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Deciding, 'What Happened?' When We Don't Really Know: Finding Theoretical Grounding for Legitimate Judicial Fact-Finding

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Deciding, 'What Happened?' When We Don't Really Know: Finding Theoretical Grounding for Legitimate Judicial Fact-Finding

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Summary

The crucial question for many legal disputes is “what happened,?” and there is often no easy answer. Fact-finding is an uncertain endeavor and risk of inaccuracy is inevitable. As such, I ask, on what basis can we accept the legitimacy of judicial fact-findings. I conclude that acceptable factual determinations depend on adherence to a legitimate process of fact-finding. Adopting Jürgen Habermas's insights, I offer a theoretical grounding for the acceptability of judicial fact-finding. The theory holds that legal processes must embody respect for legal subjects as equal and autonomous agents. This necessitates two procedural features. First, fact-finding processes must be factually reliable. This requires: (a) relevant evidence is admissible and exclusions are justified based on respecting human autonomy; (b) error-risk management is internally coherent and consistent; (c) the standard of proof is, at minimum, a balance of probabilities; (d) evidence is used rationally. Second, fact-finding processes must ensure fulsome participation rights. This project is justificatory—civil justice systems are imperfect, but there are attainable conditions that make them good, which must never be compromised.

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