International Journal of Ethics & Society (IJES)
Journal homepage: **www.ijethics.com**
Vol. **3**, *No.* **2 (2021)**

(Review article)

Analysis of Science & Knowledge from the Perspective of Evidence to Prove Criminal Cases: Philosophical-Ethical Study

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Abstract

Background: Reason is one of the main elements of criminal proceedings. Historically, criminal justice systems are usually divided into two general types: in the first type, called the "legal evidence system", the reason is only what is stated in the law, and therefore the judge has the right to document his sentence other than It does not have. In the second category, which is called the "system of persuasion of the judge", in addition to the evidence permitted by law, the judge can study other evidence and even evaluate, injure and modify the evidence presented, but the issue that is important and is very important from a legal and moral point of view is the basis of the judge's knowledge and how to achieve it. Therefore, the purpose of this article is to analyze science and knowledge from a philosophical-ethical perspective from the perspective of evidence of criminal litigation to provide the conditions for explaining the knowledge of the judge and ways to achieve this knowledge as the most important evidence of litigation.

Conclusion: The knowledge of the judge is one of the positive reasons in criminal cases that obtained as a result of examination, exploration, and investigation of the judge in the referral cases for him. Science can be valid and cited when the reasons for achieving it are legal and in accordance with judicial ethics. Therefore, personal knowledge that does not have a rational and legal basis and origin cannot be a criterion and document for issuing a judge's verdict.

Keywords: Science, Knowledge, Ethics, Criminal litigation, Judge knowledge

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Received: 11 Feb 2021
Accepted: 25 Apr 2021

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[DOI: 10.52547/ijethics.3.2.27]

Introduction

Understanding what happened in the case, in other words, resolving the subject matter of the case, is one of the most important steps for a judge to issue a verdict. Certainly, the judge does not have God-like access to phenomena and subjects. The teacher is a human being, and for this reason, to know the unknown in front of him, he must use rules and principles that are appropriate to the human perceptual system.

With a little care in the nature and mechanism of proving lawsuits in the courts, we can finally confirm the conclusion that the trial is an attempt to gain knowledge and knowledge about the subject of litigation and therefore, in general, the basics of litigation, are the methods and strategies that human beings use to identify facts and discover their unknowns. Therefore, the litigation process is directly related to the category of understanding (1).

In this article, we seek to provide the conditions for explaining the knowledge of the judge and the ways to reach this knowledge as the most important evidence of litigation by analyzing science and knowledge from the perspective of evidence of criminal litigation.

Analysis from a philosophical perspective

They have mentioned two differences between science and knowledge: First, knowledge is specific to science and is limited to knowledge before ignorance. Second, knowledge and science are different. What is perceived through the senses is called knowledge, but what is achieved through reason and thought is science (2).

Some philosophers use science and knowledge as synonymous, but today in current usage, knowledge and science are used synonymously with one of their meanings - cognition, which is both cognition of necessary truths and possible truths (3).

Proving the right is creating belief and knowledge about the existence of a right. If we believe that we have a right, it means that we have that right, and if we want to prove the existence of a right or obligation to someone, we try to create a reasonable belief in him in this regard. In a lawsuit, this person is the judge of the court. He is the one who has been able to prove the right to assert his legitimacy in the neutral mind and conscience of the judge because as it is known, the judge is more ignorant of both sides of the dispute than the truth (4).

Knowledge

Philosophical research on the concept of knowing (knowledge) and searching for appropriate ways to believe every word and discover the truth (truth/correctness) is called epistemology or epistemology (5). In philosophy, they ask questions when they want to talk about knowledge. What is knowledge? Is it possible to gain knowledge? But how do we humans gain knowledge?

