

Test and literature. An attempt to approach truth and justice.

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ABSTRACT

The criminal cassation process in Ecuador has played a fundamental role in correcting judicial errors and protecting fundamental rights, although it has faced various challenges that have affected its effectiveness and coherence within the judicial system. Hence, this research has been aimed at analyzing the cassation process, identifying the challenges and opportunities to improve legal activity, transparency and coherence. In order to guarantee the correct application of the law and the protection of fundamental rights within the judicial system. To this end, a qualitative and quantitative approach has been adopted, combining the analysis of jurisprudence and data obtained through surveys of legal professionals, seeking to examine the factors that limit the effectiveness of the cassation process. The results have shown that the lack of uniform criteria and the overload of work in the National Court of Justice have affected the transparency and efficiency of the process. Likewise, insufficient human and financial resources have contributed to delays in the resolution of cases, thus compromising timely access to justice. It has been concluded that institutional strengthening, the adoption of clear criteria for the admissibility of resources and an adequate allocation of resources are essential measures to optimize the process, by consolidating public confidence in the Ecuadorian judicial system.

Keywords: Judicial evidence, Evidence manipulation, Procedural injustice, Arbitrary decisions.

Introduction

The notion of evidence in law, although apparently simple, represents a profoundly complex and essential concept in the resolution of judicial conflicts (Collantes Zavala & Coronel Mogrovejo, 2024). Its priority lies in its ability to establish, with rigour and precision, the existence or non-existence of decisive facts in a process. There are two primary approaches to evidence: one material and the other formal. From the material perspective, evidence is considered as an activity aimed at demonstrating the veracity or falsity of the alleged facts. On the other hand, the formal approach defines it as a procedure to validate procedural facts according to established legal conventions, by functioning as a mechanism for controlling the parties' affirmations. However, both approaches converge on the ultimate purpose of evidence: the formation of a psychological conviction in the judge about the veracity of the data considered in the final decision (Stoykova, 2024).

The need to prove arises from the controversy itself, delimited by the actions and contradictions raised in the judicial process (Suárez Lindao et al., 2024). In this context, the plaintiff turns to the justice system, seeking effective judicial protection, a right that ensures that established procedures are applied fairly and expeditiously. This protection implies that the parties have the right to present evidence in support of their allegations and to contradict the evidence of the other party, thus ensuring a fair trial (Bakhtiar, 2024). However, not all facts must be proven: those that are notorious, impossible, undisputed, or those that the law presumes, are exempt. The evidence, then, must focus on specific facts that are determined in time and place, of which the judge must evaluate with well-founded reasons their correspondence with reality.

For example, during the process, the parties present evidence and witnesses, even objects or documents are observed, contributing to the construction of the framework of evidence (Quchimbo Roman et al.,

2024). This activity is an essential function in the verification of affirmations through well-founded reasons, by allowing the judge a critical and rational approach to the facts. In contrast, without adequate evidence, the judge cannot issue a fair ruling or protect the rights claimed, hence the old adage: "it is as good not to have a right, as it is to have it and not be able to prove it".

Evidence, as a process, does not only consist of following a formal procedure, but also requires an empirical or sensory basis that supports legal reasoning (Alarcón Parra & Barba Tamayo, 2024). This link between proof and reality accentuates the inevitable relationship with truth, understood in terms of correspondence with reality. From this perspective, a statement is true if it reflects the facts of the world. The search for the truth in the judicial process faces a challenge, where some theories of procedural law maintain that the ultimate goal of the process is not to discover the truth, but to resolve controversies. Thus, it generates a possible contradiction between the function of evidence and the purpose of the process as a whole. In this sense, the judicial process can culminate in a "procedural truth", which does not necessarily coincide with the material truth of the facts.

Some theorists suggest that the judge can arrive at a consensual approximation of the material truth, a formula of consensus between the parties on the essence of the controversy. This approach, while not guaranteeing absolute truth, represents an attempt at reconciliation between the parties through a decision that is close to the reality of the conflict. However, this approach raises questions, because "consensual truth" does not always reflect objective reality, but rather a shared interpretation that could distort the concept of objective justice (Moreira Aguayo & Salgado Pinto, 2024) (Olivares, 2024).

The inherent fallibility of judicial decisions must also be recognized, especially in the evaluation of evidence (Freire Padilla & Mayorga Mayorga, 2024). In this sense, the high courts close the evidentiary debate, knowing that any decision is susceptible to error (Arias-Becerra & Monsalve-Robalino, 2024). The possibility of error in the evaluation of evidence is a risk that must be minimized, although, ultimately, it is an inevitable reality of the justice system.

