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RESEARCH ARTICLE

Resolving Peer Disagreement about the Law

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Abstract

Legal experts—lawyers, judges, and academics—typically resist changing their beliefs about what the law is or requires when they encounter disagreement from those committed to different jurisprudential or interpretive theories. William Baude and Ryan Doerfler are among the most prominent proponents of this view, holding it because fundamental differences in methodological commitments severs epistemic peerhood. This dominant approach to disagreement, and Baude and Doerfler's rationale, are both wrong. The latter is committed to an overly stringent account of epistemic peerhood that dogmatically excludes opponents. The former violates the conjunction of three plausible epistemic principles: Complete Evidence, considering all epistemically permissible evidence; Independence, in which only dispute-independent evidence is epistemically permissible; and Peer Support, which involves epistemically permissible evidence. Instead, I argue for jurisprudential humility—we ought to be more willing to admit we do not know what the law is or requires, and take seriously conflicting views.

Keywords: Jurisprudence; Philosophy of Law; Legal Theory; Epistemology; Social Epistemology; Peer Disagreement; Legal Epistemology; Interpretation; Legal Knowledge

I. Introduction

Suppose a statute reads "No vehicles in the park." You might think that bicycles count as vehicles, or you might think they do not. If you are not legally trained, you might naturally turn to a legal expert to help resolve this uncertainty. However, as it turns out, many eminent lawyers, judges, and academics take quite different stances on this issue. Many such disagreements are plaguing the law, ranging from what the applicable law is in a particular case, what the general impact of statutes and constitutional documents is upon the law, and what the correct jurisprudential theory is regarding what makes the law the way it is. The aim of this paper is to guide the resolution of these kinds of disagreements about the law in a way that is acceptable to theoretically disparate jurisprudential theories.

The typical response from these legal experts is to resist changing their beliefs about the law or what it requires when those who disagree with them are committed

to different theories of interpretation or theories regarding the nature of the law. In other words, the standard response to disagreement between experts in the law is to remain steadfast in one's view on the basis of methodological commitments. This view enjoys respectable academic support, for instance in the work of William Baude and Ryan Doerfler.[1] Baude and Doerfler hold this position on the basis that epistemic peerhood is established by methodological similarity, so divergent methodological commitments sever epistemic peerhood. Put simply, the textualist and the intentionalist cannot be epistemic peers. Instead, Baude and Doerfler maintain that the only kind of disagreement that an expert should take into account is a disagreement between those who are "methodological friends."[2] For instance, when considering peerhood in the judicial context, Baude and Doerfler write: "As a matter of both common sense and more rigorous epistemology, judges ought to give far more weight to the votes of other judges who share their approach, who we call their 'friends.' By contrast there is little reason to give much weight to judges with very different approaches, who we call their 'foes.'"[3]

In the second section, I situate the theoretical background against Courtney Cox's approach to rationally resolving uncertainty among judges. Contra Cox, whose focus is on personal uncertainty, my focus will be on the sort of uncertainty that arises from legal disagreement. I will then lay out the broad nature of what I mean by "legal disagreements." Legal disagreements (nonexhaustively) include those about the nature of law, the correct method of interpreting sources, and commitments to whether there can be legal indeterminacy. The section ends by introducing the two main options for resolving legal disagreement among peers: Legal Steadfastness, the view that legal peer disagreement sometimes does not motivate belief revision; and Legal Conciliationism, the view that legal peer disagreement always motivates belief revision.

In the third section, I start by laying out a general account of epistemic peerhood derived from the literature. Epistemic peers have three things in common: a shared level of rationality, shared access to relevant evidence, and a shared method of belief formation. I hold that most legal practitioners meet these requirements to be epistemic peers. I then argue against Baude and Doerfler's definition of epistemic peerhood on the basis that it is implausibly stringent and would not be acceptable in other epistemic domains, such as science, and maintain that they are mistaken to treat interpretive disagreements as deep enough disagreements to undermine peerhood. In particular, I will differ from Baude and Doerfler over what counts as peers "sharing evidence," I will argue for mere accessibility over Baude and Doerfler's more substantive reliance conception.[4] With the more inclusive notion of legal epistemic peerhood secured, I will demonstrate that Baude and Doerfler turn out to be proponents of Legal Steadfastness.[5]

[1] William Baude & Ryan Doerfler, *Arguing with Friends* 117 Mich. L. Rev. 319 (2018).

[2] *Id.* at 321.

[3] *Id.* at 322.

[4] *Id.*

[5] David Christensen, *Disagreement as Evidence: The Epistemology of Controversy* 4.5 Phil. Compass 756 (2009); Baude & Doerfler, *supra* note 1 at 325; Alex Stein, *Law and the Epistemology of Disagreements* 96 Wash. U. L. Rev. 51, 59 (2018). For alternative terms, see Eric Posner & Adrian Vermeule, *The Votes of Other Judges* 105 Geo. L. J. 159, 162 (2016).

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In the fourth and fifth sections, I will argue that Legal Steadfastness is false due to its incompatibility with the conjunction of three epistemic principles: Complete Evidence, that one must consider all epistemically permissible evidence in responding to disagreement; Independence, that it is only epistemically permissible to consider dispute-independent evidence; and Peer Support, that the level of peer support a view enjoys is epistemically permissible evidence. In particular, responses to peer disagreement on the basis of Legal Steadfastness violate Independence in a way that constitutes question-begging. I will then argue instead for a view called "Legal Conciliationism," upon which peer disagreement always motivates belief revision, on the basis of its compatibility with these three epistemic principles.

The sixth and seventh sections will consider how adopting Legal Conciliationism shapes the legal system by considering how the prescribed belief revision varies according to the level of peer support. *Balanced* cases of roughly equal peer support call for suspension of belief. This suspension of belief in turn licenses judicial discretion to determine the relevant legal content. *Imbalanced* cases of unequal peer support call for credence revision. These two kinds of cases are important for understanding how the Conciliationist position can accommodate the intuitions aroused by extreme disagreement. The paper concludes with a mandate for jurisprudential humility and suggests a direction for future debate.

II. Legal Disagreement

In this section, I will start by laying out what I mean by "legal disagreement," clarifying the notion by appealing to the concepts of epistemic peerhood and legal interpretative expertise. I will end the section by introducing the two options for responding to legal disagreement: Legal Steadfastness, the view that legal peer disagreement sometimes does not motivate belief revision; and Legal Conciliationism, the view that legal peer disagreement always motivates belief revision.

Throughout this paper I will focus on the judicial context when it comes to legal disagreement. My goal is to provide an answer as to how judges should respond to legal disagreement. To set the context, I will borrow a distinction between two debates made by Courtney Cox.[6] Cox distinguishes between what a judge should do according to their all-things-considered "jurisprudence" when broadly construed, and what a judge should do when uncertain about what "jurisprudence" is correct or is required.[7] For Cox:

> A given jurisprudence may include, for example, theories and beliefs about constitutional interpretation and construction; the appropriate method of statutory construction; the importance and application of stare decisis; the scope of and limits on judicial discretion; the relevance of political, moral, or prudential considerations; methods for resolving legal uncertainty generated by conflicts of law, indeterminacy, or changed circumstances; appropriate aims in judging; and, as relevant, the nature of law itself.[8]

[6]Courtney Cox, *The Uncertain Judge* 90.3 U. Chi. L. Rev. 739 (2022).
[7]*Id.* at 741.
[8]*Id.* at 760.

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Cox refers to this distinction also as a distinction between a "*judicial* ought … how a judge ought, all-things-considered, decide a case …"[9], reflecting the requirements of a "jurisprudence," and a "*rational* ought—what the judge ought to do given her beliefs about which jurisprudence(s) might be correct and her aim of doing that which she ought (judicially) to do"[10], reflecting the resolution of uncertainty about "jurisprudence." Note, even though these all-things-considered jurisprudences include one's view on morality's relation to the law, they do not include any separate moral truths about when one should deviate from what the law (which may include moral principles) requires (e.g., for reasons of conscience or civil disobedience).

I share Cox's goal of providing guidance as to what a judge rationally ought to do when they are uncertain about what they jurisprudentially ought to do. A major similarity between Cox and myself is that both our accounts mandate intellectual humility for uncertain judges. Both Cox and I think that a judge should, at least sometimes, deviate from their initially preferred all-things-considered jurisprudence.[11] However, unlike Cox, I will focus on the uncertainty that is generated from legal disagreement—disagreement among legal peers about what the law is.

Cox instead focuses on the notion of "magnitude of jurisprudential rightness/wrongness," the idea that different all-things-considered jurisprudences assign different levels of "rightness" or "wrongness" to judicial decisions.[12] This is controversial for reasons Cox notes herself concerning the possibility of intertheoretic comparisons.[13] For this reason, my view is independent of Cox's account and can either stand alone in mandating jurisprudential humility or play a complementary role to the portion of Cox's account dealing with uncertainty alone.

The sort of legal disagreements I am focused on then are disagreements about which all-things-considered jurisprudence is correct. As noted, these all-things-considered jurisprudences include views about the nature of law and legal indeterminacy among other things. Given that I plan to focus on disagreements at this level, I will follow Cox in not taking a position on which all-things-considered jurisprudence is correct—including what the nature of law is and whether there can be legal indeterminacy.[14] In the remainder of this paper, I will refer to these sorts of disagreements about which all-things-considered jurisprudence is correct simply as "legal disagreements." In order to fast-track the discussion, I will make the following two assumptions about these legal disagreements and beliefs about the law:

(1) When an epistemic agent forms a belief about the law, they are either forming a belief about legal content by inferring from the sources of that legal content or forming a belief about the sources of legal content in general.[15]

[9] *Id.* at 741.
[10] *Id.* (original emphasis).
[11] *Id.* at 765–776.
[12] *Id.* at 782.
[13] *Id.* at 797.
[14] *Id.* at 743.
[15] By "sources" I intend to capture everything from acts of legislatures to moral principles.