Perhaps the main feature of knowledge, which in the past and now is accepted by almost everyone, is that knowledge is a state that puts us in a cognitive encounter with reality. Also, almost everyone is a story that knowledge is a good state. In one of Plato's treatises, Protagoras, Socrates expresses a view and ultimately defends it. Socrates' view is that deprivation of knowledge is the only factor that makes one's life bad and unsuccessful. This statement of Socrates may seem much exaggerated to modern man, but most of us will suffer from thinking that we cannot know anything (6). From what we have said, it can be said that philosophers are more or less the same story with each other and consider knowledge to have the following characteristics:

1. Knowing is a word between a conscious subject and an object, while that object is part of reality.
2. Such a relationship is a cognitive relationship. It means that the subject thinks about the object and not just sense it with his senses or just has a feeling and emotion towards it.
3. The third characteristic, which is more specific, is that knowing everything requires believing it.
4. The object/property of knowledge is a proposition.
5. The object of knowledge is a true proposition.
6. Knowing is a good thing. (6)

A) Components of knowledge:

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Truthfulness, belief, and justification are the three components of knowledge, which we will mention in the following study of their role in knowledge (7).

1. Truth

The main issue is to provide a satisfactory definition of the concept of truth, that is, a definition that is sufficient in substance and correct in form.

"Truth" is sometimes used to denote psychological phenomena such as judgments or beliefs, and sometimes to denote certain physical subjects, namely linguistic expressions and especially sentences, and sometimes to denote propositions. What is meant here is what is usually considered a news sentence in grammar, but as for the proposition, it seems to have never been quite clear. For various reasons, the use of the word "honest" seems to be the most appropriate application. Consequently, the concept of truth must always be attributed to a certain language, like the concept of a sentence, because it is clear that a single expression that is true in one language of a sentence may be false or meaningless in another language (8).

Some mental states have propositional content, that is, they belong to a proposition. For example, doubt belongs to a proposition. In contrast, some mental states do not have propositional content. For example, having pain that does not belong to the proposition. When I am in a state of mental pain, the content of my pain is not a statement, it is an experience. Of course, some mental states can have both propositional and non-propositional content. For example, the content of my fear maybe the other side's violent behavior, or I may simply be afraid, like in pain. Some common examples of propositional tendencies are: believing, wanting, and guessing.

There are three relations between mental states that have propositional content and the truth of the content of their propositions:

1) If person S has a propositional tendency towards PA, then P is true.

2) If person S has a propositional tendency towards PA, then P is false.

3) If person S has a propositional tendency towards PA, then P can be both true and false.

One example that can be a good option for propositional tendencies is an illusion. And we examine it:

If I have the illusion that P is false. It can be assumed that I have an illusion about a proposition, but that proposition is true. So one of the components of knowledge is, to be honest. (9)

2. Believe

Belief is a mental state in human beings that is attributed to the proposition. In other words, we always believe in a theorem and belief belongs to the theorem. For example, we believe that God exists, that this is the white paper, that the set of interior angles of a triangle is equal to two right angles.

One may believe in the meaning or contradiction of a proposition, but one cannot believe in a proposition and its contradiction, nor can one believe in a proposition and its contradiction. Of course, he may not particularly believe either; That is, he cannot believe that neither side is in contradiction. In other words, one must always believe in a discrepancy consisting of two contradictions. Although the seasonal surroundings of each alone are questionable. But one cannot believe a theorem and its deprivation, for example, we do not believe in every animal being human, nor in the deprivation of it not human animal. (10).

The point is that some beliefs are obtained, sometimes through reasoning, sometimes through non-reasoning.

Some beliefs are not obtained by reasoning, some of them can be called basic beliefs that do not need to be argued, so they are called basic beliefs.

Some beliefs are obtained through non- reasoning; these beliefs are obtained either through feeling or through the perception of perceptions.

The origin of belief in the senses is the action and reaction of the body and the tangible object. This action and reaction in us paint a picture that mediates science and belief. The origin of belief in consciences is the self-evident presence in the presence of the soul. Therefore, the consciences of the acquired sciences are derived from the present sciences. Because we have found the truth of hunger immediately, we can say I am hungry (10).