Therefore, although the ideal is that the judge does not make an error, the system recognizes the limits of absolute certainty in the search for judicial truth, with the purpose of granting a fair and well-founded resolution, aligned with both reason and reality (Carr et al., 2020). Therefore, this study focuses on analyzing the role of evidence in judicial processes, highlighting its relevance in the search for truth and justice through a critical-literary approach. To this end, classic and contemporary examples of literature are included, in the representation of justice and legal systems

Materials and methods

The methodology used in the study described focused on a qualitative approach oriented to the critical review of literary texts (Zhang et al., 2023). The research resorted to the analysis of classic and contemporary literary works, focusing on those that deal with issues of injustice, judicial corruption and manipulation of evidence. This critical-literary analysis allowed us to identify how literature addresses and questions the integrity of the judicial system and the role of evidence in the search for truth and justice (Granikov et al., 2020).

To develop this qualitative analysis, literary works illustrating justice and legal systems were selected. Reference works included significant examples, such as Alexandre Dumas' *Count of Monte Cristo* (Marques Filho & de Sousa Sá, 2024), *Gulliver's Travels* by Jonathan Swift, as well as the work of *Gargantua and Pantagruel* by François Rabelais (Arndt, 2024) (Foyouzi & Hosseini, 2024) (Moreno, 2024). Through these narratives, the study examined representations of justice and how these literary texts highlight ethical challenges, arbitrariness, and human error in judicial proceedings.

Results-discussion

Manipulation of evidence and criticism of judicial corruption in the *Count of Monte Cristo*.

In *Alexandre Dumas's The Count of Monte Cristo*, procedural injustice and the manipulation of evidence stand as central themes that denounce the failures and vulnerabilities of judicial systems. Dumas uses the story of Edmond Dantes as a literary medium to expose the profound consequences of corruption and bias in judicial processes, as well as to highlight the devastating impact these can have on people's lives.

In the novel, Edmond Dantes, an honest young sailor, is the victim of a conspiracy involving the tampering of evidence and the abuse of judicial power. Falsely accused of treason, Dantes is sent to prison without a fair trial, largely due to the corrupt interests and motivations of those in positions of authority. The conspirators, taking advantage of his social status and influence, distort the evidence to ensure that Dantes is convicted. Thus, Dumas highlights how the justice system can be perverted when those who have access to power decide to use it for their personal ends, instead of seeking the truth.

Through Dantes's experience, Dumas explicitly criticizes corruption within the judicial system and denounces how justice actors are corrupted by personal ambitions. In history, judges and prosecutors demonstrate that their decisions can be influenced by social and political pressures, as well as by their own self-interest. This criticism is evident in the character of Gérard de Villefort, the king's procurator, who manipulates the Dantes case to protect his own position and status. Villefort, by concealing key information that could exonerate Dantes, personifies judicial corruption, by sacrificing the integrity of the process for his own benefit.

This act of corruption demonstrates how the judicial process is reduced to a mere formality that can be manipulated and that truth and justice become secondary objectives when there are external pressures or personal interests. Dumas, in this sense, invites readers to reflect on the need for impartial judges and a judicial system that operates without interference, otherwise the system becomes a weapon of injustice instead of a means of protection.

In fact, the novel shows the devastating consequences of tampering with evidence and procedural injustice not only in Dantes' life, but also in the lives of those around him. Dantes suffers years of imprisonment, which destroys his youth, his reputation and his hope for a peaceful and happy life. In addition, this injustice drives him to seek revenge, which triggers a series of events that affect multiple characters. So it suggests that corruption and injustice in the judicial process generate knock-on effects that harm society as a whole. In this sense, Dumas argues that corruption and procedural injustices, when not confronted and corrected, dehumanize individuals and disintegrate the social fabric.

Finally, Dumas explores the idea that perverted justice leads to a cycle of revenge and destruction. The transformation of Dantes into the Count of Monte Cristo and his quest for revenge is a direct response to the betrayal and judicial abuse he suffered. Throughout the novel, Dumas invites readers to question whether revenge actually repairs the damage of injustice or whether it instead perpetuates suffering and the cycle of violence. This aspect of the story suggests an implicit critique of judicial systems that, by failing to protect the innocent and punish the guilty, push the wronged to take justice into their own hands. In this way, it undermines the role of the judicial system as a guarantor of peace and order.

