Draft

Michał Wieczorkowski

Hybrid Theory of Legal Statement and Disagreement on the Content of Law

1. Introduction

Disagreement is a pervasive feature of human discourse and a crucial force in shaping our social reality. From mundane squabbles about matters of taste to high-stakes disputes about law and public policy, the way we express and navigate disagreement plays a central role in both our personal and political lives. Legal discourse, in particular, is rife with disagreement - it is the very bread and butter of courtroom argument and legal scholarship alike. Consider a debate between two legal philosophers, Ronald and Herbert, about the Eighth Amendment of the U.S. Constitution, which prohibits 'cruel and unusual punishment'. Ronald asserts: 'It is the law that capital punishment is prohibited'. In response, Herbert states: 'It is not the law that capital punishment is prohibited'. We intuitively think Ronald and Herbert are disagreeing, which reveals in the fact that they are licensed to use expressions like *no (it isn't)* and *nuh-uh* when responding to their opponent's claim. But despite the ubiquity and significance of legal disagreement, its precise nature remains elusive. What exactly is going on when two people disagree about what the law requires? And how can hybrid theory answer this question?

At the beginning, it is important to distinguish between disagreement and dispute. Disagreement indicates a kind of rational conflict in mental states. Disagreement refers to a rational conflict between mental states – a state in which two speakers accept conflicting contents p and q. At its most general level, it is neutral with respect to the nature of the conflicting contents. (P could be a proposition that entails not-q, or p could be a preference or plan, the satisfaction or completion of which is incompatible with q, etc.) People who have never met and will never meet can count as disagreeing with one another. Disputes, on the other hand, are linguistic exchanges that appear to express disagreement. Some disputes may succeed in expressing genuine disagreements, while others may not. Moreover, some disputes may express disagreements worth arguing about, while others express trivial disagreements not worth debating. Additionally, some disputes express disagreement over the literal semantic content of the expressions used (what is said), while in others, the disagreement concerns content that is conversationally implicated, presupposed, or conventionally implicated (Plunkett and Sundell 2013).

This chapter examines the phenomenon of legal disagreement and evaluates how the hybrid theory proposed in this book explains it. Section 2 outlines different approaches to disagreement, including disagreement in belief, disagreement in attitude, and metalinguistic disputes. Section 3 highlights crucial appearances of disagreement in law. It argues that both the attitude-based and metalinguistic approaches face challenges in capturing the nature of legal disagreement. Section 4 discusses three accounts that maintain disagreement in content: content relativism, truth relativism, and aspirational contextualism. Content relativism suggests that the descriptive content of legal statements varies across contexts of assessment, while truth relativism proposes that the truth value of propositions can vary across contexts. Aspirational contextualism, on the other hand, holds that speakers making legal claims typically attempt to refer to objective, mind-independent legal standards. Section 5 argues that aspirational contextualism provides the best fit for the features of legal discourse. It addresses the challenges faced by content relativism in maintaining the stability of assertoric content and the issues with truth relativism in accounting for the preclusion of joint reflexive accuracy in legal disagreements. Section 6 demonstrates how aspirational contextualism aligns with the hybrid theory proposed in this book. Section 7 considers the potential challenge of reversibility, as presented by Jacob Ross and Mark Schroeder (Ross and Schroeder 2013).

2. Different approaches to disagreement

One prominent approach to understanding disagreement locates it at the level of beliefs. According to this view, disagreement obtains if, and only if, the contents of two beliefs (or two acceptances) are incompatible. The contents of two beliefs (or two acceptances) are considered incompatible if they cannot be true simultaneously. Given the strength of this view, explaining the nature of this disagreement proves challenging for legal expressivists who deny that propositions have any relevant explanatory role toward the content of legal statements. But, it also proves challenging for contextualist approach, which is important for our considerations because hybrid theories may want to endorse it. The first strategy that provides an alternative to the belief-based account of disagreement draws inspiration from Charles Stevenson's influential work on ‘disagreement in attitude’. The second refers to metalinguistic negotiations - a concept proposed by David Plunkett and Timothy Sundell (Plunkett and Sundell 2013; 2021; Plunkett 2015; 2016).

a) Disagreement in belief

It seems intuitive that when two people engage in a disagreement over the content of the law, it is necessary that (at least) one of them is wrong in holding the attitude she holds. This intuition is expressed by one of prominent approaches to understanding disagreement that locates it at the level of beliefs. This approach can be traced back to the influential work of Gottlob Frege. Frege argues that disagreement occurs when there is a contradiction between the opinions of different people. In other words, disagreement arises when two or more people hold beliefs or make assertions that are incompatible or contradictory. In this regard, Frege points out that only when there is a common ground can there be a meaningful contradiction between the opinions of different people. If judgments were merely relative to individual standards, any apparent disagreement would dissolve into a mere clash of subjective perspectives, with each person's utterances amounting to nothing more than reports of their own mental states. In consequence, there would be no basis for disagreement, as there would be no contradiction between differing beliefs. In consequence, someone who holds a purely subjective view of truth would have to adopt the principle of 'non disputandum est' (it is not to be disputed) (Frege 1979, 233).