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(2) Disagreements about the law occur when separate epistemic agents come to differing beliefs about either what legal content obtains, or about what the sources of legal content are.

Note that I intend disagreement about what the sources of legal content are in a broad sense. This includes not only disagreements about which sources determine legal content, but also disagreements about how to interpret those sources, if the sources are even enough to fully determine legal content, and if the sources obtain in the first place. In other words, I intend to include disagreements about not only the nature of law but also disagreements about the choice of interpretive method and the existence of legal indeterminacy. I will refer to all these disagreements as disagreements about the sources of law—what has to be looked at to know what, if any, law there is. I maintain that the above two assumptions are theory-neutral. Beliefs about the law then include beliefs about legal content inferred from the sources of law, beliefs about the sources of legal content, and beliefs about whether the conditions to trigger legal content have obtained.

I take both the concepts of the sources of legal content and inference from them to be theoretically neutral. Just about every theory of the nature of law can be described as identifying sources for legal content. A rapid survey is as follows: Legal positivism identifies social facts as the sole ultimate source of legal content; antipositivism and natural law identify moral facts as either the sole or an additional ultimate source of legal content. Likewise, every jurisprudential theory can (and should) endorse the source-inference method as a description of how epistemic agents with legal expertise form their beliefs about the law. I will return to this notion of the source-inference method and expertise shortly.

The reader might be worried that each kind of disagreement identified above requires a different sort of response. I ask the reader to bear with me until I lay out the principles that capture both kinds of cases at the start of the next section. My aim is a broad-church ecumenicalism in the sense that all major theories of law should be able to subscribe to my description of disagreement within the law—and my proposed solution. Finally, some might doubt the importance of disagreement about the law given the existence of widespread agreement. While agreement is more common, I hold it is intuitive that legal disagreements often have outsized impacts and are typically where the legal, political, and moral battles are fought within the law.

In a similar vein, these disagreements about law reveal a weakness in some recent and illuminating positive accounts of how one comes to have legal knowledge. In particular, I have in mind recent work by Mark Greenberg, who endorses legal knowledge by inference from the sources of law.[16] One of the major problems with this source-inference account of legal knowledge is that it attributes too little significance to peer disagreement.[17] This source-inference account then leaves itself open to the objection that the theory works well only in the least interesting case, that of widespread agreement about the law. Theoretical work on legal knowledge is of the most practical use when it tells us how to navigate competing

[16]In particular, see Mark Greenberg, *Nonbasic Epistemology: Must the Epistemology of a Nonbasic Domain Track its Metaphysics?* (UCLA Public Law Research Paper No. 20-33, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3725866

[17]See Samuele Chilovi & George Pavlakos, *The Explanatory Demands of Grounding in Law* 103 Pac. Phil. Q. 900, (2022).

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claims to this knowledge, and the source-inference account fails to do so when there is disagreement.

With the scope of the debate laid out, I can now give the two options for responding to disagreement about the law in a principled form:

(1) *Legal Steadfastness*: At least some of the time, one should respond to disagreement among legal experts, as peers, about the law by not revising our pre-disagreement beliefs about the law.
(2) *Legal Conciliationism*: One should always respond to disagreement among legal experts, as peers, about the law by revising our pre-disagreement beliefs about the law.

It should be noted at this early stage that belief revision does not always mean abandoning one's belief. One can revise the confidence of their belief while maintaining it is the belief they still have the best evidence for. Additionally, as I will cover in more detail in the fifth section, Legal Conciliationism is compatible with debate and the presentation of minority arguments. Finally, to *respond* to and *resolve* disagreement does not necessarily mean obliviating it—disagreement can persist permissibly, so long as it has been reacted to rationally.

III. Legal Experts and Epistemic Peerhood

Legal Steadfastness is the dominant view about how to respond to such legal disagreements, though it is not often stated explicitly. Most judges, lawyers, and academics think that judges should form their own beliefs and not feel under pressure to conform to the majority view. As indicated, I take Baude and Doerfler to be advocating for Legal Steadfastness (based on my following inclusive account of epistemic peerhood). As such, their account is useful in understanding the motivations behind the Steadfastness camp. For instance, they insightfully point out the intuitive importance of methodological choice: "A disagreement between those who share a methodology—between methodological 'friends'—involves the discovery of something new. One learns that one's methodology might lead to a different result in the case at hand. By contrast, a disagreement between those with opposed methodologies—methodological 'foes'—pretty much comes as 'old news' to the parties involved."[18]

This is one of the key motivations for Legal Steadfastness—methodology matters. Baude and Doerfler find Legal Steadfastness (as I have characterized it) attractive due to this view about the relative importance of methodological commitments. For Baude and Doerfler, this then forms a key part of their view of epistemic peerhood, to be considered below. As they put it, "…the more similar two judges are in their interpretive methodologies, the more reason they have to reduce their confidence in the face of disagreement."[19]

However, *crucially*, this intuition about the importance of methodological commitments extends beyond peerhood—even if one accepts my more inclusive account of peerhood below, one can remain committed to the Steadfast position *on the basis* of methodological commitments. As such, my imminent criticism of Baude and Doerfler's account of peerhood is not the end of Legal Steadfastness. This will instead come by considering the position's tension with the three epistemic principles mentioned

[18]Baude & Doerfler, *supra* note 1, at 327.
[19]*Id.* at 328.

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above. This latter stage of the argument will not target Baude and Doerfler if they are happy to bite the bullet and accept that my more inclusive account of peerhood undermines their conclusions about belief revision being limited to methodological friends. However, if they maintain their conclusions about the limitation of belief revision, then my more general argument against Legal Steadfastness will apply to them also. Instead, Legal Conciliationism can retain the concern for methodology that motivates the more popular Steadfast view.

The remainder of the third and fourth sections lays the crucial groundwork for the main argument against Legal Steadfastness in section five. In order to properly understand where Steadfastness goes wrong, this greater theoretical framework is required. With some of the brush cleared, I can now introduce two essential concepts for my argument: epistemic peers and epistemic experts. In short, not all who engage in legal belief and disagreement are created equal; some epistemic agents are more likely to get the right answer than others, and experts are the most likely of all.[20] The simplest concept of epistemic peers are epistemic agents who have around the same chance of getting the right answer as each other.[21] More technically, epistemic peers are typically defined when the relation between epistemic agents (those forming beliefs) is characterized by two features: shared evidence and shared rationality. In addition to the two standard requirements, I will also endorse a third requirement for legal interpreters to be considered peers: shared method.[22]

I also take these three features to provide us with the necessary and jointly sufficient conditions for determining epistemic expertise: experts have good access to the evidence, high levels of rationality, and a praise-worthy method of belief formation for the domain of their expertise. I agree with R. George Wright that it is best to err on the side of overinclusiveness when it comes to peerhood, and as such all my requirements for peerhood (and the subsequent definition of expertise) should be understood as inclusively as possible.[23]

The first requirement of epistemic peerhood, the rationality requirement, requires some terminological clarification. The term "rationality" is used throughout the literature to capture a variety of requirements concerning the epistemic capacity or virtue of the relevant agents. I will characterize this requirement as involving a parity of *domain-independent* epistemic advantage/disadvantage among the relevant epistemic agents. By domain-independent, I mean to exclude things like the epistemic advantage one gains by domain-specific training, as I treat this as a separate third requirement. Domain-independent epistemic disadvantages include things like ideological bias and earlier cognitive-developmental stage, while advantages include things like an inquisitive attitude and awareness of psychological phenomena like confirmation bias. For a legal interpreter (one who forms beliefs about the law) to be a legal expert, they must have a relatively low level of domain-independent epistemic

[20]Adam Elga, *Reflection and Disagreement* 41:3 Noûs 478, 484 (2007); Thomas Kelly, *The Epistemic Significance of Disagreement*, in Oxford Studies in Epistemology: Volume 1, 181 (John Hawthorne & Tamar Gendler eds., 2006); David Christensen, *Epistemology of Disagreement: The Good News* 116.2 Phil. Rev. 187 (2007).

[21]See David Christensen, *Disagreement, Question-Begging and Epistemic Self-Criticism* 11.6 Philosophers' Imprint 1, 2 (2011).

[22]For rare endorsements of this view, see Catherine Elgin, *Persistent Disagreement*, in Disagreement 57 (Richard Feldman & Ted A. Warfield eds., 2010); Harvey Siegel, *Argumentation and the Epistemology of Disagreement* OSSA Conference Archive 157 (2013).

[23]R. George Wright, *Epistemic Peerhood in the Law* 91 St. John's L. Rev. 663, 669–670 (2017).

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disadvantage (e.g., bias, immaturity, arrogance, etc.), and a relatively high level of domain-independent epistemic advantage (e.g., imagination, awareness of psychological biases, etc.). I am again inclined to err on overinclusiveness and presume legal interpreters who meet the other two conditions for expertise (evidence and method) also meet this rationality requirement unless we are given a compelling reason to believe otherwise.

