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BEYOND PROBABILITY; PLAUSIBILITY AS COHERENCE IN ASYMMETRIC LITIGATION

Abstract

Federal pleading doctrine systematically misallocates epistemic risk. When courts credit defendants' "obvious alternative explanations" at the pleading stage, they require plaintiffs to negate defendant-controlled narratives before discovery begins—imposing the burden of factual uncertainty on the party least able to bear it. What Twombly and Iqbal designed as a threshold screen for incoherent claims has been transformed, in practice, into a mechanism for resolving contested factual questions at the moment of greatest informational asymmetry.

The transformation rests on a doctrinal error. Plausibility is a test of narrative coherence, not comparative probability. A complaint satisfies Rule 8(a)(2) when its well-pleaded facts, assumed true, form an internally consistent account sufficient to establish liability if proven. Alternative explanations defeat plausibility only when they expose logical contradictions within the plaintiff's own narrative—not when they merely offer a conceivable lawful account of the defendant's conduct. Drawing on the circuit split, the Supreme Court's decision in NRA v. Vullo, and the structural pathology documented in asymmetric litigation, the Article develops and applies this coherence standard across four paradigmatic categories: civil rights, antitrust, First Amendment retaliation, and government accountability.

The framework is grounded in a transnational principle of procedural legitimacy: procedure must not render substantive rights illusory by foreclosing the evidentiary means necessary to establish them. Italian constitutional jurisprudence - in particular the Constitutional Court's elaboration of the diritto alla prova and the evidentiary foundations of the 2022 reform - demonstrates that early dismissal and meaningful access to proof are reconcilable when procedural design is calibrated to informational structure. The Article anticipates and responds to three objections before concluding that the circuit split over "obvious alternative explanations" can be resolved without overruling Twombly or resurrecting Conley. The choice before the Court is not between rigorous screening and permissive access—it is between a pleading standard that operates as a disciplined threshold and one that operates, in the categories of litigation that matter most, as a merits bar imposed before the evidence is in.

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INTRODUCTION

Civil adjudication is a staged architecture for managing epistemic risk. Each procedural phase—pleading, discovery, summary judgment—performs a distinct institutional function in allocating the burdens of factual uncertainty. Plausibility doctrine, as developed in *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal*, was designed to perform the first of these functions: screening incoherent claims before discovery begins. Lower courts have instead transformed it into a mechanism for resolving contested factual narratives at the moment of greatest informational asymmetry—before any evidence has been gathered. This distortion is both doctrinal and structural: it reallocates epistemic risk onto the party least equipped to bear it.[1]

Open Justice Baltimore v. Baltimore City Law Department is a symptomatic case. The plaintiffs—journalists alleging that government officials caused delays, asserted overbroad exemptions, and imposed excessive fees in retaliation for critical reporting on law enforcement—presented a complaint that was, in several respects, imprecisely drafted: it struggled to anchor its retaliation theory to clearly identified

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[1] *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). On the expansion of "obvious alternative explanations" in lower courts, see Alexander A. Reinert, *Measuring the Impact of Plausibility Pleading,* 101 VA. L. REV. 2117, 2152–67 (2015); *In re Century Aluminum Co. Sec. Litig.*, 729 F.3d 1104, 1107 (9th Cir. 2013) (holding that plaintiffs must plead facts sufficient to "render [defendants'] alternative explanation [] implausible").

factual patterns and comparators. [2] Nothing in this Article suggests that such pleadings must survive dismissal. What makes the case symptomatic is not its facts but the Fourth Circuit's reasoning: rather than identifying the complaint's internal deficiencies, the court affirmed dismissal by crediting the government's "obvious alternative explanations"—bureaucratic inefficiency, resource constraints, the volume of the requests—as though the absence of evidentiary support for those explanations were irrelevant. [3] In doing so, the court collapsed two analytically distinct inquiries—pleading sufficiency and factual persuasiveness—in a manner that recurs across thousands of cases annually and that the doctrinal analysis here is designed to address.

Open Justice Baltimore is a symptomatic case precisely because its pathology recurs across thousands of dispositions annually. Since *Twombly* and *Iqbal*, lower courts have dismissed civil rights claims, employment discrimination suits, and government accountability litigation at substantially higher rates than before 2007—and the increase concentrates precisely in categories where plaintiffs lack pre-discovery access to defendants' internal decision-making, subjective intent, or institutional practices. [4] The pattern reflects an endemic structural feature of contemporary plausibility doctrine: when courts treat defendants' "obvious alternative explanations" as grounds for dismissal, they systematically reallocate

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[2] The journalists alleged patterns of delay compared to other requesters, disparate application of exemptions based on viewpoint, and communications suggesting animus toward their reporting. Complaint at §§ 45-67, *Open Justice Baltimore v. Baltimore City Law Dep't*, No. 1:22-cv-00151 (D. Md. filed Jan. 19, 2022).

[3] *Open Justice Baltimore v. Baltimore City Law Dep't*, 89 F.4th 601, 612-15 (4th Cir. 2024). The court held that "obvious alternative explanations"—bureaucratic inefficiency, resource constraints, and the volume of requests—defeated plausibility even though such explanations were asserted by defendants without evidentiary support and even though the plaintiffs alleged specific facts suggesting discriminatory intent. *Id.* at 614. This case presents both the problem this Article addresses and its limits. The plaintiffs' complaint was, in several respects, poorly drafted. It struggled to articulate a precise theory of First Amendment retaliation and relied on inference without sufficiently anchoring that inference to clearly identified factual patterns or comparators. Nothing in this Article suggests that such pleadings must survive dismissal. The doctrinal difficulty lies elsewhere: rather than identifying the complaint's internal deficiencies, the Fourth Circuit relied on the government's "obvious alternative explanations" for the challenged conduct, thereby collapsing two analytically distinct inquiries—pleading sufficiency and factual persuasiveness. Whether or not cert is granted, the structural problem persists across thousands of cases annually. The case's value lies not in its facts but in exposing how current doctrine conflates these distinct inquiries.

[4] Empirical studies confirm this differential impact. Patricia W. Hatamyar & Kevin M. Clermont found that dismissal rates post-*Iqbal* increased substantially in civil rights and employment discrimination cases—categories where plaintiffs typically lack direct access to evidence of defendant wrongdoing—while remaining stable in contract disputes and traditional tort cases where informational resources are more evenly distributed. Patricia W. Hatamyar & Kevin M. Clermont, *Are the Effects of Iqbal and Twombly Obvious?*, 88 WASH. U. L. REV. 1175, 1189-93 (2011). Similarly, Raymond H. Brescia documented a sharp rise in dismissals specifically in housing discrimination and employment cases, finding that courts credit defendants' "legitimate business justifications" at the pleading stage without requiring evidentiary support. Raymond H. Brescia, *The Iqbal Effect: The Impact of New Pleading Standards in Employment and Housing Discrimination Litigation*, 100 KY. L.J. 235, 253-67 (2011/2012). Alexander Reinert's study of constitutional litigation revealed that motions to dismiss succeed most often when defendants assert innocent explanations for facially suspicious conduct—precisely the scenario where informational asymmetry is most acute. Reinert, *supra* note 1, at 2152-67. These findings are not artifacts of early post-*Iqbal* confusion; they reflect structural biases embedded in probability-based plausibility screening that persist in contemporary practice. *See also* Jonah B. Gelbach, *Locking the Doors to Discovery? Assessing the Effects of Twombly and Iqbal on Access to Discovery*, 121 YALE L.J. 2270, 2310-18 (2012) (documenting that *Twiqbal* increased dismissal rates by approximately 8% overall, with substantially higher increases in civil rights cases).

epistemic risk onto plaintiffs who cannot access the evidence necessary to disprove those narratives. Plaintiffs thus face a procedural trap—they lose not because their claims lack merit, but because they lack information that only discovery, or trial, can provide. What was designed as a screening mechanism has become, in practice, a merits determination disguised as a pleading doctrine.

Plausibility is a test of narrative coherence, not comparative probability. A complaint satisfies Rule 8(a)(2) when its factual allegations, assumed true, form an internally consistent account that, if proven, would establish a legal violation. Alternative explanations defeat plausibility only when they expose logical contradictions *within the plaintiff's own narrative*—not merely because they offer a conceivable lawful version of events. When the facts necessary to distinguish between competing explanations reside exclusively within the defendant's control, the appropriate judicial response is limited, targeted discovery before ruling on a motion to dismiss—not dismissal itself. That response does not abandon *Twombly*'s screening function; it prevents that function from collapsing into premature adjudication. The framework rests, finally, on a transnational consensus on procedural legitimacy that the Supreme Court has itself begun to recognize: in *NRA v. Vullo*, the Court refused to credit defendant-offered alternative explanations at the pleading stage, mirroring the constitutional commitment embedded in Italian and European procedural doctrine to meaningful access to proof as a prerequisite of fair adjudication. Procedure must not render substantive rights illusory by foreclosing the evidentiary means necessary to establish them. [5]

At its core, the disagreement over plausibility doctrine cuts deeper than terminology. By "epistemic risk," this Article refers to the risk of adjudicative error that arises when courts evaluate claims before the evidentiary process has begun.[6] Pleading doctrine determines which party bears that risk prior to discovery. A probability-based interpretation reallocates it to plaintiffs, effectively requiring them to negate defendant-controlled explanations without access to the information necessary to do so. A coherence-based interpretation preserves the procedural sequencing embedded in the Federal Rules: Rule 8 screens for internal

[5] The Italian Constitutional Court's jurisprudence on the "right to proof" illustrates this principle. In decisions in 2008 and 2023, the Court held that access to evidentiary mechanisms is a constitutional guarantee derived from Article 24's protection of the right of defense and Article 111's guarantee of due process (giusto processo). Corte cost., 7 maggio 2008, n. 144; Corte cost., 24 ottobre 2023, n. 202. The Court reasoned that procedural rules designed to enhance efficiency become unconstitutional when they render the right of defense "illusory" by preventing parties from accessing facts essential to proving their claims. The structural parallel with American due process doctrine is direct. Under Mathews v. Eldridge, 424 U.S. 319, 335 (1976), due process requires balancing the private interest at stake, the risk of erroneous deprivation through existing procedures, and the governmental interest in efficiency. Where a pleading rule forecloses the only available evidentiary route to establishing a violation, the risk of erroneous deprivation is not merely elevated—it is structurally guaranteed. The Italian "illusory right" test and the Mathews balancing framework thus converge on the same constitutional conclusion: procedural efficiency cannot be purchased at the price of systematic substantive exclusion. See also Jerry L. Mashaw, *Administrative Due Process: The Quest for a Dignitary Theory*, 61 B.U. L. Rev. 885, 902–08 (1981); Laurence H. Tribe, *Structural Due Process,* 10 HARV. C.R.-C.L. L. REV. 269, 291–96 (1975). For comparative analysis, see MAURO CAPPELLETTI & BRYANT GARTH, ACCESS TO JUSTICE: THE WORLDWIDE MOVEMENT TO MAKE RIGHTS EFFECTIVE 13–25 (1978); MICHELE TARUFFO, LA PROVA DEI FATTI GIURIDICI, 45–62 (1992).

[6] 550 U.S. 544, 556 (2007); 556 U.S. 662, 678–79 (2009).

inconsistency; Rule 26 reduces informational asymmetry through disclosure; Rule 56 evaluates evidentiary sufficiency on a developed record. [7]

The circuit split on "obvious alternative explanations" makes this instability concrete. The Second, Eighth, and D.C. Circuits require that such explanations be so compelling as to render the plaintiff's allegations unreasonable—effectively placing the burden on defendants. The Fourth and Ninth Circuits impose the burden on plaintiffs to disprove alternative explanations at the pleading stage. [89] This inconsistency creates a jurisdictional lottery in access to justice, one that *National Rifle Association v. Vullo* has begun to address but not fully resolved. [10] An amicus brief filed by civil procedure scholars and First Amendment organizations supports the petition for certiorari, arguing that the Fourth Circuit's approach contravenes the foundational principles of the Federal Rules—disproportionately burdening plaintiffs in precisely the categories of litigation where informational asymmetry is most acute. [11] The analysis here builds on that insight while advancing a broader claim: the problem lies not in *Twombly* and *Iqbal* themselves, but in their misapplication. Properly understood, plausibility screens for narrative coherence, not factual probability.

Part I documents the circuit split and its systemic consequences. Part II grounds the coherence standard in comparative constitutional doctrine. Part III implements the framework under Rule 8(a)(2), applies it across paradigmatic categories of asymmetric litigation, and addresses three objections before the Conclusion.

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[7] *Hickman v. Taylor*, 329 U.S. 495, 507 (1947); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–52 (1986).

[8] Petition for Writ of Certiorari at 15-22, *Open Justice Baltimore v. Baltimore City Law Dep't*, No. 22-1034 (U.S. filed Sept. 12, 2024).