This notion of disagreement in belief is further echoed by Charles Stevenson (Stevenson 1963), who states that in one sense of 'disagreement', you and I disagree if and only if one of us believes some proposition, and the other believes another proposition that is inconsistent with the first. He emphasizes that disagreement in belief involves an opposition of beliefs, both of which cannot be true. Accordingly, Everett W. Hall (Hall 1947) articulates this perspective, stating that two people disagree when one person believes a proposition that is the strict contradictory of a proposition believed by the other. He illustrates this with an example: when *A* believes that *X* is good and *B* believes that *X* is not good, they are believing contradictory propositions, just as they would if *A* believed that *X* is green and *B* believed that *X* is not green. In contrast, there would be no disagreement if *A* merely believed that, for example, *A* approves of *X* and *B* believed that *B* does not approve of *X*, as these propositions are not contradictory.

In conclusion, the central tenet of the disagreement in belief approach is that disagreement arises when the contents of two beliefs are logically incompatible or contradictory. This view focuses on the propositional content of beliefs and asserts that disagreement occurs when these contents cannot be simultaneously true. Disagreement, in this sense, is rooted in the logical relations between the propositions believed by the disputants.

b) Disagereement in attitude

Charles Stevenson's influential work on ‘disagreement in attitude’ provides a compelling alternative to the belief-based account of disagreement. Stevenson introduces this concept through a series of memorable examples that highlight the distinct nature of this form of disagreement.

In one example, Stevenson describes two people who have decided to dine together. One suggests a restaurant with music, while the other expresses a preference for a quieter venue. Stevenson argues that their disagreement stems primarily from their divergent preferences rather than differing beliefs. Similarly, he presents a scenario in which a museum curator and his advisers disagree about whether to purchase contemporary art or old masters. Again, the disagreement arises from their conflicting preferences rather than disputes concerning facts (Stevenson 1944, 3).

These examples illustrate a recognizable form of disagreement that is distinct from disagreement in beliefs. In each case, the parties may agree on all the relevant facts, yet they still disagree. Their disagreement, then, is not rooted in their beliefs about the world but rather in their differing preferences or attitudes. Stevenson coined the term ‘disagreement in attitude’ to describe this phenomenon.

However, Stevenson’s definition of disagreement in attitude is somewhat ambiguous, as he seems to provide more than one characterization. The most commonly cited definition in the literature simply states that disagreement in attitude occurs when people hold attitudes that cannot both be satisfied. However, in some passages, Stevenson appears to add a further necessary condition to his definition. According to this stricter definition, disagreement in attitude requires not only incompatible attitudes but also a desire by at least one party to change or call into question the attitude of the other. Stevenson writes: ‘Two men will be said to disagree in attitude when they have opposed attitudes to the same object—one approving of it, for instance, and the other disapproving of it—and when at least one of them has a motive for altering or calling into question the attitude of the other’ (Stevenson 1944, 3). This passage suggests that in fact, Stevenson considers two conditions individually necessary and jointly sufficient for disagreement in attitude: (1) the parties must hold opposed attitudes towards the same object, and (2) at least one party must have a desire to change or challenge the attitude of the other.

c) Metalinguistic negotiations

The second strategy providing a widely-discussed alternative to an account based on beliefs refers to metalinguistic disputes (Plunkett and Sundell 2013; 2021; Plunkett 2015; 2016). To understand the notion of metalinguistic dispute, we have to begin with the notion of a metalinguistic usage. Sometimes, when we use words, we hold our views about some part of reality fixed, and then use our words to communicate not about that part of reality (or at least not directly) but rather about what those words do or should mean. A metalinguistic usage of a term is hence a case where that term appears to be used (not mentioned) to convey information about how that very term is or ought to be used in the context. In Barker's much-discussed example (Barker 2002), someone asks you what counts as 'tall' around here, and you reply, 'Well, Feynman is tall' as you and your listener both look over at Feynman. We could even imagine that Feynman just happens to be standing in front of a measuring stick. In this case, the central communicative upshot of your utterance is not new information about Feynman's height, which, after all, is mutually known by you and your listener. Rather, you've communicated information about language, and in particular, about the local height threshold for 'tall'.

Metalinguistic disputes can be either descriptive or normative. A *descriptive metalinguistic dispute* is one in which at least one speaker employs a metalinguistic usage of a term to put forward a view about what a term *does* mean. And a *metalinguistic negotiation* (or, equivalently, a *normative metalinguistic dispute*) is a dispute in which at least one speaker employs a metalinguistic usage of a term to put forward a view about what a term *should* mean (Plunkett and Sundell 2013). In this regard, Plunkett argues that we may explain disagreement in legal contexts, in virtue of the notion of metalinguistic negotiation – even when the contents of two speakers' utterances are consistent, their utterances can still express genuine disagreement by virtue of pragmatically conveying conflicting attitudes towards how 'law' or 'proper method of interpretation' should be used in the relevant context.