The second requirement of epistemic peerhood, the requirement of shared evidence, is met when separate epistemic agents have access to a similar amount of evidence to form their beliefs. In the case of beliefs about the law, this evidence consists of the sources of the law. To be a legal expert, a legal interpreter must have access to all the relevant evidence for inferring legal content available.[24] The sort of evidence will vary between the sources of law (paradigmatically statutes, precedents, and moral principles, depending on one's favored jurisprudence). Simply put, a legal interpreter who is ignorant of evidence that has a putative role to play with regard to legal content is not a legal expert. The role of this evidence requirement will be crucial to defending my view against claims of shutting down debate in the fifth section—alternative views, including minority positions, are an essential part of the evidence that changes the final landscape of stalemate peer disagreement.

The third requirement of epistemic peerhood is that epistemic agents share a method of belief formation when how they form beliefs based on the evidence is similar.[25] This additional third requirement to be epistemic peers is warranted in the legal domain as it is a domain of expertise. Most of the literature on epistemic peers does not concern expert domains, but rather general situations with usually non-expert examples.[26] A similar requirement would seem to be motivated in other expert domains like science—to be peers as scientists, one must use a sufficiently similar method of belief formation (in that context, induction from empirical phenomena). Following assumption (1) above, to be a legal expert, a legal interpreter must infer the legal content from the sources of law.[27]

This notion of the source method is sufficiently inclusive to include disparate more particular methods, like Textualism and Intentionalism. It is unclear whether the debate between Textualism and Intentionalism is best construed as a debate about understanding how the sources determine legal content or as competing pictures of how to resolve legal indeterminacy. The former better matches how judges talk about their positions within the debate—as different ways of knowing what the law is, while the former better matches how theorists have often characterized the debate.[28] The important thing to note is that both these senses are captured by the source method and disagreement over sources, broadly construed as I have done above along the

[24]Note, *e.g.*, A positivist can be aware of the moral principle of fairness without treating it as a source of law.

[25]Note that different methods of belief formation are to be differentiated here not on the evidence they look at or evidential weights assigned, but *how* the evidence is used to form beliefs, i.e., whether it is used inductively, deductively, intuitively, etc.

[26]*See*, *e.g.*, Christensen, *supra* note 5 at 757–758.

[27]See Mark Greenberg, *supra* note 15 and Chilovi & Pavlakos, *supra* note 16.

[28]For instance, see Justice Antonin Scalia's own wording: "My view that the objective indication of the words, rather than the intent of the legislature, is what *constitutes the* law …" (my emphasis). Antonin Scalia, *Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Law*, in A Matter of Interpretation: Federal Courts and the Law 3-47, 29 (Amy Gutmann ed., 1997).

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lines of Cox's all-things-considered "jurisprudences." This inclusive approach is not only backed up by a theory-neutral methodology but also by a widespread agreement among legal interpreters about how to discover legal content, as I go into more detail at the end of the seventh section.

Legal experts are epistemic peers, given their high levels of shared rationality, evidence, and method. Legal experts have similar chances of getting the right answer about legal content. Given these differences, Legal experts are not epistemic peers to nonexperts. In fact, it looks like legal experts are epistemically *superior* to nonexpert legal interpreters—legal experts are more likely to get the right answer than non-experts.

This is not unique to the legal domain; scientific experts are epistemically superior to nonexperts, for instance. Note that epistemic superiority does not mean that legal experts will always be right, it simply means they have the better claim to thinking they are right. However, while dissent from nonexperts can still be valuable to experts, it is less likely to be as valuable as dissent from peer experts or epistemic superiors. For the purposes of this paper, the most important and epistemically revealing kind of dissent is that from epistemic peers.

Importantly, following my inclusive assumptions above, I take most legal practitioners and theorists—judges, lawyers, and academics—to be peers of each other. This reflects the institutional nature of legal systems—generally speaking, the legal system affords judges equal votes when it comes to deciding cases. The law already treats potentially differentiable epistemic agents as peers in order to fulfill its functions. This may explain the role of specialist courts where the differences between practitioners are so large that it warrants institutional recognition. In short, the institutional nature of law is inclusive of epistemic peerhood in a similar way to my argument. In short, the judge has much reason to listen to the academic, even if academic commentary is not a source of law.

However, this account of legal epistemic peerhood I have given is not uncontested. In particular, William Baude and Ryan Doerfler adopt a more stringent account of legal epistemic peerhood that would not allow for methodological "foes" (e.g., Textualists versus Intentionalists) to be peers, or for any peerhood to matter.[29] Baude and Doerfler argue that legal methodological foes simply cannot be epistemic peers due to failing to meet the general requirements of epistemic peerhood, which they then link to the problem of "deep disagreement."[30] Baude and Doerfler are worried about two of the standard requirements of epistemic peerhood I laid out above: rationality and sharing evidence. Baude and Doerfler initially seem to accept the traditional view, which I have followed above, that epistemic peerhood both requires rationality, in the sense of being an "otherwise capable, intelligent person"[31], and sharing evidence in the sense of to "have *access* to the same evidence."[32]

However, Baude and Doerfler seem to abandon their earlier characterization of requiring mere "access" to the same evidence and replace it with a more substantive conception of *reliance* on the same evidence. In other words, a shift from requiring merely epistemic access to evidence to requiring that peers use evidence in the same

[29]Baude & Doerfler, *supra* note 1 at 322.

[30]I take these "deep disagreements" to be distinct from both the "stalemate disagreement" referred to above, and the case of "extreme disagreements" referred to below.

[31]Baude & Doerfler, *supra* note 1 at 326.

[32]Baude & Doerfler, *supra* note 1 at 323, my emphasis.

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way. Reflecting this more substantive requirement, Baude and Doerfler write, "interpretive disputes are disputes about what things to look at, *and what to do with those things*"[33] and "[t]he other judge will be looking at different materials, or looking at them in a different way."[34] For instance, Textualists and Intentionalists would not be peers then, for even though they may have access to the same evidence, they take different parts of the evidence to be significant (e.g., "ordinary meaning" linguistic content versus intended communicative linguistic content).[35] As Baude and Doerfler put it, from the perspective of how a legal expert would perceive their methodological opponent's disagreement, "[y]et another case where the wrong methodology produces the wrong result."[36]

Baude and Doerfler then go on to seemingly combine the rationality requirement —established as distinct at the outset of their view—with this more substantive version of the evidence requirement. Baude and Doerfler write:

> …two judges ought to consider one another "epistemic peers" only to the extent that they share the same judicial outlook or methodology. This shared approach to judging is what marks the judges as "equally rational" from each other's point of view and committed to looking to the "same evidence.[37]

Thus, in Baude and Doerfler's view, judges who adopt different interpretive methodologies are not peers because they take different evidence to matter most. Baude and Doerfler later also offer another way of phrasing this point: The sort of disagreements that legal methodological foes are engaged in are "deep"[38] disagreements in which there is "no way to determine whether the person with whom one disagrees is in fact one's epistemic peer."[39] In other words, that methodological foes substantially rely on different evidence amounts to a disagreement deep enough to prevent sharing epistemic peerhood. The shared evidence point, and the deep disagreement point are two faces of the same argument against the epistemic peerhood of methodological foes.

Jonathan Matheson provides a succinct definition of deep disagreements: "Deep disagreements are disagreements concerning one's fundamental epistemic principles. Your epistemic framework is a set of principles that you endorse that gives an account of what is evidence for what, and assigns evidential weights."[40] As such, Baude and Doerfler are alleging that legal disagreements are disagreements about one's fundamental epistemic principles.[41] However, I hold that casting debates about Textualism/Intentionalism, etc. as debates about *fundamental* epistemic principles

[33]Baude & Doerfler, *supra* note 1 at 326 (emphasis added).

[34]Baude & Doerfler, *supra* note at 1 327.

[35]Baude & Doerfler, *supra* note 1 at 326. For the access version, see Richard Feldman, *Epistemological Puzzles about Disagreement*, in Epistemology Futures 219 (Stephen Hetherington ed., 2006).

[36]Baude & Doerfler, *supra* note 1 at 328.

[37]Baude & Doerfler, *supra* note 1 at 326. The "shared approach to judging" should not be taken to reflect a difference in belief formation, but rather a difference in the evidence requirement. See note 24.

[38]Baude & Doerfler, *supra* note 1 at 330.

[39]*Id.*

[40]Jonathan Matheson, *Deep Disagreements and Rational Resolution*, 40 Topoi 1025, 1027 (2021); Klemens Kappel, *Higher Order Evidence and Deep Disagreement*, 40 Topoi 1039, 1039 (2021).

[41]Even the higher-level disagreements about positivism/nonpositivism are not fundamental, Baude & Doerfler, *supra* note 1 at 332.

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would have unpleasant consequences for other epistemic domains in which we have strong intuitions about peerhood within.

In these domains, disagreement about which evidence to rely on in forming beliefs is not by itself deep enough to cause concern about peerhood. Consider the following two examples of disagreements among physicists and moral philosophers. Two physicists disagree on the fundamental laws of nature. One believes in general relativity, and the other is a proponent of quantum mechanics. Each physicist takes quite a different set of facts to be the important ones for determining the laws of nature. Each physicist weighs the evidence differently, and just because they rely on one form of evidence over another does not mean they deny that the other kind of evidence is evidence at all. However, despite this, we would be hesitant to say these physicists (all else being the same with regards to their training, rationality, etc.) are not peers simply on the basis that their respective theories take different evidence to be the most relevant. This is because the general relativity/quantum mechanics debate is not a *fundamental* epistemic principle of being a physicist, which disagreement about would prevent one from counting as a physicist in the eyes of the other. Disagreement of this sort does not eliminate peerhood. These physicists are not engaged in a disagreement deep enough to undermine their peerhood. Rather, so long as they are aware of the same set of evidence (and satisfy the rationality and method requirements), then they are peers. Peerhood is compatible with differing approaches.