In law, of course, the sensory knowledge of the judge cannot be invoked, and the reason is that this

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sense is not transferable, so it is violated at a higher level. In addition to the comprehensiveness of the judiciary and the corrupt sequence that has taken away the validity of personal science, the direction of the laws is to eliminate this science from the number of methods of proof. As mentioned at the beginning of the discussion, the basis of the promise is based on the validity of the personal knowledge of Judge, definite and irrevocable, and the violation of the rulings issued by the judge and ruler, which ruled during the time of the Holy Prophet (PBUH) and Imams (AS). But today, the increase in the error rate by judges and the suspicion of the people, especially those associated with their justice, when they want to rely on personal knowledge, has led the legislature to violate some of the rulings issued by the courts. Declare all final judgments repetitive and invalid by higher authorities, so that the judge's knowledge is practically invalidated in terms of sensibility and non-transferability to the appellate authorities and is considered as a witness (11).

3. Justification

Simply believing in the proposition P and the truth of P is not enough to know. If I believe in an honest statement by chance only, I do not know that statement. Given that believing also depends on psychological conditions, such as being optimistic or pessimistic, superstitious or non-superstitious, etc., a person is effective in determining the scope of his beliefs. Suppose S is a superstitious human being. He knows he has cancer. He also knows that his cancer is the type that leads to death in 90% of cases. However, due to his superstition, he believes that if the result of throwing a coin is milk, it will not be a disease, then he throws a coin and milk comes. So S believes he is recovering from cancer and will not die by accident. He has an honest belief that I will not die of cancer, but because his honest beliefs are only due to an honest accident, we do not consider him knowledgeable. So in addition to belief and truth, the reason or method of gaining belief is also effective in knowing. Therefore, a person who has a sincere belief is considered knowledgeable only if he has acquired that sincere belief in some way or for reasons that guarantee that the truth of his belief is not accidental. In other words, why should S believe that p has a proper answer (9)? In philosophy, this issue can have justifications that we do not address, but if the judge believes in something, he must justify it in his opinion slowly.

In most countries, the duty of the judge to cite directions is accepted as a general rule. In some countries, this duty is enshrined as a principle in the constitution, and in some countries, it is enshrined in the procedure. In France, for example, the last part of Article 455 of the Code of Civil Procedure states that the court's decision must be justified; In other words, the directions of the vote must be mentioned.

Mentioning the reasons and reasons in the verdict allows the litigants to monitor the correctness of the verdict and know what caused the opinion of the judges for or against them. The convicted person also wants to know the reason for his conviction. Besides, mentioning the reasons and reasons for issuing a verdict allows the litigants to spend all their time in proving the unfoundedness of those reasons and reasons, and the Supreme Court's attention to the unfoundedness, if they do not vote correctly. Draw the argument of the protesting vote (12).

B) The relationship between knowledge and certainty

The question of cognition and, consequently, the question of doubt and certainty has long been considered by philosophers; As the great philosophers always sought to gain true knowledge of the universe; Cognition that can be assured and benefited by others. But from the very beginning, along with the path followed by the philosophers of truth, some considered this path uneven and impassable. These opponents followed two different paths: on the one hand, there were sophists who, either because Gregory said that there is no truth and if it exists, it is not known, and if it is known, its knowledge cannot be transmitted to others, or like Protagoras. It was said that man is the standard of everything; the criterion is the existence of things that are and the non-existence of things that are not (13). Today, modern skepticism, which has emerged in a corner of the geography of Western thought, produces products in which the denial of

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certainty is an inseparable element. These software products, especially in areas such as philosophy of religion, philosophy of politics, philosophy of ethics, modern theology, hermeneutics and interpretation of texts, etc., have emerged, and one of its signs is relativity and variability.

