

Epistemic and Practical Concerns: When You Can't Meet Both The case of FRE 407

It is not uncommon that epistemic and practical interests conflict. I take the example of a US evidence rule (Rule 407 of the Federal Rules of Evidence), which sacrifices some epistemic interests in favor of practical ones. It is the rule on "Subsequent Remedial Measures".

The rule is designed to reduce accidents, because it says that evidence of remedial measures taken after an accident is not admissible to prove negligence, culpable conduct, a defect in a product, or a need for a warning or instruction. In principle the rule would reduce accidents because it encourages defendants to take remedial measures after an accident occurred. If such measures were admissible as evidence against the defendant, so the argument goes, he or she would be far less willing to take them. If the purpose of the rule is this, there is a practical concern (reducing accidents) that is preferred over the epistemic one of finding out in a concrete case (at least with this kind of evidence) whether the defendant was negligent, or whether his or her conduct was culpable, etc.

In fact, many commentators think that the rule doesn't have a rationale but two. If we look at the accounts given of it in textbooks and by courts, they generally refer to (1) a limited relevancy rationale (little probative value) and (2) a public policy rationale (make conditions safer). It is the combination of the two that is taken to justify the exclusion of some such evidence. But some scholars claim that a case-by-case evaluation would work better than a categorical ban.

Both ways of addressing the issue, the categorical ban and the case-by-case exclusion, face a dilemma: *either* we pursue the epistemic goal of finding out the truth, and we admit such evidence but run the risk of discouraging remedial measures, *or* we pursue the policy of encouraging such measures, and exclude that evidence, but run the risk of undermining the ascertainment of truth.

However, what is the best way of conceptualizing this matter from a theoretical point of view? From the start I have opposed epistemic and practical concerns, and the discussion of the rule's complex rationale has followed the idea of considering epistemic reasons on the one hand and practical reasons on the other. But one could think that the best way to conceptualize and understand an issue like this is to avoid the opposition of epistemic and practical concerns and claim instead that the gathering of information and the discovery of truth are among the practical goals of our life, both individually and collectively. Philosophical pragmatism supports this view. Knowledge is one of the goals or values of our life, susceptible of being addressed with typically practical criteria such as cost-benefit analysis. Then the root of the problem is that, given the conditions of our life, it frequently happens that the realization of one goal conflicts with that of another, so that, in the case of FRE 407, the ascertainment of truth can undermine a social policy or, vice versa, a social policy can undermine the ascertainment of truth. Irenic philosophers love to think that goals and values do not conflict with one another, but pragmatists are ready to admit it and explain it. And the explanation bedrock is constituted by the incompatible desires, or desires of incompatible states of affairs, that we happen to have.