The same appears to hold for disagreement among moral philosophers, who disagree on which normative theory is correct. One philosopher is a consequentialist, believing the results of actions to be the only morally relevant fact, and the other is a nonconsequentialist, believing actions to be the only morally relevant fact.[42] These philosophers are alike in training and rationality, etc. However, each philosopher weighs the evidence differently. It seems that, once more, one should be reluctant to deny these philosophers' peerhood simply on the basis that their respective theories take different evidence (consequence-facts or action-facts) to be the most relevant. This is because the consequentialism/nonconsequentialism debate is not a *fundamental* epistemic principle of being a moral philosopher, which disagreement about would prevent one from counting as a moral philosopher in the eyes of the other. Again, disagreement about which evidence to take as the most relevant does not seem deep enough to undermine peerhood here. Absent any reason to think that law is special, to accept Baude and Doerfler's account of peerhood would be to reject both these physicists and moral philosophers as peers. This seems like a high price to pay in light of alternative, more inclusive conceptions of peerhood. In other words, the sort of disagreement that Baude and Doerfler correctly identify legal experts as being engaged in is not sufficiently deep to be worrying.

Instead, the source method of belief generation and access to the sources are the fundamental epistemic principles for legal experts. This parallels the case of the physicist again. One physicist would reject another *as a physicist* if they denied that the correct way to form beliefs about the physical world was to inductively infer them from empirical facts (even in the face of disagreement about *which* empirical facts matter the most). Likewise, a legal expert should only reject another *as a legal expert* when they deny that the correct way to form beliefs about the law is to inductively

[42]This is, of course, a simplification of these views.

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infer them from the sources of law (even in the face of disagreement about *which* candidate sources matter the most). Fortunately for the legal domain (following assumption (1)), there is widespread agreement among legal experts with respect to these fundamental epistemic principles.

As such, I reject Baude and Doerfler's more stringent substantial reliance evidence requirement and the subsequent alleged deep disagreements. It is worth pointing out another downside of the stronger requirement, that it undermines the theoretical neutrality sought after in this paper. The more limited the peer group, the less this account matters for intertheoretical dialogue. Baking in more fine-grained methodological disagreements into peerhood feels more like an attempt to shut down debate before it can start. Textualists and Intentionalists are, all else equal, peers. I believe the above is sufficient to demonstrate that Baude and Doerfler have not identified legal disagreement with a sufficiently deep enough disagreement to prevent epistemic peerhood from being established—legal disagreements are not deep enough to cause concern.

Two final features of legal experts as epistemic peers should be addressed: peer support and strength of belief. With respect to peer support, sometimes one side of a disagreement between legal experts has more support from other legal experts. Importantly, one's view is epistemically strengthened by the presence of other peers who share that view.[43] For instance, if all legal experts but one were Textualists about statutory interpretation, then this would cast serious doubts on Intentionalism as a plausible view. Other times, both positions in a disagreement between legal experts have roughly similar support. As such, I am treating group peer disagreement as a subset of peer disagreement in general; I suspect that no key differences arise between group and individuals' peer disagreement.

Second, even though legal experts are epistemic peers, they can come to differing strengths of belief. By this, I mean that one legal expert may be very confident in their conclusions, while their colleague is more uncertain about what the legal content is. Within epistemology, this is typically fleshed out via the notion of epistemic *credences*, beliefs which have an associated quantified confidence attached to them.[44] Simply put, a belief of 0.9 is a confident belief, and a belief of 0.1 is an uncertain belief. However, there are evidentiary concerns with discovering other legal interpreters' credences—rarely do legal practitioners proclaim their uncertainty. It is very difficult to tell what credence a legal interpreter has in their belief—and so check for compliance with epistemic norms. It is easier to check whether a legal interpreter's response to disagreement is correct given the public nature of disagreement, than it is to check whether a legal interpreter's response to personal uncertainty is correct given its private nature. As such, for simplicity's sake, I will presume that all legal interpreters have a 1.0 credence going forward (maximum confidence).[45] I will consider both the cases in which the peer support is similar, the balanced case, and cases in which the peer support is significantly different for each position, the imbalanced case, and offer a resolution to both. With a better understanding of

[43]Hilary Kornblith, *Belief in the Face of Controversy*, in Disagreement 44 (Richard Feldman & Ted Warfield eds., 2010).

[44]For an overview of the history and possible relations of the concepts of belief and credences, see Elizabeth Jackson, *The Relationship Between Belief and Credence* 15.6 Phil. Compass, 1 (2020).

[45]*Contra*, Posner & Vermeule, *supra* note 5 at 178–179.

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epistemic peers and experts in hand, I will now look at how to decide between Steadfastness and Conciliationism for disagreements among legal peers.

IV. Three Epistemic Principles: Complete Evidence, Independence, and Peer Support

In this section, I will argue for Legal Conciliationism as how one should respond to such cases of legal expert peer disagreement by invoking three plausible epistemic principles: Complete Evidence, Independence, and Peer Support. I will also consider an objection to Independence via an intuition about cases of extreme disagreement, although my response will appear primarily in the next two sections.

The question of this paper is what this sort of disagreement among legal experts should serve as evidence for. As noted at the outset, there are broadly two options within the literature on peer disagreement about how to resolve cases of peer disagreement: Legal Steadfastness—at least some of the time, one should respond to disagreement among legal experts, as peers, about the law by not revising our pre-disagreement beliefs about the law; and Legal Conciliationism—one should always respond to disagreement among legal experts, as peers, about the law by revising our pre-disagreement beliefs about the law.

As noted above, Legal Steadfastness appears to be the standard view among many legal experts, especially in the judiciary—few judges think how their colleagues vote is relevant to how they should vote. Furthermore, as argued above, if one accepts my account of peerhood (in particular, the weaker access version of the evidence requirement) then Baude and Doerfer's prescriptions can be seen as an instantiation of the Steadfast view in the literature. Once we admit that legal experts are broadly peers, then to maintain that sometimes legal experts should remain steadfast in their view in the face of peer disagreement is to advocate for Legal Steadfastness.

I will argue that this position is mistaken, and instead one ought to support Legal Conciliationism, as the solution to all cases of legal expert peer disagreement. In order to motivate Legal Conciliationism, I will appeal to three desirable epistemic principles, adapted for the legal domain, Complete Evidence, Independence, and Peer Support:

> *Complete Evidence:* In responding to legal expert peer disagreement, one must consider all relevant epistemically permitted evidence when it comes to forming beliefs about legal content and the sources of law.[46]

> *Independence:* In responding to legal expert peer disagreement, the only evidence that is epistemically permissible is dispute-independent evidence.[47]

[46]Epistemic permission means to satisfy other epistemic norms, such as those found in the other two principles. Note that this is not meant to align with the extant "Total Evidence" view in the literature, which serves as an argument against Independence, as per Thomas Kelly, *Peer Disagreement and Higher Order Evidence*, in Social Epistemology: Essential Readings (Alvin Goldman & Dennis Whitcomb eds., 2011). Instead, this principle is intended to capture the idea that one should not ignore *permitted* evidence. I will address the Total Evidence view shortly below.

[47]This notion of "dispute-independence" is drawn from Christensen, (2011), *supra* note 20 at 15. For a more general principle, see Christensen (2009), *supra* note 5 at 758.

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> *Peer Support:* The level of peer support for a position in a disagreement is relevant and epistemically permissible evidence for how to respond to that disagreement and form beliefs about legal content and the sources of law.[48]

The use of these epistemically respectable principles further entrenches the philosophical rigor of prior calls for conciliation in the law, such as that of Eric Posner and Adrian Vermeule.[49] Steadfastness can be more easily resisted by appeal to these principles.

I will assume Complete Evidence for the purposes of this paper given its plausibility—one should not ignore evidence unless there is some other reason it should not be permitted (such as being prohibited by Independence). As per above, and again intuitively, Peer Support epistemically strengthens a belief—a belief is more likely to be right if many epistemic peers hold the same belief, especially when those peers are experts. The principle of Peer Support is necessary for my argument as it provides the reasons to revise one's belief in the direction of the peer support and explains the differences between the *balanced* and *imbalanced* cases of peer disagreement. I turn now to clarifying and motivating the principle of Independence. Independence is essentially intended to be a safeguard against begging the question.

Something is "dispute-dependent" just when it is the subject of a disagreement. A prohibition against dispute-dependence is intended to operate as a safeguard against question-begging ways to resolve disagreements. As David Christensen puts it, "It attempts to capture what would be wrong with a P-believer saying, e.g., "Well, so-and-so disagrees with me about P. But since P is true, she's wrong about P."[50] Importantly, note how this question-begging would infect later arguments. Take an argument of the sort: P (the question-begging response), if P then R, therefore R. Asserting R on the basis of P is clearly problematic if the reasons one asserts P are question-begging.

Covering the two other sets of reasons one has to believe P is also essential. The first set of these reasons contains evidence that led the P-believer to believe P that are antecedent to the disagreement (e.g., empirical observations, rational inferences, etc.). These reasons are epistemically permissible in the same way most evidence is. However, note there is one particular all-important instance where such reasons are not epistemically permissible—when the reasons arising from the evidence are in dispute. For instance, presume the P-believer takes the evidence to provide P-reasons, and the Q-believer takes the evidence to provide Q-reasons. In other words, the reasons antecedent to the disagreement about P become dispute-dependent when it is clear that a dispute about whether they are P-reasons or Q-reasons arises.

