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Article

2025

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### How to cite

GIUNTA MARTINO, Marta. Disagreement and Expressions of Dissent Within Public Institutions. In: Ethical theory and moral practice, 2025. doi: 10.1007/s10677-025-10496-x

This publication URL: <https://archive-ouverte.unige.ch/unige:184884>

Publication DOI: [10.1007/s10677-025-10496-x](https://doi.org/10.1007/s10677-025-10496-x)



# Disagreement and Expressions of Dissent Within Public Institutions

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Accepted: 9 April 2025  
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## Abstract

The paper explores the relation between disagreement and expressions of dissent within public institutions. Public servants can use their powers of office to express dissent with certain aspects of mandates and dispositions, especially when these conflict with their personal morality or broader moral values. Additionally, public servants' dissent can also be directed towards the *raison d'être* of a public institution if it perceived as objectionable. The paper focuses on disagreement as a source of dissent within public institutions. Expressions of dissent as a reaction to disagreement would arise from the interplay of the rights and duties accruing to individuals in different capacities and the structural uncertainty that pervades public institutions. Structural uncertainty stems from the open-ended nature of institutional *raison d'être*, the vagueness and ambiguity of legal provisions and office mandates, and the existence of multiple, non-orderly, and vaguely defined institutional functions and objectives that vary over time and space. The paper explores various types of disagreement resulting from this interplay and underscores how each type of disagreement can trigger expressions of dissent by public servants within public institutions.

**Keywords** Public institutions · Public ethics of office · Legal interpretation · Disagreement · Dissent

The philosophical discussion on disagreement has traditionally emphasized its reasonableness, epistemic component, and its role and significance in peer interactions (Besson 2005; Frances and Matheson 2019; Kelly 2005; Matheson 2014a; Sosa 2010). Political philosophers, particularly those examining pluralist liberal-democratic societies, have concentrated on understanding the reasonableness of disagreement and the appropriate responses to it within diverse segments of pluralist societies (Neufeld 2011; Quong 2011; Rawls 2001, 2005; Raz 1998; Waldron 1999). In this context, two main issues have garnered attention: addressing disagreement among citizens in public decision-making and examining how

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public institutions, adhering to a distinctive liberal approach, should respond to pluralism and ensuing disagreement (Pallikkathayl 2019; Quong 2011; Rawls 2001, 2005).

While political and legal theorists have extensively explored solutions for disagreement among citizens, limited attention has been given to resolving disagreement experienced by public servants within public institutions - the state's strictly political institutions, legislative assemblies, executives, the judiciary branch, state bureaucratic agencies, and public institutions providing public services. Despite some important exceptions (e.g., Greenawalt 1995; Rawls 2001, 2005) and the existence of some ad hoc solutions to individual disagreement, such as the possibility to conscientiously object to some practices, the discussion on disagreement and expressions of dissent within public institutions is still in its early stages. The discussion is hindered by a lack of consideration for the specific context of public institutions in which disagreement arises and a dearth of specific evaluations of the types of disagreements affecting these institutional contexts.

Broadly speaking, within public institutions, public servants' expressions of dissent can be analyzed considering their reasons in terms of disagreement. Public servants may express dissent from some parts of the mandates and the laws, policies and decisions, hereafter legal dispositions, applying to them, e.g., when they have reasons to disagree with these in light of some moral values and principles. Consider a social welfare officer who has to implement a policy that limits financial support to low-income families after a certain period of time, regardless of their circumstances. Because the policy does not consider special circumstances, e.g., a family caring for a disabled child or an elderly parent who needs ongoing support, the social worker believes that the policy unfairly treats vulnerable people. Whilst the social worker is obliged to enforce the policy, they feel that it conflicts with their moral commitment to social justice. Public servants may also express dissent from their public institution in light of a (supposedly) objectionable *raison d'être*, e.g., when they consider it unjust. Imagine a public servant working in a migration detention centre who, after reflecting on the institution's core mission, comes to believe that detaining migrants, especially for long periods and in harsh conditions, is unjust and constitutes inhumane treatment. Although tasked with supporting the institution, they feel conflicted, as they see its *raison d'être* as fundamentally objectionable.

The examination of disagreement within public institutions raises crucial questions about institutional responses to injustices and significant dysfunctions like legitimacy deficits or corruption. Analyzing disagreement within public institutions is essential to provide a conceptual account and a normative framework to assess public institutional action and the engagement in expressions of dissent by public servants. Expressions of dissent may manifest differently across institutions, depending on the legal mechanisms for expressing dissent available for public servants and their specific roles and associated duties. Additionally, expressions of dissent can take diverse forms, ranging from open disobedience to obstructive actions, each carrying distinct ethical and practical implications. This variety highlights the complexity of expressions of dissent in public service and the necessity of a nuanced account that captures its multiple expressions starting from a common baseline.

This paper discusses how considerations relating to the different roles a public servant embodies interact, sometimes supporting each other, sometimes pulling in different directions, in a context, that of public institutions, characterized by institutional uncertainty and that can suffer from institutional dysfunctions. First, I discuss the determinants of institutional uncertainty and the resulting disagreements (§ 1). I offer a multilayered approach to

interpretation of legal dispositions that allows distinguishing different types of disagreement (§ 2). I distinguish structural from individual disagreement (§ 3). Through a phenomenological lens, I analyze uses of power of office to express dissent considering different moral demands relating to public servants as connected to their moral agency and their public roles as citizens and public servants (§ 4).