Jonathan Swift's Literary Review: The Dichotomy Between Truth and Justice.

In *Jonathan Swift's Gulliver's Travels*, truth and justice appear indirectly but profoundly in the social and political satires that Swift employs to criticize the institutions of his time, including judicial systems. Swift uses the experiences of the protagonist, Lemuel Gulliver, to explore the concepts of truth and justice. Similarly, it will expose how, in many cases, these concepts manage to be distorted under the influence of personal interests and ethical failures in human societies.

On his journey to the country of the Houyhnhnms, a society of rational horses that represent the ideal of purity and reason, Gulliver observes a stark contrast to human civilization. The Houyhnhnms live in a world where there is no lying or deceit, and therefore they have no need for a judicial system. For them, truth and justice are intrinsic and form the basis of their society. In this sense, Swift presents a vision of truth and justice as fundamental and absolute values, which can only be achieved in a truly rational society free of human vices.

In contrast, the human societies described by Swift in other trips, such as the corrupt and hypocritical court of Lilliput, reveal how truth and justice are frequently manipulated to serve the interests of the powerful. In Lilliput, the values of truth and justice are subverted by political rivalries and personal vendettas. The Lilliput court operates under superficial laws and judgments that serve more as tools of

control and oppression than as mechanisms of real justice. Here, Swift satirizes how human justice systems can be distorted by prejudice and corruption, making justice a difficult ideal to achieve.

Throughout his work, Swift critiques human systems of justice by exposing ethical distortions and human limitations in reaching the truth. In *Gulliver's Travels*, human law is depicted as ineffective, arbitrary, and often absurd. Swift shows that human judicial systems are frequently tainted by bias, self-interest, and the desire for power, and rarely serve the pursuit of objective "truth" or "justice." In this way, Swift suggests that human justice systems are prone to producing unfair outcomes. Even ultimately, human institutions are not designed for impartiality, but to maintain the status quo and the privileges of certain sectors of society.

Swift uses non-human societies, especially that of the Houyhnhnms, as a mirror to show the shortcomings of human societies. Truth and justice among the Houyhnhnms do not require a formal judicial structure because these beings conduct themselves with total sincerity and rationality, without the need to manipulate evidence or distort the facts. This contrast exposes how, in human societies, judicial systems are inextricably linked to human nature and therefore vulnerable to moral errors and shortcomings. Justice in the human world, Swift suggests, depends less on truth than on the ability of individuals to maneuver within a system marked by hypocrisy and manipulation.

Through his satires, Swift raises an ethical and moral critique of the lack of integrity in human justice systems. In his work, these systems not only fail to promote truth and justice, but often operate against these principles. Human judicial systems are rife with ethical contradictions, where prejudice, corruption, and personal power are allowed to alter the judicial process. Swift warns about how the actors in these systems become desensitized to the truth and more concerned with convenience or self-benefit.

Through *Gulliver's Travels*, Jonathan Swift presents a profound critique of justice and truth in human justice systems, exploring how these values are easily distorted by human nature and the power structure. Swift suggests that although truth and justice are lofty ideals, humanity struggles to achieve them because of its own ethical weaknesses. In the ideal society of the Houyhnhnms, where a judicial system is not needed, Swift exposes a model that is unattainable for humans, which highlights the distance between the ideals of truth and justice and the reality of human systems. Thus, Swift uses literature to reveal how ethical challenges and distortions within the judicial system are a reflection of human shortcomings, by emphasizing the need for introspection and reform to move closer to these ideals.

Procedural formalism and critique of ritualistic justice in Rabelais's *Gargantua and Pantagruel*.

The relationship between procedural formality and justice is a widely questioned theme in literature, and François Rabelais' *Gargantua and Pantagruel* becomes an ideal setting to explore this duality. Through satirical tone and often grotesque language, Rabelais questions the value of justice that is based solely on formal rituals and rigid legal structures, pointing out how these become tools for abuse and arbitrariness.

In *Gargantua and Pantagruel*, Rabelais presents trial scenes that parody the judicial practices of his time, by exposing how procedural formalism distances justice from its true purpose. The characters are immersed in legal procedures that lack logical sense or rationality and that focus only on the observance of formal rules. Rabelais scoffs at the overemphasis on formalities, representing judges and lawyers who are more concerned with following protocols than with analyzing the morality or fairness of the decisions that are made.

