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The Gettier Problem and Legal Proof

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THE GETTIER PROBLEM AND LEGAL PROOF

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Abstract

This article explores the relationships between legal proof and fundamental epistemic concepts such as knowledge and justification. A survey of the legal literature reveals a confusing array of seemingly inconsistent proposals and presuppositions regarding these relationships. This article makes two contributions. First, it reconciles a number of apparent inconsistencies and tensions in accounts of the epistemology of legal proof. Second, it argues that there is a deeper connection between knowledge and legal proof than is typically argued for or presupposed in the legal literature. This connection is illustrated through a discussion of the Gettier problem in epistemology. It is argued that the gap or disconnect between truth and justification that undermines knowledge in Gettier cases also potentially undermines the success of legal verdicts.

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I. INTRODUCTION

Legal proof is an epistemic endeavor, and recent scholarship focusing explicitly on law's epistemic dimensions has demonstrated the rich and relatively unexplored philosophical ground underlying legal proof and the law more generally.[1] Although the need for better understanding of law's epistemology is clear, the relationship between juridical proof and fundamental epistemic concepts such as knowledge and justification is decidedly less so.

Consider a number of relatively uncontroversial propositions in contemporary epistemology. Knowledge and epistemic justification are kinds of cognitive successes or achievements. An agent who has a *justified* belief has performed better epistemically—or is better situated epistemically—than one who has an unjustified belief. And someone who *knows* something is in an even better epistemic position than someone with a mere justified belief: the person who knows something has a *true* belief, while the person with a justified belief may not.

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[1] *See, e.g.*, LARRY LAUDAN, TRUTH, ERROR, AND CRIMINAL LAW: AN ESSAY IN LEGAL EPISTEMOLOGY (2006); H.L. HO, A PHILOSOPHY OF EVIDENCE LAW (2008); Mike Redmayne, *Exploring the Proof Paradoxes*, 14 LEGAL THEORY 281 (2008); Michael S. Pardo & Ronald J. Allen, *Juridical Proof and the Best Explanation*, 27 LAW & PHIL. 223 (2008); Michael S. Pardo, *The Field of Evidence and the Field of Knowledge*, 24 LAW & PHIL. 321 (2005); Duncan Pritchard, *Testimony*, *in* 1 THE TRIAL ON TRIAL (Anthony Duff et al. eds., 2004); Ronald J. Allen & Brian Leiter, *Naturalized Epistemology and the Law of Evidence*, 87 VA. L. REV. 1491 (2001); Scott Brewer, *Scientific Expert Testimony and Intellectual Due Process*, 107 YALE L.J. 1535 (1998).

Moreover, the person who knows may even be in a better epistemic position than someone with a mere justified true belief—which may, in Gettier situations,[2] be true in an accidental, fortuitous, or otherwise problematic way, while the knower's true belief is appropriately connected to its justifying conditions. In sum, the knower's doxastic state is connected to the world in a way that the mere justified-true-believer's may not be, which is itself connected in a way that the mere justified-believer's may not be, which is itself connected in a way that the mere believer's may not be.

How exactly, if at all, do these propositions relate to legal proof? To what extent is knowledge the goal or aim of legal verdicts? To what extent is epistemic justification the goal or aim? This article takes up these broad questions and related issues. The literature analyzing the epistemology of legal proof reveals a confusing array of seemingly inconsistent possibilities. My primary goal in this article is to examine these possibilities in a systematic way in an attempt to clarify the relationship between legal proof, epistemic justification, and knowledge. I argue that there is a deeper connection between knowledge and legal proof than is typically assumed or presupposed in theoretical accounts of legal proof. I illustrate this connection through a discussion of the Gettier problem in contemporary epistemology[3] and what it reveals about the epistemic goals or aims of legal proof.

In Sections II and III, I outline five possible theoretical accounts of the epistemic goal or aim of legal proof and then reconcile a number of potential inconsistencies and tensions among

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[2] *See* Edmund L. Gettier, *Is Justified True Belief Knowledge?*, 23 ANALYSIS 121 (1963).

[3] *Id.*

the accounts. In Section IV, I turn to the Gettier problem. In his famous article, Edmund Gettier provides examples demonstrating that justified true beliefs will not always be sufficient for knowledge.[4] I construct and analyze similar law-related examples to argue that the gap or disconnect between truth and justification that undermines knowledge in Gettier cases may also undermine the epistemic success of legal verdicts. This similarity provides support for the idea that the goal or aim of legal proof is knowledge (or something approximating knowledge) rather than less epistemically demanding goals. Finally, in Section V, I consider and respond to a number of potential objections.

II. ACCOUNTS OF THE EPISTEMOLOGY OF LEGAL PROOF

Various possible relationships exist between knowledge, its conventionally understood components (justified, true, belief), and legal proof. Perhaps legal verdicts require knowledge or aim at knowledge as their goal. Perhaps instead they require or aim at justification, or justified belief, or true belief, or justified true belief, or mere belief, or some other propositional attitude instead of belief, such as acceptance (by itself or in combination with another component). I distinguish below between five different accounts of this relationship, each of which has been discussed (favorably, negatively, or both) by scholars. They are presented in order from one that places the least epistemic demands on legal verdicts to one that places the most demands, with three intermediate accounts. Each position offers an account of when a legal verdict has succeeded in meeting its epistemic requirements and when it has failed.

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[4] *Id.*

1. Belief or Acceptance by the Fact Finder: The "Belief" Account

Under this account, the focus is exclusively on the propositional attitudes of the fact finder. The goal of the trial is merely to persuade the fact finder to believe, to accept, to judge, or otherwise to endorse that certain disputed propositions have been proven. Although the nature of this mental state or act of fact-finding is a matter of dispute and philosophical significance,[5] its exact nature does not matter for purposes of my discussion. What matters is simply that there is some cognitive endorsement by the fact finder. Under this account, a disputed fact is "proven" under the law when, regardless of the evidence, the judge or jury has been persuaded to endorse that fact (as proven) for purposes of the verdict. Verdicts do not require nor do they aim at epistemic justification or knowledge. Accordingly, a verdict is not defective, unjust, or otherwise problematic if it fails to rise to the level of either justification or knowledge. Moreover, the level of epistemic support or evidence for the disputed propositions is irrelevant except to the extent it may persuade particular fact finders.

Although there is some support for this radical subjectivist notion of proof, it has been recently and effectively criticized by Jordi Ferrer Beltrán.[6] The most serious defect with this view is that it cannot account for the notion of legally insufficient evidence. A disputed

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[5] *See* Jordi Ferrer Beltrán, *Legal Proof and Fact Finders' Beliefs*, 12 LEGAL THEORY 293 (2006); L. Jonathan Cohen, *Should a Jury Say What It Believes or What It Accepts?*, 13 CARDOZO L. REV. (1991).

