues as intellectual honesty and sincerity and love for the truth*” (Haack, 2011: 57).

In summary, the search for the truth, if carried out and understood correctly, would partially resolve the dissatisfactions of the mentioned “veriphobics”, consubstantiating, as has already been said by much more authoritative people, not

in a violation, but in the support of procedural guarantees, especially that referring to a fair sentence. (Herdy *et al.*, 2020).

Therefore, I propose that, rather than abandoning the embrace of Taruffo and the teachings of the Spanish epistemic school on proof, we put the lens of Haack's old-fashioned purism on it. Perhaps, in this way, we can cure our myopia, adjust the terminological focus and remove barriers that, even seeing, can hinder us.

III. The Truth Bearers

Facing the issue of truth through a negative bias in the previous topic, that is, undoing mistakes that normally the procedural doctrine incurs when dealing with the truth in the process, it is appropriate, for the moment, to deal with the subject from a positive perspective, that is, it is now worth defining truth in logical-epistemic terms and conceptualizing, according to the philosophy of science, what can be understood by something true. And, for this to be done satisfactorily, it is fundamental, in precedent terms, to face what the bearers of truth would be.

Carriers of truth are understood to be what can be true or false (Costa, 2005: 1). There are, according to logical studies, some candidates to be carriers of truth. Treating them here in a discriminated manner, in addition to complementing the previously developed reasoning, would be of great value considering that procedural doctrine and jurisprudence, whether civil or criminal, as a rule, use indistinctly, as if they were interchangeable, the expressions "facts" and "statements about the facts", serving the reflections about the bearers as basic clarifications for a correct approach to the truth.

The first candidates for truth carriers are people, things and events. According to the example of Costa (2005, p. 1), "healthy" is an adjective attributable to living beings. Animals and plants are healthy. However, the qualifier is often used for, for example, food, which is not living beings. Saying that "cookies are not healthy" is nothing more than an ellipsis to say that "cookies make the living being that eats them unhealthy". The living being, therefore, is the proper bearer of the predicate "healthy", with food only being the derived bearer of said predication.

Likewise, it is common in everyday life to formulate phrases such as: this Picasso is fake, this whiskey is real, João is fake. However, by predicating truthfulness or falsity to objects or people, one is actually formulating elliptical statements in relation to these same objects or people. In the first case, the meaning of the sentence would be equivalent to saying that "the picture being observed was not painted by Pablo Picasso, the famous Spanish painter". In the second and third examples, they can be interpreted as synonymous with "this drink was produced according to traditional Scottish rules to characterize it as whiskey" and, respectively, "John is



treacherous” or “John says false things”. Thus, people and things are only derivative carriers of truth, the carrier itself being what is said about them (Ubertis, 1992: 11).

In this way, the second candidates for truth-bearers arise: sentences about things and people. Lopes Jr. and Khaled Jr. (2022a) structure the following criticism: “The inquisitorial system effectively reintroduced *cognitio*, the penal procedural apparatus of the enemy of Ancient Rome and structured a ritual in which the subject of knowledge confronts an objectified body, from which a “truth” must be extracted, which confirms what the inquisitor chose as “truth from the beginning”.

As for the final part of the transcribed excerpt, it has already been pointed out that rationalism distances and combats “sham reasoning”, which is why the authors’ critical notes cannot be addressed to whom they mention as a target. Notwithstanding the dubious concept of truth employed, what matters for this note is that, for language theory, the act of referencing has no relationship with objectifications of bodies, as suggested by Lopes and Khaled. It is, on the contrary, an extremely common linguistic act intended to isolate an object, a person, a fact, a state from the other possible similar ones to attribute meaning to the sentence. The authors themselves, in the text and in the afore-mentioned excerpt, refer without any intention of objectifying the reference. Therefore, the criticized “body-object” system, which, according to them, would have been “incorporated into the Criminal Procedure in simplifying and abstract constructs of “search” for truth by correspondence”, has nothing to do with the evidentiary rationalism defended here (Strawson 1964: 96-118).

However, they too, from a logical perspective, seem not to be proper carriers. There is a logical principle called the principle of invariance of truth: what is true or false remains true or false (Haack, 2002: 120-122).