[9] Compare *Starr v. Sony BMG Music Ent.*, 592 F.3d 314, 321-22 (2d Cir. 2010) (holding that "obvious alternative explanation" defeats plausibility only if it is "more likely" than plaintiff's account), and *Atchley v. AstraZeneca UK Ltd.*, 22 F.4th 204, 213-16 (D.C. Cir. 2022) (same), *with In re Century Aluminum Co. Sec. Litig.*, 729 F.3d 1104, 1107 (9th Cir. 2013) (holding that plaintiffs must plead facts rendering defendants' innocent explanation "implausible"), and *Open Justice Baltimore*, 89 F.4th at 614 (crediting government's alternative explanations at pleading stage). The Eighth Circuit's position is analogous to the Second and D.C. Circuits. *See Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 595 (8th Cir. 2009).

[10] *National Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 188-91 (2024) (holding that at the pleading stage, an "obvious alternative explanation" defeats plausibility only if it "clearly rules out" the plaintiff's theory of unlawful conduct, not merely because it offers a conceivable lawful account). *Vullo* implicitly endorses the distinction between plausibility as coherence and plausibility as probability, but lower courts have not uniformly applied its logic outside the First Amendment retaliation context. *See infra*–Part I, Section 2; Part II, Section 7.

[11] Brief of Civil Procedure Scholars and First Amendment Organizations as Amici Curiae in Support of Petitioners, *Open Justice Baltimore v. Baltimore City Law Dep't*, No. 22-1034 (U.S. filed Nov. 15, 2024) [hereinafter *Amicus Brief*]. For the full argument, see Maureen Carroll, *Open Justice Baltimore v. Baltimore City Law Department: Brief for Scholars of Civil Procedure and First Amendment Organizations as Amici Curiae in Support of Petitioners*, Appellate Briefs 117 (2025). The brief traces the historical development of American pleading standards from technical common-law and code-pleading systems to the Federal Rules of Civil Procedure (1938), emphasizing that Rule 8(a)(2) was designed to promote liberal pleading and decision-making on the merits rather than focusing on procedural formalities. The brief's core critique is that the Fourth Circuit's requirement that plaintiffs "state facts that rule out 'obvious alternative explanations'" conflicts with *Twombly* and *Iqbal*, which require only that complaints include enough facts to make a claim "plausible," not to disprove every possible alternative explanation. *Amicus Brief*, *supra*, at 12-18.

I. DIAGNOSING THE PLAUSIBILITY PROBLEM: FROM SCREENING TO PREMATURE ADJUDICATION

1. Plausibility and Alternative Explanations: From Screening to Early Adjudication

The shift from conceivability to plausibility did not, on its face, alter the structural function of Rule 12(b)(6): the motion to dismiss remained a threshold device, designed to screen formally incoherent claims before discovery imposes its costs on defendants. What *Twombly* and *Iqbal* changed was the specificity demanded of the plaintiff's narrative at that threshold. What lower courts have changed—without doctrinal authorization—is something more consequential: the moment at which factual contestation is resolved. When courts treat defendants' alternative explanations as independent grounds for dismissal, the Rule 12(b)(6) motion begins to perform a summary-judgment function without the evidentiary record that summary judgment presupposes. [12] The petition in *Open Justice Baltimore* asks the Supreme Court to draw this line clearly: alternative explanations defeat plausibility only when they render the plaintiff's account unreasonable on its own terms, not merely because a lawful version of events is conceivable.

Early empirical studies confirm that Twombly and Iqbal have altered dismissal patterns in ways that correlate directly with informational asymmetry. The data demonstrate that dismissal rates increased significantly post-Iqbal, but the effect was not uniform across case types. [13] Civil rights cases, employment discrimination claims, and antitrust actions—categories in which plaintiffs typically lack direct access to evidence of defendant wrongdoing—experienced substantially higher dismissal rates than contract disputes or traditional tort cases, where the relevant facts are more evenly distributed between the parties. Similarly, Alexander Reinert's study of constitutional litigation found that motions to dismiss succeed more often when defendants offer innocent explanations for facially suspicious conduct, precisely the scenario in which information asymmetry is most acute. [14]

The concentration is structural: the plausibility regime systematically disadvantages plaintiffs in cases where proving wrongdoing requires access to information controlled exclusively by defendants. When courts demand that complaints rule out "obvious alternative explanations" at the pleading stage, they impose an impossible burden on plaintiffs who cannot access the evidence that would distinguish between competing explanations. The outcome is predictable:

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[12] See Suja Thomas, *Oddball Iqbal and Twombly and Employment Discrimination*, U. ILL. L. REV. 215 (2011) (responding in part to Richard A. Epstein, *Of Pleading and Discovery: Reflections on Twombly and Iqbal with Special Reference to Antitrust*, U. ILL. L. REV. 187 (2011).

[13] *See* Patricia W. Hatamyar & Kevin M. Clermont, *Are the Effects of Iqbal and Twombly Obvious?* 88 WASH. U. L. REV. 1175, 1176-93 (2011) (documenting differential dismissal rates across case types); Brescia, *The Iqbal Effect: The Impact of New Pleading Standards in Employment and Housing Discrimination Litigation*, (*supra* note 4), at 239-53. Although based on early post-*Iqbal* data, these findings identify a structural dynamic rather than a transient effect—one that continues to inform contemporary debates over plausibility, access to discovery, and procedural fairness.

[14] Alexander A. Reinert, *Measuring the Impact of Plausibility Pleading*, (supra note 1) at 2152-67 (2015).

claims that would survive if evaluated after discovery fail at the threshold, not because they lack merit but because they lack evidence that procedure itself prevents plaintiffs from obtaining.

The circuit split on alternative explanations, moreover, produces geographic disparities in access to justice. Plaintiffs in the Ninth Circuit face substantially greater hurdles than similarly situated plaintiffs in the Second Circuit, not because their claims differ in merit but because the applicable legal standard differs in rigor. This jurisdictional lottery undermines the transsubstantive uniformity that the Federal Rules were designed to achieve and that Rule 1's mandate of "just, speedy, and inexpensive" adjudication presupposes. A procedural system that produces systematically divergent outcomes based on informational structure and geographic happenstance has deviated from its foundational commitments. [15]

Moreover, the Supreme Court's 2024 decision in National Rifle Association v. Vullo [16] signals an emerging awareness of these distortions, even if the Court has not yet articulated a comprehensive framework for addressing them. In Vullo, the Court unanimously held that the NRA plausibly alleged First Amendment retaliation by claiming that a government official pressured banks and insurers to sever ties with the organization. Significantly, the Court rejected the official's "innocent explanations" for her conduct, holding that at the pleading stage, courts must accept well-pleaded facts as true and cannot credit a defendant's alternative narrative unless it "clearly rules out the possibility" of wrongdoing. The Court emphasized that plausibility is not a probability test: "It is not enough that the official's actions might have had a legitimate purpose; the complaint need only plausibly allege an illegitimate one."[17]

Vullo thus implicitly endorses the distinction between plausibility as coherence and plausibility as probability—the very distinction that the transnational framework articulated in this Article seeks to give concrete form. Yet the Court's analysis remained tied to the specific context of First Amendment retaliation, leaving unresolved how the principle applies to other substantive areas and how lower courts should navigate cases where informational asymmetry is pronounced. The Fourth Circuit's decision in Open Justice Baltimore, rendered shortly after Vullo, demonstrates the persistence of confusion: despite Vullo's holding, the Fourth Circuit credited the government's "obvious alternative explanations" for delayed public-records responses without requiring evidentiary development. This suggests that Vullo's implicit framework requires explicit articulation and systematic application: precisely what a transnational model of pleading determination can provide.

The value of Vullo lies not in its specific holding but in its methodological approach. By refusing to weigh competing narratives at the pleading stage and by requiring those alternative explanations "clearly rule out" wrongdoing rather than merely make it less probable, the Court preserves the internal balance of the Federal

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[15] On the transsubstantive ideal of the Federal Rules, see Robert G. Bone, *Making Effective Rules: The Case of Pleading*, 168 U. PA. L. REV. 1, 14-22 (2019).

[16] National Rifle Ass'n v. Vullo, 602 U.S. 175, 188-91 (2024).

[17] Id., at 189.

Rules. Pleading determines whether a claim is coherent enough to warrant discovery; discovery determines whether it is true enough to warrant trial. Vullo reaffirms this sequence. Its logic, however, reaches beyond First Amendment retaliation: the operative variable is informational asymmetry, not doctrinal category, and the full range of structurally asymmetric litigation demands the same treatment.

The framework describes where doctrine is already heading. The coherence standard—requiring that alternative explanations "clearly rule out" the plaintiff's inference rather than merely suggest a competing narrative—is already implicit in *Vullo*'s operative language. The Second and D.C. Circuits have independently moved toward the same standard: in their formulations, a defendant's alternative explanation defeats plausibility only when it renders the plaintiff's inference unreasonable—not merely when it offers a conceivable lawful account. The Fourth and Ninth Circuits stand as outliers in a developing consensus the Supreme Court is now being asked to formalize. The coherence framework asks courts to do what their most careful pleading decisions already do: test narrative logic, not predict factual outcomes.

Informational asymmetry does not condemn Twombly; it identifies the variable that must calibrate its application. Where information is relatively balanced—contract disputes, personal injury claims—demanding factual specificity at the pleading stage promotes efficiency without sacrificing fairness. Where asymmetry is structural—civil rights, antitrust, government accountability—courts must interpret plausibility with contextual sensitivity, recognizing that plaintiffs may lack access to necessary facts absent judicial assistance or defendant cooperation. The Federal Rules have always required some factual clarity before discovery begins; Twombly's error lay not in imposing a threshold but in failing to account for the informational conditions under which that threshold must be applied. Comparative procedural systems have addressed this problem through mechanisms readily adaptable to the U.S. adversarial model.

2. No Justice Without Discovery? Plausibility, Proof, and Procedural Fairness

Twiqbal's distortion has a doctrinal dimension that the *alternative explanation* debate illuminates only partially. *Twiqbal*'s deeper effect is to transform pleading from a notice function into what the scholarship has aptly called an "information-forcing regime." [18] Drawing on Ayres and Gertner's penalty-default analysis, commentators have shown that information-forcing doctrines typically operate when one party uniquely possesses relevant information and must be incentivized

[18] Ian Ayres & Robert Gertner, *Filling Gaps in Incomplete Contracts: An Economic Theory of Default Rules*, 99 YALE L.J. 87, 91–97 (1989) (developing the penalty-default theory, under which legal rules are designed to force the better-informed party to reveal information by imposing costs on silence). The application of this framework to *Twiqbal* is developed in Alexander A. Reinert, *Pleading as Information-Forcing*, 75 FORDHAM L. REV. 1767, 1780–95 (2007); *see also* David Freeman Engstrom, *The Twiqbal Puzzle and Empirical Study of Civil Procedure*, 65 STAN. L. REV. 1203, 1218–22 (2013) (documenting how information-forcing logic is inverted when asymmetry favors defendants).

to disclose it.[19] But in civil litigation, information asymmetry runs in the opposite direction: defendants, not plaintiffs, control the evidence of intent, motive, internal decision-making, and institutional practice. By requiring plaintiffs to plead nonconclusory facts they cannot access without discovery, *Twiqbal* inverts the information-forcing logic and penalizes plaintiffs for an ignorance the procedural system itself creates.[20]

This inversion has a further dimension that deserves attention. Under the current regime, plausibility is not assessed in isolation; it is co-constructed through the interaction among the plaintiff's allegations, the defendant's proffered alternative explanations, and the judge's exercise of managerial discretion. The defendant's narrative does not simply respond to the complaint—it actively reshapes the threshold of sufficiency, transforming Rule 12(b)(6) from a formal gatekeeping device into a forum for pretrial persuasion. When courts credit "obvious alternative explanations" as grounds for dismissal, they allow that pretrial persuasion to substitute for adjudication on the merits. What emerges is not screening but premature resolution—the very pathology that *Vullo* implicitly condemned and that the circuit split on alternative explanations has perpetuated.

The Continental procedural systems resolve the tension not by eliminating early case management but by embedding within it a mechanism of judicial cooperation that compensates for informational inequality. Italian and German courts operate in the initial phase of litigation under a duty to clarify factual allegations and, where necessary, to facilitate targeted evidentiary development before final disposition.[21] This judicial function is constitutionally grounded, not a matter of mere prudence: it ensures that procedural efficiency does not render the right of defense illusory. The U.S. trend toward managerial judging already reflects a partial convergence with this model, but *Twiqbal*'s application has severed the cooperative dimension from the managerial one—retaining early screening while abandoning the corrective mechanisms that make such screening legitimate.