## 1 The Determinants of Institutional Uncertainty

Public institutions are a system of interrelated rule-governed embodied roles (Applbaum 1999; Ceva and Ferretti 2021a, b; Emmet 1966; Miller 2014).<sup>1</sup> Individuals covering a role have their practices and relations regulated by the rules governing those roles (Applbaum 1999; Ceva and Ferretti 2021a, b; Emmet 1966; Miller 2014). Rules and practices within public institutions are generally expressed formally by mandates, that make operational the *raison d'être* of the institution. A public institutions' *raison d'être* comprises the normative ideals that motivate its establishment, internal structure, and functioning (Ceva and Ferretti 2021a). A public institutions' *raison d'être* relates to the public institution's functions, objectives, and grounding principles. For example, public universities provide education and carry out research in light of values such as academic freedom, equality of opportunity, and so on. As public institutions are a system of interrelated rule-governed embodied roles and public institutional action corresponds to the interrelated action of public servants, public servants actively contribute to *making* the *raison d'être* of the public institution through the exercise of their rights and duties (Ceva and Ferretti 2021b). The *raison d'être* of a public institution is a dialogic and construed matter.

An institution's *raison d'être* offers general guidance for public servants, yet this may not suffice in guiding their conduct, especially amid uncertainty or conflicting moral demands. The open-textured nature of an institution's purpose means there's no ready-made recipe for action. Public servants may embody their roles in various ways, all compatible with the institution's *raison d'être*. For instance, the mandate of professors, requiring fair treatment of students, allows for neutral approaches to fulfil this requirement. Office mandates confer rights and duties, shaping individuals' roles and guiding their institutional interactions (Ceva and Ferretti 2021a, b). Mandates comprise a formal letter, expressed through legally valid statements, and a spirit, referring to principles derived from the *raison d'être* of the public institution. For example, Professors, within a public university, adhere to responsibilities, ethical codes, and the pursuit of truth through intellectual rigor. Additionally, public servants act upon laws, policies, and decisions, expressed in legal statements, that refer to ideals and principles that should guide their application. For instance, mandates requiring anonymization of examination procedures aim to ensure fair treatment among students by eliminating bias in grading. Such a goal might be brought about in a variety of ways, all compatible with the university's *raison d'être*.

Because the well-functioning of public institutions depends on the capacity of the public servants' interrelated action to uphold the *raison d'être* of the public institution by acting

<sup>1</sup> This understanding is based on the structural features of public institutions and public institutional action, making it applicable to various public institutions regardless of their legitimation or organizational hierarchy. Public servants have special rights and duties and, due to the interrelatedness of their roles, they are bound by duties of mutual accountability in the exercise of such rights and duties.

in keeping with their mandates (Ceva and Ferretti 2021b), each and every public servant must act in a way that is compatible with the *raison d'être*. Thus, mandates and dispositions applying to public servants should be compatible themselves with the *raison d'être* of their public institution.

Institutional ends and objectives, shaped by members, are not pre-defined or rigidly defining institutional action; they can be revised. The *raison d'être* of a public institution is open-textured, subject to continuous re-assessment. This openness is mirrored in mandate design (Ceva and Ferretti 2023), typically granting public servants certain margins of discretion, externally bounded by the law and internally by reasonableness standards (Zacka 2017) or office accountability (Ceva and Ferretti 2021a). Official discretion offers alternatives within legal bounds, yet it's not synonymous with morally justified choices. In certain circumstances, a public servant may be morally obliged to disobey the law, but disobedience exceeds the external boundaries set by the law for official conduct. Official discretion guides legitimate actions within institutional capacity, maintaining alignment with the institution's *raison d'être*.

Moreover, the mandates and dispositions on which public servants act upon can be formulated vaguely and ambiguously or can be indeterminate regarding some cases. For example, police officers' mandate requires maintaining public order, which can be interpreted as either ensuring security and legal compliance or, more broadly, including decorum. While these interpretations do not inherently conflict, how police officers understand public order influences how they enforce it in practice. Indeterminacy refers to situations lacking a single, objective answer regarding the law on specific matters, particularly when the law remains silent on those issues.<sup>2</sup>

Functions and objectives stemming from the *raison d'être*, mandates, and legal dispositions can potentially conflict or compete. Public institutions typically engage in multiple functions and pursue various objectives simultaneously, without a definitive hierarchical order among them. Public universities simultaneously pursue education and research, but practical tensions may arise, such as due to limited financial resources. The institutional response to the COVID-19 pandemic in 2020 illustrates how objectives and procedures were adapted to address the crisis. Hospitals and healthcare workers prioritized COVID-19 patients, temporarily deprioritizing regular treatments for other conditions. In situations where goals and objectives conflict or compete, public servants must make choices concerning how to act and what to prioritize in different circumstances. Such decisions are left to the discretion of public servants, since they are not usually provided with a predefined order of priority to decide what goal or objective should get primacy in specific situations.

Moreover, the interpretation of various functions, objectives, and values of public institutions can vary over time and across space. For instance, institutions addressing environmental issues may define their role in terms of either environmental protection or conservation. Departments of energy exemplify such forms of institutional change, evolving from traditional energy production to *sustainable* energy production and distribution.

Diverse considerations and goals influence the comprehension of public institutions and the expectations for institutional action. Given the open-textured nature of a public institution's *raison d'être*, resulting mandates and dispositions can be vague and ambiguous, while

<sup>2</sup> Indeterminacy arises when a set of dispositions allows for multiple conclusions. The law is considered indeterminate when it does not support a specific solution, meaning any conclusion can be seen as legitimate (Besson 2005: 64–65).

functions and objectives lack a definite order, potentially conflicting or competing. Public servants operate in a context marked by a level of uncertainty, a structural characteristic stemming from features inherent in public institutions and their actions. Acting on rights and duties in the face of structural uncertainty is not straightforward, as different interpretations may arise, fostering disagreements on understanding and executing mandates and dispositions within institutional roles.

