



SOFT EPISTEMIC PROPOSITIONS OF LAW*

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I. INTRODUCTION

General propositions of law such as “payments to creditors within ninety days of the filing of a petition in bankruptcy are voidable as preferential transfers” and singular propositions of law such as “this contract is valid”, or “John is guilty of murder”, partially explain how a disputed legal case is settled by a judge or a jury. Both types of propositions are currently at the center of jurisprudential discussions about truth in law. Assuming that it makes sense to evaluate these propositions in terms of their truth or falsity,¹ the discussion in this article centers on the nature of truth within the legal

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¹ Michael Moore refers to asking whether it makes sense or not to evaluate legal propositions in terms of their truth or falsity as “the existential question about truth in law”. See *infra* note 5.

domain. This in turn is characterized by the degree of cognitive independence which the truth-conditions (facts or states of affairs) of the propositions are claimed to possess.²

For the realist (R), the degree of cognitive independence is complete in the sense that the existence and character of at least some of the facts or states of affairs that make a proposition of law true are not constituted by, or do not depend on cognizers with the appropriate propositional attitudes (“x perceives p”, “x believes that p”, “x justifiably believes that p”, “x knows that p”). In this position, whatever appears to cognizers never determines what is actually the case.³ The idealist (I) holds the opposite view: the cognizer’s perception of the case always determines the case itself since all realms of reality are a product of the mind. The logical space between these extremes is occupied by the “minimal objectivist” (mO) and the “modest objectivist” (MO). For the minimal objectivist, whatever seems right not just to a single agent but to the relevant community determines what is right.⁴ For the modest objectivist, whatever seems right to cognizers under appropriate or ideal epistemic conditions determines what is right.⁵

The role of error in these positions represents the other side of the coin. The subjectivist (or idealist) perspective holds that a person can never be wrong about the state of affairs based on what she perceives, believes, justifiably believes, or knows to be the case. Thus, there is no room for error. In the minimal objectivist view, while it is possible for someone to be wrong, it

² See Brian Leiter’s discussion on objectivity and law in: Brian Leiter, *Law and Objectivity*, OXFORD HANDBOOK OF JURISPRUDENCE (Oxford University Press, 2002). Unlike myself, he frames the topic of cognitive independence within the issues of law and objectivity. According to Leiter, for a discourse to be semantically objective, that is, for the propositions of that discourse to be apt for an evaluation in terms of their truth or falsity, the things, facts or states of affairs referred to by such propositions must meet cognitive-independence-of-the-human-mind requirements. This may lead one to think Leiter believes that discourse can qualify for semantic objectivity if and only if the truth predicate in the domain is understood as associating discourse propositions with facts or states of affairs for which the fact that a cognizer or a community of cognizers experience a cognizing state is of no bearing for their existence and character. Nevertheless, he continues to say that cognitive independence can have degrees, which correspond to the four positions of the nature of truth to be discussed in this article.

³ Michael Moore is one champion of contemporary legal realism. His defense of realism in legal discourse can be viewed as a contemporary defense of natural law. In Moore’s approach, the truth-conditions of legal propositions include, but are not exhausted by, the truth-conditions of certain moral propositions. The former are totally mind-independent facts. See Michael Moore, *Introduction* to MICHAEL MOORE, OBJECTIVITY IN ETHICS AND LAW, COLLECTED ESSAYS IN LAW (Ashgate-Dartmouth, 2004).

⁴ This position seems to be defended by a wide range of legal positivists.

⁵ A jurisprudential project that can be seen as an instance of this position is that of Ronald Dworkin. For him, the right answers to disputed legal cases are those reached when the subject is placed under the ideal epistemic conditions such as Judge Hercules.

is not possible for the entire relevant community to be wrong. For the modest objectivist, massive error can occur and it is through devising thought experiments of a counter-factual nature that the situation can be rectified. For the strong objectivist, even the conclusions reached under appropriate or ideal epistemic conditions may be wrong and therefore we can never be sure that the metaphysical objective reality is even close to what we might think or say about it.