Properly understood, *Twiqbal* need not be read as a regression to pleading formalism. It can be read—and should be applied—as an imperfect but recoverable step toward a more structured model of civil justice, one in which pleading frames the dispute with sufficient precision to make discovery targeted and proportionate. The recalibration this Article proposes does not require overruling *Twombly* or restoring *Conley*. It requires only that courts implement plausibility screening in a manner consistent with its stated premise—and that when the relevant facts lie beyond the plaintiff's reach before discovery, procedure must provide a pathway rather than a wall.

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[19] *See*, for all, Arthur R. Miller, *Simplified Pleading, Meaningful Days In Court, And Trials On The Merits: Reflections On The Deformation Of Federal Procedure,* 88 N.Y.U. L. REV., 287, 339-340 (2013) who emphasizes also the main issue about the asymmetry of parties' information. This shift represents a structural departure from the original design of Rule 12(b)(6), which Clark and the framers of the Federal Rules envisioned as a narrow procedural safeguard rather than a substantive filter. In the pre-*Twombly* era, a strong presumption against dismissal prevailed, reserving fact-weighing for trial or summary judgment. *Twombly* and *Iqbal*, however, recast the pleading stage as an evidentiary test of judicial experience and common sense, thereby transferring evaluative discretion to the judge at the lawsuit's inception.

[20] *See supra* notes 11–13.

[21] Id., at 190-193.

II. COMPARATIVE FOUNDATIONS: THE RIGHT TO PROOF AND PROCEDURAL LEGITIMACY

1. DEFENDANT NARRATIVES AND THE DISPLACEMENT OF PLEADING FUNCTION: A COMPARATIVE DIAGNOSIS

The Fourth Circuit's ruling in *Open Justice Baltimore* exemplifies a structural drift in post-*Twiqbal* pleading practice that comparative analysis can illuminate with precision. By crediting the government's "obvious alternative explanations"—bureaucratic inefficiency, resource constraints, volume of requests—to defeat plausibility before any evidentiary development, the court transformed the defendant from a passive respondent into an active shaper of the sufficiency threshold, converting Rule 12(b)(6) from a procedural screen into a forum for pretrial persuasion on the merits.[22]

The doctrinal genealogy of this problem is clear. Under *Conley v. Gibson*, a plaintiff needed only to provide notice of the claim and its basis.[23] *Twombly* and *Iqbal* replaced notice pleading with plausibility, requiring factual allegations sufficient to make the claim "plausible on its face."[24] Although facially procedural, the standard imports burden-of-proof reasoning into the pleading stage by requiring plaintiffs to present narratives that survive comparison with defendants' alternative explanations.[25] Lower courts have dismissed claims when defendants' benign rationales appear "obvious," even without evidentiary support—embedding a de facto merits assessment in what the Federal Rules designate as a formal threshold.[26]

Comparative analysis reveals that this practice is both unfair and contingent: a product of interpretive choice rather than structural necessity. In Italian civil procedure, the *atto di citazione* defines the factual and legal grounds of the claim and the remedy sought, but is not designed to adjudicate plausibility through competing explanations.[27] Courts do not dismiss claims because lawful alternative accounts of the defendant's conduct exist. Consideration of alternative narratives belongs to the evidentiary phase, where it bears on persuasiveness after proof—not on admissibility before it.[28] This sequencing reflects a principle of epistemic

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[22] On the transformation of defendant's role under *Twiqbal*, see Arthur R. Miller, *Simplified Pleading, Meaningful Days in Court, and Trials on the Merits: Reflections on the Deformation of Federal Procedure*, (supra note 19), at 339-40.

[23] *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

[24] *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

[25] On *Twiqbal* as importing burden-of-proof reasoning into pleading, see Alexander A. Reinert, *Pleading as Information-Forcing*, supra note, at 32-35 (2012).

[26] *See, e.g.*, *In re Century Aluminum Co. Sec. Litig.*, 729 F.3d 1104, 1107 (9th Cir. 2013) (requiring plaintiffs to plead facts rendering defendants' alternative explanation implausible);

[27] On Italian pleading requirements, see Cesare Cavallini, *The Determination of the U.S. Pleading from a Civil Law Perspective*, 21 WASH. U. GL. ST. L. REV. 155, 193-96 (2022).

[28] *See* Michele TARUFFO, LA PROVA DEI FATTI GIURIDICI (supra note 5), 45-62 (explaining separation of pleading and proof phases in Italian procedure); see also Cesare Cavallini & Stefania Cirillo, *Reducing Disparities in Civil Procedure Systems: Towards a Global Semi-Adversarial Model,* 34 FLA J. INT'L, 99 (2022).

discipline: judges should not resolve factual disputes through unaided inference at a stage when evidentiary mechanisms are available to provide proof.[29]

Italy's 2022 civil justice reform makes the contrast still sharper. The reform introduced a summary adjudication mechanism permitting dismissal after the first hearing (*udienza di prima comparizione*) when a claim "manifestly lacks foundation" on the basis of clear facts or valid documents.[30] The efficiency objective is identical to *Twiqbal*'s: terminating meritless cases early to manage docket congestion.[31] The mechanism, however, is structurally different. Dismissal under Article 183-*quater* occurs only after both parties have submitted documentary evidence at the hearing.[32] The judge evaluates the allegations in light of those materials.[33] Documents in Italian procedure carry probative weight as historical representations of facts, without the need for testimonial mediation; once produced, they must be assessed according to the statutory standards of proof.[34]

When American courts apply plausibility screening based solely on allegations and judicial intuitions about "obvious alternatives," they engage in what Italian procedure would recognize as merits evaluation without the evidentiary foundation that makes such evaluation legitimate.[35] The Italian system permits early termination—but only when competing narratives can be tested against proof rather than speculation. That the U.S. system arrives at the same functional outcome through a structurally thinner procedure is not a minor technical divergence. It is a systematic reallocation of the risk of adjudicative error onto plaintiffs who, precisely in the categories of litigation most affected, cannot access the evidence necessary to discharge it.[36][37]

The implication is not that American courts should transplant Italian procedural mechanisms wholesale. It is that the Italian experience demonstrates the feasibility of combining heightened pleading standards with procedural legitimacy, provided the specificity demanded does not exceed what plaintiffs can reasonably possess

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[29] See TARUFFO, LA PROVA DEI FATTI GIURIDICI (supra note 5), at 50-62.

[30] On the 2022 Italian reform, see Cesare Cavallini & Stefania Cirillo, *The Americanization of the Italian Civil Proceedings*, 57 N.Y.U. J. INT'L L. & POL. 7, 47-49 (2024).

[31] The parallel to U.S. summary judgment expansion is notable. *See Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986).

[32] See. Art. 183-*quater* c.p.c. (It.)

[33] Unlike American Rule 12(b)(6), which considers only complaint allegations, Italian Art. 183-*quater* reviews allegations plus documentary evidence presented at the first hearing. *See* Cavallini & Cirillo, *The Americanization of the Italian Civil Proceedings*, (*supra* note 28), at 48-49.

[34] Italian procedural theory treats documents as "historical representations" of facts carrying probative weight without testimonial mediation. Under Arts. 213-220 c.p.c., documentary evidence must be judicially evaluated according to statutory standards once presented. *See* TARUFFO, LA PROVA DEI FATTI GIURIDICI, *supra* note 5), at 58-62.

[35] On plausibility as de facto merits assessment, see A. Benjamin Spencer, *Understanding Pleading Doctrine*, 108 MICH. L. REV. 1, 32-38 (2009).

[36] *See* Patricia W. Hatamyar & Kevin M. Clermont, *Are the Effects of Iqbal and Twombly Obvious?*, (*supra* note 4), at 1189-93 (2011) (documenting differential dismissal rates); Alexander A. Reinert, *Measuring the Impact of Plausibility Pleading*, (*supra* note 1), at 2152-67(finding heightened dismissals where defendants assert innocent explanations); Raymond H. Brescia, *The Iqbal Effect: The Impact of New Pleading Standards in Employment and Housing Discrimination Litigation*, , (*supra* note 4), at 253-67 (same).

[37] *See* Jonah B. Gelbach, *Locking the Doors to Discovery? Assessing the Effects of Twombly and Iqbal on Access to Discovery*, 121 YALE L.J. 2270, 2310-18 (2012).

before evidentiary access. Where plausibility determinations turn on information within the defendant's exclusive control, targeted pre-dismissal disclosure—functionally analogous to documentary presentation at the Italian initial hearing—would allow courts to test competing explanations on evidence rather than inference, and would bring U.S. practice into alignment with the constitutional minimum that the Italian system has articulated and enforced.[38]

2. The Constitutional Foundations: The Right to Proof and Its Transnational Resonance

Italian constitutional jurisprudence provides the doctrinal architecture for this minimum standard. The right to proof derives from Article 24's guarantee of the right of defense and Article 111's principle of *due process*.[39] The Constitutional Court has consistently held that procedural fairness demands not formal equality before the law, but a genuine opportunity to exercise procedural rights in substance—including the ability to access and present evidence essential to the claim. In a landmark ruling, the Court declared unconstitutional provisions denying appellate review of orders refusing requests for pre-trial evidence-taking, reasoning that mechanisms such as technical assessments and early witness examination) perform constitutionally protected defensive functions.[40][41] Denying review of their refusal, the Court held, would render the right of defense "illusory"—a term that signals not procedural inconvenience but constitutional nullification.[42] A subsequent ruling extended this reasoning, holding that where procedural mechanisms serve defensive purposes, parties must have a meaningful opportunity to challenge their denial before final judgment is rendered.[43]

These decisions establish a *functional right to proof*: not unlimited evidentiary access, but a constitutional floor ensuring that procedural design does not systematically foreclose access to evidence on which the legal position depends.[44] The principle operates functionally rather than formally: it asks not whether evidentiary mechanisms exist on paper, but whether they are accessible in practice to parties who need them to establish their claims. Where decisive information lies

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[38] On procedural accommodation as response to informational asymmetry, see Mauro Cappelletti & Bryant Garth, Access to Justice: The Worldwide Movement to Make Rights Effective (*supra* note 5) at 8-22.

[39] Costituzione [Cost.] art. 24 (It.) ("All persons have the right to take judicial action to protect their rights and legitimate interests. The right of defense is inviolable at every stage and level of the proceedings."); *id.* art. 111 ("All judicial proceedings are conducted according to the principle of due process regulated by law.").

[40] *See* Corte cost., 7 maggio 2008, n. 144, Giur. cost. 2008, 1395. The Court held unconstitutional Arts. 669-*quaterdecies* and 695 c.p.c. insofar as they denied appellate review.

[41] *Id.* The Court noted that preventive evidence-gathering (*assunzione preventiva*) serves substantive defensive functions, particularly when evidence risks being lost or when early clarification can facilitate settlement.

[42] The phrase has become doctrinal standard in Italian constitutional jurisprudence on procedural rights, establishing a functional test: procedural rules that systematically prevent effective defense violate Article 24.

[43] Corte cost., 24 ottobre 2023, n. 202, Giur. cost. 2023, 2145. The Court extended protection to preventive technical consultancy under Art. 696-*bis* c.p.c., holding that denial of such mechanisms requires appellate review when they serve defensive purposes.

[44] The Court distinguished evidentiary requests made for dilatory purposes (which may be denied) from those necessary to establish factual predicates for legal claims (which trigger constitutional protection).

within the opposing party's control, that functional guarantee requires procedural design to permit disclosure before adjudicative conclusions are drawn.[45]

The structural parallel with American constitutional doctrine is direct. The *Mathews v. Eldridge* balancing framework requires courts to weigh the private interest at stake, the risk of erroneous deprivation under existing procedures, and the governmental interest in efficiency. Where a pleading rule forecloses the only available evidentiary pathway to establishing a constitutional violation, the risk of erroneous deprivation becomes structurally certain. Italian and American doctrine thus converge on the same constitutional logic: procedural efficiency cannot be purchased at the cost of systematic substantive exclusion. Parties should not lose cases because procedural design prevents presentation of decisive evidence.[46] Both systems recognize, through different institutional mechanisms, that meaningful access to justice requires realistic access to the means of proof—not a formal right of entry to courts that the system's own rules render unexercisable.[47]

The Constitutional Court's jurisprudence did not remain abstract. It directly shaped the 2022 reforms: summary adjudication under Article 183-*quater* was structured precisely to avoid violating the constitutional right to proof, by conditioning early dismissal on prior documentary submission and judicial evaluation.[48] Efficiency through early termination is constitutionally permissible—but only when grounded in an evidentiary foundation sufficient to legitimate the judgment.[49] Procedure may filter claims for efficiency; it may not render the right of defense illusory by foreclosing the evidentiary means on which that defense depends.[50]

In the American context, this principle subjects *Twiqbal*'s plausibility standard to a functional test that its formal framing obscures. The question is not whether Rule 8(a)(2) requires more than notice—it does—but whether the standard, as applied in cases of pronounced informational asymmetry, systematically prevents plaintiffs from accessing evidence essential to their claims. Where decisive facts reside exclusively with defendants, and where courts credit defendants' alternative narratives to defeat plausibility before any disclosure occurs, the answer is yes.[51] The procedural system has created a logical trap: plaintiffs cannot plead adequately without information they cannot access; they cannot access that information

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[45] Cost. art. 24 (It.); Corte cost., sent. n. 18/2000; *cf. Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

[46] On this shared value across legal systems, see Mirjan Damaška, THE FACES OF JUSTICE AND STATE AUTHORITY: A COMPARATIVE APPROACH TO THE LEGAL PROCESS 102-08 (1986).