## 2 Interpretation and Disagreement

Institutional structure and functioning, and the ensuing structural uncertainty pervading public institutions require that public servants, before acting in institutional capacity, understand mandates and dispositions in light of the *raison d'être* of their public institution. Public servants must thus engage in a process of interpretation. Importantly, the process of interpretation involves three different albeit intertwined objects, i.e., the institutional *raison d'être* and the ensuing mandates and legal dispositions. The *raison d'être* and the ensuing mandates and legal dispositions are interpretable in the sense that, as individuals embody them and act upon them, they must understand what they mean and require.

The practice of interpretation is not exclusively linked to judiciary public servants, despite the common emphasis on judges and courts in legal theories. All public servants, in fulfilling their roles, need to understand what these are and what they require of them. Thus, interpretation is necessary also to the implementation and enforcement of laws by all public servants. Interpretation considerations are essential also for law design and formulation. It is crucial to ensure laws align with the *raison d'être* of the relevant public institution and the broader legal system, along with the values and principles these support. Lawmakers must be attentive to how members of various public institutions might interpret and implement laws to prevent designs that inadvertently accommodate unwarranted interpretations or implementations, or the potential negative externalities that might result from law enforcement.

However, in a situation of structural uncertainty, interpretation is not necessarily a univocal matter.<sup>3</sup> Rather, different interpretations might be the object of disagreement. Disagreement about the *raison d'être* and the ensuing mandates and disposition makes the uses of powers of office flowing from these contestable in a context characterized by structural uncertainty. Disagreement can arise from different interpretations among public servants. For instance, two public servants might interpret the same disposition differently based on varying principles or on a different order of priority given to the same principles. This disparity can lead to opposing courses of action. In the case of public order discussed above, different interpretations can affect how police officers enforce related rules. For example, officers with a broader interpretation may treat disorderly conduct as seriously as other security and law violations. Public servants, through interpretation, exercise discretion in choosing actions and practices aligned with their understanding, defining the range of discretion in different circumstances.

<sup>3</sup> As it is an implication of a structural feature of public institutions and public institutional action, this holds regardless of the possibility of socialization to imbue shared interpretations among public-facing professionals (see, e.g. Dzur 2018).

That two public servants might disagree on the interpretation of a public function or objective and, relatedly, what is required to maintain and support it, is a consequence of institutional structural uncertainty. Although dispositions and mandates offer relatively determinate content compared to the *raison d'être* of their public institution, they can still be vague, ambiguous, or indeterminate. The general normative guidance from the *raison d'être* may lead to disagreements on understanding and discharging powers of office, as well as establishing the order of priority among different functions, objectives, and values.

## 2.1 Layers of Interpretation

In a context of moral or value pluralism, where individuals are likely to hold diverse views and beliefs or different conceptions of the same values and principles, and within public institutions characterized by structural uncertainty, disagreement among public servants can often be considered reasonable. This reasonableness stems from challenges in determining the relevance of evidence to different claims or disagreements on the weight of evidence in specific cases. Additionally, disagreement counts as reasonable when it arises from vagueness, different perspectives on life or competing normative considerations. Finally, disagreement among public servants is reasonable because moral and political values and principles cannot be realized altogether in any institutional context.<sup>4</sup>

When disagreement is reasonable, is there a right course of action? Can it be solved simply through interpretation?

The questions relating to interpretation have been addressed by legal scholars and virtue ethicists. The existence of some sort of guidelines on how to interpret legal dispositions does not imply that there will be a univocally correct interpretation. Applbaum argues that widespread substantive disagreement is persistent, making a general account of meaning and interpretation insufficient (Applbaum 1999). However, most legal theorists contend that a satisfactory account of legal interpretation can address the disagreement issue.

Legal interpretation theories diverge on various aspects, including the connection between law and morality and, consequently, the influence of extra-legal considerations in resolving interpretive disagreements. In simplified terms, the debate opposes legal positivists, advocating the separation of law and morality and giving primacy to the text of dispositions for interpretation (Hart 1961; Raz 1994), to legal interpretivists, arguing for a connection between law and morality and urging the consideration of additional factors, such as the intentions of those who designed the disposition and other morally and politically relevant values that institutions should uphold (Dworkin 1986; see also, Greenberg 2014; Hershovitz 2015).

It is outside of the scope of the paper to engage with an in-depth discussion of theories of interpretation, and the generality at which I discuss legal interpretation is such that I need to not take a stance with respect to the debate. Nevertheless, my approach aligns with legal interpretivism and theories defining how to interpret mandates and dispositions. It emphasizes referencing values and principles underpinning institutional action. This approach acknowledges interpretive challenges, institutional uncertainty, and disagreement as inherent and reasonable. Moreover, it underscores the role of extra-legal considerations, like values and principles, in shaping the meanings and requirements of public servants' roles.

<sup>4</sup> Such understanding aligns with Rawls' sources of reasonable disagreement (Rawls 2005: 55).

When public servants act upon mandates or legal dispositions, understanding their meaning and requirements is crucial.<sup>5</sup> The first step involves analyzing the letter, the written text providing legal validity. The first layer of interpretation is plainly *semantic*. Legal positivists would be content at this step. However, to fully ascertain the law, recognizing that dispositions and mandates, even if vague or ambiguous, use language with legal domain-specific meanings is essential. Importantly, these references extend to moral and political values and principles. While the first stage clarifies the semantic content, the second stage is necessary to determine the substantive content of dispositions.

The second layer of interpretation revolves around the spirit of the disposition. Interpreting substantive content means ascertaining the set of values and principles that must be considered in reference to a mandate, a disposition, or a given case. In this phase, abstraction from the text reveals the underlying principles and values associated with various moral, political, and legal concepts. The conceptual dimension of this stage makes this layer of interpretation *analytical*. Concepts, while normative, may lack sufficient guidance for action. A disposition may refer to multiple values or principles in a non-orderly manner, potentially creating logical or practical tension. Additionally, the same values and principles can be understood and expressed through different, competing conceptions.