So, for “R”, the nature of truth in law relates a legal proposition to certain totally mind-independent facts or states of affairs. “I” holds that the nature of truth in law correlates certain legal propositions to entirely mind-dependent facts or entities. “mO” maintains that the nature of truth in law relates a legal proposition to facts or entities and its existence and character depend on the cognizing states of the members of the relevant community. “MO”’s thesis is that the nature of truth in law relates a legal proposition to certain fact(s) the existence and character of which result from an agent(s) experience of a cognizing state under ideal or appropriate epistemic conditions.

There are at least two points at which the entire spectrum of the above positions converge:

- 1) “Truth” (or the predicate “is true”) names a relationship between a proposition (of law) and the attainment of certain fact(s) or state(s) of affairs (truth-conditions), regardless whether those facts or states of affairs are social or conventional (as the legal positivist would like them to be) or whether human cognition has any bearing on the existence and character of those facts (as a natural lawyer would have it).⁶
- 2) There is a more basic assumption of the meaning of propositions known as a truth-conditional approach to meaning. In this view, the meaning of a proposition is known (understood) when what it would take for that proposition to be true or to state a truth is known. As Patterson puts it, “it is taken to be the case by many philosophers that the meaning of propositions is a function of what makes them true or false”.⁷ One obvious consequence of this approach to meaning is that when someone fails to recognize something as a truth-condition when it is one or when someone states something that figures within the truth-conditions for a proposition when it does not, that someone can be said not to know the meaning of the proposition in question. In

⁶ This is regardless of the metaphysical account of the truth-makers (facts or states of affairs) adhered to by the realist, the subjectivist, the minimal objectivist, or the modest objectivist position. For an excellent discussion on the nature or metaphysical character of the truth-conditions for legal propositions, or as she calls them, of legal facts, see Connie Rosati, *Some Puzzles about the Objectivity of Law*, 23 L. AND PHIL., 273-323 (2004).

⁷ See DENNIS PATTERSON, LAW AND TRUTH 18-19 (Oxford University Press, 2005).

other words, she is giving either a partial (incomplete) or an incorrect account of its meaning.

In view of this, we can see that truth is closely related to meaning. In fact, the entire discussion about the nature of truth rests upon the truth-conditional approach to meaning. Hence, it is important to keep the two issues apart. The semantic one consists of asking what the truth-conditions of *p* are and the mind-independence involved in enquiring about the nature of those truth-conditions.⁸ Separating these issues is analytically helpful because it makes it possible to differentiate the semantic or mind-independence level at which claims about truth in law should be placed.

In this article, I will deal with the semantic aspect, focusing on issues regarding the construction of the set of truth-conditions for legal propositions. In particular, I hold that Michael Moore's analysis of the meaning of what he calls "singular propositions of law" (SPL) in his essay entitled "The Plain Truth about Legal Truth",⁹ is flawed at least in two ways. Moore gives an inaccurate account of the meaning of SPLs in that 1) he sees the truth of certain "factual propositions" within the set of truth-conditions for SPLs, which is incorrect for reasons explained below; 2) while completely overlooking the role of what I call "soft epistemic propositions of law" (SEPL) as a fundamental component of the set of truth-conditions for SPLs. SEPL's assert that the minimum threshold for asserting as proven some proposition (that describes some aspect of the world) has been reached by the available evidence. Or simply that the relevant standard of proof has been met. I suspect this twofold weakness in analyzing the meaning of SPLs is mainly due to jurisprudence's habitual lack of attention to epistemological concerns like those that explain the function of a standard of proof (SoP) or, as I call it, a proof policy, within some areas of the law.¹⁰ Larry Laudan has recently developed such a model and it is from his insights on what he calls the "soft core of legal epistemology" that I elaborate on the idea of SEPLs.

In saying that true factual propositions do not figure within the set of truth-conditions for SPLs, I am not suggesting that events in the world outside the courtroom have nothing to do with judicial outcomes. In other words, I do not endorse the idea of judicial decisions as constitutive of the

⁸ We can also add the matter of procedures for verifying whether the truth-conditions of a proposition have been obtained.