[47] *See Mathews v. Eldridge*, 424 U.S. 319, 333-35 (1976).

[48] *See* Cavallini & Cirillo, *The Americanization of the Italian Civil Proceedings*, (supra note 28) 48-49 (2024).

[49] Art. 183-*quater*'s documentary presentation requirement reflects this constitutional constraint. If summary dismissal were permitted on allegations alone—as in post-*Twiqbal* U.S. practice—it would risk violating the constitutional right to proof.

[50] *See* Mashaw, *Administrative Due Process: The Quest for a Dignitary Theory*, (supra note 5) at 902; Tribe, *Structural Due Process*, (*supra* note 5), at 291-96.

[51] *See* Reinert, *Pleading as Information-Forcing (supra* note 18), at 32-35 (documenting how *Twiqbal* creates logical impossibility in asymmetric cases).

without first pleading adequately.[52] Italian constitutional doctrine addresses exactly this risk, and it should inform plausibility analysis in asymmetric cases in the United States.[53]

3. Convergence and Its Doctrinal Implications

The comparative analysis in Part II yields a precise doctrinal implication: the convergence between American and civil-law pleading cultures, however partial and institutionally mediated, supports a transnational minimum standard for plausibility determinations in asymmetric cases.

American and Continental pleading systems have long been understood as structural opposites: notice pleading in the U.S. prioritizes access and remedial flexibility; factual pleading in Italy and Germany conditions judicial engagement on a minimally articulated right.[54] That opposition has been narrowing for two decades. *Twombly* and *Iqbal* accelerated the convergence by introducing a factual specificity threshold that echoes the Continental demand that pleadings frame the right claimed rather than merely notify the defendant of a grievance.[55] *Conley*'s open-ended notice gave way to a hybrid standard: formally notice-based, functionally plausibility-gated. The Court framed the shift in efficiency terms, but its deeper consequence was to move American pleading toward the rights-based logic of civil-law systems while preserving the adversarial character of fact development through discovery.[56] That convergence is neither complete nor uniform—judicial discretion remains broader in the U.S., remedies more equity-driven, fact development primarily party-controlled rather than judge-led. But the transatlantic divide has narrowed enough to make a transnational principle of pleading legitimacy a doctrinal possibility rather than a theoretical aspiration.

What that principle requires, at minimum, is this: plausibility may demand coherence; it may not demand proof. A standard that conditions judicial access on a showing that the plaintiff's narrative is more probable than the defendant's—assessed without evidence, before discovery, at the moment of maximum informational asymmetry—violates both the internal logic of *Twombly* and the transnational minimum that comparative analysis reveals. A coherence-based pleading standard preserves *Twiqbal*'s screening function while preventing Rule 12(b)(6) from operating as a mechanism of premature exclusion in asymmetric cases. The operative question, developed in Part III, is not whether the plaintiff's account is more probable than the defendant's, but whether it is internally coherent

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[52] This is the "plausibility trap" identified by critics: plaintiffs cannot plead adequately without discovery but cannot obtain discovery without adequate pleading. *See* Suja A. Thomas, *The New Summary Judgment Motion: The Motion to Dismiss Under Iqbal and Twombly*, 14 Lewis & Clark L. Rev. 15, 44-50 (2010).

[53] *See* Judith Resnik, *Failing Faith: Adjudicatory Procedure in Decline*, 53 U. Chi. L. Rev. 494, 545-58 (1986); Stephen B. Burbank & Sean Farhang, *Rights and Retrenchment: The Counterrevolution Against Federal Litigation*, 117 Yale L.J. 190, 246-53 (2007).

[54] See Cavallini, *The Determination of the U.S. Pleading from a Civil Law Perspective*, (*supra* note 27), at 183, 193.

[55] *See* Id. at 678–79.

[56] *See, e.g.,* Cesare Cavallini & Marcello Gaboardi, *Rights vs. Remedies: Towards a Global Model*, 28 U.C. Davis J. Int'l L. & Pol'y 171 (2022).

and legally cognizable on its own terms—and whether any inferential gap depends on information the plaintiff could not reasonably possess before discovery.

III. Implementing the Coherence Standard: A Transnational Framework for Access to Justice

1. Recalibrating Twiqbal: Epistemic Risk and Procedural Sequencing

Civil adjudication operates through staged reallocations of epistemic risk, and the coherence of that staging depends on each procedural phase performing its assigned function and no other. Rule 8 screens for internal consistency sufficient to justify the transition to discovery—it does not assess likelihood. [57] Discovery compels disclosure to reduce informational asymmetry before adjudicative comparisons occur. [58] Summary judgment then evaluates whether the remaining factual uncertainty permits a reasonable jury to find for the nonmoving party. [59] When plausibility is treated as a comparative probability inquiry, this sequence collapses: the pleading stage absorbs functions assigned to discovery and summary judgment, reallocating epistemic risk to plaintiffs at the moment of greatest informational disadvantage—before any evidence exists to justify the comparison.

The convergence between American plausibility pleading and civil-law factual pleading, documented in the preceding Part, represents a valuable development in transnational procedural culture. *Twombly* and *Iqbal*'s insistence on factual specificity aligns U.S. practice with a global consensus that pleadings should frame disputes with clarity and precision. That convergence should be preserved rather than discarded. The problem lies not in *Twombly*'s core holding but in its interpretive excesses—specifically, the lower courts' transformation of plausibility into a comparative probability test that credits defendants' "obvious alternative explanations" before any evidentiary development.

A probability-based interpretation of plausibility is internally unstable in light of *Twombly* itself. The Court expressly rejected a "probability requirement," clarifying that plausibility demands more than speculation but does not require that unlawful conduct be more likely than lawful alternatives.[60]

Yet the "obvious alternative explanation" approach reintroduces precisely that comparison. It evaluates whether the defendant's account better fits the alleged facts and dismisses where the lawful narrative appears more persuasive. This transforms plausibility into a relative probability test without acknowledging the shift. Probability comparisons presuppose an evidentiary record capable of inferential weighing. [61] At the pleading stage, however, courts must assume the

[57] 550 U.S. 544, 555–56 (2007); 556 U.S. 662, 678 (2009).
[58] *Hickman v. Taylor*, 329 U.S. 495, 507 (1947); Fed. R. Civ. P. 26(b)(1).
[59] *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–52 (1986).
[60] 550 U.S. 544, 555–56 (2007); 556 U.S. 662, 678 (2009).
[61] 477 U.S. at 248–52. *Iqbal*, 556 U.S. at 678–79.

truth of well-pleaded facts. To compare competing explanations under those constraints is to evaluate likelihood without evidence.

The instability of probability-based plausibility is most plainly exposed within the architecture of the Federal Rules. Rule 12(b)(6) tests legal sufficiency, assuming the truth of factual allegations.[62] Rule 12(c) applies the same standard on the pleadings alone. [63] By contrast, Rule 56 permits evidentiary comparison on a developed record. [64]

By crediting alternative explanations at the pleading stage, courts effectively perform a summary-judgment function without an evidentiary record. Courts thus apply a hybrid threshold that reallocates epistemic risk while bypassing the procedural safeguards built into Rule 56.[65]

The difficulty exposed by the foregoing analysis is not whether plausibility should operate as a threshold, but how. The misapplication of "obvious alternative explanations" reveals the absence of a structured account of what plausibility is meant to test. This Part therefore develops a coherence-based framework for pleading determinations—one that preserves *Twombly* and *Iqbal*'s screening function while preventing Rule 12(b)(6) from collapsing into premature merits adjudication in cases marked by informational asymmetry.

The Supreme Court has repeatedly emphasized that plausibility "is not akin to a probability requirement," but instead asks whether the pleaded facts permit a reasonable inference of liability. [66]Yet lower courts have increasingly treated defendant-proffered "obvious alternative explanations" as dispositive at the pleading stage, effectively transforming Rule 12(b)(6) into a mechanism for early merits adjudication. This shift is particularly consequential in cases marked by pronounced informational asymmetry, where plaintiffs cannot reasonably access evidence of intent, motive, or internal decision-making without discovery.

Under this coherence-based approach, the pleading inquiry follows a structured but limited sequence. The purpose is not to compare competing factual narratives, but to determine whether the plaintiff's allegations, assumed true, form a legally coherent account of wrongdoing sufficient to justify discovery. Under *Iqbal*, plausibility analysis begins with the separation of factual allegations from conclusory assertions and legal labels. [67] This first step is categorical rather than evaluative: courts are instructed to disregard naked assertions without factual support, but not to weigh the credibility or relative persuasiveness of competing narratives. Once this filtration is complete, all remaining factual allegations must be assumed true. Only then may the court assess whether those facts, read as a whole, plausibly state a claim for relief.

At this second stage, plausibility must be understood as a question of *internal consistency and legal fit*. A complaint is plausible when its factual allegations form

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[62] 556 U.S. at 678–79.

[63] Fed. R. Civ. P. 12(c).

[64] Fed. R. Civ. P. 56(a).

[65] *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986).

[66] *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

[67] *Twombly*, 550 U.S. at 557; *Swanson v. Citibank, N.A.*, 614 F.3d 400, 404–05 (7th Cir. 2010).

a coherent narrative that, if true, would constitute a violation of law. [68] An alternative explanation defeats plausibility only when it reveals an internal contradiction in the plaintiff's account—when the pleaded facts cannot logically coexist with the asserted legal theory, or when they negate the inference of wrongdoing on their own terms. By contrast, an alternative explanation that merely suggests lawful conduct does not render a coherent narrative implausible; it identifies a disputed factual issue that lies beyond the proper scope of pleading doctrine. [69]

Treating plausibility as a comparative exercise in likelihood reassigns the burden of epistemic uncertainty to plaintiffs at precisely the moment when they are least able to bear it. In civil rights, First Amendment, antitrust, and government accountability cases, decisive evidence often resides exclusively with defendants. Requiring plaintiffs to plead facts that negate innocent explanations before discovery reallocates informational risk and conditions access to judicial process on information that procedure itself withholds. As empirical studies confirm, heightened pleading standards disproportionately affect precisely those categories of cases in which informational asymmetry is most acute. [70]

The coherence standard imposes genuine requirements. A complaint that is internally thin, analytically muddled, or insufficiently anchored to concrete factual patterns fails even under a restrained understanding of *Twiqbal*. What coherence-based plausibility requires is analytic honesty: a complaint should be dismissed because it is under-pleaded or incoherent, not because the defendant's explanation appears more reasonable.

Open Justice Baltimore v. Baltimore City Law Department illustrates both the doctrinal stakes and the limits of plausibility doctrine. The case has attracted attention because it exemplifies a growing judicial tendency to credit governmental explanations at the pleading stage despite informational asymmetry. But it also exposes an uncomfortable reality: the plaintiffs' pleading itself was weak. The complaint struggled to articulate a precise theory of retaliation, conflated delay with discriminatory intent, and relied on inference without sufficiently specifying relevant comparators or factual patterns. In this sense, *Open Justice Baltimore* may ultimately be a poor vehicle for doctrinal reform.

Yet the Fourth Circuit's analysis compounded that weakness by invoking "obvious alternative explanations" rather than squarely identifying the deficiencies of the pleading itself. The distinction is consequential. When courts rely on benign governmental narratives rather than candidly assessing the quality of the pleading, they expand the role of alternative explanations beyond their proper function and obscure the real grounds for dismissal. Doctrinal drift follows: plausibility becomes a proxy for judicial intuition about the merits rather than a disciplined inquiry into narrative coherence.

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[68] *Twombly*, 550 U.S. at 567; *Matrixx Initiatives, Inc. v. Siracusano*, 563 U.S. 27, 45 (2011).

[69] *See* A. Benjamin Spencer, *Understanding Pleading Doctrine*, *supra* note 35.

[70] See Alexander A. Reinert, *The Costs of Heightened Pleading*, 86 IND. L.J. 119 (2011); Gelbach, *Locking the Doors to Discovery? supra* note 4, at 2270.

A coherence-based approach forces courts to keep these inquiries distinct. If a complaint fails for lack of factual specificity or internal consistency, dismissal is appropriate. If it fails only because the defendant's explanation seems more likely, dismissal is premature. Preserving that distinction protects both access to justice and doctrinal integrity.

