The Nature of Legal Proof

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Two good-making properties legal proof shares with beliefs that can generate knowledge
1. Substantive: meeting a shared qualitative condition that allows discounting any remaining risk of error
2. Formal: tentativeness or conditionality of conclusions

The substantive condition

- Different statements which can be used to explain one another, with some margins always remaining, eg:
    - Error-eliminability
    - Sufficient inductive probability
    - Relative plausibility?
    - Normalcy?
    - Sensitivity

- How does this condition [Sensitivity…] make it rational to discount the risk of error in law?
    - Sensitivity exhausts practical value: for every practical reason to ϕ there is a pair reason to ϕ well; ϕ-ing well normally involves sensitivity with respect to the reason to ϕ
        - Value is there to be realised
        - Value grounds reasons to engage with it in ways that allow realising it
        - Value must also ground reasons to engage well; otherwise, value is incoherent (Sophie's example)
            - Engaging badly involves disregard of value
            - Disregard wastes value
            - Disregard produces disvalue
            - From here: for value to ground only reasons to engage in ways that might not realise it would be incoherent
            - Value is not incoherent

- ○ The reasons to engage are reasons to engage well?
- ○ For every reason to engage, there is another reason to engage well
- ○ Engaging well normally involves sensitivity in thought
  - ■ What the argument does not come to
  - ■ Absent sensitivity, it remains possible for the agent that there are no reasons and no value = the agent engages badly in thought (poem example, spontaneity example)
  - ■ The same goes for value deficiency, which is a form of value
    - ● Educational value
    - ● Wasted value
- ● Impact for the legal system: reasons of respect
  - ○ Reasons to engage well in thoughts, words and symbolic action
  - ○ Spill over to human conduct
  - ○ Require sensitivity in thought with respect to these reasons and the non-normative facts of the conduct
  - ○ Balancing with the need for accuracy / preventing errors that also involve disrespect

The formal condition

Tentativeness / conditionality on evidence and on the absence of a better hypothesis

- ● A theoretical risk of error always remains: the risk of human error is ineliminable
  - ○ 'Theoretical' - not grounded in the evidence and hypotheses the agent has identified
  - ○ The response to epistemic reasons ought to be outright belief which is tentative / conditional, as responding well = responding consistently with epistemic potential
  - ○ Upshots
    - ■ Incorporating Bayesian conditionality without undermining conceptual viability of outright belief
    - ■ Allowing for a non-probabilistic concept of knowledge that takes count of the remaining risk of error
  - ○ Implications for the response to value and reasons: tentative / conditional belief
- ● Value is realisable / knowable in the limiting conditions of this world