⁹ See MICHAEL MOORE, *supra* note 3.

¹⁰ Legal theorists have been more concerned with how much principles, or more generally, how much evaluative reasoning is involved in adjudication, if there is a necessary link between this type of reasoning and legal reasoning and questions of that sort than with the not less interesting jurisprudential question of when an arbitrator of fact (a judge or a jury) is entitled to regard a factual assertion as proven within a certain area of the law. Neither Hart nor Kelsen, or even Raz, three of the most influential philosophers of law of the twentieth century, have addressed this issue in their work.

facts of the case.¹¹ Outside events have much to do with a case, at least in Criminal Law¹² (it is often stated—even by Supreme Courts of both Common and Civil Law traditions—that the ultimate purpose of a criminal trial is to determine the truth), but as a criterion to determine whether the verdicts are correct or not and not as a truth-condition of SPLs.¹³ Another way of stating this would be: Suppose you were asked to explain the meaning of “John is guilty of murder” (p) when uttered by a judge or jury to an audience. You would have to say things such as “well, among other things, what this assertion basically implies is that the proposition describing a particular act of John’s, say that of depriving Julius of his life by hitting him on the head with a tennis racket, has been proven to the appropriate standard/degree, say beyond all reasonable doubt”. It would not be necessary to refer to the truth of the proposition describing John’s conduct as having been implied by the declaration. However, if you were to judge whether p is correct or not or engage in a discussion on whether the criminal system is fair in terms of convicting the truly guilty or acquitting the truly innocent,

¹¹ This is a thorny path. Some might say that there are complex conducts which prior to the decision of a court would not be regarded by citizens as a crime since the extension of some legal concepts, like for instance “tax evasion”, have not yet been fixed once and for all by statutory law patterns. Thus, citizens see court pronouncements of those conducts as crimes that are constitutive, in the sense that they are the creators of the relevant facts of the case. I do not think this position would hold even when the qualifying an act as a crime can sometimes be *ex-post* (via judicial activity). Something would still have to be categorized or qualified, something about which there is doubt as to whether it is a crime or not. That something amounts to the facts reported by factual propositions.

¹² There are other branches of the law, like the law of torts, that claim the main purpose of the judicial process is to seek the truth of what happened in the world, which is much more controversial.

¹³ Jordi Ferrer makes a similar statement in his analysis of the result of probatory activity in terms of the judge’s, or more generally, the arbitrator-of-fact’s propositional attitude towards the proposition declared as proven. One of his theses states that the declaration of p as proven (p being the description of the facts of a case with legal consequences, such as sanctions or otherwise, say “ x did not pay her taxes”) implies the arbitrator-of-fact’s knowledge of p . Regarding this point, he says, “It should be pointed out here that from the point of view of the judge, that is to say, the person who declares ‘ p as proven’, there is no difference between the requirement of (justified) belief in p and the requirement of knowledge. In other words, a person who believes that p and that the content of his belief is justified necessarily has to believe that he knows that p . *The distinction is however important from the point of view of third parties controlling judicial decisions. In effect, from the point of view of a third party, it is obvious that he can say that an individual s believes that p , but that p is false, and therefore, that s does not know that p . What we have now is a conception that does not lead to subjectivism in the judicial fact-finding. In effect, given that one of the requirements needed to be able to say that a proposition is known is that it is true and that the truth of a proposition does not depend on the will or the beliefs of any individual, what we obtain is a criterion for checking the justification of the judicial decision regarding facts that is independent of the trier: The truth of the proposition declared proven*”. See Jordi Ferrer, *Legal Proof and Fact Finders’ Beliefs*, 12 *LEGAL THEORY* 293-314 (2006).

this would be the appropriate time to make reference to what actually happened.