Phrases such as: “(...) *power not only represses, but also produces effects of truth and knowledge, constituting truths, practices and subjectivities*” or even “*The inquisitive sensibility around which the idea of real truth is articulated it has a triple genesis and foundation: juridical-inquisitorial, political and scientific. This heterogeneous formation does not come as a surprise: Foucault points out that, in fact, there are several places in society where the truth is formed, where a series of rules of the game are defined, from domains of knowledge, as is the case, in particular, legal practices*” (Khaled, 2009: 31,35). In addition to the clear sham reasoning, the transcribed lines demonstrate that its author is dealing with something completely different from the concept of predication to propositions without any relation to the logical principle of invariance.

Thus, the statement “I am reading the present text now” may be true for the reader, but false if used by the same reader’s parent. In the same way, “esta nevando”, “it’s snowing” or “sta nevicando”, phrases that are different from each other, will all be true if it is, in fact, snowing outside. Thus, for something to be the bearer of

truth itself (apophantic), it seems that the phrase itself about things or people is not enough, but it needs to contain something else that can characterize it as such.

Making use, for the time being, of what Frege, in German, called *Sinn*, translated as meaning (1973: 49-84), it is possible to say that sentences, when referenced (*Bedeutung*), gain specific contours, acquire a meaning of its own. Returning to the retro examples, if, when stating “I am reading the present text now”, the references are, in fact, the reader and not its parent, the “present text” refers to what is written here and the “now” is the exact moment in which it is read, then the meaning is specific, being able to attribute to it the predication of true or false. This meaning is called a proposition.

From what has been exposed so far, it can be intuited in a very brief way that not all the structures of a language are carriers of truth. First of all, for them to carry the properties of truth or falsehood, it is fundamental that they are complete structures that have meaning. In a statement such as “bicycle look at fish”, for example, nothing can be said about its truth or falsity precisely because of the impossibility of establishing a correspondence between its object and its reference in the world. Likewise, interrogative or even imperative structures do not support such predication. There is no reason to say that the following phrases “Is the vaccine from company X effective against the Coronavirus?” and “Take and vaccinate X, you denialist!” can be true or false. Therefore, the carriers of truth (the propositions) will be descriptive sentences in which the sender seeks to direct his words to the world.

Haack (2002: 120-122) states that linguistic structures considered to be truth-bearers must satisfy at least two conditions, namely: “(i) *one can trust that they will not change their truth-value*” (principle of truth). invariance) and “(ii) *all things of the relevant kind are true or false*”.

However, before moving on to a critical analysis of the various concepts of truth existing in philosophy, some further observations should be made regarding the relationship between the plane of references, language and propositions, all with the primary aim of eliminating so many other confusions, noted in the scope of the procedural doctrine when dealing with the theme of truth in the process.

Some of the commonplace statements put forward as the basis for the mistaken connection between the search for truth and the authoritarian process, a structuring relationship of *Veriphobia* already discussed, are that the concept of truth would be “*tendentally dogmatic*”, which would link it “*to the idea of totality and excess*”, expressing itself “*materially in the inquisitorial system*”. With regard especially to the correspondent view adopted here, it would be a “*pretention of full adequacy and entirely corresponding to reality*”, “*where the truth is not understood as a point of tension, but as correspondence and full adequacy*”, which would allow us to conclude that “*this truth tends to be one, it is a dogmatic truth that is positioned as*



absolute and intolerant, that feeds itself and simultaneously collaborates with power” (Khaled, 2009: 30-31).

The first conceptual mistake that can be called attention is regarding the absolute character mentioned there. At no time did epistemologists or jurists adept at seeking truth in the process conceive it as an “*incontestable knowledge, as a totality, which can only be animated by a hubris*”. There is an unacceptable equation between knowledge, truth and proposition. Truth as correspondence is absolute by a logical principle of exclusion: either the proposition finds support in the phenomenal plane or not, that is, it is either true or it is false, with no third possible genres, being, therefore, independent from the current power.