[6] *See* Ferrer, *supra* note 5.

proposition is "proven" under the law only "if there is sufficient evidence in its favor," and the evidence is sufficient when the disputed proposition "is acceptable as true."[7] The *acceptability* of a proposition (as opposed to mere belief or acceptance of it) takes us into the realm of epistemic evaluation. Abandoning the belief account, therefore, is to acknowledge that legal verdicts aim at *some* epistemic goal. A legal verdict that fails to achieve this goal misses its mark and fails, regardless of the particular beliefs or acts of acceptance that comprise or underlie it.

Recognizing this epistemic aspect, however, leaves open a number of additional possibilities.

2. Belief or Acceptance plus Some Level of Epistemic Support: The "Belief-plus" Account

Under the belief-plus account, the goal of the trial is to persuade the fact finder to endorse disputed propositions only when there is adequate epistemic support. A fact is considered proven under the law if the judge or jury has been persuaded to endorse that fact as proven for purposes of the verdict and it has an adequate level of epistemic support. Under this view, a legal verdict is adequate and has achieved its goal when the fact finders' conclusions meet the requisite epistemic level.

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[7] *Id.* at 294. In the United States, this sufficiency requirement depends on what reasonable fact finders could conclude based on the evidence and the burden of proof. *See* Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250–256 (1986) (explicating the standard for civil cases); Jackson v. Virginia, 443 U.S. 307 (1979) (explicating the standard for criminal cases).

The belief-plus account, however, does not entail that either justification or knowledge is the goal of legal proof. The epistemic support required to render verdicts adequate may not rise to a level that would render them epistemically justified, and although they may have enough epistemic support, the conclusions may be false (thus precluding knowledge). Both Mike Redmayne and Alex Stein have endorsed a belief-plus account while also explicitly denying that verdicts aim at either justification or knowledge. According to Redmayne, verdicts require some degree of epistemic support but not enough "to satisfy the degree of justification required for knowledge."[8] Redmayne is referring to civil cases under the preponderance standard, but he also discusses examples of criminal convictions that appear to be adequate despite fact finders failing to have adequate justification for knowledge.[9] Likewise, Stein acknowledges that verdicts must meet some justificatory requirement, but he argues that under the "relaxed criteria of adjudicative fact-finding," fact finders "do not even purport to satisfy the 'justified true belief' standard or similar criteria for knowledge."[10]

3. Justified Beliefs by the Fact Finder: The "Justification" Account

Under this view, the goal of the trial is for fact finders to form epistemically justified beliefs regarding disputed propositions. More specifically, a disputed fact is proven when the judge or jury has been persuaded to endorse that fact as proven for purposes of the verdict and is justified

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[8] *See* Redmayne, *supra* note 1, at 299.

[9] *See id.* at 302.

[10] ALEX STEIN, FOUNDATIONS OF EVIDENCE LAW 59 (2005).

in doing so in the sense of justification required for knowledge. Although, under this view, legal proof is now connected with a stronger form of epistemic justification, it is not necessarily connected with knowledge: fact finders may have the justification necessary for knowledge without having knowledge (e.g., if the propositions at issue are false).

Both Jordi Ferrer and H.L. Ho appear to endorse something similar to this account while also denying that verdicts aim at knowledge.[11] According to Ferrer, a juridical fact is proven when it is acceptable based on the evidence to find that fact, and acceptability "is linked to justified belief" or "to the justification of the belief that there is sufficient evidence."[12] However, he argues, truth is too strong a requirement (thus precluding a knowledge requirement) because a fact can be proven under the law and still be false (it may also be true and not proven). Similarly, according to what Ho terms his "belief-account of fact-finding," a fact finder must find a fact proven only when "one would be justified sufficiently strongly," given the standard of proof, to believe that fact based on the evidence.[13] Ho explains that this requirement does not require the fact finder to believe the proposition at issue; rather the fact finder is to form a detached "meta-

[11] *See* Ferrer, *supra* note 5; HO, *supra* note 1, at 89–99. For a discussion of the justification of legal verdicts, *see* Amalia Amaya, *Justification, Coherence, and Epistemic Responsibility in Legal Fact-Finding*, 5 EPISTEME 306 (2008).

[12] Ferrer, *supra* note 5, at 307.

[13] HO, *supra* note 1, at 93.

belief" as to whether a third party would be epistemically justified.[14] He rejects a stronger "knowledge-based" account.[15]

4. Justified True Beliefs by the Fact Finder: The "JTB" Account

The JTB account provides an additional possibility between a justification account and a knowledge account. Under the JTB account, the goal or aim of the trial verdict is for fact finders to form justified true beliefs. In other words, the JTB account builds in truth as an additional criterion by which to measure the cognitive success of the fact finders' conclusions and makes this criterion part of the aim of legal verdicts.[16] Thus a verdict based on justified beliefs will still have failed its aim if it turns out to be false.[17] This account stops short of requiring knowledge, however, in that it does not require whatever further conditions may be required to turn a JTB into knowledge—for example, an appropriate connection between justification and truth to avoid Gettier-style counterexamples.

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[14] *Id.* at 95–96.

[15] *Id.* at 87–89.

[16] This criterion could also be added to the belief and belief-plus accounts to create a true-belief account and a true-belief-plus account (without a justification requirement). I discuss these possibilities in the next section.

[17] *Cf.* Glanville Williams, *A Short Rejoinder*, CRIM. L. REV. 103, 104 (1980) ("There is a miscarriage of justice whenever an innocent man is convicted.").

Eugenio Bulygin appears to endorse such an account.[18] Ho also attempts to build a truth component into his belief account that would transform it into something like a JTB account.[19]

5. Knowledge by the Fact Finder: The "Knowledge" Account

Under this account, the goal or aim of the trial verdict is for fact finders to gain knowledge. This position builds on the previous account in the following way: verdicts still aim at justified true beliefs, but even a verdict based on JTBs will have missed the mark or failed its goal in cases in which the fact finders' JTBs fail to qualify as knowledge (e.g., in Gettier situations).

Anthony Duff, Lindsay Farmer, Sandra Marshall, and Victor Tadros have recently endorsed a knowledge account for criminal cases.[20] According to Duff and colleagues, "[t]he

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[18] Eugenio Bulygin, *Cognition and Interpretation of Law*, *in* COGNITION AND INTERPRETATION OF LAW 20 (L. Gianformaggio & S. Paulson eds., 1995) ("for punishing Tom the law requires not only that the sentence 'Tom killed Peter' be true, but also that there be sufficient evidence for the truth of this sentence.")