Having said that, I will clarify what Moore means when he uses the term “singular proposition of law” in the following section by focusing on the set of truth-conditions Moore claims is associated with SPLs. My objective at this stage is to emphasize two factors: the presence of factual propositions within the set and the absence of propositions that assert that the relevant standard of proof has been met by the evidence that support the singular proposition of law. Then, by making a distinction between material guilt and probatory guilt centered on establishing the truth of both “John is guilty (m) of murder” and “John is guilty (p) of murder”, and finally by presenting a test for the admission of truth-conditions, I will explain why the two elements emphasized above are mistakes.

II. THE TRUTH-CONDITIONS OF SPLS

Regarding SPLs, also known by U.S. lawyers as “the law of a case”, Moore states the following:

A singular legal proposition is one that is neither semantically general nor universally quantified. Its terms do not refer to a class of particulars, and it does not purport to predicate a property of all members of that class. Rather, a singular legal proposition predicates a legal property about one particular item referred to by a proper name or a definite description. Consider the following examples: “This will is valid” and “The defendant is guilty of murder”. Such singular legal propositions may be either dispositive, as in the latter example, or evidential, as in the former example. In either case, they are the vehicles for expressing either all or part of a judge’s or jury’s decision in a particular case.¹⁴

Moore sees the truth-value of the following propositions as fully determinative of the truth-value of SPLs, that is, as fully determinative of the outcome of disputed legal cases:

- 1) *Factual propositions.* In the recent film “A few good men”, a lawyer tells a witness “I want the truth” whereupon the witness responds, “you can’t handle the truth”. The characters are referring to the truths of certain propositions of fact relevant to the case. *These are probably the most obvious kinds of statements whose truth or falsity is of interest to lawyers.*

¹⁴ See MICHAEL MOORE, *supra* note 3, at 24-26. Consider also the SPL “Sheriff Kirby was not guilty of obstructing or retarding the passage of the U.S. Mail”, which has been the cornerstone on which Moore elaborates on his view of natural law. *Id.* at 324-325.

- 2) *General legal propositions.* Equally as involved in decisions of disputed legal cases as propositions of fact, are general propositions of law. A general proposition of law is one contained in a universally quantified statement such as “all non-holographic wills require two witnesses in order to be valid”.
- 3) *Interpretive propositions.* Because general propositions of law are about a general class of cases but no one particular case, we need interpretive premises in order to connect the particular facts of a given case to general propositions of law. Such premises connect factual predicates to legal ones, so that one can connect, for example, factual propositions about the written name of a particular person on a particular document, to legal propositions about subscriptions, signatures, witnesses, and valid wills.
- 4) *Propositions of value.* Some theories of law and of interpretation would reduce items 2) and 3) above to propositions of fact. Rejecting such legal positivists and formalists theories, as I do, requires a fourth kind of proposition, that of value. In various ways, propositions of value are partly truth determinative of both general propositions of law 2) and of interpretive propositions 3). Such propositions of value are thus relevant to our concern about *the kinds of propositions whose truth or falsity is determinative of the outcome of disputed legal cases*.
- 5) *Propositions of logic.* Contrary to much of the overblown and misdirected rhetoric of the American Legal Realists and their intellectual descendants, a decision in a disputed legal case involves logical deduction. The premises are matters of fact, law, and interpretation, and the conclusion is the proposition describing the decision in the case. What justifies the decision as following from these kinds of proposition is logic. If “p” is true, and if “p implies q” is true, then “q” must be true as well. This rule of inference, which the Stoics named modus ponens, states a necessary kind of truth, logical truth. No one can plausibly urge judges or juries to be illogical in their decisions, so propositions of logic like modus ponens join the other four kinds of propositions as necessarily involved in the decision of disputed legal cases.¹⁵

As stated in the introduction, I wish to emphasize that in the above list of propositions whose truth or falsity supposedly determine the outcome of disputed legal cases, the first place is occupied by what Moore calls “factual propositions” (propositions describing the facts of a case). Moreover, propositions that state whether the relevant standard of proof has been satisfied or not, which we call “soft epistemic propositions of law” (SEPL), do not appear in the list. But, why is this a mistake?

