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The Constitutional Purpose of Policing

Why U.S. Policing Needs to Return to the First Principles of the Constitution

IN THE WAKE OF RECURRING INCIDENTS OF POLICE CORRUPTION AND EXCESSIVE USES OF FORCE, THE FUNDAMENTAL ESSENCE OF POLICING IN THE UNITED STATES IS UNDER INTENSE SCRUTINY. DEBATES CONTINUE TO REVERBERATE ABOUT THE PURPOSE OF POLICING AND ITS ROLE IN MODERN SOCIETY.

Some groups advocate for a complete overhaul, restricting police functions to solely responding to violent crimes. This viewpoint typically stems from concerns about the overreach or misuse of police authority in responding to nonviolent situations and a desire to reallocate resources or responsibilities to other community services or agencies.

Others hold steadfast to the traditional view that policing is about enforcing the law and maintaining order and that law enforcement officers must focus on ensuring societal stability through arrests and prosecutions.

Yet other voices, such as author Simon Sinek and a group of police leaders known as The Curve, urge a redefinition

of policing away from criminal enforcement toward the goal of protecting the most vulnerable in society. Proponents of this stance suggest that the shift from law enforcer to guardian will inject honor back into the profession, motivate officers, and inspire others to join.¹

The debate surrounding the purpose of policing is an important one. It serves as a pivotal avenue to address deep-seated issues, ensuring that the values and practices of police officers align with the evolving needs of society. A unified understanding of the role of the police can also lead to stronger partnerships with communities and better strategic decisions regarding resource allocations, operational priorities, and training and education programs. Such an understanding can also lay the groundwork for bolstering public trust and instill a sense of meaning and purpose for those who seek to join or are currently serving in the profession of policing.

In the ongoing debate, however, there is a missing piece that provides a clear answer. It is a well-known and revered document that serves as a statement of the United States' values and the foundation of the law. It is also the guiding document that shapes the principles of U.S. policing and the use of police powers: the Constitution of the United States.

At the heart of U.S. governance lies the Constitution. Its preamble echoes the collective determination to craft a more perfect union, emphasizing the



vital role of the people in shaping the government's purpose and function. Within its provisions lie core objectives and values that extend to policing. A proper framing of the concept of constitutional policing can serve to not only define the purpose of policing and its intrinsic value but ensure more just, equitable, and safe communities.

THE OATH

The crucial role played by the U.S. Constitution in shaping policing is often overlooked even though the journey of every officer into the profession begins with an oath to the principles contained in this foundational document. Before U.S. officers can exercise the powers vested in them, they must take a solemn oath to protect and defend the Constitution of the United States and the constitution of their state, commonwealth, territory, or district. In addition, they commit to lawfully exercise the powers granted to them by the people, specifically, in this case, the powers granted to them to serve as police officers.

THE PURPOSE

The Preamble to the U.S. Constitution famously begins, "We the people of the United States of America, in order to form a more perfect union..."

This opening statement speaks to the collective endeavor of the people to create a cohesive, fair, and continually improving society. It also emphasizes the centrality of the people in defining the purpose and role of government.

The Preamble continues with the objectives and aspirations for the United States to establish justice, ensure domestic tranquility, provide for common defense, promote general welfare, and secure liberty for all citizens. Simply put, the Preamble succinctly outlines the core purposes of government, emphasizing the pursuit of justice for all and the safeguarding of people from harm. The police, as an operational component of government, becomes the custodian and key enabler of these ideals and objectives.

THE ESTABLISHMENT OF JUSTICE

The establishment of justice, the first objective outlined in the Preamble, stands at the heart of both U.S. governance and policing. Within a democracy's social contract, individuals cede their right to pursue individual justice, entrusting the government to represent them in seeking justice collectively in criminal courts. The public must have faith that the government will pursue justice on its behalf to avoid vigilantism and individual retribution by the aggrieved. Notably, the U.S. Constitution does not establish the enforcement of the law as the purpose of policing. Instead, the constitutional objective is to establish justice and protect people, where enforcement is a tool to achieve these responsibilities. Thus, while the police alone cannot "establish justice," it has an important role in pursuing justice on behalf of the people and ensuring equitable treatment for those accused.

PROTECTING PEOPLE FROM HARM

The objectives of ensuring domestic tranquility, providing for the common defense, and promoting the general welfare align with the responsibility of police officers to preserve domestic peace and promote the common good. Many states, in fact, use the term "peace officer" to define the roles and responsibilities of officers of the law. This term reflects the multifaceted roles and responsibilities of an officer beyond merely enforcing laws and underscores the idea that their duty extends to maintaining public order, promoting community safety, and preserving peace within society.²

Protecting people from harm also aligns with the U.S. Constitution's goal of promoting the general welfare. This proactive approach to policing involves preventative measures, community engagement, and a genuine commitment to safeguarding all members of society, especially those most at risk.

CONSTITUTIONAL PRINCIPLES

Beyond the Preamble, the U.S. Constitution lays down the essential principles that guide and safeguard the function of policing within society. It also defines

the roles of the three co-equal branches of government—legislative, executive, and judicial—and how police powers are balanced among them. Its provisions on checks and balances, separation of powers, and limitations on governmental intrusion collectively form the framework for just, equitable, and lawful policing.

The principle of federalism with its balance between centralized authority and local control grants localities the autonomy to tailor policing strategies to their specific needs, fostering a more community-oriented approach. It allows local police agencies to collaborate with communities to understand their specific concerns and work together to address them effectively.

The U.S. Constitution also serves to establish the concepts of liberty, equality, and freedom in the United States. The first 10 amendments, known as the Bill of Rights, include rights to free speech, religion, and the press; the right to bear arms; protections against unreasonable searches and seizures; the rights to due process, fair trials, and protection against self-incrimination; and protections against cruel and unusual punishment.