[19] HO, *supra* note 1, at 99. Ho attempts to derive this requirement from the nature of beliefs (i.e., that beliefs aim at truth); however, he acknowledges that it is unclear whether such an argument can succeed. *Id.*

[20] *See* 3 ANTHONY DUFF ET AL., THE TRIAL ON TRIAL: TOWARDS A NORMATIVE THEORY OF THE CRIMINAL TRIAL 87–91 (2007); *see also* Pardo, *Field of Evidence*, *supra* note 1, at 322–323 (endorsing a knowledge account for verdicts). A number of scholars have explicitly rejected a knowledge account. *See* Redmayne, *supra* note 1; Stein, *supra* note 10; Ferrer, *supra* note 5; HO,

trial aims at a verdict that is both true and justified by the adequate and legitimate evidence presented at the trial,"[21] but that is not all. Even in cases in which a verdict is both "true and warranted or justified by the available evidence," the verdict will be inadequate in cases of "fortuitously true belief" that does not constitute knowledge.[22] To support this view, they present a Gettier-style example in which someone is convicted accurately based on tainted or unreliable evidence that appeared to be sufficient when presented.[23] They conclude that a defendant in this situation is entitled to have her conviction overturned.[24] Under a knowledge account, verdicts aim at something beyond JTBs; they aim at knowledge or something approaching knowledge in the connection between justification and truth.

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supra note 1; DOUGLAS WALTON, WITNESS TESTIMONY EVIDENCE: ARGUMENTATION, ARTIFICIAL INTELLIGENCE, AND LAW (2007); Roy Sorensen, *Future Law: Prepunishment and the Causal Theory of Verdicts*, 40 NOÛS 166 (2006).

[21] DUFF ET AL., *supra* note 20, at 91.

[22] *Id.*

[23] *Id.*

[24] *Id.* I previously also endorsed a knowledge account on similar grounds: that a justified true verdict may be true by mere coincidence without any connection to the justifying evidence. *See* Pardo, *Field of Evidence*, *supra* note 1, at 322–323.

III. RECONCILING ASPECTS OF THE ACCOUNTS

The accounts outlined above differ on a number of key points regarding the relationships between legal proof, knowledge, and the various components of knowledge. As discussed below, some of these differences may be explained by a focus on either (1) different aspects of or perspectives on legal proof, or (2) different conceptions of the epistemic concepts.

One difference in the accounts is already noted above—that is, the appropriate propositional attitude of legal proof. Is it beliefs, acceptances, or something else? For my purposes, the exact nature of this component is less important for evaluating the epistemology of proof than what is common among the differing accounts. What they each share is some cognitive endorsement of a proposition as proven by the fact finder. In their act of judging a fact as proven, fact finders *endorse* that proposition as proven for legal purposes. With this endorsement, they undertake a *commitment* to allow legal consequences to follow from their decision.[25] It is these endorsements on which an analysis of the epistemology of legal proof ought to focus, whether conceived as belief or as acceptance.[26]

A second difference concerns the role of truth. Three of the accounts reject truth as part of the goal of proof, and two accounts incorporate truth as a necessary part of that goal. Under a charitable reading of the five accounts, however, this focus appears more apparent than real.

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[25] *See* ROBERT B. BRANDOM, MAKING IT EXPLICIT 157–163 (1998).

[26] Moreover, beliefs and acceptances often converge. They may diverge, however, in cases with mandatory evidentiary presumptions.

On the one hand, there is an obvious sense in which we care about the truth or falsity of legal verdicts. Justice requires truth, and false verdicts are a form of injustice; this, after all, is why we care about proof and evidence in the first place. So it seems, in this sense, absurd to reject truth as the goal or aim of proof. On the other hand, however, we recognize that truth in every case is an impossible goal to achieve and that mistakes will inevitably be made. Instead, we require a level of proof below certain truth that allocates the risk of errors among the parties and, in tandem with other evidentiary rules, attempts to minimize total errors or types of errors. In this sense, the goal or aim of proof is to satisfy the proof rules—including the standard of proof that sets the appropriate level of epistemic support required for facts to be proven—and it would be absurd from this perspective to require a further proof requirement of truth. I refer to this latter sense as the *internal* or *probatory* perspective and I refer to the first sense as the *external* or *material* perspective.[27]

The differences among the accounts regarding truth may be explained by focusing on these shifting perspectives. The accounts that reject truth appear to be focusing solely on the internal, probatory perspective. From this perspective, all that can be expected of fact finders epistemically is that they perform their function in accord with the proof rules—that they find a fact to be proven if the evidence rises to the epistemic level set by the proof standard and that they refuse to find a fact proven if it does not.[28] From this perspective, an error has been made

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[27] For a discussion of material and probatory adjudicative errors, *see* LAUDAN, *supra* note 1, at 12–13.

[28] The three accounts differ on what that level is—belief, belief-plus, or justification.

when fact finders conclude that a fact has been proven and the evidence does not rise to the appropriate epistemic level, or vice versa.[29] From this perspective, there is nothing more to it. This is the perspective taken recently by Justice Antonin Scalia in a recent dissenting opinion, in which he rejected the idea that criminal defendants (even those sentenced to death) have a freestanding constitutional right to challenge their convictions through habeas corpus by proving their innocence when their convictions were supported by sufficient evidence and there were no other constitutional violations.[30] By focusing solely on the probatory perspective, Justice Scalia

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[29] I am putting aside issues of jury nullification, in which an acquittal may not be an error when the evidence establishes proof beyond a reasonable doubt.

[30] *See In re* Davis, 130 S. Ct. 1, 2–3 (2009) (Scalia, J., dissenting) ("This Court has *never* held that the Constitution forbids the execution of a convicted defendant who has had a full and fair trial but is later able to convince a habeas court that he is 'actually' innocent."). The dissent came from an order directing a federal district court to hold an evidentiary hearing on whether a state prisoner, currently sentenced to death, could prove his innocence. Whether state prisoners can challenge their convictions through federal habeas review solely on grounds of "actual innocence" is technically an open question for the Supreme Court. *See* District Attorney's Office v. Osborne, 129 S. Ct. 2308 (2009); House v. Bell, 547 U.S. 518, 555 (2006). Under current law, federal courts may grant habeas relief to state prisoners only when their convictions are "contrary to, or an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1). Thus, Justice Scalia argued, Davis cannot get relief even if the district court concludes that Davis has clearly proven his innocence.

appears to conclude that material errors (even those clearly apparent after the fact) are not by themselves constitutionally significant.

From the external, material perspective, however, there is more to the story. Even if everything goes right in a probatory sense, errors in a material sense can and will be made. The two accounts that require truth appear to be focusing on *both* the probatory and the material perspectives. In addition to the probatory requirements, they appear to focus on the fact that even when things go right in a trial from a probatory perspective, they may go wrong materially. And when this occurs—even if neither the fact finder nor the legal system can be *blamed* for this error[31]—there is still an important sense in which the fact finder, the system, and the verdict have failed.[32] The two accounts that require truth are focusing on this external, material perspective in

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Justice Thomas joined the dissent. Justice Stevens (joined by Justices Ginsburg and Breyer) concurred in the order and argued that Davis may still get relief. The case is likely to return to the Supreme Court if Davis's proof is persuasive. The analysis above regarding the probatory and material perspectives clarifies the disagreement among the justices.