¹⁵ *Id.*

III. THE ARGUMENT

1. *Material Guilt and Probatory Guilt*

The answer is found by focusing on the kind of legal property the singular proposition of law is said to predicate. Take for instance the SLP “John is guilty of murder”. We can distinguish two senses of “is guilty”. One implies that the defendant really committed the crime (in our example, murder by hitting Julius on the head with a tennis racket) for which he may or may not be charged; and another implies that according to the judicial scrutiny John has been subjected to, he has been condemned. Like Laudan, I refer to the first sense as the expression “material guilt” (guilt m) and to the second as “probatory guilt” (guilt p).¹⁶ For the sake of the argument, let us assume this distinction.¹⁷

2. *The Truth of “John is Guilty (m) of Murder”*

In determining the truth of “John is guilty (m) of murder”, it is only a contingent matter that John had been investigated, that certain inculpatory evidence had been found; that he had pled guilty (not going to trial in this case); that having pled not guilty, that the judge or jury declared there was sufficient evidence to justify a conviction, or even that he is sentenced to jail. It may be the case and makes perfect sense to say that even if all this were true, “John is guilty (m) of murder” could still be false. In other words, it is possible for John to live with the consequences of having been declared guilty (p) without having actually committed the crime.¹⁸ This can occur with the following combination of truth values: We have “John is guilty (m) of murder” as false, which in turn implies the falsity of, to use Moore’s terms, the factual proposition “John hit Julius on the head with a tennis racket and this caused his death”, and the truth of “John is guilty (p) of murder”. The truth of “John is guilty (m) of murder” soley depends on the

¹⁶ LARRY LAUDAN, TRUTH, ERROR, AND THE CRIMINAL LAW 11-12 (Cambridge University Press, 2006).

¹⁷ This petition is basically addressed to those who wish to confront the thesis that facts exist outside the courtroom and who attribute a fully constitutive power to judicial decisions.

¹⁸ This is not unheard of since human inquiries are fallible by nature. In fact, recognizing the possibility of a false inculpatory finding, and the correlative of a false exculpatory finding allows a society to have open discussion on the costs of both types of errors (false convictions and false acquittals). Thus, if such events occur, it ultimately allows them to determine how they want to distribute those errors.

fact that John has actually committed the crime, that is, on the truth of the relevant factual proposition describing John's conduct.¹⁹

3. The Truth of “John is Guilty (p) of Murder”

On the contrary, if we are to determine the truth of “John is guilty (p) of murder” it is as relevant as it could be that there has been a declaration of the propositions describing the facts of the case (in our example, the proposition describing that John hit Julius' head with a tennis racket) as proven (which amounts to say that sufficient evidence has been gathered and assessed), by the trier of fact. In this case, the factual proposition “John hit Julius' head with a tennis racket causing his death” is also involved, but it is its status of being proven, not its truth, not its correspondence with what happened in the world, that is important. For it may be the case, and again, it makes perfectly good sense to say, that it is true that John hit Julius' head with a tennis racket causing his death, and still “John is guilty (p) of murder” is false. That is, that John had really done it; nonetheless he had not been convicted.²⁰ The particular combination of truth values in this case would be the following: We have the factual proposition of our example being true, but the falsity of “John is guilty (p) of murder”, which in turn implies either the falsity of the proposition declaring John's conduct as proven, or not having such a declaration at all. At this point, someone might be inclined to think that I am going against the so called “teleological connection between proof and truth” thesis (or simply teleological connection thesis), which states that the main goal of the institution of legal proof is to achieve truth.²¹

But that would be wrong. I hold that the teleological connection thesis must be understood as having two purposes: One is to serve as a regulatory ideal by establishing what the designers of the judicial process should be aiming for when giving a particular configuration to the set of rules of evidence and procedure. In this sense it can be an incentive to carry out epistemological thought experiments in which the trial could be viewed as a purely truth seeking engine.²² And the other would be to motivate a critical

¹⁹ Ultimately, what determines the truth of “John is guilty (m) of murder” is correlating “John hit Julius on the head with a tennis racket causing his death” with reality, with the facts.