The Fifth and Fourteenth Amendments include the due process clauses, ensuring that no person is deprived of life, liberty, or property without due process of law and protecting individuals from arbitrary government actions. The Fourteenth Amendment's equal protection and privileges and immunities clauses prohibit states from denying any person within their jurisdiction the equal protection of the laws or discriminating against out-of-state citizens. These are fundamental rights that affect the roles and responsibilities of U.S. police officers every day.

The U.S. Constitution also reinforces the principle that no individual entrusted by the public—not a president, a priest, or a police officer—is above the law. It upholds the sanctity of civil rights and liberties, mandating that officers operate within legal boundaries while pursuing justice and protecting people from harm.

THE PUBLIC

The public naturally holds an expectation that police officers embody the values enshrined within the U.S. Constitution. The public looks to officers as both pursuers and guardians of justice, entrusted with ensuring equitable treatment and equal protection of the laws for every member of society while fostering a sense of safety, trust, and mutual respect within communities.

Adherence to these principles is vitally important given the history of those in power using the police to perpetuate unjust laws and the subjugation of the disadvantaged or ignored such abuses against racial minorities and the poor. Building trust with those communities can be fostered by police who embody the pursuit of justice and the protection of all people in a fair, just, and equitable manner.

Moreover, constitutional alignment fosters collaboration between the police and the community. Engaging with the public empowers officers to gain valuable insights, identify community concerns, and tailor their strategies effectively to address specific needs.

An alignment with constitutional values also empowers officers to utilize a spectrum of tools and tactics that echo these foundational principles. This encompasses prioritizing de-escalation techniques, embracing community policing models, and allocating resources for preventive measures and responsive capabilities.

THE PROBLEM AND PATH FORWARD

Despite U.S. policing resting upon the constitutional bedrock, the document's significance in defining the purpose of policing often remains underutilized. This is likely because the notion of "constitutional policing" is often narrowly interpreted, predominantly focusing on cautioning officers against violating individual rights. Training in constitutional policing primarily revolves around what officers should avoid—such as unlawful searches, excessive uses of force infringing upon the Fourth Amendment—as well as respecting First Amendment rights and safeguarding the Fifth Amendment right against self-incrimination. This negative framing misses the broader context

of the U.S. Constitution's fundamental purpose in defining the role of government, the purpose of policing, and the values and expectations of the people.

The lack of comprehensive constitutional education in police academies and the absence of ongoing training also significantly contribute to the underappreciation of the U.S. Constitution's role in shaping the core purpose of policing. Police training often provides only minimal instruction on the many applicable laws and the Constitution, leaving recruits with a cursory understanding rather than a comprehensive grasp of how constitutional principles intersect with the daily realities of policing. Moreover, they rarely develop the necessary foundational knowledge and critical thinking skills to apply constitutional concepts effectively when performing their duties.

The legal training provided in policing is frequently delivered by instructors who are not legal experts themselves. While these instructors possess valuable field experience, they might lack the comprehensive legal expertise required to delve deeply into fundamental constitutional concepts. Consequently, the training often falls short in providing the analytical insights or addressing complex legal scenarios that officers encounter in their day-to-day duties. Furthermore, in-service training, intended to augment and update an officers' knowledge, often allocates minimal time to constitutional education, failing to sufficiently reinforce or expand officers' understanding of the law and its constitutional underpinnings, and thus hindering their ability to navigate evolving legal landscapes or apply constitutional policing principles in agency programs and operations.

To bridge this gap, police leaders must prioritize and facilitate thorough constitutional education for police recruits and continuous training for officers throughout their careers. A robust curriculum should delve into the fundamental principles of the U.S. Constitution and their direct relevance to policing, emphasizing how it shapes the overarching objectives of justice and the protection of people from harm. By anchoring policing strategies in these constitutional obligations, officers can prioritize fairness, equal protection, and community safety.

Aligning policing goals with constitutional values encourages proactive crime prevention, promotes conflict resolution, and fosters trust and collaboration with the community.

CONCLUSION

At its core, the U.S. Constitution embodies a philosophy that demands a balanced, just, and equitable approach to the use of government power. It delineates the principles that should be the cornerstone of every officer's ethos and conduct, laying out the moral and ethical framework within which policing must operate. Most importantly, it defines the purpose of policing by emphasizing the noble pursuit of justice for all and the imperative to safeguard people from harm. For officers in the United States, understanding and embodying the spirit of the U.S. Constitution is not just a legal obligation—it is a moral imperative.

Returning to the constitutional purpose of policing demands a shift in perspective. It calls for a reorientation toward community-oriented, empathetic, and proactive approaches that prioritize prevention over mere reaction. It necessitates a culture within police agencies that prioritizes the constitutional principles over convenience or expediency. It requires introspection, sometimes reforms, and a collective commitment to realigning policing practices to pursue justice for all and protect people from harm.

In the pursuit of this constitutional purpose, police agencies, policymakers, communities, and citizens must converge to rekindle the promise of a society founded on justice, equality, and the common good. This must be a collective and concerted effort to pursue the ultimate objective of the U.S. Constitution: to form a more perfect union. ☐

NOTES:

¹See Jack Cauley et al., "Transforming Policing Culture," *Police Chief* 90, no. 9 (September 2023): 40–45.

²See California Penal Code Section 830 et seq., where a "peace officer" refers to specific individuals authorized to enforce the law, maintain public order, and protect the public within the state. The U.S. Supreme Court has also recognized that police officers also serve as emergency responders outside of any responsibilities to investigate. See also, *Michigan v. Bryant* (2011) 562 U.S. 344, 368 (2011) ["Police officers in our society function as both first responders and criminal investigators."].