Once the relevant concepts have been ascertained, interpretation moves to a last stage which is plainly *normative*. In this stage, public servants interpret mandates and dispositions to determine the priority of values or principles and assess what different conceptions of these elements require in a given circumstance. This normative phase provides straightforward action guidance, answering the question of what public servants should do in a specific case.<sup>6</sup>

The different layers of interpretation can be visualised as follows:

Semantic layer	Analytical layer	Normative layer
Allows ascertaining what mandates and dispositions mean and require by analyzing their written text, which gives them legal validity.	Allows ascertaining the relevant values and principles, expressed through moral, political, and legal concepts. While concepts are normative, they can be understood and expressed through different, competing conceptions and are non-orderly. Their normative dimension might not be enough to be action-guiding.	Allows assessing what different conceptions of values and principles require in each situation. It is action-guiding and answers what public servants should do in a specific case.

While they can be distinguished for analytical clarity, the three layers of interpretation are not clear-cut and tend to influence each other. Following the legal interpretivist perspective, understanding a law's meaning sometimes requires us to also consider what the law *should* mean, blurring the lines between different layers of interpretation.<sup>7</sup> Essentially, interpretation is not just about the law's words, but also about its broader implications and

<sup>5</sup> I do not assume public servants constantly engage in conscious interpretation. Instead, they often align with the majority or a widely accepted interpretation without critical engagement.

<sup>6</sup> I assume public servants often rely on casuistry reasoning (Zacka 2017) to guide their actions. They identify applicable dispositions by comparing similar cases, applying the principle that like cases should be treated alike. This process involves interpretation, considering both epistemic and moral factors beyond just empirical facts.

<sup>7</sup> I thank an anonymous reviewer for their insightful suggestion on this point.

values. Each layer of interpretation builds on the others to provide a fuller understanding of the law. The semantic layer examines the specific wording of the provision, the analytical layer unpacks the broader values and competing principles behind it, and the normative layer provides guidance on how public officials should act in accordance with those values and principles.

## 2.2 Types of Disagreement and their Significance

While interpretation may seem to smoothly progress through its stages, disagreements can arise in each phase. The three interpretation phases, highlighting three layers of meaning, correspond to three types of disagreement.

Samantha Besson's discussion on disagreement follows similar lines (Besson 2005). While Besson delves into semantic, conceptual, normative, empirical, and epistemic aspects, my discussion excludes empirical disagreement, focusing on its instrumental relevance for theoretical forms of disagreement. The three forms of disagreement identified are specific types of epistemic and moral disagreement inherent to interpretation and implementation of mandates, legal dispositions, and institutional *raison d'être*.

The first disagreement type is *semantic*, a relatively infrequent occurrence, only genuine when the same disposition can support more than one semantic meaning. For example, the Italian Constitution states that "[...] The President of the Republic may appoint five citizens who have honoured the Nation through their outstanding achievements in the social, scientific, artistic and literary fields as life Senators" (1947, art. 59). The disposition can be interpreted in two semantically supported ways. It can be seen as allowing each President to nominate up to five life Senators. Alternatively, it can be understood to require that the Senate composition allows only for five life Senators nominated simultaneously by the President.

The second type of disagreement is *analytical*, involving conflicting values and principles expressed by mandates and dispositions, either explicitly in the letter or implicitly abstracted from the spirit. This analytical disagreement arises from the inherently conceptual nature of the moral and political values referenced by mandates and dispositions. Going back to the example concerning the appointment of life senators in Italy, the law reflects the values of merit and recognition, granting the President power to honour exceptional achievements in various fields. It also reflects the value of checks and balances, limiting the number of life Senators to prevent the President from exerting too much influence over the Senate. However, the law can raise questions about representation, whether appointed life Senators undermine democratic principles, and about reasonable uses of discretionary powers.

Assuming moral pluralism, the challenge with analytical disagreement lies in the reasonable diversity of individuals' prioritization and competing conceptions of the same concepts. To take moral pluralism seriously implies that the reasonable moral disagreement that can result in some circumstances is difficult to resolve. The general normative guidance from the *raison d'être* of a public institution often falls short in solving analytical disagreements due to its abstract nature, accommodating more than one value and principle, and multiple conceptions of the same concepts. Even if public servants agree on the relevance of justice, fairness, and equality as guiding principles for welfare redistribution, these values alone

lack specificity as actionable guidelines, requiring further determination of their content and demands in diverse circumstances.

Despite the second phase of interpretation allows ascertaining which concepts underlie dispositions, it does not solve the disagreement concerning the way to discriminate between the different relevant concepts, as well as among different conceptions of the same concept. Even when different conceptions are not logically conflicting, their consequences and application in different circumstances usually make an important difference. Thus, public servants disagreeing about the most fitting conception end up disagreeing about the ways in which they ought to act on mandates and dispositions, and thus the ways in which they should discharge their powers of office. This third type of disagreement is *normative*. In the example concerning the appointment of life senators in Italy, the normative disagreement takes the cue from the two interpretations that are suggested by the two possible semantic interpretations. Following the first interpretation, that the President has the discretion to appoint up to five life Senators, the normative question revolves around how the President should exercise this discretion. This interpretation implies that the President has discretion, but with that discretion comes a responsibility to use it wisely, ensuring that the appointments align with the values of merit, representation, and national interest. Following the second interpretation, where the law requires the Senate to always have exactly five life Senators, the normative question is more straightforward: How should the President ensure that this fixed number is maintained. This interpretation places a clear responsibility on the President to maintain the exact balance of the Senate, ensuring that the number of life Senators does not fluctuate, and the political structure remains consistent.