[31] *Cf.* John Hawthorne & Jason Stanley, *Knowledge and Action*, 105 J. PHIL. 571 (2008) (arguing that knowledge provides the norm for action but that some failures to comply are excusable or less blameworthy than others).

[32] Even when legal decision rules are conceptualized probabilistically (e.g., proof beyond a 0.5 likelihood in civil cases or beyond a 0.9 likelihood in criminal cases), a finding is materially accurate when it is 100 percent accurate in the sense that there is a finding when the disputed proposition is true and no finding when it is false.

which a verdict is successful when it is true (as well as justified) and include this as part of the verdict's goal or aim. A focus on both perspectives forms the basis of a recent concurrence by Justice John Paul Stevens, in which—in response to Justice Scalia's dissent—he argues that convicted criminal defendants who cannot demonstrate a probatory error of constitutional significance or other constitutional error may still be able to seek habeas relief by proving material innocence.[33]

A third difference in the accounts concerns epistemic justification. There appears to be widespread disagreement in the accounts regarding whether and the extent to which justification is part of the goal or aim of legal proof. Putting aside the untenable mere-belief account, the disagreement among the other four accounts appears again to be more apparent than real. Here the disagreement can be reconciled by focusing on the concept of justification rather than aspects of legal proof.[34] The other four accounts all recognize that legal proof aims at some level of epistemic support beyond belief; they disagree about whether that level requires "justification."[35] Those who reject that it does (and accept the belief-plus account) appear to accept a high,

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[33] *See In re Davis*, *supra* note 30, at 1–2; *see supra* note 30.

[34] By contrast, possible disagreements with truth can be reconciled by holding truth constant and focusing on the legal proof side. My analysis assumes a minimally realist conception of truth in the sense that the truth transcends the evidence and what occurs at trial.

[35] Much of this disagreement may have to do with the fact that there is no generally accepted account of epistemic justification. *See* WILLIAM P. ALSTON, BEYOND "JUSTIFICATION": DIMENSIONS OF EPISTEMIC EVALUATION (2005).

relatively invariant notion of justification. If, by contrast, we recognize a more flexible notion of justification that shifts depending on the context[36] or the practical issues at stake,[37] then we can recognize a sense in which legal proof requires justification.

The four accounts all appear to accept the idea that the justificatory aspect of proof involves an evaluation of whether the evidence is sufficient to satisfy the applicable standard of proof. Under a more flexible conception of justification, the proof standard provides a rule-based account of when the fact finder is epistemically justified in a given case.[38] This conception of justification is consistent with and recognizes the important connection between justification and action[39]—in high-stakes situations in which a lot depends on being wrong, higher levels of epistemic support may be necessary.[40] Thus the proof necessary to justify a civil verdict may not be as great as in criminal cases, and yet the fact finders in both cases may be epistemically justified. If one wishes to endorse a higher (or another) standard for epistemic justification and conclude that legal proof does not, therefore, require justification (or does not require it for civil cases), then so be it. The disagreement is no longer about anything having to do with legal proof.

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[36] *See* DAVID LEWIS, *Elusive Knowledge*, *in* PAPERS IN METAPHYSICS AND EPISTEMOLOGY 418 (1999).

[37] *See* JASON STANLEY, KNOWLEDGE AND PRACTICAL INTERESTS (2005).

[38] For a discussion of rules in legal proof and epistemology, *see* Frederick Schauer, *In Defense of Rule-Based Evidence Law—and Epistemology Too*, 5 EPISTEME 295 (2008).

[39] *See* Hawthorne & Stanley, *supra* note 31.

[40] *See* STANLEY, *supra* note 37.

Along with these differences among the accounts, a further point of clarification concerns a distinction between systemic and case-specific epistemic considerations. From a systemic perspective, the key epistemic consideration is the total number (and types) of material errors.[41] From this perspective, other things being equal, a proof process that produced a higher frequency of materially accurate verdicts would be epistemically superior to a system that produced a lower frequency of materially accurate verdicts (and more material errors). Therefore one criterion by which to evaluate a legal verdict is how reliable or truth-conducive the system or process is that produced the verdict.[42] From a case-specific perspective, however, individual verdicts that result

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[41] Material errors may be false positives (i.e., finding a false proposition to be proven) or false negatives (i.e., finding a true proposition to be not proven). From a systemic perspective, the relevant policy considerations concern not only minimizing total errors but also whether to prefer one type of error over another.

[42] From this perspective, it does not matter whether any individual verdict is justified. A system that produced more accurate verdicts would be superior to a system that produced fewer, even if the latter produced more verdicts that were justified. Epistemic justification is no guarantee of truth—this is one lesson of the Gettier problem—and so it is, of course, possible that a highly accurate proof system could have few justified verdicts and that a highly inaccurate system could have many justified verdicts. These possibilities, however, run counter to the basic presuppositions of evidence law and legal proof that (1) verdicts better supported by the available evidence (and thus more justified than their alternatives) are more likely to be true; and

from a generally reliable or truth-conducive system or process may still suffer from case-specific epistemic defects. Therefore an additional criterion by which to evaluate a verdict is whether a case-specific defect undermines a verdict that might otherwise satisfy the first criterion. Each perspective provides a way in which a verdict may be epistemically defective—it may have been produced through a defective proof process as a general matter or it may have been produced through a case-specific epistemic defect in an otherwise reliable process.[43]

Although the various accounts appear to be reconcilable with regard to the three traditional components of knowledge—justified, true, belief—a further disagreement exists between knowledge itself and legal proof. Here, I contend, the various positions are not reconcilable; there does appear to be a substantial disagreement among the accounts on whether knowledge—or an epistemic requirement beyond JTBs—is the goal or aim of legal proof. The

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(2) verdicts supported by better evidence (and thus more likely to be justified than verdicts based on worse evidence) are more likely to be true.

[43] By analogy, suppose the proof process were instead a mechanical test from a "guilt machine" that purported to tell us whether a particular defendant was guilty. If the machine reported a result of "guilty," the defendant could object on the ground that the test itself does a poor job of sorting guilty from innocent defendants (systemic epistemic concerns); or alternatively, the defendant could object on the ground that even if the test is generally good at identifying guilt, there was a problem in administering his test that undermined the particular result (case-specific epistemic concerns). Both appear to be legitimate challenges that a defendant could raise, either of which would undermine the epistemic success of a legal verdict.

majority position is "no" and the minority position is "yes." I attempt below to defend the minority position through a discussion of the Gettier problem.