The Supreme Court's decision in *National Rifle Association v. Vullo* confirms this point. There, the Court rejected government officials' benign explanations at the pleading stage, emphasizing that such explanations cannot defeat plausibility unless they clearly rule out the inference of unlawful conduct. [71] Considered alongside *Twombly* and *Iqbal*, *Vullo* confirms a sequencing principle implicit in the Federal Rules: pleading tests coherence, discovery tests truth, and adjudication weighs competing explanations.

Recognizing this sequence restores the intended function of pleading standards. Plausibility doctrine was designed to screen out incoherent and conclusory claims, not to insulate defendants - particularly institutional and governmental defendants- from judicial scrutiny by front-loading factual disputes into the pleading stage. When informational asymmetry prevents plaintiffs from accessing decisive facts, procedural legitimacy requires that plausibility operate as a gateway to proof, not as a substitute for it.

The civil law's complex, text-based pleading systems (as exemplified by the German and Italian procedural traditions) reflect a fundamentally different view of the relationship among factual narration, legal qualification, and judicial interpretation. [72] These systems treat the fact-law dichotomy as a guiding principle of the pleading process itself, not merely a formal threshold. [73] Despite notable differences in procedural design, judicial organization, and evidentiary methods between the two jurisdictions, they share a common structural idea: only factual allegations that match and define the normative aspects of the claimed right can give a claim legal precision. In other words, a claim gains procedural and conceptual legitimacy only when the plaintiff's account of facts sufficiently outlines the boundaries of the right invoked within the legal system.[74]

This relationship between fact and right places the pleading within a structured framework of legal communication: the plaintiff's role is not just to recount events but to present them in a manner that fits the categories through which the law recognizes and safeguards rights, The complaint must articulate not only the factual basis of the alleged violation but also, through precise language, precisely identify the normative boundaries that give juridical meaning to those facts.

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[71] *Nat'l Rifle Ass'n v. Vullo*, 602 U.S. 175, 188–91 (2024).

[72] See Cavallini, *Determination of the U.S. Pleading from a Civil Law Perspective* (supra note 27), at 182-192. Specifically regarding the German system, see Hein Kotz, *Civil Justice System in Europe and the United States*, 13 DUKE J. COMP. & INTL L. 61 (2003); Arthur Von Meheren, *Some Comparative Reflections on First Instance Civil Procedure: Recent Reforms in German Civil Procedure and the Federal Rule*s, 63 NOTRE DAME L. REV. 609 (1988); John F. Langbein, *The German Advantage in Civil Procedure*, 52 U. CHI. L. REV. 823 (1985); John F. Langbein, *The Influence of Comparative Procedure in the United States*, 43 AM. J. COMP. L. 545 (1995).

[73] *See* Id., at 183,193.

[74] *See* Id., 184, 195.

Viewed comparatively, this requirement serves convergent purposes across both traditions: it disciplines the complaint, focuses judicial inquiry, and reveals a shared conceptual foundation between civil-law factual pleading and the post-Twiqbal U.S. standard that is more substantial than the conventional opposition between notice and fact pleading suggests.

The convergence documented in this Part has a precise doctrinal implication. When pleading doctrine requires factual specificity sufficient to frame the contours of a cognizable right - rather than merely notifying the defendant of a grievance - the complaint assumes a dual function: it screens for incoherence at the threshold while enabling targeted and proportionate fact development through discovery. This dual function is operative only when the specificity demanded does not exceed what the plaintiff can reasonably possess before evidentiary access. The transnational principle developed in Part II, and implemented in Part III, sets that limit: plausibility may demand coherence; it may not demand proof.

From this perspective, Twiqbal carries structural implications for the relationship between U.S. pleading doctrine and the Continental tradition. Under Conley v. Gibson, a complaint functioned primarily as a notice instrument: its purpose was to identify the claim in broad outline and open the door to discovery, with substantive elaboration deferred to later stages. Twiqbal reconfigures that function by requiring the plaintiff to articulate, at the outset, a factual account specific enough to render the claim plausible on its face. That requirement does not replicate the Continental model—it does not demand the granular identification of the right invoked and the normative basis for its protection that Italian and German procedure requires. But it does shift the complaint from a trigger for remedial exploration toward a threshold assessment of the claim's factual foundation, a shift that narrows, in degree rather than in kind, the institutional distance between the two traditions.

That narrowing has precise limits. Judicial discretion in the U.S. remains substantially broader than in civil-law systems; remedies continue to be equity-driven and shaped by party demand rather than by a pre-constituted normative framework; and fact development remains primarily adversarial, organized through party-controlled discovery rather than through judicially directed inquiry. Twiqbal does not eliminate these differences. What it does is introduce, at the pleading stage, a threshold assessment of factual adequacy that performs a function structurally analogous to the minimum-specification requirement of Continental factual pleading: identifying whether the complaint articulates a sufficiently defined claim to justify judicial engagement. The two systems remain institutionally distinct. The convergence documented here is functional rather than formal, and its significance lies precisely in that distinction: it supports a transnational principle of pleading legitimacy without requiring equivalence of procedural design.

The functional convergence identified here does not dissolve the institutional differences between adversarial and inquisitorial procedure. It identifies a shared structural commitment: that the pleading stage should serve the adjudicative process by framing a cognizable dispute, not by substituting for the evidentiary process through which that dispute is resolved. That commitment, instantiated

differently across the two traditions, provides the normative foundation for the transnational principle developed in Part III.

The amicus brief filed in support of the petition proceeds from a Conley-restoration theory: early dismissal without prior evidentiary access is categorically inconsistent with Rule 8's foundational design, and the correct remedy is to return to the permissive standard the Court abandoned in 2007. That argument accurately identifies the structural dysfunction but proposes a cure the Court will not and need not administer. Wholesale restoration of the "no set of facts" baseline is doctrinally untenable—the Court has superseded it definitively—and strategically unnecessary: the coherence standard resolves the same structural problem without requiring any departure from Twombly's text or holding.

The transnational minimum standard articulated in this Article does not require the Court to choose between originalism and textualism, nor does it require a determination of whether *Twiqbal* reflects judicial activism. Those questions, however important, are orthogonal to the claim advanced here. The coherence standard is grounded not in a theory of original intent or textual fidelity, but in a structural principle that the Federal Rules' own architecture already implies: that pleading, discovery, and summary judgment serve functionally distinct roles in managing epistemic risk, and that plausibility review must not absorb functions assigned to the later stages. This principle is confirmed, rather than invented, by the comparative analysis in Part II, and it requires nothing more than a rigorous reading of what *Twombly* already says: plausibility is not probability, and alternative explanations are not grounds for dismissal unless they expose internal contradiction in the plaintiff's own narrative.[75]

What distinguishes the coherence standard from both the amicus Conley-restoration position and the existing circuit-split doctrine is its refusal to treat the tension between plausibility screening and informational asymmetry as a binary choice between permissive access and merits exclusion. Plausibility doctrine was designed to screen incoherent claims before discovery begins—not to insulate from judicial scrutiny defendants who control the decisive facts. Where the pleading cannot be more factually specific because the relevant information resides exclusively with the defendant, the coherence framework does not lower the sufficiency threshold: it identifies the absence of defendant-controlled facts as a structural condition requiring procedural accommodation, not as a pleading defect requiring dismissal. This distinction marks the boundary between a doctrine that calibrates epistemic obligation to epistemic position and one that penalizes epistemic inequality as if it were epistemic failure.

The Seventh Circuit's ruling in *Swanson v. Citibank, N.A.*[76] supplies a template for this recalibration. By holding that plausibility is "context-specific" and that a complaint need only provide enough detail to suggest a valid claim rather than to

[75] *See* Jois, *Pearson, Iqbal, and Procedural Judicial Activism* (supra, note 8), at 906-11; see also, from a different view, James A. Wynn, *When Judges and Justices Throw Out Tools: Judicial Activism in* Rucho V. Common Cause*,* 96 N.Y.U. L. REV 607 (2021). See also, more broadly, Cesare Cavallini, *The Law through the King. U.S. (Procedural) Judicial Activism from a European Perspective,* 58 AKRON L. REV., 101 (2025).

[76] *Swanson v. Citibank, N.A.*, 614 F.3d 400, 404 (7th Cir. 2010) (Easterbrook, Posner, Wood, Posner dissenting).

negate all competing explanations, the Seventh Circuit applied precisely the coherence conception this Article defends. That approach aligns with the structural logic of the continental European systems examined in Part II: where factual pleading requirements are more demanding, the judicial role in facilitating proof compensates for the stricter threshold, ensuring that informational inequality does not become a categorical bar to judicial access. The lesson is functional rather than institutional. What the Italian and German models demonstrate is not that American courts should adopt judicial case management on the civil-law model, but that any procedural system committed to meaningful access to justice must build in some mechanism to prevent pleading standards from demanding, as a condition of entry, facts that only the evidentiary process can produce.

2. A TRANSNATIONAL FRAMEWORK: PRINCIPLES AND IMPLEMENTATION

PRINCIPLES AND IMPLEMENTATION

Historically, national systems have shifted between two concepts of pleading: the rights-based model of Continental Europe, which requires detailed factual pleading to establish the right claimed, and the remedial model of the United States, which emphasizes access and judicial flexibility. [77]

That convergence yields a transnational pleading model resting on three operational pillars: good-faith factual allegation, procedural cooperation, and proportionality.

The first pillar—good-faith factual allegation—requires careful elaboration to avoid misunderstanding. The distinction between information that is inaccessible and information that the plaintiff has not yet sought is crucial but often elided in practice. Consider the employment discrimination plaintiff who knows she was terminated but lacks access to internal emails demonstrating a discriminatory motive, or the antitrust plaintiff who suspects collusion but cannot obtain the defendants' pricing communications through discovery. These plaintiffs possess enough information to frame a coherent narrative of wrongdoing, but not enough to prove it. The law should not penalize them for lacking evidence that only discovery can provide. By contrast, a plaintiff who alleges fraud without identifying any specific misrepresentation, or who claims breach of contract without specifying which contractual provision was violated, has failed to meet even a minimal threshold of factual specification. The good-faith standard thus asks: has the plaintiff alleged the facts within her knowledge that, if supplemented by evidence reasonably expected to be in the defendant's possession, would support the claim?

The second pillar—procedural cooperation—addresses a genuine blind spot in American pleading doctrine: the assumption that discovery must always follow, rather than facilitate, plausibility determinations. Unlike civil-law systems, where judicial case management is constitutionally embedded, U.S. procedure treats early judicial intervention as exceptional rather than routine. Yet the Federal Rules

[77] *See* in this regard the echoes of the vision by MAURO CAPPELLETTI &PAUL L. KOLLMER, THE JUDICIAL PROCESS REVIEW IN COMPARATIVE PERSPECTIVE 205–08 (1989).

already contain the necessary flexibility. Rule 26(d)(1) permits discovery before the parties' Rule 26(f) conference "when authorized by the Rules, by stipulation, or by court order." This provision, though rarely invoked at the pleading stage, provides district courts with discretionary authority to order limited discovery when necessary to evaluate plausibility. The question is when such authority should be exercised.

The answer lies in the nature of the information gap. In civil rights cases alleging discriminatory intent, where the plaintiff has been denied employment or promotion but lacks access to the employer's internal decision-making records, limited early discovery (perhaps restricted to key personnel files or communications) can resolve the plausibility question without triggering full-blown discovery. In antitrust cases premised on circumstantial evidence of collusion, targeted interrogatories or document requests regarding pricing decisions may suffice to determine whether the complaint states a plausible claim. [78] In data-breach cases in which the plaintiff knows her information was compromised but cannot identify the source without a forensic investigation, early disclosure of basic security logs may clarify whether the defendant's systems were implicated. The key is proportionality: the permitted discovery should be narrowly tailored to the specific informational deficiency that prevents a plausibility determination, not a dress rehearsal for merits discovery.

The third pillar—proportionality and context—resists mechanistic application because its function is to introduce judgment into what might otherwise become a rigid standard. Proportionality is not limited to litigation costs, but encompasses the parties' positional relationship, the nature of the information at issue, and the type of proof required. Claims involving governmental defendants, subjective intent, or internal decision-making present different access constraints than disputes between private parties with symmetrical informational resources. These contextual factors should inform how stringently courts apply the plausibility threshold.

Consider Open Justice Baltimore itself. The plaintiffs sought public records from a government agency that controlled the pace, scope, and cost of disclosure. The asymmetry was structural: the government decided what to produce, when to produce it, and how much to charge. In such cases, requiring the plaintiff to negate "obvious alternative explanations" before discovery effectively insulates government conduct from judicial review. By contrast, in a commercial dispute between sophisticated parties with comparable access to transactional documents, the balance leans differently. Proportionality analysis makes these distinctions visible rather than submerging them beneath acontextual doctrine.