3. Disagreement in law

What exactly is going on when two people disagree about what the law requires? One puzzling feature of legal disagreements is the sheer variety of linguistic resources speakers employ to express them. Consider, for instance, the diverse array of disagreement markers we find in everyday disputes. In some contexts, speakers use markers such as 'No' and 'you are wrong':

Herbert: Haggis is tasty.

Ronald: Yuck! No! Haggis is not tasty.

Here, Herbert and Ronald seem to be expressing conflicting attitudes or preferences. Markers like ‘yuck’ and ‘no way’ feel quite felicitous. In other contexts, however, speakers reach instead for markers with a more factual or alethic flavor, such as ‘It is false’ or ‘What you said/think/believe is false’:

Herbert: The Earth is flat.
Ronald: Well, it is false – it is quite round.

Here it seems more apt to say that Herbert and Ronald have a factual disagreement about the shape of the Earth.

It is noteworthy that legal disputes seem to comfortably employ the full range of disagreement markers:

Herbert: It is the law to pay taxes.
Ronald: No, you are wrong, it is not the law to pay taxes.

However, disputing participants in legal discourse may also felicitly declare statements they disagree with as false:

Joseph: Should I pay taxes?
Herbert: It is the law to pay taxes.
Ronald: What Herbert said is false, it is not the law to pay taxes.

This observation poses challenges for both pure attitude-based and pure metalinguistic negotiation accounts of legal disagreement.

An attitude-based story, on which parties to a legal dispute are merely expressing conflicting non-cognitive attitudes, seems to miss something. After all, in paradigm cases of attitudinal disagreement, alethic markers often sound odd (McKenna 2014):

Herbert : Haggis is tasty.
Ronald: What you said/think/believe is false. Haggis is not tasty.

If legal disagreements were purely attitudinal, one would expect alethic markers to sound equally out of place. The fact that they don't suggests there is a dimension of factual disagreement that the attitude theorist fails to capture.

But a pure metalinguistic negotiation strategy also struggles here, as it is quite obscure whether it is capable of vindicating 'it is false' markers of disagreement[1].

Additionally, both attitude-based and metalinguistic strategies sit uneasily with standard assumptions about propositional content. In order to explain 'it is false' markers of disagreement, proponents of these strategies seem to be committed to abandoning the philosophical orthodoxy suggesting that propositions are the primary bearers of truth[2].

Moreover, there is one additional problem for metalinguistic negotiations approach – it intuitively mislocates the disagreement. When we talk about legal disagreement between speakers uttering 'It is the law that capital punishment is prohibited'/'It is not the law that capital punishment is prohibited,' we seem to be particularly interested in a conflict over legal status of capital punishment. Identifying this with a conflict over how should we understand 'law' or 'proper method of interpretation' seems to miss the most salient issue of disagreement. Hence, the metalinguistic view risks reducing substantive legal disagreements to mere verbal disputes (Finlay 2017; Bolinger 2022; Cappelen 2018, 174–175; in response, see Plunkett and Sundell 2021).

Therefore, I argue that the use of 'it is false' markers in legal discourse may be explained in terms of disagreement in belief.

4. Three approaches to disagreement in content

Having established that disagreement concerning legal content is best explained in terms of disagreement in beliefs, we must now consider how hybrid theory can incorporate this insight.

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[1] It is noteworthy that instead of metalinguistic negotiations, one could refer to metalinguistic negation in order to vindicate such markers. Laurence Horn (Horn 1989) describes metalinguistic negation as 'a device for objecting to a previous utterance on any grounds whatever, including the conventional or conversational implicata it potentially induces, its morphology, its style or register, or its phonetic realization'. Typically the objection is introduced by a negation term ('not') but can also be fronted by a wide range of disagreement markers, including alethic prefaces (e.g. 'it's false that', 'it's not the case that', and even 'it's not true that…'). Renée Jorgensen Bolinger (Bolinger 2022) argues that at least some types of moral disagreements can be glossed as occurring through metalinguistic negation. However, there is no evidence that denials in legal disputes show any of the signs of metalinguistic negation. Instead, it seems that denials in these settings show no pressure towards appearing in the form of a denial-correction sequence; they do not require special intonation; and if there are polarity items in the sentence, they behave in all the usual ways (see Plunkett and Sundell 2013).