This leads to the same problems of question-begging above, the following argument is impermissible: Well, so-and-so disagrees with me about whether the evidence gives P-reasons (they think it gives Q-reasons). But since the evidence does give me P-reasons, they are wrong about whether the evidence gives me P-reasons. The upshot of this is that P-reasons arising from the evidence are allowed only when they are not also dispute-dependent. Otherwise, the same downstream problem occurs with deriving R from P above. To prevent this, it is essential to move backward through the argumentative steps to isolate the first disagreement, else the subsequent

[48]This principle is inspired by Kornblith, *supra* note 42 at 44.

[49]Posner & Vermeule, *supra* note 5.

[50]Christensen (2011), *supra* note 20 at 2.

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arguments may be tainted fruit. In the next section, I will also dismiss the fear that Independence combined with Conciliationism leads to a suppression of argument.

Second, the set of reasons arising from the nature of the disagreement, in particular the status of extreme disagreements. Extreme disagreements are disagreements where the relative peers' beliefs are quite different from each other. Some philosophers think these kinds of disagreements give a reason to believe P above, where Q is an extremely different position. In particular, I have in mind the "Justificationist" view of Jennier Lackey and the "Total Evidence" view of Thomas Kelly, both of which make such appeals to extreme disagreement to undermine Independence, at least in cases of extreme disagreement.[51] Essentially, these views hold that the cost of violating the intuitive prohibition against question-begging in Independence is lower than the cost of being unable to reconcile the conservative intuition for steadfastness in cases of extreme disagreement.

However, I hold that it is possible to reconcile our intuitions about extreme disagreements with the Independence principle. Such disagreements will have an impact on how one should respond to peer disagreement, but I hold never a large enough one to motivate steadfastness. I will cover my response to this objection in more detail below, but in preview: in the balanced cases, extreme disagreements actually give us even more of a reason to suspend belief which is a conciliatory move compatible with Independence; in the imbalanced cases, extreme disagreements can be captured by their impact on credence variation—one should vary one's credence less or more based on the size of the disagreement, but one should still always vary one's credence in imbalanced cases—again a conciliatory move compatible with Independence.

I should also note that Independence is quite the plausible principle to commit to when it comes to legal belief formation in particular. There are two reasons which motivate a commitment to Independence in the legal domain. First, some domains might be what could be called a matter of taste, such as aesthetics, in which the kind of reasons an epistemic agent has for forming a belief do not need to be the same for all experts. Other domains seem less taste-sensitive, like science, where the kind of reasons an epistemic agent has for forming a belief ought to be apply to all experts in that domain (e.g., empirical data), unless they reflect some fault. Law seems not particularly taste-sensitive and so is subject to plausible rational requirements like Independence. Second, there are important rule of law reasons for adhering to Independence due to the argumentative nature of the legal domain. Generally speaking, we expect legal decision makers to give rational reasons for their decisions.

Two further final clarifications are required, the first concerning the popularity of the Steadfast view among legal practitioners; and second, the distinction between the evidence provided for by actual disagreement and the evidence provided for by merely possible disagreement. First, one should not mistake a large amount of peer support for the Legal Steadfastness view among legal practitioners as support from relevant experts. The relevant experts in the Legal Steadfastness-Conciliationism debate are epistemologists, not interpretive experts concerning legal content. This is because Steadfastness and Conciliationism are philosophical positions about epistemic norms and are motivated or undermined by appealing to the truth of

[51]Kelly, *supra* note 45 at 198–201; Jennifer Lackey, *What Should We Do When We Disagree?*, in Oxford Studies in Epistemology: Volume 3 283 (Tamar Gendler & John Hawthorne eds., 2008).

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epistemic principles (for instance, Independence). Those best suited to evaluate the truth of epistemic principles are epistemologists, even when those principles concern legal content. As such, the large amount of support among legal practitioners, as experts about legal content, does not provide a particularly strong counter against any Conciliationist argument, as I will go on to make shortly.

Turning to the second clarification, some theorists about epistemic peer disagreement hold merely possible disagreement is as important as actual disagreement. They hold the two should be treated the same for resolving disagreement, for example Thomas Kelly holds, "[i]t is extremely implausible that actual disagreement is always more epistemically significant than certain kinds of merely possible disagreement."[52] The reasoning behind this is that it could be that the only thing preventing actual disagreement is epistemically irrelevant (for disagreement).[53] For instance, presume two peers do not share a common language, but (unknowingly) strongly disagree with each other's views on the law, should this not count as a relevant kind of disagreement given they really do disagree, given they just do not know it yet? Importantly, Baude and Doerfler also appear to offer an argument of this form when they hold that disagreement between methodological foes comes as "old news" and as such is not new epistemic data requiring conciliation.[54] In other words, since the disagreement between methodological foes has always been possible, and even foreseen, then it should make no difference when methodological foes do in fact actually end up disagreeing.

I think this is a mistake. Christensen points out that there is a difference between an actual mistake and mere fallibility: "So the mere possibility of disagreement by peers tells us only what we already know. Actual disagreement with peers is informative because it provides evidence that a certain possibility—the possibility of our having made an epistemic error—has been actualized. It makes what we already know possible more probable."[55] The mere possibility of disagreement about the law is not the same as the evidence provided for by actual disagreement about the law.

V. Against Legal Steadfastness and For Legal Conciliationism

With the epistemic principles laid out above, I will now argue against Legal Steadfastness and for Legal Conciliationism on the basis of their compatibility with Independence.

The proponent of Legal Steadfastness has two options when it comes to peer disagreement: Ignore the disagreement or try to explain it without conceding the Steadfast position. The former approach, ignoring, clearly seems to violate Complete Evidence. Complete Evidence mandates taking into account all potential epistemically permissible evidence when forming beliefs about legal content. The fact of peer disagreement is itself a form of evidence about legal content. There seems little reason to take peer disagreement as an epistemically impermissible form of evidence. Thus, so far as the proponent of Legal Steadfastness is committed to Complete Evidence,

[52]Kelly (2006), *supra* note 19 at 181.
[53]*Id.*
[54]Baude & Doerfler, *supra* note 1 at 327, 330.
[55]Christensen (2007), *supra* note 19 at 208.

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then they must offer some explanation of the balanced peer disagreement in order to satisfy Peer Support.

I take the only other explanation of peer disagreement for the adherent of Legal Steadfastness to violate Independence. To see this, consider the following two cases: first, where one remains steadfast in the face of peer disagreement about particular legal content on the basis of their belief about that legal content; second, where one remains steadfast in the face of peer disagreement about particular legal content on the basis of their methodological commitments. Additionally, I will address a third case in the next two sections: where one remains steadfast in face of peer disagreement about particular legal content on the basis that the disagreement is extreme.

First, steadfastness on the basis of one's belief about legal content. Consider the following. A statute reads "no vehicles in the park." So-and-so disagrees with me about whether bicycles count as vehicles (they think they do not)—and so whether or not they are allowed in the park—but since bicycles are allowed in the park, they are wrong about whether bicycles are allowed in the park. This example is clearly question-begging, as per above, so little time needs to be given to it. However, most legal arguments are more sophisticated than this and take the form of the second case, although sometimes this is implicit.

Second is steadfastness on the basis of one's methodological commitments. Consider the following. A is a textualist and believes that bicycles are prohibited on the basis of the "ordinary meaning" linguistic content of a statute. B is an Intentionalist and believes that bicycles are permitted based on the intended communicative linguistic content of the same statute (perhaps there was an obvious typo or omitted word). If A wanted to remain steadfast in their belief about whether bicycles are permitted, they might give an argument of the form: B disagrees with me about whether bicycles are permitted (they think they are), but since textualism is true, they are wrong about whether bicycles are permitted. The problem at hand should be familiar from above—given A and B disagree about whether textualism or intentionalism is true, then to rely on it as a reason to dismiss a disagreeing peer is question-begging given its dispute-dependence. In short, whether the statute gives us Textualist reasons or Intentionalist reasons is a part of the disagreement among peers and so cannot be used to resolve that disagreement without begging the question.

Note, once the more inclusive notion of peerhood is adopted, then this second case appears to be the account Baude and Doerfler offer when they recommend remaining steadfast on the basis of methodological commitments—i.e., it is all right for the Intentionalist to ignore the Textualist just because the latter is not an Intentionalist. It should now be clear that this approach is problematic and commits peers to beg the question to justify their steadfastness. In the sort of steadfastness based on one's methodological commitment like Textualism and Intentionalism, the question-begging comes in by answering the dispute about bicycles by appealing to the disputed truth of either Textualism or Intentionalism. It is not enough to give reasons for or against Textualism or Intentionalism to prevent charges of begging the question when the peers find themselves in the position of a stalemate disagreement after all evidence has been considered. To rely on one's methodological choices when disagreement persists in the face of attempted persuasion is still to beg the question for resolving peer disagreement. In other words, in cases of stalemate peer disagreement, we can always (at least in the legal domain) climb the chain of the relevant arguments to find (nondeep) dispute-dependent premises whose reliance upon resolving peer disagreement begs the question. Additionally, this second case

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captures higher-level debates among peers, like the one between positivists and nonpositivists, such as is allegedly the debate in *Riggs v. Palmer*.[56] To discount one's opponent on their jurisprudential commitments alone, when these are in dispute, is to beg the question.

