Juridical Proof and the Best Explanation

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In this article, we attempt to correct this neglect and to demonstrate that the process of inference to the best explanation itself best explains both the macro-structure of proof at trial and the micro-level issue of the value of particular items of evidence. For this reason, the neglect has been problematic because, as we also attempt to show, the probability-based accounts are parasitic on the more fundamental explanation-based considerations. To the extent the former take into account and attempt to supplement the latter, they may be helpful; to the extent they ignore such explanatory considerations, they risk mismodeling the process. Even if inference to the best explanation offers a more descriptively accurate account than the probability approach, "too bad for current practices; we are offering normative advice," might be the response from proponents of the probability approach. But, here too, a neglect of explanatory considerations would be a mistake; inferences based on explanatory-considerations may be justified as well, indeed more so than the conclusions generated by a probability approach.