The existence of non-bivalent logical strands is not ignored. The so-called Sorites Paradox, for example, aims to problematize the bivalent application to vague concepts of common language. There is, obviously, no space to debate the fuzzy logics here. However, just so that the point is not left open, mention is made of a simple example, but sufficient for what we want to expose here. For propositions like “the passion fruit on the table are yellow”, one can, by approximation and only by approximation, predicate their true value. This is due to the simple fact that, if you look closely at the passion fruit, it will certainly be possible to notice different colors and shades of yellow (green, orange, red, etc.). Thus, opponents of bivalence would claim that the proposition is neither true nor false. The error seems to be in the analysis of the enunciative formulation, since it is incomplete. If the assertion were “passion fruits are exclusively yellow”, then the predication would undoubtedly be false. If the predication is a simplification of “passion fruits are predominantly yellow”, then it could be attributed to the true predication. The question, therefore, is not in the predicative bivalence, but in the propositional construction. For further details on propositions of the genre, see Whitehead and Russell (1963: 91-109).

On the other hand, Khaled Jr. (2009, p. 31), during his critique on the absolute nature of truth, he mentions the following excerpt from Foucault: “power not only represses, but also produces effects of truth and knowledge, constituting truths, practices and subjectivities”. Well, if the truth is produced to sustain power, then it will not be absolute and immutable, but variable according to the prevailing power. If constituted by those in power, then it will not have “correspondence and full adequacy” to the reference, but will be the result of a formulation in which the phenomenal plane is irrelevant and, many times, uncomfortable. In this view, there is a clear confusion between the absolute value of truth and the authoritarian imposition of versions previously chosen as “true”. What epistemology preaches, on the contrary, is that “every scientific discipline should be organized, in principle, as X represents any scientist, arbitrary, since science aims at the truth and, therefore, must impose itself on anyone regardless of the will of the holder of power” (Da Costa, 1999: 30).

However, in order to establish this relationship between the object of the proposition and what actually happened, knowledge is fundamental. Knowledge, in turn, will never be absolute, but in levels and degrees (Taruffo, 2009, p. 82-92). Nor will it be indisputable. On the contrary, in an honest investigation, when verifying the falsity or inconsistency of a belief, the investigator must abandon the proposition and formulate others compatible with the new discoveries, being the contradictory and the contestation of informative premises, inferential rules and conclusions the engines for cognitive evolution (Taruffo, 1992: 401-408).

Precisely for this reason, the abstract and empty idea of truth used by “veriphobics” does not hold up. When speaking epistemically of truth in the process, one is, in strict terms, only attributing predication to the propositions that are already found in the core of a complaint, an initial petition or even the respective defenses (Ubertis, 1992: 9). In other words, the search for truth in the logical-epistemic sense has nothing to do with the “*aletheia*” mentioned by them, but rather means assigning values to the propositions that make up the procedural representation of the conflict.

IV. Conclusions

As has already been said numerous times, it is difficult to understand what the authors understand as truth. What can be said with great certainty, however, is that they are not dealing with a predication attributable to a proposition. On the contrary, they make a clear confusion between reference, proposition and predication of truth. Lopes and Khaled (2022a), despite making critical notes directed at rationalism, expressly mentioning Taruffo, Ferrer and Ferrajoli as direct targets, they clearly did not understand the foundations of the rationalism they allegedly combat. So much so that Khaled (2009, p. 33), on another occasion, suggests that “perhaps the most appropriate option is a third alternative, based on another notion of truth: *veritas*. In Latin, truth is *veritas* and refers to the accuracy of a report as to its fidelity to what happened”. Now, the proposal considered by him as appropriate, in view of everything that has been exposed in the present thesis so far, is much closer to what rationalism and its authors take as a premise than what he, Khaled, fights and attributes to rationalists.

As can be seen from the previous lines, the debate between supporters of evidentiary rationalism and opponents of the search for truth is based on different conceptions of what the very concept of truth would be. There is great confusion on the part of some, as will be seen in detail in the items below, between statements about the facts and their narratological characteristics, procedural representation of the conflict, propositions and predications of truth. More than that, the notion



of correspondence, which has a defined content, is interpreted, as a rule, similar to equivalence, since the authors use common sense to fill it in their writings. Everything permeated by a high dose of idealism, ends up making the debate almost obstructive of progress.

Thus, as another attempt to establish the theoretical bases of the present work, the following topics will have as their object precisely the dissipation of such confusions, making clear the concepts that will be adopted and the pertinence of their use in the process.

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