However, one of the necessary attempts to fundamentally evaluate these theories is to go to their roots and main presuppositions, which seems to be one of these presuppositions for denying certainty and knowing the truth. Claims such as the improvability of the existence of God, the personality of religion, the denial of any fixed and absolute proposition in religion, the relativity, and variability of values. (Both legal and moral), the timeliness of the rules of Islam, religious and epistemological polarization, the existence and formalization of different readings of religion, etc. are among the things that can be considered as an element of denial of certain knowledge of the principles of their subject (14).

Proof of litigation and epistemology

Philosophers, logicians, and theologians have drawn the line between ignorance and cognition with the element of "correspondence with reality." Of course, this is not the place for this discussion, because in the definition of cognition and the types of acknowledgment, it is the definition. To which phenomenon this definition applies is another discussion that has been done elsewhere. But the establishment of epistemology cannot be done without discussing the criterion of cognition.

Determining the criteria for recognition is vital. When we define cognition as true belief, what stands out is the indicator by which the truth of belief can be found. Because the state of lack of belief can be easily recognized through the states of belief. Just as the conviction of belief is also a matter of the soul, which is considered introspectively. Few people can be found who do not know whether they have a particular belief or not. It is also rare to find someone who does not know whether believing in (c) is permissible or just preferable. Discovering the degree of intensity and weakness of belief and the principle of its existence usually does not require a special index. But this is not the case. It is not possible to distinguish true belief from falsehood without a clear criterion. Usually everyone thinks their beliefs are true. It is rare to find someone who considers (c) a liar but still believes in (c). Practiced minds can doubt Descartes philosophically in their beliefs, but in this case, they are in the position of second-order cognition. As a first-rate cognition, even Descartes' skepticism is true. However, his belief may be false. Is there a way to diagnose or not? (6).

It is necessary to mention an important point here. Searching and determining the criterion for recognizing contradictions does not have an unfillable gap between the world of proof and the world of proof due to the limitation of human cognition. Which state of mind is cognition and which is not cognition - for example, is illusion or emotion - is one thing, and what is the limit of cognition is another. By accepting the limitations of human cognition and the indelible possibility of error in it, it is possible to obtain indicators that distinguish cognition from non-cognition.

Epistemological inquiries about the existence of an independent outside world, before human consciousness, as well as the possibility and manner of perceiving the outside world, are most evident in the views of the proponents of the school of idealism or idealism and realism or realism. In contrast to the realists who emphasize the existence and proof of the objects of the universe regardless of human knowledge and ignorance, the idealists insist on the role and effect of cognition and perception and the need to prove the existence of objects that explicitly considers existence as perception and what The power of human perception and cognition cannot be grasped by non-existence (15).

The following is examined from different perspectives:

1. Realism

Homes, a well-known American law professor, and the judge is also a follower of the school of expediency. He has always been empirical, claiming that the life of the law has never been rational. He expressed the essence and summary of his ideas and in explaining it, he emphasized that public opinion and custom, even immature judicial opinions, have a significant effect on the formation of the rights of

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any society, and the legal system cannot be based on logic alone. In his famous lecture entitled Law Path for Law Students, Homes noted that a distinction must be made between what is and what should be (16).

According to realistic view point of Holmes:

1. As for what it is, Holmes is unquestionably a follower of real law. While he considers law as the manifestation and witness of moral life, he sees its manifestation only in the opinions of the courts. "I unequivocally believe that judges create rights and should do so," Holmes wrote explicitly in one of his statements as a minority in the Supreme Court. And in the same historical lecture, he declares the theory of law prediction by saying that I mean law only to predict the verdict that the court will issue in foreign events. Explaining his statement, he added that the court's verdict should be examined separately from all the factors that have influenced it, to clearly define the line between law and ethics. Holmes has also repeatedly emphasized that the political and economic beliefs of the judge should not limit the rules of law (17).