[2] (See Weber 2012; Salmon and Soames 1989; Stalnaker 1999)

This section examines three distinct approaches that can maintain disagreement in content while remaining compatible with hybrid theory's emphasis on the cognitive dimension of legal statements: content relativism, truth relativism, and aspirational contextualism. By examining these three approaches, we can evaluate which framework best allows hybrid theory to capture the belief-based nature of legal disagreement while maintaining its core insights about the relationship between cognitive and non-cognitive elements in legal discourse.

a) Content relativism

In order to explain the phenomena of legal disagreement, one may endorse a view that the descriptive content of legal statements is sensitive to the context of assessment. Most hybrid theorists argue for stability across contexts of assessment. In their view, even if normative statements express different content when asserted by different speakers, the content of these statements, once asserted, remains constant regardless of who evaluates them, thus providing stable truth-conditions for these statements.

However, Michael Ridge (Ridge 2007; 2009a; 2009b; 2014) offers an innovative alternative for understanding how descriptive content works in normative statements. He argues that any moral statement combines two elements: a normative perspective and a representational belief, which are connected in a specific way. Normative perspectives involve broadly desire-like states but also constitute a perspective which the agent intuitively endorses – they are sets of relatively stable self-governing policies about which standards to reject and accept (Ridge 2014, 152).

Regarding representational beliefs, Ridge proposes that the beliefs expressed by sentences of the form ‘X is good’ can be understood as ‘X would be highly ranked as an end by any admissible ultimate standard of practical reasoning’. Crucially, a normative perspective and a representational belief constituting the content of the moral statement are logically related in that the concept of ‘admissible’ as it figures in the content of the belief should be understood as adverting to standards of practical reason whose acceptance is not ruled out by a particular normative perspective. In consequence, the machinery Ridge developed just provides a function which ‘takes you from a normative perspective to a representational content’ (Ridge 2014, p. 210), implying that the descriptive content of sentences is *derivative* from a particular normative perspective. The key point made by Ridge is that the normative perspective determining the content of ‘admissible’ in a particular normative statement is not necessarily the perspective of the speaker. According to Ridge, when I judge that your normative claim is true, then I thereby occupy a normative perspective and believe that the representational content of your claim

corresponds to reality relative to that perspective. As a result, the proposition being assessed as true or false need not be the proposition asserted by the speaker whose claim is being assessed. Rather, which representational content a speaker is assessing as true or false is relative to their own normative perspective (Ridge 2014, 147).

To illustrate Ridge's idea, consider the sentence: 'Licorice is tasty'. Suppose the truth of this sentence, as used in context c_0 and assessed from context c_1, depends on the tastes of the assessor. If Herbert likes the taste of licorice and Ronald is disgusted by it, the utterance is true as used by Herbert and assessed by Herbert, but false as used by Herbert and assessed by Ronald. One way to make this supposition coherent is to reject the idea that the proposition expressed by particular utterance is constant across different contexts. According to content relativism, there is no absolute fact of the matter about the propositional content of a given assertion or belief[3]. In the case at hand, we might say that as assessed from Herbert's context, the proposition Herbert asserted is that licorice is pleasing to Herbert's tastes; but as assessed from Ronald's context, the proposition Herbert asserted is that licorice is pleasing to Ronald's tastes. In this regard, Ridge's ecumenical expressivism, which states that the normative perspective of the agent assessing the utterance enters the scene to help pick out not its truth value, but the relevant truth-bearer(s) of this utterance – the relevant proposition to which truth is ascribed – seems to support a version of content relativism, where the content of a particular utterance varies between different contexts of assessment.

The question whether an uttered legal statement possesses different descriptive content when evaluated in varying contexts of assessment appears to invite complex theoretical considerations. However, careful analysis suggests that such content remains invariant in this respect. This conclusion stems from fundamental principles governing the nature of assertions and their role in legal discourse. It is a requirement of a speech act being an assertion that it have a determinate content, as speakers are responsible for a content of their assertion, and they could not be responsible for contents which vary among hearers. As John MacFarlane (MacFarlane 2014, 74) argues, such variation would undermine the basic function of assertoric speech acts. Consider a simple example involving taste statements: If Ronald were to claim that Herbert had asserted that licorice is pleasing to Ronald's tastes, Herbert would simply deny this, and ordinarily this denial would be taken to be authoritative. In support of his claim,

[3] Truth-value relativism is primarily advanced by John MacFarlane (see MacFarlane 2014), whereas content relativism is developed by Herman Cappelen (see Cappelen 2008a; 2008b; Cappelen and Hawthorne 2009).

Herbert could point out that her basis for making the assertion was that licorice tasted good to him, and that he was aware of the deep differences between her tastes and Ronald's. So it would have been completely irrational for him to assert that licorice is pleasing to Ronald's tastes. And if it was so, then Ronald is not entitled to deploy their taste in assessing Herbert's statement.