Each pillar reinforces the others: good-faith allegation defines the plaintiff's minimum epistemic obligation; procedural cooperation provides the mechanism for addressing what that obligation cannot reach; proportionality calibrates both to the structural features of each case. The result aligns the American pleading inquiry

[78] On the use of limited discovery to test plausibility in antitrust cases, see William H. Page, *Twombly and Communication: The Emerging Definition of Concerted Action Under the New Pleading Standards*, 5 J. COMPETITION L. & ECON. 439, 462-64 (2009).

with the broader transnational commitment, documented in the preceding comparative analysis, to meaningful access to proof. [79]

Under this framework, a complaint satisfies Rule 8(a)(2) when it clearly and concisely presents: the material facts supporting the claim; the legal basis for relief; and the remedy sought. [80] The plaintiff must allege sufficient factual matter—within her knowledge or reasonable investigative capacity—to state a claim that is coherent and legally cognizable. The standard does not require the plaintiff to establish likelihood of success, to plead evidence, or to negate all conceivable lawful explanations for the defendant's conduct.

A complaint clears the plausibility threshold when two conditions are jointly satisfied. First, the well-pleaded factual allegations, assumed true, form an internally consistent narrative that, if proven, would establish each element of the asserted claim. Second, the inferential gap between the alleged facts and the claimed legal violation does not depend on information the plaintiff could reasonably be expected to possess prior to discovery. Where the first condition is met but the second requires defendant-controlled facts to bridge the gap, the appropriate judicial response is limited, targeted discovery—not dismissal. Where neither condition is met, dismissal under Rule 12(b)(6) is warranted regardless of the defendant's alternative explanations.

Alternative explanations defeat plausibility only when they expose internal inconsistency within the plaintiff's own narrative—when the pleaded facts themselves negate the asserted inference of wrongdoing or fail to align with the legal elements of the claim. [81] By contrast, an alternative explanation that merely suggests a lawful account of the defendant's conduct identifies a disputed factual issue properly reserved for discovery and adjudication, not a deficiency in pleading.

This formulation aligns with the Supreme Court's most recent guidance. In *National Rifle Association v. Vullo*, the Court rejected the argument that a defendant's "innocent explanations" could defeat plausibility merely because they were conceivable, emphasizing that at the pleading stage courts may not credit benign narratives unless they "clearly rule out" the plaintiff's theory of unlawful conduct. *Vullo* thus confirms what *Twombly* and *Iqbal* already implied: plausibility is a threshold inquiry into narrative coherence, not a mechanism for resolving factual contestation.

Informational asymmetry is a structural feature of modern litigation, not a pleading defect. In many contemporary categories of litigation—civil rights, First

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[79] *See* Mirjan Damaska, THE FACES OF JUSTICE AND STATE AUTHORITY: A COMPARATIVE APPROACH TO THE LEGAL PROCESS, 102-108 (1991), who predicts that the evolution of civil procedure towards a transnational model implies a reallocation of authority between parties and courts.

[80] Fed. R. Civ. P. 8(a)(2). See also Charles E. Clark, *Simplified Pleading*, 2 F.R.D. 456, 458–60 (1943) (emphasizing that Rule 8 requires a statement sufficient to frame the dispute, not evidentiary detail). For contemporary reaffirmations, see *Swanson v. Citibank, N.A.*, 614 F.3d 400, 404–05 (7th Cir. 2010) (plausibility is "context-specific" and does not require elimination of alternative explanations).

[81] *Twombly*, 550 U.S. at 557 (alternative explanations matter only insofar as they render the pleaded inference implausible); *Nat'l Rifle Ass'n v. Vullo*, 602 U.S. 175, 188–91 (2024) (rejecting benign explanations at the pleading stage unless they "clearly rule out" unlawful conduct). For circuit approaches distinguishing internal incoherence from mere competing narratives, see *Starr v. Sony BMG Music Ent.*, 592 F.3d 314, 323–24 (2d Cir. 2010); *Atchley v. AstraZeneca UK Ltd.*, 22 F.4th 204, 215–16 (D.C. Cir. 2022).

Amendment retaliation, antitrust, government accountability, privacy and data protection—decisive evidence of wrongdoing typically resides within the defendant's exclusive control. Internal communications, deliberative processes, intent, motive, and institutional practices are rarely accessible to plaintiffs prior to discovery.

Doctrinal approaches that require plaintiffs to negate "obvious alternative explanations" at the pleading stage systematically reallocate epistemic risk to the party least able to bear it. Empirical studies confirm that post-*Iqbal* dismissal rates have increased most sharply in precisely those categories of cases marked by pronounced informational asymmetry. This pattern is not incidental; it reflects a bias embedded in probability-based plausibility screening.

The transnational framework rejects the premise that informational asymmetry constitutes a pleading failure. Instead, asymmetry is recognized as a systemic condition that requires procedural accommodation. A plaintiff who alleges, in good faith, the facts reasonably available to her, while identifying conduct that, if supplemented by evidence plausibly in the defendant's possession, would establish liability, has satisfied Rule 8(a)(2). The absence of defendant-controlled facts at the pleading stage is not a defect to be punished by dismissal, but a signal that discovery may be necessary to test competing explanations.

Comparative procedural law reinforces this conclusion. Civil-law systems, while often requiring more detailed factual pleading, constitutionally embed mechanisms of judicial cooperation designed to prevent informational inequality from rendering the right of defense illusory. Italian constitutional jurisprudence, for example, has articulated a functional *right to proof* as an element of due process, ensuring that procedural filters do not foreclose access to evidence essential to the merits of the claim. [82] While the institutional design differs from the American adversarial model, the underlying principle is shared: procedural efficiency cannot justify insulating informational power from judicial scrutiny.

Recognizing informational asymmetry does not require abandoning plausibility screening or endorsing unrestricted discovery. The transnational model instead conceptualizes discovery as a calibrated procedural bridge between pleading and adjudication. When plausibility turns on information within the defendant's exclusive control, district courts may—and should—order limited, targeted discovery proportionate to the specific informational gap before ruling on a motion to dismiss. [83]

Examples illustrate the point. In First Amendment retaliation cases, limited disclosure of internal communications or decision-making rationales may clarify whether the alleged conduct plausibly reflects viewpoint-based animus. In antitrust cases premised on circumstantial inference, targeted interrogatories or document requests concerning pricing or coordination may suffice to determine whether the

[82] On the constitutionalization of a functional right to proof in Italian law, see Corte cost., sent. nn. 144/2008; 202/2023.

[83] Fed. R. Civ. P. 26(d)(1). On early, limited discovery as a case-management tool, see MANUAL FOR COMPLEX LITIGATION (FOURTH) § 11.422; For proposals linking early discovery to plausibility determinations, see Reinert, *The Costs of Heightened Pleading* (*supra* note 70), at 172–76.

complaint states a coherent claim. In data-breach litigation, basic system logs or forensic reports may identify whether the defendant's infrastructure was implicated. In each instance, discovery functions not as a reward for pleading success, but as a procedural tool to prevent dismissal based on evidentiary gaps created by asymmetry itself.

The transnational model redefines the judicial role at the pleading stage—not as an arbiter of factual probability, but as a guardian of procedural legitimacy. District courts implementing this framework should explicitly acknowledge informational asymmetry where present; decline to credit obvious alternative explanations unsupported by evidence; order limited, proportionate discovery where necessary to resolve plausibility; and revisit dismissal motions after basic factual development.

Courts should articulate this reasoning transparently in published opinions. Transparency requirements of this kind discipline the application of plausibility doctrine and restore coherence to Rule 12(b)(6) jurisprudence by distinguishing deficiencies in pleading from unresolved factual disputes. The outcome is a pleading standard that serves its intended purpose: screening for narrative incoherence without resolving the factual disputes that only discovery can address.

This approach preserves *Twombly*'s legitimate concern with frivolous litigation while preventing plausibility from becoming a trap that ensnares meritorious claims before they can be developed. It also harmonizes American pleading doctrine with a broader transnational commitment to procedural fairness: access to justice cannot depend on which party controls the relevant information. When procedure requires plaintiffs to prove wrongdoing before they can access the evidence necessary to do so, it ceases to operate as a neutral framework and instead entrenches positional inequality.

The transnational model articulated here reflects a deeper commitment to procedural democracy. In complex modern litigation, the decisive facts are rarely visible at the outset. A system that conditions judicial access on informational possession systematically favors institutional defendants over individuals, governments over citizens, and the powerful over the vulnerable. This distributive asymmetry is a structural failure of procedural justice, not an incidental empirical finding. Rights, as Ronald Dworkin argued, function as trumps against utilitarian calculations that would otherwise sacrifice individual entitlements to aggregate efficiency. Pleading, properly conceived, should function as a dialogue rather than

a contest: a mechanism for framing disputes coherently while enabling courts to facilitate fair factual development. [8485]

By reconceptualizing plausibility as coherence, recognizing informational asymmetry as a systemic condition, and treating discovery as a proportionate procedural right rather than a privilege, this framework offers a path forward. It preserves adversarial party control, respects judicial economy, and integrates comparative insights without abandoning the core commitments of the Federal Rules. Above all, it restores the pleading stage to its proper constitutional role: not as an early adjudication of truth, but as the principled opening of the judicial process.

3. ILLUSTRATIVE APPLICATIONS

The coherence framework requires translation from principle to practice. Four paradigmatic applications demonstrate how the framework operates across different categories of litigation marked by informational asymmetry, showing that coherence-based plausibility preserves *Twiqbal*'s gatekeeping function while preventing premature adjudication. Employment discrimination illustrates the framework's first paradigmatic application.

The first concerns *employment discrimination***.** Employment discrimination cases present a classic informational asymmetry: plaintiffs allege that adverse employment actions were motivated by discriminatory intent, but direct evidence of the employer's motivation lies exclusively within the employer's control. [86] Consider a female employee who alleges she was denied promotion despite superior qualifications, identifies the decision-maker, cites similarly situated male employees promoted during the same period, and notes temporal proximity between filing an EEOC complaint and the denial. [87] She lacks access to internal emails, personnel files, or deliberations documenting the decision-making process.

Under a probability-based plausibility analysis, courts have dismissed such complaints by crediting employers' assertions of legitimate, nondiscriminatory

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[84] RONALD DWORKIN, TAKING RIGHTS SERIOUSLY 90–94 (1977) (arguing that rights function as political trumps that override aggregative utilitarian calculations even when compliance is costly in efficiency terms). The application to procedural rights is developed in Lawrence B. Solum, *Procedural Justice*, 78 S. CAL. L. REV. 181, 238–44 (2004) (arguing that procedural fairness is an independent dimension of justice irreducible to accuracy or efficiency); Jerry L. Mashaw, *The Supreme Court's Due Process Calculus for Administrative Adjudication in Mathews v. Eldridge: Three Factors in Search of a Theory of Value*, 44 U. CHI. L. REV. 28, 47–52 (1976) (critiquing the balancing test for subordinating dignitary values to efficiency calculations). In the pleading context, the right of access to judicial process cannot be traded off against aggregate litigation-cost savings when the plaintiff has no alternative means of vindicating the underlying substantive right.

[85] On access to justice as a component of democratic legitimacy, *see* generally CAPPELLETTI & GARTH, ACCESS TO JUSTICE: THE WORLDWIDE MOVEMENT (*supra* note 3); Resnik, *Failing Faith*, (supra note 53) at 494. For contemporary accounts linking procedural design to power distribution, *see* Daryl J. Levinson, *Rights Essentialism and Remedial Equilibration*, 99 COLUM. L. REV. 857 (1999).

[86] On structural asymmetry in employment discrimination cases, see Thomas, *The New Summary Judgment Motion: The Motion to Dismiss Under Iqbal and Twombly* (*supra* note 53), at 44-50.