In short, both the first and second cases violate Independence by relying upon dispute-dependent reasons to dismiss peer disagreement and so are tainted by begging the question. The problem with Legal Steadfastness can be given thus:

> *Against Steadfastness:* In order to satisfy Complete Evidence, Legal Steadfastness can only explain Peer Support by violating Independence, due to appealing to dispute-dependent evidence in the form of one's beliefs about legal content, or one's methodological commitments.

Meanwhile, Legal Conciliationism can accommodate Complete Evidence, Peer Support, and Independence. Complete Evidence forces Legal Conciliationism to take into account Peer Support. Legal Conciliationism can also explain Peer Support by claiming this *peer disagreement itself* is evidence for belief revision. This option is not open to the proponents of Legal Steadfastness given the essence of their view is to avoid at least some belief revision. The proponent of Legal Steadfastness has to explain why Peer Support can be ignored acceptably, while the Legal Conciliationist view can make positive use of it as evidence. In short, the only way to explain the evidence of equal peer disagreement without violating Independence is to prescribe belief revision, just as Legal Conciliationism recommends. As I will shortly explain, this belief revision consists of either a suspension of belief, which licenses judicial discretion; or the downgrading of one's credences.

In order to head off an understandable objection, it is crucial to address just when one should adopt this conciliatory posture. It is a natural fear that arguing for necessary conciliation in the face of peer disagreement might be prone to suppressing the debate and novel ideas that come with the steadfast territory. This is a mistake. One only adopts the conciliatory position at a very particular time, when one reaches a *stalemate* with one's peers. Upon initially finding out one disagrees with one's peers, then these peers should try and persuade each other of their respective views *prior* to conciliation. This amounts to a form of checking that one's peer really does have all the relevant evidence in the form of arguments and facts. Such evidence sharing may result in one's peers changing their position, on the grounds of that evidence. Only once this evidence sharing has occurred, and all novel arguments and evidence have been presented, does the landscape of peer disagreement need to be addressed. Post-evidence, if the peers find themselves in a stalemate still, *then* the conciliatory posture I argue for should be adopted. This addresses two potential issues one might have had with my view. First, one might have been worried that a particularly persuasive minority argument could not appear in my view given my conciliatory position. It should now be clear that such arguments can appear in the evidence-sharing stage that shapes the final stalemate. Second, one might have been worried that when they conciliated on an issue in the past, they would then be stuck with that belief. Again, it

[56] *Riggs v. Palmer*, 115 N.Y. 506 (1889). While characterizing this case as a debate between positivists and nonpositivists has become somewhat of a canon of jurisprudence (see Ronald Dworkin, Law's Empire 15–17 [1986]) this is not without controversy. For a recent critical reexamination, see Felipe Jimenez, *Legal Principles, Law, and Tradition* 33.1 Yale. J. L. & Human. 59, 66–67 (2022).

should be clear that such beliefs can be modified in the evidence-sharing stage, which in turn reshapes the landscape of any stalemate—one's beliefs can and should constantly be being adjusted to not only one's peers' view but any other new evidence.

In my view then, the value of dissent is captured adequately in Legal Conciliationism. Additionally, the distinction between our epistemic and practical obligations should be noted. I hold that while we are epistemically obligated to adopt Legal Conciliationism, the practical impacts this adoption has are more nuanced. For instance, I will maintain that while a legal practitioner should adopt Legal Conciliationism, this does not preclude that practitioner from advocating for their client's best interest—even if they deviate from what the practitioner should actually believe the legal content is.

Before considering just how one should revise our beliefs in the balanced case of legal expert peer disagreement, this is a good opportunity to underline one of the major impacts of how I have constructed Legal Conciliationism: jurisprudential humility. Essentially, when resolving disagreement, if one wants to respect Independence, one cannot appeal to one's preferred theory of law (e.g., positivism versus nonpositivism) or mode of statutory interpretation (e.g., Textualism versus Intentionalism). This goes against the predominant approach both within the courtroom and academic literature. Legal experts in the courtroom are all too happy to make implicit (and occasionally, explicit) appeals to theories of law and rules of interpretation—one need only think of how many judges subscribe to Textualism, etc. The upshot of my view is to encourage a great dose of jurisprudential humility. We should be wary of sticking dogmatically to our preferred theory of law or rules of interpretation. Instead, as I will further explain, one should take the beliefs of those peers who disagree with us more seriously. Further, a consequence of my view is that judges and academics should take each other's positions seriously. This is particularly important in common-law systems in which academic commentary is not typically a source of law. Even when it is not a source of law, it is still important epistemic evidence from a peer.

To address the third case, one motivated by extreme disagreement, I will now go on to look more specifically at how one should revise our beliefs in both what I call the "balanced" and "imbalanced" cases of legal expert peer disagreement. The imbalanced case is disagreement among legal experts where there is uneven peer support for each position—one side of the debate is favored by many more epistemic peers. The balanced case is disagreement among legal experts where there is no such imbalance and rather there is parity of peer support for each position.

The judicial context is important and complex, so will serve as a useful illustrative example. Importantly, for a multipanel court, whether judges find themselves in a balanced or imbalanced case of peer disagreement is not determined by their final votes—rather, these final votes are indicative of the post-revision epistemic landscape of the judges' beliefs. The judges will have found themselves in a balanced case where they are roughly evenly split and an imbalanced case where some positions are dominant, and others are not. An easily sorted imbalanced case then would be where, on a nine-member panel, eight judges support one position and only one judge supports another. Again, note these are not judicial votes, these are the positions of the judges *prior to voting*. Likewise, a balanced case would likely be represented when five judges hold one view, while the remaining four judges hold another. Where the intermediate cases lie will be difficult to tell, although I am inclined to be broad about what counts as a balanced case given my resolution of these cases will protect the minority views from majoritarian rule.

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The process of belief revision happens before the final votes of the court are revealed. The votes then reflect how the judges have revised their beliefs in response to a imbalanced or balanced case, after trying to convince each other. These final votes (e.g., an 8-1 split, or a 5-4 split, etc.) are then themselves useful epistemic evidence to draw upon in later decisions. Importantly, this distinguishes my proposal from that of Posner and Vermeule, who recommend a novel two-stage process upon which judges revise their beliefs after a first round of voting.[57] By encouraging conciliation prior to voting, my view has the virtue of preserving judicial practice as it stands, while encouraging further conciliation between judges. My view also advances on the interesting work done by Posner and Vermeule by strengthening the mandate for conciliation by appealing to robust epistemic principles that clearly apply to all instances of legal content/sources of law, rather than motivating this general mandate by considering examples of legal content that already incorporate epistemic elements (e.g., "reasonable doubt").[58]

VI. How to Resolve the Balanced Case of Legal Peer Disagreement

In my Legal Conciliationist picture, the balanced case (one of roughly even peer support) motivates a suspension of belief about legal content. This call for a suspension of belief further distinguishes my proposal from prior work, such as by Posner and Vermeule, as it represents a more radical form of belief revision than previously offered for the legal domain.[59] I will also argue that this suspension of belief can be reconciled with our intuitions about cases of extreme disagreement without resorting to Legal Steadfastness.

It is now time to look more specifically at how one should revise our beliefs in these balanced cases. Keep in mind that any specific proposal for how one should revise our beliefs is distinct from accepting Legal Conciliationism more generally—one can disagree with my proposed way to revise belief while still being committed to Legal Conciliationism on the basis of my arguments above. I hold that in balanced cases of even peer disagreement, the disagreeing peers should revise their beliefs by *suspending belief* about the disputed legal content. Suspension of belief represents a compromise belief for both parties. I will shortly consider two different ways to suspend belief: uncertainty and ambivalence.

However, suspension of belief is just one candidate response to the balanced cases on Legal Conciliationism. In particular, it is an option that appeals to epistemic indeterminacy—that there is no good epistemic evidence as to what the sources of the relevant legal content are. There are two further options, both of which I reject, first, that the epistemically balanced cases actually make the legal content metaphysically indeterminate; and second, that the balanced cases serve as epistemic evidence for actual metaphysical indeterminacy. I reject both on the grounds of their violation of my desired theoretical neutrality. The first holds that instead of suspending belief, one should take peer disagreement of this sort as actually constituting metaphysical indeterminacy. This view would preference consensus-based positivism above all

[57]Posner & Vermeule, *supra* note 5 at 164.
[58]*Id.*, 162–174.
[59]*Id.*, 189–190.

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other views, on which such disagreement already seems to constitute a change in the law. This is enough of a reason to avoid this approach.

The second holds the weaker thesis that such disagreement is merely defeasible evidence of actual metaphysical indeterminacy. However, even this weaker thesis will preclude views like (some versions of) natural law, which might prohibit any real metaphysical indeterminacy at all. Instead, all views, including natural law, can accept the idea that we simply do not have good enough evidence to be sure what the law is right now, even if it is actually determinate. As such I will continue to endorse suspension of belief as the appropriate response to the balanced cases of disagreement. Note, both the strong and weak metaphysical theses are compatible with the epistemic thesis I endorse—uncertainty could be (but need not be) a sign/creator of indeterminacy.

There are two major ways to characterize suspension of belief: uncertainty and ambivalence. The former is the claim that there is a lack of evidence to form a justified belief about the thing one is suspending belief about. As such, suspension of belief as epistemic uncertainty amounts to being in "higher-order doxastic or epistemic states like believing that one doesn't know."[60] The latter, ambivalence, is the view that the relevant evidence supports considering two or more incompatible beliefs—roughly having equal credences in each.[61] I am inclined to support the former view, uncertainty, as the relevant one for my project: the evidence in balanced cases of peer disagreement supports believing that one does not know what the legal content is. Not only do such situations make it unclear what the legal content is, they also make it unclear if any of the beliefs are tenable.