This reasoning extends naturally to the legal domain. Consider two legal philosophers with contrasting interpretive approaches: Herbert, who endorses a textualist position, and Ronald, who is an advocate of purposivism. Suppose Herbert asserts: 'It is the law that stealing is prohibited'. If Ronald were to claim that Herbert had asserted that it is the law that N according to Ronald's view, Herbert would justifiably deny responsibility for such content, as it contradicts what he actually said. This analysis suggests that the descriptive content of legal statements remains constant across different contexts of assessment. To maintain otherwise would contradict the intuition that Herbert is justified in denying responsibility for content relative to Ronald's preferred interpretive framework.

b) Truth-relativism

Consider once more the claim that the truth of 'licorice is tasty', as used in context c0 and assessed from context c_1, depends on the tastes of the assessor. An alternative explanation to content-relativism is truth-value relativism. According to truth-value relativism, truth is not an absolute property; there is no absolute fact about whether a proposition, as used in a particular context, is true. Instead, truth is inherently relative – a proposition can be true when assessed from one context and false when assessed from another. Consequently, propositions can vary in truth value depending on the context of assessment.

While for content-relativism context of assessment contribute to propositional content of assessed utterance, truth-value relativism considers contextual material as contributing to the parameters against which a proposition is assessed for truth or falsity. The most popular form of truth-value relativism posits that an additional parameter makes reference to the person assessing a given proposition.

For instance, when Ted said yesterday, 'Mona Lisa is beautiful', he uttered the proposition that Mona Lisa is beautiful. When we assess Ted's assertion made yesterday, we evaluate the same proposition he uttered. However, according to truth-relativism, the truth-value of this statement is not universal or absolute; what matters for its truth or falsehood is the context of the assessor, not Ted's aesthetic standards. John MacFarlane (MacFarlane 2014), the leading proponent of truth-relativism, argues that the sentence 'There will be a sea-battle

tomorrow' is neither true nor false when uttered, but it becomes true or false when someone evaluates that utterance the following day. In this way, we don't simply have a non-standard parameter for truth (like a standard of taste); rather, we have a single utterance content that can shift in truth-value across different acts of assessment. Therefore, the key idea of truth-relativism is that a single proposition is assessed for truth on each occasion, with the change occurring in the contextually determined parameters against which that proposition is assessed for truth.

It is noteworthy that the truth-relativist approach appears to be a viable option and has already been applied to legal statements by other theorists (Kristan and Vignolo 2018). It should not be surprised – this perspective offers a compelling alternative to content-relativism, as it vindicates legal disagreement as disagreement in content while avoiding problems concerning responsibility for asserted content, as it remains constant across different contexts. However, while this framework appears promising for analyzing legal disagreement, closer examination reveals fundamental tensions with the nature of legal discourse.

To understand these tensions, let us first examine how relativism operates in matters of disagreement. In this regard, it endorses the following position:

Preclusion of joint accuracy. The accuracy of my attitudes (as assessed from any context) precludes the accuracy of your attitudes or speech act (as assessed from that same context).

Consider how this applies to disputes about taste. When Yum claims 'Licorice is tasty' and Yuk disagrees, the relativist account suggests that Yum's assertion can be accurate relative to her taste perspective while being inaccurate relative to Yuk's. If Yuk eventually gets Yum to dislike the taste of licorice, Yum will feel pressure to withdraw her earlier assertion that it is tasty. In this respect, disputes of taste are like disputes about any objective matter—for example, the age of the earth. In another respect, though, they are not much like disputes about paradigm objective matters. For Yuk can only compel Yum to retract her assertion by, so to speak, changing Yum's perspective—bringing it about that Yum occupies a context of assessment that differs in semantically relevant ways from the one she occupied before. For, as long as Yum persists in her liking for licorice, the relativist account predicts, she is warranted in standing by her original assertion (even if it is inaccurate from Yuk's perspective). As long as what she asserted remains true as assessed from her current context, she need not retract.

However, disagreements about objective matters operate differently. In these cases, the very same facts that show a claim to be false as assessed from one perspective will suffice to

show it false as assessed from any other, thus implying that retraction can be compelled without any change of perspective. This demonstrates that there is a stronger form of disagreement than preclusion of joint accuracy, which is characteristic for more objective discourses and may be characterized as follows:

Preclusion of joint reflexive accuracy. The accuracy of my attitudes (as assessed from my context) precludes the accuracy of your attitude or speech act (as assessed from your context).

In my opinion, unlike taste disputes, where claims can be simultaneously accurate relative to different perspectives, legal disagreements appear to maintain preclusion of joint reflexive accuracy. Consider a case where a trial court declares 'It is the law that N' and an appellate court subsequently rules 'The trial court's statement that it is the law that N is false'. The trial court must acknowledge this ruling and there is no possibility for it to maintain the accuracy of its original assertion – the facts that invalidate the claim from one legal perspective invalidate it from all perspectives within that legal system.