[87] This scenario mirrors fact patterns in cases like *Littlejohn v. City of New York*, 795 F.3d 297 (2d Cir. 2015), and *Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72 (2d Cir. 2015).

reasons—"obvious alternative explanations" — such as qualification assessments or budgetary constraints. [88] Under coherence analysis, this complaint survives. The allegations are factual rather than conclusory—they identify specific actors, actions, comparators, and temporal sequence. The narrative is internally coherent: denial of promotion to a qualified employee who filed a discrimination complaint, while similarly situated male employees were promoted, plausibly suggests retaliatory or discriminatory intent if the employer's stated reasons prove pretextual. [89]

Plausibility turns on the employer's subjective motivation—information exclusively within the employer's control. Proportionate discovery would include: (1) the decision-maker's personnel file and emails related to the promotion decision; (2) documentation of comparators' qualifications and promotion processes; (3) limited deposition testimony regarding reasons for denial. [90] This discovery is narrowly tailored to the specific gap—employer's motivation—without requiring wholesale production of employment records. Post-discovery assessment would determine whether the inference of discrimination survives on the basis of evidence rather than on a judicial assessment of whose explanation seems more likely. [91]

The coherence framework does not eliminate pleading requirements or resurrect pre-*Twiqbal* notice pleading. Plaintiffs must still identify adverse actions, decision-makers, protected characteristics, and comparators where relevant. Conclusory allegations without factual anchoring properly fail. What changes is the treatment of employers' alternative explanations: they do not defeat plausibility merely by being conceivable, but only by exposing internal contradictions in the plaintiff's narrative or being established through limited evidentiary development. This approach aligns with *McDonnell Douglas*'s burden-shifting framework, which recognizes that discrimination is rarely proven through direct evidence and typically requires inference from circumstantial facts. [92] Coherence-based plausibility preserves that sequence by preventing courts from resolving the ultimate question—whether the employer's stated reasons are pretextual—at the pleading stage. [93]

On the other hand, *antitrust conspiracy* cases present informational asymmetry in its purest form: plaintiffs allege coordination among competitors but lack access to direct evidence of agreement, which would reside in defendants' internal

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[88] *See, e.g.*, *Littlejohn*, 795 F.3d at 311-12 (affirming dismissal where employer asserted budgetary reasons); but see *Vega*, 801 F.3d at 85-87 (reversing dismissal where plaintiff alleged sufficient comparator evidence).

[89] On coherence in discrimination pleading, see *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 511-12 (2002) (holding that discrimination plaintiffs need not plead prima facie case but must provide sufficient factual notice).

[90] On proportionate discovery in employment cases, see Fed. R. Civ. P. 26(b)(1) (listing "parties' relative access to relevant information" as proportionality factor).

[91] This parallels the evidentiary showing required at summary judgment under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), but operates with limited, targeted discovery rather than full merits development.

[92] *McDonnell Douglas*, 411 U.S. at 802-05.

[93] On preserving *McDonnell Douglas* sequencing, see Deborah L. Brake & Joanna L. Grossman, *The Failure of Title VII as a Rights-Claiming System*, 86 N.C. L. REV. 859, 908-15 (2008); Brescia, *The Iqbal Effect: The Impact of New Pleading Standards in Employment and Housing Discrimination Litigation*, (*supra* note 4) 253-67.

communications. [94] Consider plaintiffs alleging that competing firms engaged in parallel price increases under market conditions not conducive to independent pricing. [95] They cite economic analysis suggesting coordination, identify communications between executives at industry conferences, and allege that pricing changes occurred in lockstep despite different cost structures. They lack access to internal pricing communications or strategic planning documents.

Under the probability-based plausibility standard, courts have dismissed such complaints by crediting defendants' assertions of rational, independent behavior—the "obvious alternative explanation" that parallel pricing reflects oligopolistic interdependence rather than conspiracy. [96] But this conflates plausibility with persuasiveness. The question is not whether independent action is more likely than conspiracy, but whether, if the complaint's allegations are assumed true, they form a coherent narrative of unlawful coordination. [97]

In coherence analysis, allegations of parallel conduct, along with factors such as industry communications, economic implausibility of independence, and market conditions, present a coherent conspiracy narrative. Plausibility turns on whether communications between competitors reflect mere information exchange or actual coordination—information residing in defendants' pricing deliberations. Proportionate discovery would include interrogatories regarding pricing decisions during the alleged conspiracy period; document requests concerning communications with alleged co-conspirators about pricing; and a limited economic analysis of whether the alleged conduct is consistent with independent decision-making. [98]

Critically, proportionality requires careful calibration in antitrust cases, where discovery can be exceptionally burdensome. [99] Narrow requests targeting the temporal period, specific products, and identified communications are presumptively proportionate. Broad requests for all pricing documents across multiple years and custodians exceed proportionality unless plaintiffs demonstrate that comprehensive discovery is necessary to test their specific conspiracy theory. [100] The coherence framework thus implements *Twombly*'s concern with frivolous antitrust litigation without requiring plaintiffs to disprove independent action before accessing evidence. [101]

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[94] On informational asymmetry in antitrust, see Page, *Twombly and Communication: The Emerging Definition of Concerted Action Under the New Pleading Standards*, (supra note 78) at 462-64.

[95] This scenario mirrors fact patterns in cases like *In re Text Messaging Antitrust Litig.*, 630 F.3d 622 (7th Cir. 2010).

[96] *See, e.g.*, *In re Musical Instruments & Equip. Antitrust Litig.*, 798 F.3d 1186, 1194-95 (9th Cir. 2015) (dismissing conspiracy claim based on parallel conduct plus limited additional factors).

[97] On the distinction, see Spencer, *Understanding Pleading Doctrine*, (*supra* note 35), 35-38.

[98] On targeted discovery in antitrust cases, see Page, (*supra* note 78), at 462-64.

[99] *See Bell Atl. Corp. v. Twombly*, at 558-59 (noting that antitrust discovery can be "enormously expensive").

[100] On proportionality in complex litigation, see MANUAL FOR COMPLEX LITIGATION (FOURTH) § 11.422; Fed. R. Civ. P. 26(b)(1) (proportionality factors include burden and expense relative to benefit).

[101] This approach preserves *Twombly*'s holding that parallel conduct alone does not state a claim, 550 U.S. at 556-57, while preventing over-dismissal of plausible conspiracy claims with plus factors. *See* Page, *supra* note, at 464-68.

The coherence framework's broadest application lies in government accountability litigation—constitutional torts under § 1983, *Bivens* actions, and administrative law challenges. [102] These cases systematically present informational asymmetry: governmental decision-making processes, official motivations, and institutional practices are rarely accessible to plaintiffs before discovery. [103] *Qualified immunity* doctrine compounds the problem by allowing officials to assert immunity at the pleading stage, requiring plaintiffs to plead not merely constitutional violations but violations of "clearly established" law. [104]

Consider a § 1983 excessive force claim where the plaintiff alleges that police officers struck him repeatedly after he was restrained, that he posed no threat, and that he suffered serious injuries. [105] Officers assert qualified immunity, claiming the plaintiff resisted arrest and posed a danger justifying force—an "obvious alternative explanation." [106] Under the probability-based plausibility standard, some courts have dismissed such claims by crediting officers' accounts without further evidentiary development. [107]

Under coherence analysis, the excessive force claim proceeds. Allegations of being struck while restrained, the absence of a threat, and resulting injuries are factual. The narrative is coherent: if the plaintiff was restrained and posed no threat, striking him repeatedly violates clearly established Fourth Amendment law. [108] The officers' assertion that the plaintiff resisted does not expose internal contradiction—it presents a disputed factual issue. Proportionate discovery would include body-camera footage if available, use-of-force reports, medical records, and limited depositions regarding the encounter. [109] Post-discovery assessment determines whether qualified immunity applies based on developed records rather than speculation. [110]

This approach does not eliminate qualified immunity or require trials in every excessive force case. It ensures that immunity determinations rest on evidence rather than on judicial assessment of whose version seems more plausible on allegations alone. The principle extends across government accountability contexts—First Amendment challenges, due process claims, equal protection challenges—with the same analytical sequence: identify informational asymmetry,

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[102] *See* John C. Jeffries, Jr., *The Right-Remedy Gap in Constitutional Law*, 109 YALE L.J. 87 (1999).

[103] *See* Stephen B. Burbank & Sean Farhang, *Rights and Retrenchment: The Counterrevolution Against Federal Litigation*, 117 YALE L.J. 190, 246-53 (2007).

[104] *Pearson v. Callahan*, 555 U.S. 223, 231-32 (2009).

[105] *Tolan v. Cotton*, 572 U.S. 650 (2014).

[106] On officials' ability to assert qualified immunity at pleading stage, see *Iqbal*, 556 U.S. at 685.

[107] *See, e.g.*, *Estate of Smith v. Marasco*, 318 F.3d 497, 514-15 (3d Cir. 2003) (crediting officers' account at summary judgment); but see *Scott v. Harris*, 550 U.S. 372, 380-81 (2007) (requiring video evidence to resolve factual disputes).

[108] *Graham v. Connor*, 490 U.S. 386, 396-97 (1989) (establishing objective reasonableness standard for excessive force claims).

[109] On proportionate discovery in § 1983 cases, see MANUAL FOR COMPLEX LITIGATION (FOURTH) § 33.23.

[110] This approach aligns with *Tolan*'s requirement that courts view evidence in the light most favorable to the non-moving party. 572 U.S. at 656-57.

assess good-faith pleading, calibrate proportionate discovery, and distinguish narrative coherence from factual probability. [111]

These four applications confirm that coherence-based plausibility is operationally precise. It preserves *Twiqbal*'s gatekeeping by dismissing complaints that are internally incoherent, conclusory, or factually threadbare—but it prevents gatekeeping from collapsing into premature adjudication by requiring evidentiary development when plausibility turns on defendant-controlled information. [112] The framework does not guarantee plaintiffs' success; it ensures only that success or failure turns on proof rather than on asymmetric access to information. [113]The framework's versatility derives from its focus on substantive features—informational asymmetry, good-faith pleading, proportionality—rather than substantive doctrine. It asks the same analytical questions regardless of the underlying cause of action: Does the complaint present an internally consistent narrative? Does plausibility turn on information within the defendant's control? Has the plaintiff alleged all facts reasonably available? Would limited discovery resolve the informational gap proportionately?

By maintaining this disciplined approach, courts can distinguish meritorious claims requiring evidentiary development from frivolous claims properly dismissed at the threshold. The coherence framework implements a minimal principle of procedural legitimacy applicable across legal systems: *procedure must not render substantive rights illusory by foreclosing the evidentiary means necessary to establish them*. [114] This principle, drawn from Italian constitutional doctrine and comparative analysis, transcends institutional differences between adversarial and inquisitorial procedures. It articulates a shared commitment that access to justice requires realistic access to the means of proof, not a merely formal right of entry to courts. [115] By calibrating pleading doctrine to informational structure, the coherence approach restores plausibility to its proper function: the first stage in a sequence designed to adjudicate disputes on their merits, not to foreclose them at the threshold.

4. THREE OBJECTIONS CONSIDERED

The coherence framework developed in Parts I through III rests on three claims: that plausibility tests internal narrative consistency rather than comparative probability; that informational asymmetry warrants procedural accommodation; and that limited early discovery can bridge the gap between pleading sufficiency

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[111] *See, e.g.*, *Vullo*, 602 U.S. 175 (First Amendment retaliation); *Mathews v. Eldridge*, 424 U.S. 319 (1976) (procedural due process); *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977) (equal protection).

[112] On preserving screening while preventing premature adjudication, see Robert G. Bone, *Plausibility Pleading Revisited and Revised: A Comment on Ashcroft v. Iqbal*, 85 NOTRE DAME L. REV. 849, 876-82 (2010).

[113] This principle reflects the Federal Rules' commitment to decision on the merits. *See* Fed. R. Civ. P. 1 (requiring "just, speedy, and inexpensive determination of every action"); Charles E. Clark, *Simplified Pleading*, 2 F.R.D. 456, 458-60 (1943).

[114] This minimal principle synthesizes insights from Italian constitutional law (*see supra* Section 5, discussing Corte cost. nn. 144/2008, 202/2023) and comparative procedural analysis (*see supra* Section 4).

[115] *See Mathews v. Eldridge*, 424 U.S. 319, 333-35 (1976).

and merits adjudication without displacing *Twombly*'s screening function. Each claim invites a serious objection. This section addresses the three most consequential.[116]

The first objection is that the coherence standard is no less manipulable than the probability standard it is designed to replace. If courts can exercise discretion under a probability framework to dismiss meritorious claims, they can equally exercise discretion under a coherence framework to deny that a complaint is internally inconsistent, or to find that an alleged inferential gap is a pleading defect rather than an informational asymmetry. On this view, the framework merely shifts the locus of judicial discretion without constraining it.

The objection identifies a genuine feature of the framework without establishing that it is a defect. Judicial discretion is ineliminable from pleading doctrine; the debate concerns its proper object and scope. The coherence standard constrains discretion in a specific and verifiable way: it limits the grounds for dismissal to deficiencies *internal* to the plaintiff's own narrative. Whether a narrative is internally consistent is a question of logical structure that can be evaluated with greater intersubjective reliability than the comparative probability question of whether the plaintiff's account is more or less likely than the defendant's. The latter requires inferential weighing across competing frameworks without an evidentiary basis; the former requires only that the court assess whether the alleged facts cohere on their own terms. Probability-based discretion is discretion to resolve contested factual issues before discovery; coherence-based discretion is discretion to identify logical incoherence in pleaded narratives. The two are not equivalent. One displaces the merits; the other polices the pleading.