Additionally, not even shared conceptions of the relevant values and principles might prove to be action guiding in all circumstances. For example, public servants working in welfare institutions might disagree over which of the conceptions of the values and principles at hand should be deemed appropriate to address a certain case, and so which are weightier in a particular circumstance. Consider, for example, a public servant who has to decide whether to grant financial assistance to a family in need. One view of fairness might emphasize strict adherence to rules and eligibility criteria, ensuring that aid is distributed based on clear, objective standards. Another view might prioritize compassion and human dignity, arguing that the family's exceptional circumstances, such as having a disabled child or being temporarily unable to work, should lead to an exception being made, even if the family does not technically meet all the formal requirements.

The different types of disagreements arising from the three layers of interpretation can be visualised as follows:

Semantic disagreement	Analytical disagreement	Normative disagreement
Disposition supporting more than one semantic meaning.	Disposition supporting relevant values and principles that can be ordered in different fashions, and that can be coherently understood according to different conceptions.	Disposition supporting different conceptions of values and principles that require different courses of action.

Disagreement, thus, is a multi-layered matter. The different layers of disagreement can be assessed separately for the sake of analytical clarity, but such analytical distinctions do not

hold in reality. Semantic, analytical, and normative disagreements are interconnected, with one type revealing another, creating a complex interplay.

The three types of disagreement have epistemic significance. Disagreement's epistemic significance has been studied in the context of epistemic peerhood (Kelly 2005). Being epistemic peers would imply possessing the same evidence, as well as being equally able to process such evidence (Kelly 2005; Matheson 2014a). While the actual possibility that two individuals are epistemic peers is rare (Frances 2014; King 2011; Matheson 2014a, b), disagreement among epistemic peers remains relevant because, in reality, it may be impossible to ascertain who holds an epistemic advantage in a given situation (Frances and Matheson 2019; Matheson 2014a, b). Semantic, analytical, and normative disagreement are epistemically significant because they show a difference in views concerning principles or values due to limits of understanding. Epistemic disagreement involves differing opinions on principles or concepts due to limitations in understanding, yet a correct answer remains attainable knowledge (Raz 1998: 51–52). Public servants may dispute the semantic, analytical, and normative interpretation of mandates or dispositions due to varying perspectives on their epistemic meaning. For instance, they might differ on whether a specific case is pertinent to the application of a particular set of legal dispositions.

Epistemic disagreement extends beyond the act of interpretation, encompassing the moral dimension where conflicting moral convictions may arise. This interplay between epistemic and moral elements can transform a semantic disagreement over text interpretation into a moral matter, highlighting the clash in moral convictions. Similarly, a particular analytical disagreement concerning moral and political values and principles can turn from a “mere” epistemic matter to a moral matter, making it difficult to reconcile different conceptions of the same concepts or agree on the ordering of the relevant values and principles. Ultimately, a particular normative disagreement concerning the different conceptions of moral and political values and principles can turn from a “mere” epistemic matter to a moral matter, concerning implementation, i.e., what the mandate or disposition requires public servants to do in a given circumstance.<sup>8</sup>

Disagreement is pertinent not just in the realm of interpretation but also in the implementation of mandates and legal dispositions that make the institution's *raison d'être* operational. Interpretation and implementation are intricately linked. Instances of uses the power of office to express dissent often stem from moral normative disagreements, prompting public servants to grapple with what they should do in a specific circumstance. It is also in reaction to this question that the moral demands linked to individuals as moral agents, as well as those emanating from their public roles as citizens and members of public institutions, regain prominence.

## 2.3 From Disagreement To Dissent

### 2.3.1 From Structural Disagreement To Individual Disagreement

To understand the significance of disagreement in the context of use of powers of office to express dissent, especially from an individual standpoint, further exploration of disagree-

<sup>8</sup> Besson (2005) views epistemic disagreement as a normative issue rooted in social pluralism, whereas, in my perspective, moral or value pluralism has a more profound influence on the discourse concerning the use of the powers of office to express dissent.

ment and its reasonableness within public institutions is crucial. While some institutional *raison d'être*, mandates and legal dispositions may be clear and uncontroversial, the question arises: What occurs when public servants disagree?

Crucially, tracing some margins within which disagreement within public institutions is reasonable is possible. As the mandates and the dispositions that a public servant must act upon ultimately depend on the public institution's *raison d'être*, the former should be interpreted and applied with reference to the latter. To interpret the *raison d'être* of the public institution, grasping the content of its general normative guidance is sufficient at a first stage. Assuming that public servants are in the same epistemic conditions, disagreement on the correct interpretation is reasonable if the interpretations are at least compatible with the *raison d'être* of the institution. To see this, consider two public doctors sharing the mandate of curing patients but approaching diagnoses differently. A doctor relies on medical records and clinical data, emphasizing objective evidence, while the other doctor focuses on patient interactions and interviews, believing personal context is crucial for a complete diagnosis. Both approaches align with the hospital's *raison d'être*, i.e., to care for and cure patients. While they may disagree on which method is more effective, such differences are reasonable as they are compatible with the institution's purpose of helping patients recover.

However, to look merely for compatibility between a mandate or a disposition and the reason *d'être* of the public institution from which these ensue is not enough. Rather, public servants should interpret their mandates and dispositions in a way that is not only compatible, but also *coherent* with the *raison d'être* of the public institution. More specifically, public servants should pursue some sort of normative coherence concerning standards and principles and their application, rather than mere coherence among facts or empirical descriptions (Besson 2005: 379). For example, if a public servant is deciding how to allocate welfare resources, they should ensure that their decision aligns with core values like fairness, justice, and compassion. Normative coherence is about applying these values consistently across different cases, ensuring that decisions reflect a coherent ethical approach, rather than merely being factually compatible with previous decisions.