In the absence of a belief about legal content, judges need to make a decision. I support uncertainty because of the particular way I take cases of balanced peer disagreement to license judicial discretion. The way in which this discretion is constrained differs depending on whether one endorses uncertainty or ambivalence. On ambivalence, discretion seems to be limited to acting on one of the beliefs one has just as good evidence as another for. Meanwhile, on uncertainty, judges seem able to exercise their discretion in a way that does not reflect the specific beliefs of any of the peers, given the equal support for conflicting beliefs. I take this latter approach to be more desirable for it allows for greater compromise between the views. Given no belief is elevated on the uncertainty reading of suspension of belief, it is possible to exercise discretion in a way that is more acceptable to both disagreeing parties, than it is on ambivalence, where one party is necessarily the winner and another the loser. In the case of uncertainty about what the relevant legal content is, then a broader discretion will allow for legal content to be built on what is agreed upon, even if the final result is not encapsulated in any of the original proposals.

This is particularly important in the cases of extreme disagreement mentioned above, where there is a large gap between the disagreeing peers' beliefs. In such cases, being able to come to a potential compromise position reduces the pull of the intuition to steadfastness that arises out of extreme disagreement. Simply put, in the balanced case of disagreement, uncertainty allows us to reconcile the extreme disagreement intuition with Independence by allowing both a suspension of belief

[60]See Jane Friedman, *Why Suspend Judging?* 51.2 Noûs 302, 306 (2017); Michael Bergmann, *Defeaters and Higher-Level Requirements* 55.220 Phil. Q. 419, 421 (2005).

[61]See, for instance, Amalia Amaya, *Ambivalence, Judicial Craftmanship, and the Development of the Law: Variations on a Theme of Benjamin Cardozo* 34.1 Yale. J. L. & Human. 190, 193 (2023).

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that elevates neither side of the disagreement, and an exercise of discretion that also can prefer neither side.

There is much more that could be said about this exercise of discretion, but for now, it suffices to demonstrate how this schema would work in the *Riggs v. Palmer* case. In *Riggs v. Palmer*, the presiding judges disagreed about whether a beneficiary of a will can inherit after murdering the maker of that will. Presuming balanced peer disagreement, the judges ought to suspend belief about there being a determinate legal content about whether a beneficiary can inherit in this situation or not. Given that suspension of belief, the judges should then use their discretion to decide how the law in question should be understood for resolving the case. This final suspension of belief as belief revision is reflected in the balanced nature of the final votes of the court, as per above.

This approach has the virtue, then, of easily being able to explain why the Court in *Riggs v. Palmer* came to the decision it did. Given the epistemic indeterminacy arising from judicial disagreement, the judges were able to use their discretion (via the mechanism of voting) to decide how the law around succession should be construed to decide the case—that the beneficiary cannot inherit. Note I am not committing to nonpositivism, I am not saying that the decision applied what was the law all along. Likewise, I am not committing to consensus-based positivism, I am not saying that the lack of a consensus made it the case that there *actually* was no law on the issue and so discretion could operate, as I will cover very shortly. All theories of the nature of law permit discretion, they just justify it differently. When this epistemic indeterminacy arises, all theories of law permit discretion.

The alternative is to commit question-begging violations of Independence above or be stuck in an implausible discretionless stalemate. A major impact of this view then is that, in cases like *Riggs v. Palmer*, which suffer from the balanced case of peer disagreement, the judges are not simply applying the law, they are applying discretion when the law is unclear. Note this is distinct from any claim about the law running out. Depending on one's preferred jurisprudential view, unclear law might mean there is no law or that there is a law that is difficult to ascertain. Both these views are compatible with my claims. I am arguing, for both these views, that such uncertainty leads to discretion.

Recall the ecumenical aims of this paper, I am neither endorsing nor attacking either positivism or nonpositivism—both families of view can adopt my proposal. I will likely upset both positivists and nonpositivists; the former are likely to feel I am diminishing the metaphysical impact of peer disagreement (at least on a Hartian view), while the latter are likely to feel I am downgrading what they see as an application of the law to mere discretion. However, to reiterate, both theories can maintain their metaphysical theses while adopting my epistemic proposal—nothing about discretion arising from epistemic indeterminacy threatens the central views of either positivism or nonpositivism.

For a less theoretical example of a balanced case, consider *Texas v. Johnson*, in which the issue at hand was whether the burning of the United States (U.S.) flag was protected speech under the First Amendment of the U.S. Constitution.[62] A majority of five justices to four dissenting held that the burning was indeed protected as symbolic speech. As such, this is another case of balanced disagreement that permits the justices to exercise epistemic discretion over the relevant legal content—whether

[62] *Texas v. Gregory L. Johnson*, 491 U.S. 397 (1989).

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flag burning is protected by the First Amendment or not. My position on suspension of belief and discretion can be summarized as:

> *Discretion in Balanced Cases*: In cases of epistemic uncertainty arising from balanced peer disagreement, judges have the discretion to decide the relevant application of the disputed legal content (beyond merely choosing from the options initially presented).

Recall that these legal disagreements about legal content and its sources are disagreements over which all-things-considered "jurisprudence" (in Cox's sense) is correct, and so include disagreements that cover a variety of grounds including the nature of law, method of interpretation, and stance on legal indeterminacy. The relevant disagreements sensitive to belief revision are only those stalemate beliefs where the disputants have gone through the steps of laying out their aggregation of the importance of different sources and anything else relevant to their all-things-considered jurisprudence, yet disagreement persists.

The relevant sort of discretion is *epistemic* discretion to decide how the law ought to be understood. One may worry then that the votes will simply reflect the peer support prior to suspension of belief. However, note two changes that occur once suspension of belief is brought into the picture. First, judges who feel constrained by their all-things-considered jurisprudences to believe the law is one way are now free to exercise epistemic discretion to treat it another way, such as the way they believe the law ought to have been all along. This may change votes. Second, even if votes are not changed, the *rationale* of the decision is changed. Decisions arising from the application of epistemic discretion might well warrant different treatment in later cases, depending on one's views on precedent in one's all-things-considered jurisprudence.

It should be noted that this discretion only amounts to discretion over how to construe the relevant disputed legal content for resolving the case. This discretion is then constrained by other existing legal content where there is agreement. The discretion is not broad enough to allow the judges to decide the case however they like—it only acts as a mechanism for moving forward in the face of balanced disagreement about a particular legal content. The question then arises whether judges ought to conciliate/suspend in disagreement over discretion too. However, recall that this discretion allows judges to vote with what the law *ought* to be in mind. It is not at all clear that judges are peers with each other about what the law ought to be in the same way they are for what the law is. This looks like a more likely candidate for a deep disagreement, as discussed above. However, while judges should not conciliate over *how* to exercise discretion in balanced cases, the fact they *should* exercise epistemic discretion can be triggered by disagreements with methodological foes.

It should be noted that the above is the *general case* with respect to the impact of mandated suspension of belief. In some instances, there will be other agreed-upon legal content that attaches to relevant epistemic criteria—such as the presence of a suspension of belief—to trigger a different resolution of a case. For instance, ambiguity-sensitive content like the common-law 'Chevron' deference is an example of legal content that is triggered by suspension of belief, trumping the need to turn to discretion.[63] However, it should be noted that these are special cases and do not arise in most cases of legal disagreement. While my view is compatible with trumping legal

[63] *Chevron U.S.A. Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

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content that activates epistemic criteria like suspension of belief, it is independent of views that rely on the existence of this kind of legal content to motivate Legal Conciliationism in general. The upshot then, in balanced cases of legal expert peer disagreement, is that such disagreement motivates jurisprudential humility in the form of suspension of belief which in turn licenses the use of constrained judicial discretion as to what the disputed legal content requires. Let us now look at the imbalanced case.

VII. How to Resolve the Imbalanced Case of Legal Peer Disagreement

In the imbalanced case, Peer Support is characterized by an imbalance of peer support for competing epistemic positions. In situations where the peer support is unbalanced, then the evidence provided by Peer Support depends on the particular apportionment of that evidence—how much support exists for each position. In every case of imbalanced peer disagreement, downgrading one's credence is called for (possibly to the point where one now has a higher credence in their opponent's belief than their own). Two aspects of the imbalanced case will necessarily be quite ill-defined: how much to revise belief and in what way to revise belief. The first issue, how much to revise belief, is difficult because it is not certain what exact weight we should attach to the beliefs of those we disagree with. The second issue, in what way to revise belief, is likewise unclear given it too depends on the weight we should attach to our opponents' beliefs.

However, the general direction of belief revision in the imbalanced case is fairly clear. The more peer support a position has, the less revision is called for, and the less support, the more revision.[64] On one end of the spectrum, the more even end, the relevant peer support will motivate an adjustment of one's confidence (credence) in those beliefs but is unlikely to make a large enough change to prefer one's opponent's belief. For instance, consider the case of *Smith v. United States*, about whether a statutory reference to the "use of a firearm" in drug trafficking crimes included its use in barter.[65] Simplifying somewhat, six of the judges took an intentionalist stance in interpreting the statute while the remaining three took a broadly textualist stance. As such, thirty-three percent of judges were seeming Textualists, while sixty-six percent were Intentionalists. In such a case, many in both parties will likely retain their views given reasonable levels of peer support but downgrade their credences respectively. Say both parties started with a 1.0 credence in their original view. One way in which their new credences could reflect their taking account of dissenting voices is for the majority to downgrade their confidence to a 0.66 credence, and the minority to downgrade their confidence to a 0.33 credence.