However, to be able to predict the court's decision, it is not only necessary to pay attention to the laws and the history of opinions. It is necessary to consider the judicial psychology of the judge and the political and economic situation in the society, and only then can a legal advisor achieve. Regarding the possibility of separating the rules of law from the social roots, we must say here that to prevent any illusions and confusion, we note that Holmes' statements about the critique of legal knowledge and the way judges work should not be inferred that he favors the rule of justice over It is a salary. As many American writers have acknowledged, Holmes is the forerunner of the school of legal realism in America, and his words have inspired all followers of this school.

2. Restricting the concept of law in the context of court rulings has not prevented Homes from denouncing the workings of the courts and legal education and from remembering the role of the rules of law as a means of meeting the needs of the uncle. It is at this point that the influence of pragmatism in Homes can be seen and he is considered a follower of expediency (17).

It can be said that the school of realization or realism is based on two things:

1. What is the law and what should not be is not based: According to this school, to describe rights, one should avoid judging values about them. Value judgment refers to the evaluation of rights based on ethics and justice or political values. Proponents of this school of thought believe that the question of law is separate from the question of what law should be (18). Explain that to know legal rules, values can be assumed, and based on these assumptions, legal rules can be separated from other rules. For example, he said that legal rules are fair rules. In this case, the oppressive rules will be removed from the realm of law. According to the proponents of this school, the abandonment of values helps us to describe objectively and without prejudice to rights with the help of experience by looking at the realities of society. In this way of thinking, the researcher takes a completely external perspective and observes. In this way of thinking, the researcher takes a completely external perspective and observes. In addition to the Homes we talked about, John Austin is also a supporter of this school. He writes: The existence of rights is one thing and the merit of another is the existence or non-existence of the rights of research, and whether or not it meets the desired criteria of another research, the rights that currently exist are rights, whether we consider it desirable or not. 19).

3. Law is a set of rules that are known according to its origin, and Austin says: Law is a set of personal commands that people habitually obey. Kelsen believes that law is a set of rules rooted in government power. New positivists have used the method of understanding to explain the law. They are also loyal to the main idea of the positivists, which is the separation of the question of rights and what should be the question of rights. The only difference between the new and old theories is the emphasis on the need to study law from an internal perspective. If we look at the behavior of society from an external perspective, there is no difference between behavior that is done out of habit and behavior that is done as a rule. (19)

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Although realism is compatible with common sense, it is difficult and perhaps impossible to argue. If it were not for this, ideological or phenomenological positions in epistemology would not have been presented with such intensity and force. Says the contemporary philosopher of science Karl Popper:

My view is that realism is neither provable nor refutable. Realism is as provable as anything but logic and finite arithmetic. Common sense will undoubtedly vote for it; Of course, even before Descartes, in fact since the time of Heraclitus, there have been hints that our conventional world may be nothing more than a dream. But even Descartes and Locke were realists. A philosophical theory of realist opposition did not begin in earnest before Barclay, Hume, and Kant.

Accordingly, this philosopher ultimately accepts realism as a reasonable conjecture and hypothesis, a hypothesis against which no reasonable option has been proposed. So realism itself, despite being reasonable, is not more than a proven or unproven conjecture (15).

2. Idealism

The shortcomings of Locke's theory of knowledge led to George Barkley's tendency toward originality of mind or ideology. This Irish bishop, who was more concerned with preserving faith and proving the existence of God, established a philosophy that included the denial of everything outside the mind (15).

Barkley feels he can now provide an answer to the fundamental question of philosophy as he saw it. And this is a question about the concept of being. What is existence? Barkley's first answer to this question is: To be and to exist means to be understood and to come to the realm of perception if everything we encounter is an idea. Then the principle of "existence" must be found like ideas (imaginations). In any case, it is futile to think that imaginations exist outside of knowledge, and to exist in knowledge means to perceive the means of knowledge. Hence what cannot be perceived cannot exist, so any metaphysical statement that makes itself involved in the universe makes something incomprehensible is meaningless. Barkley, in particular, thinks that believing in what is called material substance does not make sense. These words are not related to an idea and are therefore meaningless. We do not even know what we mean when we commit ourselves to the existence of what is called (20).