To honour the mandate and the dispositions applying to them, public servants should understand and implement these in a way that is coherently supported by a balance of their semantic, analytical, and normative interpretation and that is coherent with the open-texture of the *raison d'être* of their public institution.

Legal theorists and virtue ethicists emphasize that, collectively, the interpretation and application of law hinge on communities, primarily comprising institution members. In a dialogic relation governed by the institution's *raison d'être*, these experts shape the interpretation of mandates and legal dispositions. However, while the interpretation of the *raison d'être* and the ensuing mandates and legal dispositions involves collaborative and dialogic efforts among public servants, the choice of conduct remains an individual responsibility. While hierarchy, majority opinion, and precedent can serve as points of reference in resolving disagreements about interpretation and implementation, they do not provide a solution when the disagreement is based on moral grounds. Ultimately, the role of majority interpretation, precedent, and hierarchy seem to work *a negativo*, as the framework from which to look at disagreement and understand its nature.

Disagreement - especially of the moral normative kind - can also turn into a moral puzzle that the individual public servant confronts in institutional capacity. There is a level of disagreement that can be generalized among public servants. It is a kind of reasonable

disagreement that characterizes institutional action in normal circumstances and can therefore be normalized as an implication of recognizing the open-texture of public institutional action. Such disagreement is structural as it results from entirely structural matters. Another level of disagreement goes beyond the routine exercise of power, emerging when public servants use their powers of office to express dissent with some aspect of their institution, mandate or legal disposition. This kind of disagreement is not generalized among office-holders because it is not an entailment of how institutional action is structured. Rather, it is individualized, and arises when there is a conflict or a tension between the rights and duties that individual institutional role occupants may have in their various capacities as public servants, citizens and moral agents.

## 2.4 Individual Disagreement as a Source of Dissent

Individual disagreement plays a key role in shaping public institutional action. Disagreement and ensuing expressions of dissent are so widespread that some institutions have institutionalized ways to accommodate them. By accommodating dissent, legislators and public servants more generally acknowledge that disagreement can be valuable. In legal proceedings, judges often issue dissenting or concurring opinions, expressing disagreement with the majority's decision. Dissenting opinions fully or partially disagree with the judgment, while concurring opinions agree with the outcome but for different reasons. Both types of opinions highlight disagreements on the interpretation or application of moral and political values. Another illustration is conscientious objection to certain practices. Legal exemptions of this kind allow individuals who would otherwise be legally required to engage in a practice they find morally objectionable to refrain from it.

Significantly, as argued above, semantic, analytical and normative disagreement often overlap in practice, and this implies that it might be difficult to address them separately. The case of a doctor refusing euthanasia under a law protecting such procedures clearly illustrates this intertwined nature of analytical and normative disagreement.

In a first version of the example, the doctor disagrees that the law prescribing doctors to perform euthanasia is coherent with the principles grounding the mandate. The doctor grounds the refusal to comply in the idea that the mandate prescribes that one must cure patients, and euthanasia cannot be conceived as a cure. The doctor argues that their refusal to perform euthanasia is coherent with the spirit of the mandate and that such an interpretation of the institution of public healthcare is the correct one. In this case, the doctor dissents from the law in virtue of an analytical interpretation of the *raison d'être* of the public institution and the ensuing mandate that excludes that such role is compatible with such rule.

In a second version of the same example, the doctor agrees that the performance of euthanasia is a legitimate function of public hospitals preoccupied with administering healthcare but refuses to comply for reasons of personal conscience. In this case, the doctor does not dissent from the analytical interpretation, since euthanasia is considered consistent with the *raison d'être* of the public institution. Rather, the doctor dissents from the normative interpretation according to which euthanasia should be performed by each and every doctor, even in the case in which one finds it morally objectionable.

In the first version of the example, the doctor might find that allowing for exemptions on compliance does not solve the disagreement, i.e., the fact that the current interpretation is incompatible with the *raison d'être* of the institution, whereas the provision of a legal

exemption might suffice to the doctor in the second version of the story. Moreover, the doctor might make an additional reference to personal values and principles to ground the decision not to comply. The doctor might consider euthanasia an intentional form of killing that goes against the natural duty not to harm that we hold as moral agents. The doctor could reasonably hold that the natural duty not to harm is strengthened by the professional obligations they have in virtue of their institutional role as a public doctor.

A similar illustration can be applied to cases that appear blurrier, such as that of public servants tasked with welfare benefits distribution based solely on income thresholds.<sup>9</sup> In a first scenario, the welfare officer believes that such a distribution fails to support vulnerable people and is thus incompatible with the institution's *raison d'être*. The officer argues that other hardships, like medical crises or caregiving responsibilities, should also be considered, as they are central to the institution's *raison d'être*. Even if the law allowed for exceptions through exercises of discretion, the officer believes the problem lies in the fundamental misalignment between the law's interpretation and the welfare system's core values. The officer's disagreement is analytical. In a second scenario, the officer agrees that such a distribution is coherent with the institution's *raison d'être* since income is the key factor to consider. However, they believe that denying aid to a family in crisis, for example when they are just above the income threshold, would be morally wrong. Also in this case, the officer might invoke personal values to justify refusing to follow the law, arguing that denying aid to families just above the threshold violates a moral duty to support those in crisis. They could see their moral obligation to help the vulnerable as reinforced by their role in the welfare institution. Here, the officer's disagreement is normative, as it concerns the application of a disposition to a specific case.