²⁰ This amounts to a false exculpatory finding, or simple, a false acquittal. This type of error has been regarded by different societies along different times in history as less grave an error than a false inculpatory finding. That is, preferable than a false conviction. We are prepared to have big numbers in the left side of the ratio of false acquittals to false convictions, so long as the numbers of the right side maintain being low.

²¹ See JORDI FERRER, PRUEBA Y VERDAD EN EL DERECHO 68-69 (Marcial Pons, 2003).

²² An excellent example of such a thought experiment can be found in: LARRY LAU-

spirit towards the current state of things the outcome of which could be a diagnosis of our evidential practices in terms of how well we are placed on the track that would lead them to achieve truth. But the teleological connection thesis should not be taken so as to be demanding from the judge or jury to do something else apart from following the current rules of evidence and procedure. That is, the current rules telling legal operators in what conditions certain evidence must be excluded, rules about the relevant standard of proof that must be satisfied, etc.

In other words, the teleological connection thesis should not be read so as to make it mandatory that when deciding disputed legal cases, judges consider factual propositions (such as “John hit Julius’ head with a tennis racket”) as proven only to the extent to which those propositions are true. The way our evidential practices hopefully achieve truth is not by making the truth of factual propositions a necessary condition for the determination of their status as proven,²³ but by making our rules of evidence and procedure, which govern our evidential practices, apt for the task of promoting the truth. That is, by giving those rules the adequate epistemic profile. So, it is the designer’s responsibility,²⁴ and ultimately, given the fact that it is frequently the case that the designers (members of the legislatures) do not have the credentials this task calls for, it is a function of how solid and vigorous our legal epistemology is.

Now, let us return to the declaration of the relevant factual propositions as proven by the trier of fact as implied in the truth of the assertion “John is guilty (p) of murder”. This declaration, as we have seen, grants the status of “proven” to “John hit Julius’ head with a tennis racket causing his death” of our example. But, is this declaration arbitrary? Are judges and juries left unconstrained in order to regard whatever they feel like as proven? How is this status granted? Another way of asking would be: When, or under what conditions, does the relation of the evidence or the premises to the sought conclusion (that John hit Julius with a tennis racket in his head causing his death) warrant the acceptance of the conclusion as proven in the context of Criminal Law? The answer amounts to the specification of what’s been called the “standard of proof” (SoP), also referred to as a proof policy. In

DAN, *supra* note 16, at 4-9. In this book, the author outlines what can be called the research program for contemporary legal epistemology.

²³ This position has been called “the conceptual connection between proof and truth” thesis. See JORDI FERRER, *supra* note 21, at chapter two.

²⁴ Of course, somebody could say that another way in which our evidential practices could not achieve truth would be by ignoring the current rules of evidence and procedure, regardless of their best epistemic profile possible, in which case the responsibility would be on the legal operators themselves. But that is not the picture I’m referring here. I am assuming at least the judge’s intention to follow the rules, even though there is room, of course, to make mistakes.

effect, the SoP can be viewed as a decision rule for the judge or jury, which establishes what they should look for in the evidence in order to be entitled to regard the sought conclusion as a proven proposition.

The SoP tells the trier of fact what the characteristics of the inferential link connecting the available evidence and the hypothesis at stake, must be.²⁵ The form of this decision rule would be along the following lines: If conditions a, b, c, n, are satisfied declare the relevant hypothesis as proven, and therefore, convict the accused. Otherwise, acquit him. For instance, if we are to regard as real standards those currently operating in the U.S.A. or in Mexico,²⁶ our decision rule would look like this: If you don't have a reasonable doubt about the defendant's guilt (U.S.A.); or: If you are strongly or firmly convinced of the accused being guilty (Mexico); then convict. Otherwise, acquit.