Ideologically, proof no longer means the distinction between the existence of an object and our knowledge of it. Rather, it should be considered synonymous with existence and creation: nothing can be said about its existence before our knowledge, and it is at the same time with this knowledge and in the stage of proving that the object is created. Thus proof is simultaneous or preceded by proof, not preceded by it.

If we want to apply the theory of ideology to law, the result will be that the existence of a right is associated with proving it to the judge. In this case: First of all, it is useless to talk about the stage of proof, because it is the proof of the truth that gives it existence. Second, the court's verdict always has an established face (15).

3. Phenomenalism

According to Eyre, phenomenology is a theory that considers material objects as a logical combination of sensory data. According to this definition, phenomenology does not deny the existence of material objects but makes them nothing but sensory data. Knows (for example, a desk is nothing more than a collection of sensory data that has a specific relationship to each other). Explaining his definition, Eyre writes: To say that material objects are a logical combination of sensory data means that every object proposition is a set of sensory data propositions. An object proposition "is a proposition concerning material objects; that is, the components of the proposition refer to material objects, such as "this ball is red," "that chair is behind the table." (21).

In these examples, words such as "ball," "chair," and "table" refer to material objects outside the mind. "Sensory data proposition" is a proposition about sensory data, such as "I find the Korean sensory data in red." In this example, the "red spherical sensory data" has a mental identity and belongs directly to the consciousness of the cognitive subject. The translatability of object propositions means that the components of object propositions can be

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replaced with interpretations that refer to sensory data. For example, the statement "there is a red ball on the table" is translated as: "I find the Korean sensory data in red on the brown sensory data with such and such characteristics." From a phenomenological point of view, material objects are nothing but a combination of sensory data, so it must be possible to translate object propositions into sensory data propositions. The untranslatability of object propositions requires one of the following two things: 1. The meaninglessness of object propositions; 2. Phenomena incompatibility. Reflection shows that object propositions are untranslatable, and since object propositions cannot be judged to be meaningless, phenomenology faces a kind of incompatibility. (21)

According to the theory of phenomenology, "provability" or provability is the criterion for believing in the stage of proof. Mere lack of current proof of the existence of a phenomenon will not be a reason for its non-existence. Lack of reason is not the reason for non-existence, provided that this proof is possible under certain conditions and in some way. Or perhaps it would be better to explain that direct reason or sensory perception is not the only way to know the existence of an object, but also that indirect evidence and parallels can and must be accepted to prove the object. Because by accepting them, it will be able to prove a wider scope (15).

Conclusion

The knowledge of the judge is one of the positive reasons in criminal cases that result from the examination, exploration, and investigation of the judge in the referral cases for him. This positive evidence has been the focus of many legal debates from the past to the present and is a questionable area. Examining the legal system governing the criminal field, it is clear that the knowledge and persuasion of the judge's conscience are placed alongside other evidence and is considered a criterion for proving criminal claims. But the important point in this matter is how to obtain knowledge and reach the judge with certainty. A subject that inherently and per se takes on a philosophical dimension and needs to be kept from this perspective. The approach tried in this article was used. As an outcome, it can be said that the ways to achieve knowledge and knowledge of the judge can be divided into three categories, and among them, considering the dominance of the spiritual system in this area, it was accepted to accept two types and He rejected and rejected the kind that was based on emotional issues and outside the framework of reason. The subject that we achieved in explaining and examining knowledge and science. Because science can be valid and cited when the reasons for achieving it are legal and in accordance with judicial ethics. Therefore, personal knowledge that does not have a rational and legal basis and origin cannot be a criterion and document for issuing a judge's verdict.

Ethical Consideration

Ethical issues (such as plagiarism, conscious satisfaction, misleading, making and or forging data, publishing or sending to two places, redundancy, etc.) have been fully considered by the writers.

Acknowledgement

Researchers consider it necessary to thank and appreciate all the participants who helped us in this research.

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