The examples underscore the need for institutionalized mechanisms to accommodate dissent while safeguarding the moral integrity of public servants and the rights and liberties of public service beneficiaries, as well as the realization of important political principles. These instances also reveal the intricate and interconnected nature of the grounds for disagreement, with various types of disagreement overlapping, reinforcing, or exacerbating each other. Importantly, the examples emphasize that dissent, expressed through the use of powers of office, often originates from complex and intertwined moral demands associated with different roles. These moral demands may either align and reinforce one another or conflict, giving rise to a moral puzzle.

### 3 Public Servant's Disagreement, Moral Puzzle and Dissent

Individual disagreement might give rise to a moral puzzle for public servants. This final section explores how various sources of disagreement shape the conceptualization of uses of powers of office to express dissent within institutions. By examining the interplay between moral demands associated with rights and duties belonging to individuals as moral agents and in virtue of their institutional roles, I aim to elucidate the descriptive relationship between disagreement and expressions of dissent within public institutions. This discussion provides a phenomenology of uses of powers of office to express dissent.

<sup>9</sup> I thank an anonymous reviewer for their suggestion to propose a blurrier example to better illustrate the nuances of the argument.

Individuals are bound by rights and duties that accrue to them by virtue of their moral agency. Among these are general duties with universal validity, including duties not to harm, mutual aid, mutual respect, and duties of justice and conscience.<sup>10</sup> Additionally, public servants have rights and duties that accrue to them in virtue of their public institutional role. The moral demands and rights and duties associated with moral agency and public service are distinct yet partially overlapping, as the discussion in the previous section highlights.

Moreover, public institutions are generally expected to realize certain values. Public servants should act considering what is required by institutional legitimacy and its maintenance, e.g., acting in line with the demands of fairness and equality. Institutional role occupants not only have a general duty to abide by the law or the principles of personal ethics but also by the distinctive normative commitments that are binding for them as members of public institutions (Ceva and Ferretti 2021a: 24). Among these are the rights and duties coming from office mandates and the dispositions relating to these, as well as the general responsibilities deriving from demands of justice, procedural fairness, and equality, and those regulative principles such as the duty of office accountability, or the duty of answerability.

As individuals are bound in several relations and diverse capacities, the way one acts will be influenced by the different considerations relating to each of the different roles one embodies. When institutional role occupants determine their course of conduct, their judgments are often influenced by personal beliefs and commitments. Achieving complete person neutrality associated with offices is considered implausible in many accounts (Applbaum 1999; Ceva and Ferretti 2021a; Zacka 2017). Moreover, it is a generally accepted idea that moral integrity should be respected and even protected. While the moral demands from mandates may not always conflict with other moral demands arising from moral agency, in certain circumstances, they may pull in different and competing directions. In cases of structural uncertainty and reasonable disagreement, public servants' choices may not be solely guided by the rights and duties and moral demands related to their public office but may also be influenced by considerations tied to the rights and duties and moral demands arising from moral agency. Ultimately, while analytically distinct, the demands associated to moral agency and public service interact and shape the actions of public servants in an institutional capacity.

Public servants may opt to prioritize considerations of conscience, acting in accordance with the personal moral values and principles tied to the moral demands arising from moral agency. In the second version of the doctor example, the doctor agrees that the performance of euthanasia is a legitimate function of public hospitals but refuses to comply for reasons of personal conscience (for example, as their Christian catholic values do not sit comfortably with the administration of euthanasia). The reasons supporting such personal moral values and principles must not be based on religious doctrines to fall into this category. The doctor might dissent from the administering of euthanasia in virtue of an interpretation of the *raison d'être* of public healthcare and the ensuing mandate that excludes that such role is compatible with such service on reasons that belong to general morality. For example, they might assume that if patients have a right to die, then doctors have a correlative duty to kill. The doctor would disagree in both cases for reasons of personal conscience, but in one version, the reason for disagreement would be considered particular, whereas in the other, it would be deemed general. The two are different because in one the doctor challenges a practice in

<sup>10</sup> While moral duties should generally be followed, exceptions exist, such as harming in self-defence. In such cases, the individual should not be considered blameworthy.

light of some particular personal values, whereas in the other, the doctor challenges a practice or even what the institution of public healthcare as a whole should (or should not) allow for in light of general moral principles.

Alternatively, public servants' choices may be guided by the rights and duties and moral demands ensuing from their public roles as citizens and public servants. This could imply some measure of restraint from appealing to reasons of personal morality to privilege reasons that are public. For example, public servants might opt to act in light of their conception of justice, giving primacy to the duty of justice in its strikingly public dimension. They might prioritize justice over personal conscience, guided by the notion that public reasons should inform institutional action (both as citizens and public servants). Following the influential Rawlsian perspective, individuals within a liberal democratic society should invoke the concept of public reason (Rawls 2001: 91), particularly concerning constitutional fundamental laws and matters of basic justice, to guide principles of government, the political process, and the distribution of resources (Rawls 2005: 227–229). Rawls anchors the concept of public reason in the principle of justice, using it as a publicly recognized standpoint for citizens to evaluate the fairness of their political and social institutions. Public reason identifies certain justice conceptions accepted by citizens, forming the basis for a collective and informed political agreement. Rawls argues that the rules governing political institutions can only be deemed fair if justified from a shared perspective, avoiding reliance on contestable moral, philosophical, or religious concepts. The value of justice, being adaptable to diverse perspectives, serves as a relatively uncontroversial foundation for public reason (Rawls 2001).

However, public servants may hold inconsistent or incorrect conceptions of justice and its implications for their institutional roles. Even if public institutions are deemed legitimate and fundamentally just, this does not guarantee automatic coherence between public servants' fulfilment of their office duties and their broader responsibilities to legitimacy and justice, especially within the context of their institutional actions.

Ultimately, public servants may prioritize strictly legal obligations stemming from their institutional roles, avoiding scrutiny of the legitimacy or justice of their public institution and its directives. This approach is concerning, especially given the potential for subtle injustices and institutional dysfunctions, including structural injustice and corruption, which public servants are uniquely positioned to identify and address.