The conditions under which it is valid to declare factual propositions as proven may vary across different legal domains or areas of the law. And they also may vary throughout history, in the same domain or area. For instance, in the law of torts the applicable SoP is that of "the preponderance of the evidence"; while in Criminal Law, the applicable SoP is, as we have mentioned, proof "beyond all reasonable doubt" (BARD), or the firm confidence in the defendant's guilt. A SoP in operation in the middle ages in Roman law tradition countries required either two reliable witnesses or a confession in order to justify a conviction.²⁷ This contextual element has an interesting effect on the truth value of the declarations of certain factual

²⁵ LARRY LAUDAN, *supra* note 16 at 79-81.

²⁶ Laudan holds that these alleged standards are not real standards due to the fact that they both make legal proof of guilt parasitic on the prior existence of the trier of fact's firm belief about the defendant's guilt. The author says that in other domains such as mathematics or epistemology, "such a proof policy would be a laughingstock. One ought not to say to any trier of fact, 'You have a proof of A provided you are firmly convinced of A'... To the contrary, we say, 'You have no entitlement to be strongly convinced of A unless and until you have a proof of A', adding for good measure that, 'your firm convictions about A count for nothing absent an acceptable proof of A'. And then we tell them what a proof of A would look like. That is what is to have a standard of proof. A proper SoP does not depend on one's subjective confidence in a hypothesis; on the contrary, the standard tells us whether our subjective confidence is justified... Outside Law, rational confidence in a conjecture follows on its proof, it does not precede it. Inside the Law, such confidence precedes, certifies, and even constitutes the 'proof'". LARRY LAUDAN, *supra* note 16, at 80. Ferrer can be said to come to this same conclusion too, but by taking a different but related route. As we said somewhere above, he analyses the result of the probatory activity in terms of the propositional attitudes the trier of fact can be said to assume. He strongly criticizes the position for which the relevant propositional attitude is one of belief. That is, the position which states that "it is proven that p" amounts to the judge's firmly belief in p. He defends the thesis according to which the adequate propositional attitude is that of acceptance of the proposition as if it were true. See JORDI FERRER, *supra* note 13 at 293-314.

²⁷ This is no longer the case. Or, is it?

propositions as proven. Factual propositions may be either true or false, but when it comes to the proof of those propositions expressed in statements of the form “*p* (the relevant factual proposition) is proven”, the former may be true and, at the same time, false. It is perfectly possible, at least in the common law tradition, that the same factual proposition, say “Simpson killed his wife” had not met the requirements of the criminal SoP, but having done so in other domain of the Law, such as the Law of torts. So, we have “*p* (“Simpson killed his wife”) is proven” as false for the purposes of convicting Simpson, but for the purposes of making him liable for damages, as true.

The severity of the conditions under which it is valid to declare certain factual propositions as proven may also vary across different areas of the law. That is to say that the characteristics of the inferential link between the evidence or the premises, to the sought conclusion, in terms of it being stronger or weaker, may be different depending on the area of law in which we locate ourselves. This amounts to say, regarding our previous example, that the criminal SoP requires a more powerful inferential link connecting the premises to the conclusion. That’s why it is relatively easier to prove the same factual proposition in another legal context provided that the inferential link requirement there is less demanding. How demanding we want our SoP to be; how robust a proof we want there to be in order to take practical decisions such as convicting or acquitting the defendant based on it, are questions related to a society’s considerations of the costs that errors of the kind of a false inculpatory finding and a false exculpatory finding, may produce. Throughout history, different societies have taken false inculpatory findings to be more serious errors than false exculpatory findings, and thus a whole body of doctrine, concepts, and precepts have been developed so as to make sure that whenever errors do occur they be false exculpatory findings in the vast majority of cases. This doctrine, of which the SoP is the main element, has been referred to by Laudan as the “doctrine of error distribution”. The systematic analysis of the intertwined concepts of this doctrine (the SoP, the benefit of the doubt, the presumption of innocence and the burden of proof) is legal epistemology’s soft core.²⁸

Above I said that declarations of the sort “*p* (the relevant factual proposition, in our example, “John hit Julius’ head with a tennis racket causing his death”) is proven” are necessarily implied by true propositions predicating the defendant’s probatory guilt uttered by the judge or jury, in our example, by the proposition “John is guilty (*p*) of murder”. Now, we can add to this that the truth of those declarations is a matter of the relevant SoP being satisfied or not. I refer to propositions stating that the appropriate SoP has been satisfied or not as “soft epistemic propositions of law” (SEPL).