IV. THE GETTIER PROBLEM, KNOWLEDGE, AND LEGAL PROOF

One way to explore the relationship between knowledge and legal proof is to examine the conditions for knowledge beyond JTBs and to examine whether these conditions play a role in legal proof. What has generally come to be known as the "Gettier problem" provides a useful tool for exploring these conditions and for examining their relevance for legal proof. Or so I argue below. Although the problem has been mentioned in the legal literature on a few occasions (typically in passing), its relevance to legal proof has not been subjected to sustained analysis.[44] That *it ought to be* may initially strike those on both the philosophy and the law sides of the aisle as strange for a variety of reasons.

To begin with, iterations of the problem often involve the kinds of either fanciful (e.g., fake barns, disguised animals) or mundane (e.g., coins in the pocket, stopped clocks) scenarios of which those concerned with the practical evidentiary problems of legal proof cannot easily see

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[44] Sorensen, *supra* note 20, is an exception. I discuss Sorensen's examples in the next section. For a discussion of the problem in the context of substantive criminal law, *see* Douglas N. Husak & Craig A. Callender, *Wilful Ignorance, Knowledge, and the "Equal Culpability" Thesis: A Study of the Deeper Significance of the Principle of Equality*, 1994 WIS. L. REV. 29, 44–53; and for a discussion of the problem in the context of witness testimony and hearsay evidence, *see* Michael S. Pardo, *Testimony*, 82 TUL. L. REV. 119 (2007).

the point. And even those more open to the philosophical examples may see the problem as an unlikely source of illumination for law for three additional reasons. First, the literature appears arid and academic even to some philosophers; it has taken on a life of its own with a seemingly endless array of proposals, followed by counterexamples, followed by further proposals, and further counterexamples, and so on.[45] Second, there does not appear to be much consensus regarding possible solutions; this philosophical disagreement may, in other words, make extracting lessons for the law difficult. Finally, empirical work questions the stability and reliability of the intuitions relied on in assessing the examples—thus questioning substantively whether the problem undermines claims to knowledge at all and, more important, questioning the methodology employed in analyzing the problem.[46] In this section, I attempt to answer directly

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[45] *See* William G. Lycan, *On the Gettier Problem Problem, in* EPISTEMOLOGY FUTURES 148 (Stephen Hetherington ed., 2006) ("the Gettier problem became a leading focus, if not the focus, of disenchantment with the definition-and-counterexample method of analytic philosophy. In some cases the disenchantment spilled over into scorn; there were slighting references to the 'S knows that P' crowd."). *But see* TIMOTHY WILLIAMSON, THE PHILOSOPHY OF PHILOSOPHY 179 (2007) (referring to Gettier's article as the "canonical example in the literature on philosophical thought experiments").

[46] Jonathan M. Weinberg, Shaun Nichols & Stephen Stich, *Normativity and Epistemic Intuitions*, 29 PHIL. TOPICS 429–460 (2001), *reprinted in* EXPERIMENTAL PHILOSOPHY 17 (J. Knobe & S. Nichols eds., 2008).

all but the last of these concerns. I save the last concern for the next section, in which I consider it along with a number of other possible objections.

Gettier's article undermines the position that JTBs provide the *sufficient* conditions for knowledge by providing examples in which JTBs are present but knowledge is not.[47] The two examples he provides illustrate cases where an epistemic agent infers true propositions from false premises—but false premises from which the agent has good evidence.

The first example involves an agent, Smith, who infers a true conclusion from a false conjunction:

> *Coins*: Smith believes that (a) Jones will get the job for which he has applied and (b) Jones has ten coins in his pocket. Smith has strong evidence for each proposition and he thus infers that (c) the person who will get the job has ten coins in his pocket. It turns out, however, that Smith in fact gets the job instead of Jones, and that Smith had ten coins in his pocket. Smith had little evidence for

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[47] The argument is an abductive one from specific cases to general conclusions; in other words, the examples are given epistemic priority over any general definitions or principles. Moreover, as Williamson explains, the hypothetical cases themselves (not psychological facts about intuitions) provide evidence for evaluating the counterfactual conditionals they raise. *See* WILLIAMSON, *supra* note 45, at 235. Hypothetical Gettier cases provide counterexamples to the modal claim that knowledge coincides with JTBs in all possible cases; actual Gettier cases provide counterexamples to the nonmodal claim that they coincide in all actual cases. *Id*. at 193.

thinking he would get the job and he had no idea how many coins were in his pocket. Therefore, despite the fact that Smith's belief in (c) was true and justified (based on (a) and (b)), Smith did not know (c).[48]

In the second example Smith infers a true conclusion from a disjunction:

Barcelona: Smith has strong evidence that Jones owns a Ford and no evidence regarding the whereabouts of his acquaintance Brown. Smith infers the following proposition: either Jones owns a Ford or Brown is in Barcelona. It turns out that Jones does not in fact own a Ford but that Brown, it just so happens, is in Barcelona. Smith's belief in the inferred disjunction was true and justified but was not based on knowledge.[49]

In both examples, Smith infers a true conclusion from false premises regarding Jones. Something beyond a JTB may therefore be required in order to qualify as knowledge—JTBs, in other words, sometimes fall short of knowledge. Analyzing what this "something more" might be gives rise to the Gettier problem.

Although Gettier's two examples focus on reasoning from false premises, the problem generalizes to any situation in which an agent forms a justified belief that turns out to be true by

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[48] Gettier, *supra* note 2, at 1–2.

[49] *Id.* at 2–3.

coincidence or luck.[50] More straightforward perceptual beliefs may also give rise to Gettier problems. Consider the following two examples:

> *Clock*: Smith checks his generally reliable wall clock, which displays the time as 8:29. And it is 8:29. However, the clock stopped at 8:29 last night. Smith does not know it is 8:29.[51]

> *Deer*: Smith looks out his window and sees what he thinks is a deer on his lawn. He's wrong. What he observes is a cleverly disguised dog that looks like a deer. However, there is a deer on his lawn, hiding behind some bushes. Smith does not know there is a deer on his lawn.[52]

Clock and *Deer* share important similarities with *Coins* and *Barcelona*. In all four cases, Smith's beliefs are justified despite misleading evidence: the evidence regarding Jones in *Coins* and *Barcelona*, the reliability of the clock in *Clock*, and the disguised dog in *Deer* are, in an

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[50] More specifically, Gettier cases often involve instances of bad luck (undermining justification) followed by good luck (making the belief true). *See* Linda Zagzebski, *The Inescapability of Gettier Problems*, 44 PHIL. Q. 65 (1994). For a more developed and nuanced discussion of the varieties of luck in epistemology, *see* DUNCAN PRITCHARD, EPISTEMIC LUCK (2005).

[51] Lycan, *supra* note 45, at 154; I. SCHEFFLER, CONDITIONS OF KNOWLEDGE (1965).