This characteristic of legal disagreement poses a significant challenge to relativist accounts. When courts follow appellate rulings, they typically frame their actions as correcting past errors rather than merely adopting new perspectives. While one might argue that legal systems simply provide institutional mechanisms for forcing a change of perspective, this view understates the nature of legal disagreement. When legal actors make conflicting claims about what the law requires, they commit themselves to the view that at least one claim must be objectively inaccurate in a way necessitating retraction. Unlike taste disagreements, where persistent disagreement seems natural, sustained disagreements toward legal content are viewed as out of place. Consider the following conversation

> Ronald: It is the law that hate speech is prohibited.
> Herbert: No, that's false. The Supreme Court has repeatedly held that hate speech is protected under the First Amendment unless it constitutes direct incitement to imminent lawless action or specific threats.
> Ronald: Well, I still believe it is the law that hate speech is prohibited, and nothing will change my mind.

We respond presumably to Ronald's behavior by finding it puzzling and we might even want to question whether Ronald knows how to use legal statements.

However, Kristan and Vignolo (Kristan and Vignolo 2018) raised a significant challenge to the above analysis. In this regard, they refer to the phenomena of retrospective overruling, which raises the claim that the legally correct interpretation of a given set of legal sources has been different all along from what some final judicial decision stated in the past. They argue that the nature of the conflict that arises in a retrospective overruling motivates an assessment-sensitive analysis, as it requires preclusion of joint accuracy, but not preclusion of joint reflexive accuracy. However, in my opinion it is just a place where institutional mechanisms come in play by suspending the requirement of retraction, that is rather natural in such cases, due to practical purposes.

Therefore, the distinction between these two forms of disagreement reveals a crucial feature of legal discourse. In taste disagreements, relativism allows for joint accuracy while precluding only joint assessment from any single perspective. However, legal disagreements exhibit preclusion of joint reflexive accuracy—claims shown false from one perspective are necessarily false from all perspectives within that legal system. This characteristic of legal disagreement poses a significant challenge to truth-relativist accounts of legal discourse, as it suggests that legal statements possess a kind of objectivity that transcends individual perspectives within a given legal system.

c) Aspirational contextualism

The basic feature of a view that makes it contextualist is that it claims that the semantic content of particular expression varies depending on the value of one or more parameters that are determined by the context in which it is uttered. In this regards, context-sensitivity of legal statements seems straightforward – legal statements often refer to specific legal systems or jurisdictions, implying that legal statement 'This action is illegal' is context-sensitive at least with respect to these systems. On its own, the above characteristics of contextualism is a rather weak and unspecific claim. It says nothing about how the semantic content of ‘ought’ varies from context to context, or what the relevant parameters are, or how they are determined. Construed in this generic and unspecific way, contextualism should not really be all that controversial when applied to legal statements.

Yet, the term ‘contextualism’ is often associated in the metaethical with a much more specific kind of contextualist view. This more specific view is characterized by a claim that concerns how the value of the standards parameter is determined by context: the relevant parameter in any context of utterance will be those that the speaker actually subscribe to.

Following Alex Worsnip (Worsnip 2019), we may call this view 'parochial contextualism', since it makes the semantic content of legal statements dependent on the local or parochial standards of the speaker. It is worth noting that according to parochial contextualism, a legal statement can be made true simply by a speaker subscribing to a set of standards according to which it is true. Thus, parochial contextualism makes the truth of normative utterances radically mind-dependent. However, unlike generic contextualism, parochial contextualism is problematic when applied to legal statements, as it is not compatible with belief-based explanation of disagreement concerning legal content, which, as I have argued earlier, is the most preferable way to explain this phenomena. What is more, it seems to generate the problem of being too liberal with truth, as it implies that when some radicals say that it is the law that torturing other people is permitted, and subscribe to the sources of law and a method of interpretation that license such a claim, we are forced to concede that they speak truly.

Yet we should note that contextualism need not be limited to parochial forms. One non-parochial view, which we might call 'aspirational contextualism' (Worsnip 2019), holds that the relevant normative standards are just whichever particular set of objective, mind-independently true normative standards are conversationally salient. Following Worsnip, I'll call this view 'aspirational' contextualism, since it says that normative utterances aspire to objectivity, rather than merely attempting to make claims about what's required by the local, parochial standards.

It is important to note that an aspirational contextualist can still be a thoroughgoing contextualist. One might hold that it is against the spirit of (thoroughgoing) contextualism to suggest that the value of any semantic parameter floats free of the speaker's own control: shouldn't speakers be able to determine, through their own intention, what occupies the ordering source parameter? But the aspirational contextualist can, in one sense, accommodate this point. The aspirational contextualist can say that whenever speakers make legal claims like 'Capital punishment is prohibited by law', they intend to talk about the relation between the norm prohibiting capital punishment, the sources of law, and the proper method of interpretation, where the latter is given non-subjective reading and is relativized to the particular jurisdiction rather than particular agent. Thus, even if the speaker is mistaken about or ignorant of the proper interpretive method, that objectively proper method still occupies the context-sensitive parameter.