Whilst public servants are arguably in a position of epistemic superiority concerning the functioning of their institution, they might lack the legitimate authority to decide over certain issues that are object of reasonable disagreement. Their rights and duties are limited by their mandates and constrained by the necessity to keep public institutions legitimate. To see this, the doctor's example is helpful, too. Euthanasia is a practice surrounded by deep disagreement concerning the value of life and the interpretation of what it means "to cure," on one hand, and whether assisted suicide should be included among the health services that public hospitals legitimately offer, on the other. The two layers of disagreement are intertwined, yet their resolutions might necessitate distinct approaches. If we take seriously moral pluralism, we might never be in the position of agreeing on the morality of euthanasia. Nevertheless, if we ask ourselves 'what should public healthcare provide in light of reasonable disagreement?', we can consider the same problem from the point of view of legitimacy.

In this normative context, public servants are expected to uphold their institutional commitments, yet their personal values and political perspectives are not necessarily set aside. Returning to the doctor's example, a request for an exemption from administering euthanasia can be seen as an effort to preserve one's moral integrity in the face of a morally objectionable act. However, as previously discussed, it can also pose a challenge to the prevailing interpretation of public healthcare and the institutional role of a public doctor.<sup>11</sup> Conversely, a non-objecting doctor may argue that administering euthanasia aligns with a conception of public healthcare that balances the duty to avoid harm, preserve life, and alleviate suffering. Each option is both practically viable and philosophically relevant to the discourse on public servants' expressions of dissent.

My goal in this paper, and in this section specifically, was not to prescribe solutions for the conflicts that arise from differing moral commitments but to show how these commitments interact in practice. While the discussion is primarily descriptive, shedding light on how public servants might respond to disagreements and conflicting moral demands, it is nonetheless crucial for informing normative evaluations of their conduct in institutional capacity. In this regard, the account I present here can help clarify the structural challenges faced in normative debates, such as those concerning 'dirty hands' (Hollis 1996; Thompson 2017; Walzer 1973), just war theory - particularly regarding whether members of the military are morally obligated to follow unjust orders (Estlund 2007; McMahan 2007; Walzer 1997), noble cause corruption (Kleinig 2002; Miller 2024), civil disobedience (for an overview, see Delmas and Brownlee 2024), conscientious objection (see, among others, Ceva 2015; Smith and Brownlee 2017), whistleblowing (see, among others, Bocchiola and Ceva 2021; Boot 2017; Delmas 2015), and the likes. My aim in this paper has been to provide clarity about the underlying problems in the just-mentioned debates, which can contribute to a deeper understanding of the normative questions these debates address.

## 4 Conclusions

Structural uncertainty sets the stage for disagreement on how public servants should act based on the mandates and dispositions tied to their institutional roles. Determining the appropriate course of action for public servants in various circumstances becomes complex in a context marked by structural uncertainty, as there may not be a single correct and straightforward approach to interpreting and discharging one's powers of office. While establishing the *raison d'être* of a public institution involves collective practices that can address disagreement collectively, public servants must grapple with their individual disagreements and decide how to respond in their institutional capacity. Public servants navigate conflicting normative demands stemming from their institutional role, citizenship, and moral agency.

This paper has illuminated the institutional backdrop in which uses of powers of office to express dissent unfold, shedding light on one of their sources, i.e., disagreement. Looking at disagreement within public institutions provides insights into the dynamics of expressions of dissent. In particular, the discussion helps to disentangle, clarify, and identify certain aspects

<sup>11</sup> Additionally, disagreement-based dissent can sometimes lead to institutional dysfunction. For example, if all doctors in a public hospital agree that euthanasia is legitimate but refuse to perform it, the institution fails to provide a legitimate practice.

related to the structure of institutional action that might bring about moral puzzles for public servants. The expression of dissent through the exercise of powers of office frequently emerges from the interplay between structural uncertainty inherent in institutional structure and functioning, and the diverse moral demands imposed on individuals in public office. In the face of competing normative demands and disagreements with certain aspects of their mandate or dispositions, public servants must navigate the available options judiciously.

**Acknowledgements** The research for this study was conducted as part of my work for the project “Endogenous Institutional Trustworthiness – EnTrust. A conceptual and normative inquiry with the tools of analytical political philosophy,” which was funded by the Swiss National Science Foundation at the University of Geneva from January 2020 to December 2024. A previous version of the paper was presented at the 2023 edition of the MANCEPT Workshops, at the panel on “Theories of Public Reason” (Manchester, September 2023) and at the third EnTrust Research Project’s Workshop on “Affective and Contestatory Reactions to Institutional Failures” (Geneva, March 2023) – thanks to all the participants in these events for their helpful comments and criticisms. I am especially grateful to Emanuela Ceva, Michele Bocchiola, Candice Delmas, Gabriele Badano, Francesco Chiesa, Rubén Marciel, Matthieu Debief and two anonymous reviewers for their detailed feedback.

**Author Contributions** All authors contributed to the study conception and design. Material preparation, data collection and analysis were performed by Marta Giunta Martino.

**Funding** Open access funding provided by University of Geneva  
This work was supported by SNSF-Division 1 funded project titled “Endogenous Institutional Trustworthiness– EnTrust. A conceptual and normative inquiry with the tools of analytical political philosophy” (Grant number: 197354).

**Data Availability** Not applicable.

## Declarations

**Statement Regarding Research Involving Human Participants and/or Animals** Not applicable.

**Ethical Approval** Not applicable.

**Informed Consent** Not applicable.

**Competing Interests** The author declares no potential competing interest with respect to the research, authorship, and/or publication of this article.

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