[52] Lycan, *supra* note 45, at 154; R.M. CHISOLM, THEORY OF KNOWLEDGE (1966).

important sense, unrelated to Smith's true beliefs—they have little or nothing to do with *why* the beliefs are true. Beyond such accidental connections between misleading evidence and the truth of Smith's beliefs, the Gettier problem is broader still. A justified belief may have an appropriate causal connection between evidence and truth and still give rise to a Gettier problem:

> *Fake Barns*: Smith is driving through Fake Barn County. He passes a barn and comes to believe that the barn he has just passed is in fact a barn. And it is. But it is the only real barn in a county filled with barn facades constructed to fool passing motorists. Smith has good reasons for believing it is a barn—he knows what barns look like and he has no idea he is in Fake Barn County (or that there even is such a thing). Yet he does not know that it is a barn.[53]

Although there is a direct causal connection between a barn, Smith's perception of a barn, and Smith's justified true belief, Smith is "Gettier-ized." Had he perceived any other barn in the area, he would just have easily formed a false belief, and, because of this luck, Smith does not know.

The general disconnect between evidence and truth in the examples prompted a search for the appropriate epistemic connection, which has fostered the voluminous literature.[54] Philosophers have taken a variety of tacks to try to resolve this disconnect between evidence and

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[53] Alvin I. Goldman, *Discrimination and Perceptual Knowledge*, 73 J. PHIL. 771 (1976).

[54] For a good overview of the literature on the Gettier problem, *see* Lycan, *supra* note 45.

truth: adding a fourth condition, strengthening justification to ensure an appropriate connection with truth,[55] stipulating that one not be Gettier-ized, and denying the intuition and claiming that Smith does know.[56] My point is not to foray into these debates further but rather to step back and show how the conceptual gap between justification and truth opened by the Gettier problem can illuminate legal proof.

This gap can be examined by constructing a number of legal-proof-based examples of the problem and examining whether they undermine or cause problems for otherwise accurate and justified legal verdicts. Consider the following example:

> *Framed Defendant*: The police arrest a motorist and plant drugs in his car. He is convicted at trial of illegal possession based solely on testimony from the arresting officers and the planted drugs. As it turns out, the defendant did have illegal drugs in his car at the time that never were discovered. The verdict that the defendant possessed drugs is therefore both true and justified (that is, the evidence at the time of the trial is sufficient to establish a conviction beyond a reasonable doubt), but the truth and the justifying evidence are disconnected. The truth of the verdict is purely coincidental or accidental.[57]

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[55] *See* Zagzebski, *supra* note 50.

[56] *See* Lycan, *supra* note 45.

[57] *See* Pardo, *Field of Evidence*, *supra* note 1, at 322–323. As in Gettier's examples, the legal examples assume we know the truth. One objection raised during a presentation of an early

Does the verdict in this example achieve its aim or goal? I think it does not. The disconnect between the evidence and the truth renders the verdict insufficient. If this conclusion is correct, then it renders the knowledge account of verdicts more plausible. It suggests that whatever is required for *knowledge* beyond JTBs is also required for legal verdicts to achieve their goal.

But is the conclusion correct? To see why it is, consider each of the components—truth and justification—separately. Suppose a fact finder flipped a coin to arrive at a conclusion (say, to convict a defendant), and the verdict turned out to be true. This verdict is plainly problematic

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version of this paper was that we typically never know the truth in legal settings—we only have better or worse evidence—and hence I am not entitled to this assumption. Assuming truth, however, simply allows us to reflect more clearly on the conceptual point regarding a possible disconnect between truth and justification manifested in Gettier cases; it is not an empirical claim about whether we know the truth in any actual cases nor a metaphysical claim about whether such knowledge is possible. In any event, those persuaded by this objection could reframe the examples by describing them as involving two perspectives: our own external perspective, in which we have better evidence, and the fact finders' internal one, in which they are presented with the trial evidence. In these reframed examples, my analysis would still go through in the relevant respects. The jury would arrive at the same conclusion as we do, although coincidentally; the Gettier-ized gap would now be between our justification and their justification (rather than between the truth and their justification).

because while true, the verdict is true by sheer coincidence (the fortuity of the coin flip); the evidence has nothing whatsoever to do with the verdict. Similarly, in *Framed Defendant* we have evidence that provides the basis for a verdict but that has nothing to do with the truth of that verdict. The evidence in the example is no better ground for a verdict than the coin, and the verdict is similarly problematic. Now, consider justification. As discussed in the previous section, even well-justified verdicts could be problematic from an external, material perspective (if they turn out to be false). The upshot of this is that justification alone is not sufficient to render a verdict successful.[58] Thus, if justification in *Framed Defendant* is not sufficient by itself, and the truth component is likewise insufficient standing alone—and the two components are not connected in anyway—it is hard to see how their combination can somehow render a verdict successful. The more plausible conclusion is that it is not.

Perhaps there is something extreme about the example, however, and it does not generalize. To the contrary, a couple of additional examples further illustrate that the problem applies to legal proof more generally.

> *Disjunctive Verdict*: Consider any case, criminal or civil, in which a jury is instructed that it should find a fact, X, proven if it finds one of two other facts, Y

[58] This idea appears to be at the core of Justice Stevens's concurrence in *In re Davis*. *See supra* note 30.

> or Z.[59] Now suppose: (1) the jury has enough evidence of Y to justify a finding of X and no evidence of Z; and (2) Y is false and Z is true. Here the jury's verdict finding X would be true (because Z is true) and it would be justified because the disjunction "Y or Z" is justified based on evidence of Y. Yet the evidence justifying the verdict would have nothing to do with its truth.

Disjunctive Verdict is similar to Gettier's original examples of *Coins* and *Barcelona*. Also, like *Framed Defendant*, it presents a true and justified verdict with a Gettier-ized gap between the two. Is it problematic? Yes, I contend, for the same reasons as the previous example. The verdict is true but in as much of an accidental way as a true verdict decided by coin flip. And the unconnected justification is not enough by itself to render it sufficient. Something is missing; something more is required for the verdict to achieve its goal. As with the other Gettier examples, this "something" is whatever is necessary for knowledge beyond truth and justification.

Similar conclusions apply to legal-proof examples that depend on perceptual and causal evidence (similar to *Clock*, *Deer*, and *Fake Barns*):

> *Fake Cabs*: The plaintiff files a lawsuit against the defendant, who owns and drives the only taxicab in town, claiming she was hit by the defendant's cab while

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[59] For example, suppose a jury is instructed to find the mens rea element of a crime proven if the defendant had one of two mutually exclusive mental states.

> crossing the street. She saw the cab drive away but did not see the driver. A video camera at the intersection filmed the accident, and it shows what appears to be a cab (but not the driver) hitting the plaintiff, exactly as she claimed. Now, suppose the car in the video really is the defendant's, but also that—unknown to the jury—along with his real cab there are hundreds of other cars in the town that look identical to his cab. The jury finds for the plaintiff based on the video.