As Worsnip (Worsnip 2019) notes, this move is analogous to how contextualists handle the information-sensitivity of 'ought' statements. When a speaker uses the fact-relative 'ought', she wants to make a claim about what she (or someone else) ought to do, not merely given the

information she herself possesses at the time, but given the totality of the facts. In a normal case, the speaker doubtlessly can't fully identify what the totality of the facts consists in. Nevertheless, she can identify the salient body of information under the general description 'the totality of the facts', and intend to pick out whatever body of information fits that description. The aspirational contextualist makes a similar move for 'the objective moral standards'. I am persuaded that speakers do sometimes intend to talk about what one ought to do according to the objective moral standards. They are not always merely making a claim about what salient local standards require; sometimes, they are intending to make a bolder claim that does not get to be true that cheaply.

Consider the following conversation between Ronald who favors purposivism and Herbert who endorses textualism:

> Ronald: It is the law that capital punishment is prohibited.
> Herbert: You are wrong, it is not the law that capital punishment is prohibited.

On the aspirational contextualist view, Ronald and Herbert are not merely referring to their preferred methods of interpretation, but to the proper method, whatever it is. Since both speakers refer to the same objective standards (albeit possibly having different conceptions of what those standards are), their claims express beliefs with genuinely contradictory contents concerning what the proper method of interpretation, when applied to the sources of law, actually require.

However, aspirational contextualism faces challenges in explaining how speakers can intend to refer to objective legal standards even when they may be mistaken about what those standards are. In this regard, aspirational contextualists may argue that an analysis of the content of legal statements must take into account the *referential/attributive* ambiguity. Consider the sentence:

> Herbert: Smith's murderer is insane.

Keith Donnellan (Donnellan 1966) pointed out that a description like *Smith's murderer* in Herbert's utterance has two uses. A speaker using it attributively predicates insanity of whoever murdered Smith. On the referential use Herbert predicates insanity of a particular individual, and the description is just a device for getting the addressee to recognize which one it is. Herbert's utterance has therefore two different meanings corresponding to the attributive and

the referential use of the description, and it expresses a different proposition in each of the two cases[4].

And just as ‘Smith’s murderer’ in the sentence ‘Smith’s murderer is insane’ can be used attributively to predicate insanity of whoever murdered Smith, even if the speaker can't identify that individual, legal statements may involve an attributive intention to refer to the objectively proper interpretive method, even if the speaker hasn't correctly identified it.

In summary, aspirational contextualism offers a non-parochial form of contextualism about legal statements, according to which speakers can intend to refer to objective legal standards even if they are mistaken about the content of those standards. This view can make sense of genuine disagreement about the law explained in terms of beliefs with contradictory contents, and, accordingly, the use of ‘it is false’ markers of disagreement. What is more, in contrast to content-relativism, it does not predict any uses of legal statements that undermine our intuitive patterns concerning responsibility for content, and, in contrast to truth-relativism, it aligns with preclusion of joint reflexive accuracy.

5. How aspirational contextualism works with hybrid theory of legal statements

When speakers dispute about what the law requires, how can we understand their disagreement? Aspirational contextualism offers a compelling answer while providing a crucial complement to hybrid theory's account of legal statements. The relationship between these theories illuminates both the nature of legal disagreement and how legal statements connect to legal reality.

Hybrid theory treats the descriptive content of legal statements as primary, holding that they express beliefs directly while conveying desire-like states only through generalized conversational implicature. Yet this raises a crucial question: what exactly do these beliefs refer to? Aspirational contextualism answers this question by specifying that within any given jurisdiction, legal statements aim to track objective, mind-independent standards rather than merely expressing claims relative to a speaker's preferred interpretive framework.

Consider this paradigmatic legal disagreement:

[4] It is noteworthy that Saul A. Kripke (1977) argued (though with a good deal of ambivalence) that Donnellan’s distinction has no *semantic* relevance. His main arguments were directed at establishing that what Donnellan called the referential use of descriptions was actually nothing more than a speaker's wishing to convey something about a particular entity, a purely pragmatic phenomenon. (See Kripke 1977) However, George M. Wilson has responded convincingly to most of Kripke's arguments. (See Wilson 1991)

Herbert: It is the law that capital punishment is prohibited.

Ronald: It is not the law that capital punishment is prohibited.

Aspirational contextualism explains that despite their different interpretive preferences, both speakers are attempting to refer to the same objective legal standards. This explains why their dispute licenses the full range of disagreement markers, including alethic ones like ‘you are wrong’ and ‘it is false’ - their statements just express beliefs with contradictory contents.