Moreover, transparency requirements provide a structural check. When courts are required to identify the specific internal contradiction that defeats plausibility, rather than invoking a defendant's benign narrative as a freestanding basis for dismissal, the reasoning becomes visible and reviewable on appeal. Published opinions applying the coherence standard will generate doctrinal precedent that is harder to circumvent than the currently diffuse and inconsistent application of probability-based plausibility across circuits. The manipulability objection, properly understood, is an argument for disciplined application, not for abandonment.[117]

The second objection is that the coherence standard functionally resurrects *Conley v. Gibson*'s "no set of facts" standard and effectively requires that all

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[116] *See* A. Benjamin Spencer, *Plausibility Pleading*, 49 B.C. L. Rev. 431, 461–68 (2008) (arguing that plausibility creates unpredictable and judicially manipulable standards); Bone, *Plausibility Pleading Revisited and Revised*, (supra note 112), at 876–82 (identifying manipulability and over-dismissal as the two central objections to heightened pleading), *Simplified Pleading, Meaningful Days in Court, and Trials on the Merits,* (*supra* note 19), at 339–43 (contending that Twiqbal risks resurrecting the formalism that the Federal Rules were designed to displace).

[117] On judicial transparency as a constraint on discretion, see Judith Resnik, *Managerial Judges*, 96 HARV. L. REV. 374, 426–31 (1982) (arguing that published reasoning disciplines judicial case management); Scott Dodson, *New Pleading, New Discovery*, 109 MICH. L. REV. 53, 80–84 (2010) (proposing that appellate review of plausibility determinations can reduce inter-circuit inconsistency). On the verifiability of logical coherence relative to probability assessments, Thomas, *The New Summary Judgment Motion: The Motion to Dismiss Under Iqbal and Twombly*, (*supra* note 52), at 47–50

complaints survive the pleading stage unless they are so incoherent as to be unintelligible. If plausibility turns only on internal narrative consistency, critics may argue that virtually any complaint—however speculative or poorly pleaded—will be able to construct a formally consistent account of wrongdoing, forcing defendants into discovery regardless of the claim's actual merit.

The objection conflates logical coherence with legal adequacy, and legal adequacy with empirical likelihood. The coherence standard does not protect poorly pleaded complaints; it distinguishes between two independent grounds for dismissal that the current doctrine improperly collapses. A complaint may fail the coherence standard for several reasons that have nothing to do with the probability of the plaintiff's account: the alleged facts may be internally contradictory; the legal theory may be unrecognized by applicable law; the allegations may be purely conclusory without factual grounding; or the inferential gap between alleged facts and claimed violation may be unbridgeable by any plausible evidence. These are genuine coherence failures, and they warrant dismissal under the framework as clearly as under the current doctrine.

The coherence standard excludes only one category of dismissal ground: the conclusion that the defendant's alternative explanation is more probable than the plaintiff's, in the absence of evidentiary development. *Conley*'s "no set of facts" standard excluded almost nothing; it permitted dismissal only when the complaint was incapable of yielding any legally viable theory, even if the facts alleged were supplemented by everything discovery might produce. The coherence standard occupies a middle ground: it requires factual specificity, legal cognizability, and internal logical consistency—but it does not permit dismissal on grounds of comparative probability without evidentiary foundation. The critical difference from *Conley* is that the coherence standard is a genuine sufficiency test rather than a notice requirement. It asks whether the pleaded account is adequate as stated, not whether it can conceivably be supplemented to make it adequate.[118]

The third and most practically consequential objection concerns the costs of the procedural accommodation the framework prescribes. The proposal that courts order limited targeted discovery when informational asymmetry prevents plausibility determinations raises immediate concerns about burden, expense, and the risk of strategic exploitation. If every complaint alleging informational asymmetry generates a round of pre-dismissal discovery, the framework may effectively eliminate the gatekeeping function *Twombly* was designed to preserve, and transform Rule 12(b)(6) practice into a two-stage process with substantially higher fixed costs for defendants.

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[118] The distinction between the coherence standard and Conley's "no set of facts" formulation maps onto the broader scholarly debate over whether Twombly represented a genuine change in pleading law. Compare Richard A. Epstein, *Of Pleading and Discovery: Reflections on Twombly and Iqbal with Special Reference to Antitrust,* U. ILL. L. REV. 187, 201–06 (2011) (defending heightened specificity requirements as efficiency-enhancing), with Miller, *Simplified Pleading, Meaningful Days in Court, and Trials on the Merits* (*supra* note 19), at 291–98 (arguing that Twombly effected a structural regression to fact-pleading formalism). The coherence standard preserves Twombly's genuine contribution—requiring factual specificity sufficient to frame a coherent dispute—while rejecting its misapplication as a probability test. See Conley v. Gibson, 355 U.S. 41, 45–46 (1957); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 563 (2007) (abrogating Conley).

The objection rests on an empirical assumption that the framework explicitly contradicts: that informational asymmetry is pervasive rather than structural and categoric. The framework does not authorize pre-dismissal discovery for all complaints that allege asymmetry; it authorizes targeted, court-supervised disclosure in cases where the complaint presents an internally coherent account of wrongdoing; plausibility turns specifically on facts within the defendant's exclusive control; and the plaintiff has in good faith alleged all facts within reasonable investigative reach. This is a conjunctive test. Complaints that fail on the first or third ground, as incoherence or insufficiency of good-faith pleading, are dismissed without any discovery, as under current doctrine.

The costs of pre-dismissal discovery in cases where all three conditions are met must be weighed against the costs systematically generated by the current regime: the foreclosure of meritorious claims in categories of litigation—civil rights, employment discrimination, government accountability, antitrust—where informational asymmetry is categorical rather than incidental. The relevant question is allocative rather than aggregate. The coherence framework does not increase total litigation cost; it reallocates the cost of epistemic uncertainty to the party in exclusive possession of the relevant information, which is also the party best positioned to reduce that cost through proportionate disclosure. That reallocation is satisfies both procedural logic and Rule 1's mandate that the Federal Rules secure the "just" determination of every action. The good-faith pleading requirement and the proportionality constraint ensure that qualifying complaints remain a narrow category: courts retain full discretion to deny pre-dismissal discovery when the request is not targeted to the specific informational gap, or when the alleged asymmetry reflects insufficient investigation rather than positional inequality.[119]

CONCLUSION

Sequencing, Legitimacy, and the Architecture of Uncertainty

[119] On the proportionality of targeted pre-dismissal discovery, see Fed. R. Civ. P. 26(b)(1) (listing "the parties' relative access to relevant information" as a proportionality factor); MANUAL FOR COMPLEX LITIGATION (FOURTH) § 11.422 (authorizing early, targeted discovery to resolve threshold legal questions). On the empirical magnitude of the access-to-justice problem, see Gelbach, *Locking the Doors to Discovery? Assessing the Effects of Twombly and Iqbal on Access to Discovery*, (supra note 4), at 2313–18 (2012) (estimating that Twiqbal increased dismissal rates by approximately 8% overall, with substantially higher increases in civil rights cases). The law-and-economics literature does identify genuine costs from expansive discovery. See Louis Kaplow & Steven Shavell, *Accuracy in the Adjudication of Claims*, 14 J. LEGAL STUD. 255, 261–67 (1985) (developing an efficiency framework under which discovery costs are weighed against accuracy gains); Louis Kaplow, *The Value of Accuracy in Adjudication: An Economic Analysis*, 23 J. LEGAL STUD. 307, 341–49 (1994) (arguing that pre-trial mechanisms should minimize the sum of error costs and procedure costs). The coherence framework is consistent with this literature: it does not authorize open-ended discovery but limits targeted pre-dismissal disclosure to cases satisfying three conjunctive conditions, constraining the qualifying category to those in which accuracy gains from disclosure predictably exceed attendant costs. The aggregate social cost of systematically foreclosing meritorious claims in civil rights, employment, and government accountability litigation exceeds any plausible estimate of marginal discovery costs imposed by targeted pre-dismissal disclosure in structurally asymmetric cases. See Gelbach, (*supra* note 4), at 2318–21.

Plausibility doctrine has acquired a constitutional dimension that the debate over notice versus fact pleading has consistently understated. When a procedural rule conditions access to discovery on prior possession of evidence that only discovery can produce, it does not merely burden plaintiffs—it severs the connection between substantive right and remedial process on which the enforceability of federal law depends. Civil rights statutes, antitrust law, and First Amendment doctrine are written on the assumption that adjudication will generate, through structured evidentiary exchange, the factual record on which liability turns. A pleading standard that forecloses that exchange in precisely those categories of cases where the relevant facts are least accessible does not screen claims; it extinguishes them. The epistemic cost of the current regime is borne asymmetrically, by parties whose substantive rights Congress has expressed the clearest interest in protecting. That is not a tolerable incidental effect of a threshold screening mechanism. It is a structural subversion of the remedial design that the Federal Rules were built to serve.

National Rifle Association v. Vullo supplies both a doctrinal anchor and a limiting principle. By holding that alternative explanations defeat plausibility only when they "clearly rule out" the inference of unlawful conduct, [120] the Court implicitly adopted the coherence conception of plausibility over the probability conception—without overruling *Twombly*, resurrecting *Conley v. Gibson*, [121] or mandating wholesale doctrinal revision. *Vullo*'s limitation is equally significant: the Court located its holding in the First Amendment retaliation doctrine, leaving unresolved whether the principle extends across the full domain of asymmetric litigation. The circuit split over "obvious alternative explanations" persists in civil rights, antitrust, and government accountability cases because lower courts have treated *Vullo* as context-specific rather than as a general pleading principle. [122] The coherence framework developed here generalizes what *Vullo* left implicit: that informational asymmetry, not doctrinal category, is the operative variable, and that a pleading standard calibrated to the epistemic position of the plaintiff rather than to the substantive area of law is the only reading of *Twombly* and *Iqbal* consistent with their text and with Rule 1's mandate of just adjudication. [123]

The transnational analysis in Part II establishes an independent doctrinal foundation: the coherence standard rests on a constitutional floor shared across legal systems that are otherwise deeply different in procedural design. Italy's Constitutional Court, elaborating the *diritto alla prova* under Articles 24 and 111

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[120] 602 U.S. at 11–13 (2024) (holding that courts may not credit benign explanations at the pleading stage unless they clearly negate the inference of unlawful conduct).

[121] 355 U.S. 41, 45–46 (1957) (articulating the "no set of facts" formulation later abrogated by Twombly).

[122] *See*, e.g., Matrixx Initiatives, Inc. v. Siracusano, 563 U.S. 27, 45–46 (2011) (rejecting dismissal where competing inferences were possible but not dispositive at the pleading stage); Biro v. Conde Nast, 807 F.3d 541, 545–46 (2d Cir. 2015) (holding that alternative explanations defeat plausibility only when they render the plaintiff's inference unreasonable); In re Pre-Filled Propane Tank Antitrust Litig., 860 F.3d 1059, 1064–65 (8th Cir. 2017) (en banc) (emphasizing that plaintiffs need not disprove all lawful explanations at the pleading stage). See also Scott Dodson, *New Pleading, New Discovery*, (supra note 117), at 60–66 (analyzing the interaction between plausibility and discovery sequencing).

[123] Fed. R. Civ. P. 1 (directing that the Rules "be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding").

of the Constitution, has held that procedural rules become unconstitutional when they render the right of defense illusory by cutting off access to the factual means necessary to sustain a claim. The 2022 civil justice reform operationalizes that principle by conditioning early dismissal on a threshold calibrated to what the plaintiff can reasonably know before evidentiary exchange. The structural parallel with the American due process doctrine under *Mathews v. Eldridge* is not incidental: where a pleading rule forecloses the only available evidentiary route to establishing a violation, the risk of erroneous deprivation becomes structurally certain rather than statistically elevated. The comparative convergence on this point reflects the structural character of the constraint, not the superiority of any particular system: procedure may not purchase efficiency at the price of systematic substantive exclusion. That principle, instantiated in the coherence standard's treatment of informational asymmetry, is what makes the framework applicable across the full range of asymmetric litigation rather than confined to any single doctrinal category.

Every term the Court leaves the circuit split unresolved is a term in which plaintiffs in the Fourth and Ninth Circuits are systematically screened out of federal court on grounds that plaintiffs in the Second, Eighth, and D.C. Circuits are not, and in which the Federal Rules' guarantee of transsubstantive uniformity—the commitment that procedural outcomes should not vary with geography or the identity of the presiding circuit—is openly violated. The Court already has the doctrinal resources to resolve the conflict. *Vullo* supplies the vehicle; *Twombly* and *Iqbal*'s text supplies the warrant. What the coherence framework supplies is the analytical structure needed to make explicit what the Court's most careful pleading decisions have always implied: that plausibility is a test of narrative logic, not a prediction of factual outcome; that epistemic risk belongs with the party best positioned to reduce it through disclosure; and that procedure must not render substantive rights illusory by foreclosing the evidentiary means necessary to establish them. The choice before the Court is not between rigorous screening and permissive access. It is between a pleading standard that operates as a disciplined threshold and one that operates, in the categories of litigation that matter most, as a merits bar imposed before the evidence is in.