The verdict is true and justified (that is, there is sufficient evidence before the jury and no evidence regarding the fake cabs), and, as with *Fake Barns*, there is a straightforward causal connection between the true conclusion and the evidence. But there is still something problematic about the verdict—the jury would have formed the same conclusion if it had been one of the hundreds of other identical-looking cars on the video. The fortuitous circumstances—that it just happened to be the defendant's cab—render the relationship between the conclusion's truth and justification accidental in a way that undermines knowledge.[60] It also, as in the previous examples, makes the verdict problematic.[61]

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[60] For a more realistic example, consider an eyewitness identification that turns out to be true, but given the conditions, the witness would have made a (false) positive identification if several other people had been presented to the witness instead.

[61] The verdict is problematic primarily because it is unsafe—that is, in a number of similar possible worlds the jury would have reached the same result and been in error.

The examples in this section reveal a sense in which legal verdicts require more than truth and justification.[62] More specifically, they show that as with Gettier cases more generally, truth and justification also need to be connected in an appropriate way. Within epistemology, this additional requirement is necessary for knowledge. Within law, this additional requirement is necessary for legal verdicts to succeed in achieving their goal or aim.

V. OBJECTIONS

This section considers four objections and the lessons to be drawn from the Gettier problem for legal proof.

Objection 1: Causation, not Knowledge

In a recent article, Roy Sorensen offers an account of verdicts that denies that just verdicts require knowledge.[63] He apparently would also reject the other possible accounts outlined in Section II. Rather, he contends that causation is a necessary condition for criminal verdicts in the sense that a verdict is just only if the verdict was caused by the underlying crime.[64] To support this conclusion he also relies on Gettier-style examples.

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[62] Alternatively, one might propose strengthening the concept of justification and concluding that these conclusions are not really justified. However, this runs the risk of collapsing justification into truth. For a discussion, *see* Zagzebski, *supra* note 50.

[63] Sorensen, *supra* note 20.

[64] *Id.* at 170.

Sorensen relies on two examples in which, he contends, causation is present, knowledge is not, and the verdict is just. The first is based on Gilbert Harman's assassination example:[65]

> *Assassination*: A civil-rights leader is murdered. Jill is a member of a sequestered jury in the case of the alleged shooter. After hearing strong evidence of guilt, Jill and the other jurors convict. While the jury is sequestered, the government issues a false press release claiming that it was a bodyguard and not the civil-rights leader who was shot.[66]

According to Sorensen, the verdict (assuming there is sufficient evidence at the trial) is just even though Jill and the other jurors did not know that the assassin killed the civil-rights leader. The verdict is just because the crime caused the verdict.[67] But, Sorensen claims, the jurors did not know because of the false report.[68] The verdict does indeed seem just, but does the example really show that Jill does not know? Although some have claimed that false evidence (such as the report) does undermine claims to knowledge even when the agent is unaware of it,

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[65] GILBERT HARMAN, THOUGHT 143–144 (1973).

[66] Sorensen, *supra* note 20, at 171.

[67] *Id.*

[68] *Id.* ("Although the jurors do not know that the assassin killed the civil rights leader . . . their verdict is still just.").

the case produces disagreement.[69] Plausibly, Jill does know.[70] The example does not unambiguously show that just verdicts do not require knowledge and thus cannot by itself bear the weight required to support Sorensen's thesis.

What about the second example? Here, Sorensen invokes *Fake Barns* to construct a similar example that provides a causal connection but in which the agents lack knowledge:

> *Fake Trials*: A jury convicts a defendant after hearing overwhelming evidence. The jurors, however, are unaware that psychologists are running fake trials in the same courthouse. Their case is the only real one, but the jurors and "jurors" in each case believe they are participating in real trials.[71]

According to Sorensen, the jury's verdict is just because it was, we assume, "caused by the crime in a normal way."[72] But because of the fake trials, the jury does not know that the defendant is guilty.[73] Thus "[j]ustice does not require knowledge."[74]

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[69] *See* Lycan, *supra* note 45.

[70] Moreover, the idea that false or misleading evidence *not presented* could undermine the epistemic success of agents will seem strange to most evidence scholars, I think, given that excluding misleading evidence is one of the main strategies for preserving the epistemic integrity of verdicts.

[71] Sorensen, *supra* note 20, at 171.

[72] *Id.*

But does this example undermine the knowledge account? I do not think so. The case is not parallel to *Fake Barns* in a way that undermines knowledge *of the relevant propositions*. No part of the jurors' epistemic task is to gain knowledge about whether or not the trial they are witnessing is real or not. Rather, it being real is a presupposition of the trial itself (much like the presupposition that the jurors are not brains in a vat). A closer analogy is *Fake Cabs*, which Sorensen's causal account would say is just but, if the analysis above is correct, is a problematic, unjust verdict. The same would be true if a jury convicts based on eyewitness testimony which is true and caused the verdict but would have been exactly the same if it had been false—for example, if several other people in the area looked exactly like the defendant. Much like a ride through Fake Barn County, the presence of so many possible defeaters undermines knowledge and renders verdicts problematic even when there is a perfect causal chain.

Moreover, the causation account also faces its own significant problems. For example, it implies that in *Framed Defendant* a verdict is just if the fact that the defendant committed the crime is what caused the police to frame him. Sorensen recognizes this possibility and so excludes verdicts based on "deviant causal chains."[75] This appears to be ad hoc, however. The more plausible analysis of *Framed Defendant* is that the Gettier-ized gap between truth and justification creates a problem for the verdict—the very same gap that creates a problem for knowledge. Finally, the causal account leads to other perverse results, most significantly that it

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[73] *Id.*

[74] *Id.*

[75] *Id.* at 172.

would exclude lots of relevant and highly probative evidence from a trial if that evidence is not itself caused by the crime.[76]

Objection 2: Problems with Other Components of Knowledge

A second potential objection might concede the force of the legal Gettier examples but reject the knowledge account because of problems regarding the components of belief or justification. For example, one might hold that knowledge requires belief and that fact finders' need only accept rather than believe the propositions expressed in their verdicts. Similarly, one might hold that knowledge requires a level of justification higher than what is required for legal verdicts. In either case, one might therefore reject knowledge as the aim or goal of proof for these reasons.

I concede this possibility for those who hold these specific conceptions. My focus is on establishing that an appropriate connection among (1) fact finders' conclusions (however conceived), (2) the epistemic support they require, and (3) their truth, matters for legal proof. This connection arises in non-Gettier cases and is missing in Gettier cases. The verdicts of legal fact finders achieve an additional level of cognitive success when they possess this connection, and this additional requirement matters for legal proof. If verdicts fail to be knowledge for other reasons, then so be it. One can, in that case, employ some other concept (e.g., "knowledge-like")

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[76] His theory would exclude any "forward-looking" evidence. *See* Judith Jarvis Thomson, *Liability and Individualized Evidence*, 49 LAW & CONTEMP. PROBS. 199 (1986); *see also* Redmayne, *supra* note 1, at 296 (noting that Sorensen's theory is problematic because it would exclude motive evidence).

if one accepts these other conceptions.[77] The connection between truth and evidence (justification) present in non-Gettier cases is what matters, and this connection is better captured by an account of legal proof that requires knowledge or something approximating knowledge than by the other possible accounts.