The key contribution of aspirational contextualism lies in its account of how beliefs expressed by legal statements refer to their subject matter. When speakers make legal claims, their statements involve what philosophers call an ‘attributive intention’ - they aim to refer to the proper method of interpreting legal sources, even if they disagree about or misidentify what that method is. Just as someone can meaningfully refer to ‘Smith's murderer’ without knowing who committed the crime, legal speakers can intend to track objective standards without having perfect knowledge of them.

Therefore, hybrid theory, supplemented by aspirational contextualism, creates a sophisticated framework for understanding legal discourse. While hybrid theory establishes that legal statements primarily express beliefs, aspirational contextualism specifies the mechanism by which these beliefs refer to legal reality. This synthesis preserves the cognitive dimension of legal statements emphasized by hybrid theory while providing a precise account of how speakers can engage in substantive disagreement about legal content, even when they differ in their preferred interpretive approaches.

6. Reversibility Challenge

A significant challenge to the content-based explanation of legal disagreement emerges from the phenomenon of reversibility, which warrants careful consideration. In the epistemic domain, Ross and Schroeder have demonstrated that both disagreement and retraction arguments face important limitations due to reversibility (Ross and Schroeder 2013). The reversibility thesis concerning epistemic expressions holds that ‘for each kind of epistemic expression, there are epistemic sentences involving that kind of expression that a fully rational speaker can sincerely assertively utter, even under ideal conditions, while correctly believing that later she will sincerely assertively utter their negation’ (Ross and Schroeder 2013, 49)[5].

[5] For a more detailed discussion on reversibility in the context of disagreement among epistemic statements, see (Spencer 2016; Ross and Schroeder 2016; Finlay 2017; Marques 2018).

Given that my defence of a form of legal invariantism rests substantially on disagreement and retraction intuitions, one might reasonably worry that reversibility poses a similar challenge to invariantism concerning legal statements. However, I contend that this concern, while intelligible, is ultimately misplaced for two crucial reasons. First, and most fundamentally, we lack independent evidence for applying the reversibility thesis to legal statements. Ross and Schroeder themselves acknowledge that reversibility is not a universal feature of all sentences. They note that while compound epistemic sentences of the form 'it might be that p and it might be that not p' typically exhibit reversibility, simpler epistemic sentences of the form 'it might be that p' are never reversible, at least for ordinary (non-epistemic) values of p. Therefore, in order to state that the reversibility thesis applies to legal statements, we need to evaluate whether it is felicitous to make legal statements in their reversible form:

> Herbert: It is the law that capital punishment is prohibited, but it will not be the law that capital punishment is currently prohibited.

This type of statement appears fundamentally incoherent within a legal context. The idea that a rational agent could sincerely assert a legal statement while simultaneously believing its future negation is difficult to reconcile with the function of legal discourse, which seeks to provide clear, consistent, and authoritative guidance. While some epistemic judgments may legitimately shift based on new evidence or evolving perspectives, legal statements serve to guide behaviour and coordinate social action through stable, authoritative determinations – functions that would be undermined if such statements were readily reversible. This fundamental difference makes reversibility less plausible when it comes to legal statements.

Therefore, we should acknowledge that legal statements may have different descriptive content when uttered in different jurisdictions. However, within a given jurisdiction, their meaning should be considered constant across different contexts of use.

7. Conclusion

This paper has examined the phenomenon of disagreement concerning legal content and evaluated how hybrid theory, supplemented by aspirational contextualism, can best explain it. The analysis leads to three main conclusions. First, legal disagreements are best understood as disagreements in belief rather than merely disagreements in attitudes or metalinguistic negotiations. This is evidenced by the felicitous use of alethic disagreement markers like 'it is

false’ in disputes concerning legal content, as the felicitous use of such markers indicates that legal statements express beliefs with genuinely contradictory content.

Second, among the various approaches maintaining disagreement in content, aspirational contextualism provides the most compelling framework for understanding legal disagreement. Unlike content relativism, which struggles to maintain stability of assertoric content across contexts of assessment, or truth relativism, which fails to account for the preclusion of joint reflexive accuracy in legal disagreements, aspirational contextualism correctly predicts that legal statements aim to track objective, mind-independent standards within any given jurisdiction. This approach explains how speakers can intend to refer to proper legal standards even when they disagree about or misidentify what those standards are.

Third, the synthesis of hybrid theory and aspirational contextualism creates a sophisticated framework that preserves both the cognitive dimension of legal statements and the possibility of substantive disagreement about legal content. While hybrid theory establishes that legal statements primarily express beliefs, aspirational contextualism specifies the mechanism by which these beliefs refer to legal reality through speakers' attributive intentions to track objective standards.

The broad implication of this research is that legal disagreement involves a stronger form of objectivity than is sometimes suggested in contemporary debates. When legal actors make conflicting claims about the legal content, they commit themselves to the view that at least one claim must be objectively inaccurate in a way necessitating retraction. This stands in contrast to more subjective domains like taste, where persistent disagreement seems natural and appropriate.

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