²⁸ See LARRY LAUDAN, *supra* note 16, at chapters two and three.

IV. CONCLUSION: A TEST FOR THE ADMISSION OF TRUTH-CONDITIONS

Truth and meaning, at least in the modernist tradition, are closely related.²⁹ Someone can be said to know the meaning of a proposition to the extent to which he is able to give an account of what it would take for that proposition to state a truth. As long as she can specify the truth-condition(s) for the proposition in question, she may be regarded as knowing what that proposition means. Determining the truth value of that proposition is a matter of whether its truth-conditions are satisfied or not: p (the proposition in question) will be true if and only if its truth-conditions are met, and false otherwise. In determining the truth of “John is guilty (m) of murder” the trier of fact’s declaration that the factual proposition in question has been proven is irrelevant. Likewise, the determination of the truth of “John is guilty (p) of murder” when uttered by a judge or jury is unaffected by the relevant factual proposition’s correspondence to what actually happened.

It is perfectly plausible that the soft epistemic proposition of law (SEPL) is false and the proposition predicating John’s material guilt is true. If someone had claimed that the above SEPL figured within the truth-conditions of “John is guilty (m) of murder” would be proven wrong by this case in which even when the supposed truth-condition does not obtain (even when the proposition is false), the proposition in question ended up being true. Thus, he would have to renounce to his claim or be held responsible for adhering to an incorrect account of the meaning of “John is guilty (m) of murder” if he did not.

If proposition describing John’s conduct (“John hit Julius on the head with a tennis racket causing his death”) is false and the proposition predicating John’s probatory guilt is true is also perfectly plausible. In this case, as in the former, if someone had claimed that the previous factual proposition figured within the set of truth-conditions of “John is guilty (p) of murder”, as I said Moore had, would be proven wrong by this case in which

²⁹ When giving an account of the philosophy of language according to the modernist tradition, Patterson says: “Speaking broadly... philosophy of language in the modernist tradition takes its basic task to be disclosure of the relationship between the word and the world. In the modernist tradition the principal function of language is representational: it depicts the way things are. States of affairs which exist independently of mind, can be portrayed or represented accurately in speech or thought to the degree their depiction in expression correctly or accurately reflects these states of affairs. In modernist terms the question ‘What does this sentence mean?’ may be translated as ‘What state of affairs does the asserted proposition purport to represent (depict)?... On a modernist representationalist account of language, any given use of language is successful—that is, states a truth- if and only if the utterance accurately describes the facts’. See DENIS PATTERSON, *supra* note 7 at 163-167.

even when the proposed truth-condition does not obtain (even when the proposition describing John's conduct turn out to be false), the proposition in question ended up being true.

However, after establishing which factors do not have a bearing on the truth, the question is: On what does the truth of "John is guilty (m) of murder" and "John is guilty (p) of murder" depend? As also mentioned above, the first depends on its correspondence to what actually happened, and it is therefore accurate to claim that the factual proposition "John hit Julius on the head with a tennis racket causing his death" figures within its set of truth-conditions. In the case of the second, it depends, among other things, on the appropriate SoP being satisfied, and thus it is correct to say that soft epistemic propositions of law (SEPLs) figure within its set of truth-conditions.

Therefore, there are reasons why Moore's SLP is correctly said to predicate the property of being guilty in its second sense, that is, the property of being probatory guilt. Moore says that his main concern is with "the kinds of propositions whose truth or falsity is determinative of the outcome of disputed legal cases". In other words, he is interested in the factors on which convictions and acquittals (in the case of Criminal Law) depend. What determines if a disputed legal case ends up, for instance, convicting the defendant, has everything to do with the fact that the appropriate SoP has been satisfied or not in the particular case, which, as we have seen, is a crucial feature of the meaning of "John is guilty (p) of murder".