In the trial between Panurgo and Dindenault, for example, Rabelais uses absurd and exaggerated language to show how the arguments of the lawyers become a parody in which the interest in looking eloquent prevails. Even of maintaining the appearance of formality, instead of resolving the conflict fairly. This satirical approach highlights the possibility that judicial decisions deviate from the truth and become a mere exercise in rhetoric and compliance with legal rituals, rather than a process of seeking justice.

Through satire, Rabelais questions the validity of a justice system that focuses on the appearance of legality without analyzing the substance of the conflicts. By ridiculing the judicial system of his time, he

shows how extreme formalism conceals, and even justifies, arbitrary and often unjust decisions. The character of Pantagruel, for example, observes on several occasions how legal proceedings are carried out without respect for common sense, by allowing judges to issue rulings that, although they meet the formal requirements, lack true justice. This literary critique suggests that procedural formality, rather than ensuring impartiality and fairness, makes it easier for the judicial system to deviate from its ethical mission.

In *Gargantua and Pantagruel*, Rabelais also explores how procedural formalism leads to arbitrary judicial decisions, in which the outcome depends more on the ability to manipulate the formalities than on the fairness of the case. Characters involved in trials often face uncertain fate, because their fates depend on judges who prioritize technicalities over the ethical content of their decisions. This representation emphasizes the risk that judicial systems will fall into arbitrariness, lacking a true commitment to justice and being more interested in maintaining structures of power and control.

By exposing these elements in his work, Rabelais not only criticizes the judicial system itself, but also the power structure behind it. His satire points to an institutional justice that, instead of serving the people, serves those who have the knowledge of manipulating procedures and formalities to their advantage. Rabelais warns that this reliance on formalities gives rise to abuses of power and corruption, by allowing judges and lawyers to maintain a façade of justice. While in reality they use the legal system to perpetuate inequalities and personal benefits.

Rabelais's work is ultimately a denunciation of the dangers of ritualistic justice and excessive formalism. By presenting a judicial system that is entangled in its own formalities, Rabelais insists on how this structure hides the truth, by allowing arbitrary decisions and maintaining systems of power that perpetuate inequality. *Gargantua and Pantagruel* show that justice must go beyond rituals and formal rules, by advocating for an approach that privileges fairness and ethics. Even that he criticizes any judicial system that allows appearances to become an excuse for injustice.

DISCUSSION

Literature analysis has remarkably captured this tension between procedural rules and the pursuit of justice in several narratives that highlight ethical conflicts within the judicial system. The works analysed have shown how procedural rules are manipulated or applied in a cold and depersonalised way. So they generate situations where judicial decisions, although legally correct, are morally unjust or disproportionate. In this sense, literature acts as a critical mirror, revealing how mere adherence to legal formalities does not always result in justice. This literary questioning highlights the need for ethics and deontology, by showing that, without a deep ethical commitment, the law runs the risk of becoming a rigid mechanism, susceptible to corruption and arbitrariness.

In addition, the tension between professional ethics and procedural rules exposed in the literature has accentuated the need for a balance in legal practice. Professional ethics should serve as a guide for jurists to privilege justice and equity over the simple technical application of the norm. This literary reflection invites legal practitioners to continually evaluate the legitimacy and moral implications of their decisions, by promoting a more humane and less formalistic justice.

Conclusions

The research has allowed us to conclude that the literature, by addressing the concept of justice and the integrity of the judicial system, evidences both the virtues and weaknesses of legal processes. Through the analysis of classic and contemporary works, the fundamental role of evidence in the search for truth and justice has been highlighted. Thus, it has shown that the literary representation of the evidentiary activity often reflects an ideal of justice threatened by arbitrariness and human error. These results highlight the priority of integrating ethical values into judicial practice to safeguard the integrity of the system.

Likewise, it has been shown that the tension between procedural formality and justice is a recurring theme in the literature, where the manipulation of evidence and judicial corruption are represented as challenges that compromise the fairness of the system. Literary examples such as the Count of Monte

Cristo, Gulliver's travels, and the work of Gargantua and Pantagruel have illustrated how blind adherence to norms results in unfair decisions. So he has suggested the need to reform legal practices and strengthen ethical engagement among jurists.

Finally, research has indicated that literature not only acts as a mirror reflecting the failures of the judicial system, but also serves as a critical tool for rethinking ethical values in legal practice. Therefore, it is essential to consider the implementation of safeguards that protect the truth in the evidentiary process, as well as to develop future lines of research that examine the impact of ethics and deontology on the effectiveness of judicial systems.

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