The same would apply to other forms of legal disagreements, such as disagreements about whether property rights were best construed as a single exclusive right[66] or as a "bundle of sticks."[67] Any part of the above all-things-considered "jurisprudence" can be subject to a legal disagreement amenable to the same schema

[64]For agreement as evidence in belief revision, see Christensen (2011), *supra* note 20 at 18.
[65]*Smith v. United States*, 508 U.S. 223, 225 (1993).
[66]*See, e.g.*, *Kaiser Aetna v. United States*, 444 U.S. 164, 179 (1979).
[67]*See, e.g.*, *City of West Bend v. Continental IV Fund*, 535 N.W.2d 24, 487 (Wis. Ct. App. 1995).

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of credence-based belief revision. In other words, if it turned out that ninety percent of peers thought of property as an exclusive right, then this would provide strong reasons to downgrade one's belief that property was better construed as a bundle of rights. Recall that 1.0 is maximum confidence for a belief, and 0.1 is the minimal confidence for a belief that one continues to believe. I will shortly lay out a distinction between private and public credences to clarify this view.

Meanwhile, at the other strongly imbalanced end of the spectrum, the relevant peer support seems to encourage those in the majority position among peers to revise their beliefs only minimally, while it encourages much greater revision among those in the minority. Note, this is still a Legal Conciliationist position as belief revision is always called for in order to avoid violating Independence. However, it can be a very small amount of revision if one is in a strong position of peer support. Recall that in the judicial setting, the votes of the court are indicative of the final epistemic landscape post-revision. As such, the final votes already reflect how the judges have downgraded their credences. Note that the relevant judges can downgrade their credences in such a way as to result in a balanced case of peer disagreement, and thus motivate suspension of belief.

It is also here that the intuition that arises from extreme disagreements can be accommodated without rejecting Independence or turning to Steadfastness. Essentially, where the disagreements between peers are large, then less conciliation is called for than when disagreement is small. However, rather than go all the way to a Steadfast view, I hold that peers should still also conciliate and revise their beliefs in the face of peer disagreement, suitably modified for by the level of peer support.[68] For instance, just because one peer holds an extremely divergent view does not mean they should not revise their belief upon discovering the rest of the peer set holds a very different view. In short, Independence and extreme disagreements can be reconciled here in the imbalanced case, as well as the balanced case above. Note also, that even if these responses to the case of extreme disagreements fail, a Legal Steadfastness built upon extreme disagreement alone would be quite weak (one would not remain steadfast often).

Similarly, one might fear this proposal leads to problematic recursion issues when iterated repeatedly, i.e., one must constantly update their belief in the face of ever-changing levels of peer support *post-revision*. A full treatment of this major issue in social epistemology goes beyond the space available here. However, I will be able to contribute three thoughts that gesture toward a solution. First, the credence affected by the evidence of peer disagreement is the legal interpreter's *private credence*, not the public credence of 1.0, which is part of the evidence of peer disagreement for the above evidentiary reasons. Second, legal interpreters have multiple *private* credences in all available options (which add up to 1.0 collectively), although they may be very low. Third, an interpreter's public credence only shifts when their dominant private credence does *due to evidence of public peer disagreement*. This has the result that repeated iteration of belief revision on peer disagreement will reach one of two stable outcomes: either all peers will adopt the same public credence (widespread agreement), or a subset of peers have sufficiently

[68]As such, my view here does not align with the "Equal Weight" view in the literature. My view is something like the Equal Weight view, adjusted for this peer support and effects of extreme disagreement (i.e., not all peer views are equal). See Elga, *supra* note 19 at 484.

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strong private credences to resist the evidence of iterated revised peer support and so retain a minority stable view.[69] I suspect such strong private credences are relatively rare, but their presence lets us understand why some minority positions can survive iterated peer disagreement. Belief revision need not necessarily be a zero-sum game. I should note, however, that I suspect the vast majority of legal interpreters who adopt the popular steadfast view do not have sufficiently strong private credences to maintain all of their positions.

I will end the constructive part of this paper by considering how useful this final version of the imbalanced case of disagreement (with significantly uneven peer support) is in explaining why legal experts have to infer the law from its sources to be considered experts in the first place. This is explained by the widespread agreement among epistemic peers that this is the right method to form beliefs about the law—usually, legal practitioners agree on how to tell what the law is.[70] In other words, if any disagreement does arise, this would be an example of the significantly uneven form of the imbalanced case of disagreement—there is widespread agreement among epistemic peers that beliefs about legal content should be formed by inferring from the sources of law. Recall I take such sources to be very broad and potentially include moral principles. Future work has much to say about the nature of this source-inference method in more detail. For now, the consensus about using the source method can be understood as, to steal a term from Gerald Postema, the "pre-interpretive agreement" that allows us to go on to have intelligible disagreements about the sources of law as epistemic peers, post-interpretation.[71] The legal case is analogous to the scientific case, where there is widespread consensus about the scientific method as a way of forming beliefs about natural facts—this consensus helps explain what makes a scientific expert. Finally, it should be noted that such a consensus is contingent and that it could be the case that we did not live in a world in which most epistemic peers agreed about how to form beliefs about the law—here, legal expertise would have little conceptual value.

All legal interpreters should exercise a good deal of jurisprudential humility when it comes to peer disagreement by both invoking their own methodological commitments less and listening to those who share their legal expertise. To do anything else would be question-begging. This applies not only in the courtroom but even in abstract theoretical debates about theories of law, although the stakes are usually higher in the former situation.

VIII. Conclusion

This paper began by laying out what counts as a legal disagreement and the two options for responding to legal disagreements: Legal Steadfastness and Legal Conciliationism. I clarified these options by turning to the concepts of epistemic peers—those who share a level of rationality, access to the evidence, and method of belief

[69]Note, this is not a steadfast view for such peers have downgraded their private credences on the basis of peer disagreement as evidence. The only time they do not downgrade is when there is no new evidence of peer disagreement (the situation is stable).

[70]See Bill Watson, *Explaining Legal Agreement*' 14 Jurisprudence 1, 9 (2023); Dennis Patterson, *Interpretation in Law* 42 San Diego L. Rev. 685, 687 (2005).

[71]Gerald Postema, *"Protestant" Interpretation and Social Practices* 6.3 Law & Phil. 283, 297 (1987). See also Posner & Vermeule, *supra* note 5 at 166.

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formation, and legal experts—those who are generally rational, have access to the sources of law and infer legal content from its sources. I then engaged with Baude and Doerfler's charge that legal practitioners are engaged in a deep enough disagreement to undermine epistemic peerhood, for reasons due to their more substantive reliance version of the evidence requirement. I rejected this claim by a closer examination of deep disagreement, concluding the legal disagreements are not deep enough to cause these concerns.

In deciding between Legal Steadfastness and Legal Conciliationism, I appealed to three principles in my answer: Complete Evidence, that all epistemically permissible evidence must be considered in forming beliefs; Independence, that only dispute-independent evidence is epistemically permissible; and Peer Support, that the level of peer support for a view is epistemically permissible evidence. I then rejected Legal Steadfastness given it must violate Independence by appealing to dispute-dependent evidence. In turn, I supported Legal Conciliationism given it can accommodate all three of these principles.

In the balanced case of peer disagreement, where Peer Support is roughly even, I held that, following Legal Conciliationism, one should revise our beliefs by suspending belief about legal content and its sources, instead turning to judicial discretion to determine the legal content. In the imbalanced case of peer disagreement, I held that Peer Support mandates the downgrading of one's confidence in belief, relative to the level of Peer Support for the relevant positions. This account of how to resolve peer disagreement also represents a missing component of extant accounts of legal knowledge (i.e., Greenberg's source-inference account) My account offers a way in which to preserve the insights of the source method by guiding us in what to do when it fails to produce consensus alone.

The alternative to my account would be to remain in the unproductive theoretical deadlock and to treat what is really an exercise of discretion as the simple application of the law, despite controversy. To close, to merely suggest further directions for the debate and not to respond decisively, I will consider a brief survey of possible avenues of attack for my opponents. Two direct attacks concerning the tenability of my premises are available. First, one could reject Independence and hold that dispute-dependent evidence is epistemically permissible. This would have to be for reasons distinct from the intuitions about extreme disagreement handled above. Such attacks will require either explaining why dispute-dependent evidence is not question-begging, or why question-begging is permissible some of the time. The latter of these routes could take the form of relying upon alternative epistemic principles, such as consistency.

Second, one could accept my premises and add a principle to the schema that undermines the importance of Peer Support and explains why the evidence Peer Support offers is unpersuasive. Two possible routes come to mind, one attacking the notion of legal expertise and another attacking the notion of legal peers. The former would amount to claiming that alleged legal experts are not particularly reliable and so using their disagreement as evidence is unreliable also. However, this approach is in danger of undermining the possibility of reliable legal knowledge at all. The latter would be the claim that the epistemic hierarchy in the legal domain is more stratified than I have presented it—fewer legal experts are peers to one another. I suspect this approach would butt up against common (but contingent) features of most legal systems, such as the parity of members of the judiciary when sitting together.

However, for now, it is enough to say that judges, lawyers, and academics should listen more to each other when they disagree. Humility is a virtue often lacking among legal interpreters. When attempting to ascertain what the law is or requires, we ought to remain less steadfast in their views and consider seriously the value of our opponents' views.

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