Objection 3: Against Conceptual Analysis

A third possible objection is on methodological grounds—one might object to the use of intuitions about hypothetical Gettier cases to reveal insights about knowledge or legal proof. Support for this objection might come from the provocative article by Jonathan Weinberg, Shaun Nichols, and Stephen Stich reporting some empirical evidence for the notion that people from different backgrounds differ in their reactions to whether a Gettier example presents a case of

[77] An analogy with science may be helpful. Well-established scientific facts or theories may fail to qualify as "knowledge" under some epistemological theories or conceptions of knowledge, but this does not render them epistemically equivalent to baseless conclusions or mere conjecture. Nor does it render a concept of "scientific knowledge" useless for the philosophy of science or other theoretical endeavors. Likewise, even if legal proof fails to generate genuine knowledge as that concept is understood by some (many) epistemologists, this neither reduces legal judgments to the level of guesses or conjecture, nor does it render a concept of "legal knowledge" theoretically useless for the philosophy of law.

knowledge.[78] (For example, in response to their survey, "East Asian" subjects were more likely to conclude that a person in a Gettier situation "really knows" rather than "only believes," and "Western" subjects were more likely to conclude the reverse.) In short, does reliance on judgments about possible cases undermine the analysis in this article?

I do not think so. As noted above, my analysis is consistent with differing conceptions of knowledge and its components. One plausible explanation for widespread differences in responses to Gettier examples would be that people are employing different conceptions (or different concepts) of knowledge or, more generally, different conceptions of successful cognition.[79] Independent of whether these are really cases of *knowledge*, the Gettier problem reveals a potential gap between truth and justification—that is, that truth plus justification does

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[78] *See* Weinberg, Nichols & Stich, *supra* note 46. The simple fact that there is disagreement about the examples does not by itself undermine the examples as sources of evidence. For a discussion of this point, *see* WILLIAMSON, *supra* note 45, at 192. For example, there is often disagreement among eyewitnesses, but eyewitness testimony remains an important source of knowledge.

[79] *See* Lycan, *supra* note 45; Frank Jackson, *Book Review: Experimental Philosophy (Knobe & Nichols eds., 2008)*, NOTRE DAME PHIL. REV. (2008). For an alternative explanation of disagreement about Gettier examples, *see* WILLIAMSON, *supra* note 45, at 183–190, who suggests that it may have to do with having a better or worse classificatory ability to apply the relevant concepts. He draws an analogy to law students, who learn an ability to apply legal concepts more successfully than those without legal training.

not insulate a conclusion from being correct by accident.[80] This possibility is what the examples reveal and it is one, I argue, that matters for legal proof. If it matters for legal proof, then this conclusion stands regardless of other intuitions about the examples.

Now, perhaps there is also disagreement about whether this gap does matter for legal proof—that is, perhaps we disagree about whether this gap, when present, is a problem for legal verdicts. I contend that it is: verdicts true by pure accident are problematic, and non-Gettier-ized verdicts are better and more just than Gettier-ized ones.[81] I think this account better captures the aims or goals of legal proof than do accounts that deny this aspect. Perhaps there is widespread disagreement regarding this conclusion. But if so, then this would still not necessarily vindicate any of the other accounts considered in Section II. Rather, it would open up space for normative arguments about what the aims or goals of proof should be.

Objection 4: Harmless Error?

Perhaps taking the above invitation, one might object that the verdicts in the legal examples are not a problem. First, one might contend that if a verdict is true, the verdict has achieved its goal. Moreover, any possible error would be harmless. But we do recognize problems with these verdicts, and the errors are not harmless. A verdict obtained by a coin flip that happens to be true would plainly be a problem. Nor would such a verdict be harmless error. Due process requires

[80] *See* Jackson, *supra* note 79.

[81] They are better because they are safer. *See supra* note 61.

that verdicts must also be supported by sufficient evidence put before the fact finder.[82] And harmless-error analysis depends on what a reasonable fact finder could conclude based on the evidence.[83] If there is insufficient evidence before a fact finder at a trial, the error would not be harmless (regardless of what else we might know about the case). The verdict would have failed its epistemic aim or goal.

Additionally, one might concede such a justification requirement (in addition to truth) but deny an additional requirement that verdicts be non-Gettier-ized. But problems arise here as well. If the evidence that satisfies a sufficiency (justification) requirement is only accidentally connected with the truth of a verdict, then something is wrong with the verdict.[84] This is most clear to see with *Framed Defendant*—not only is the (coincidentally true) verdict a problem; the error is not harmless. If the police-manufactured evidence is removed from the case (which, by hypothesis, was all of the inculpatory evidence), then the error would not be harmless because no reasonable fact finder could have otherwise convicted. This is as it should be, regardless of whether the verdict was true.[85]

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[82] *See* Jackson v. Virginia, 443 U.S. 307 (1979).

[83] *Id.*

[84] *Cf.* DUFF ET AL., *supra* note 20, at 91 (concluding that a convicted defendant in such a situation is entitled to have the conviction reversed).

[85] A similar conclusion applies to the other legal examples. In *Disjunctive Verdict*, if we remove the evidence from the false side of the disjunct, there is now insufficient evidence to support a conviction. Likewise, in *Fake Cabs*, if we admit evidence about the fake cabs, then the evidence

VI. CONCLUSION

In this article, I argue for a deeper connection between knowledge and legal proof than is generally presupposed in the legal literature. This deeper connection arises from the fact that whatever undermines knowledge in Gettier cases may also undermine the success of legal verdicts, although this conclusion is consistent with the idea that successful legal verdicts may fail to qualify as knowledge for other reasons. The primary focus of my analysis is on illuminating legal proof and its relationships with fundamental epistemic concepts; however, the analysis may carry some significance for epistemology as well. Within the epistemological literature, both the practical significance of the Gettier problem specifically and the value of knowledge more generally (i.e., what of practical value it adds beyond true beliefs or true and justified beliefs) are matters of dispute.[86] If, however, the goal of legal proof is non-Gettier-ized true and justified conclusions (knowledge or something approximating knowledge), then this suggests that the practical significance of both is enormous.

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is no longer sufficient. Even if the system that produced these verdicts is generally reliable, the examples present case-specific epistemic defects that undermine the verdicts.

[86] *See* JONATHAN L. KVANVIG, THE VALUE OF KNOWLEDGE AND THE PURSUIT OF UNDERSTANDING (2003); Mark Kaplan, *It's Not What You Know That Counts*, 82 J. PHIL. 350 (1985).