



The Idea of Civil Police

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Part 3 of 4

III. WHAT, IDEALLY, A CIVIL POLICE FORCE SHOULD BE

Within the framework of principles in the philosophy of government and of law that have just been set forth, I will now state, as briefly as possible, the institutional character and characteristic functions of a civil police force operating under ideal conditions. By ideal conditions, I mean a civil society under a justly constituted government the laws, policies, and acts of which are for the most part just. That some portion of the population is given to criminal conduct does not flaw the conditions since the elimination of criminality from a society of men is utopian, not ideal. Having described a civil police force under ideal conditions, I will then introduce flaws into the picture and ask how a civil police force should function under something less than ideal conditions, though always in a civil society under a *de jure* or duly constituted government, in which a major portion of the population obeys the laws

in acknowledgment of their authority, their justice, and the end they serve—the common good.

A civil police force should be constitutionally set up as an appendage or arm of the executive branch of the government, even though coercive force is an adjunct of the laws that the legislative branch enacts and that the judicial branch applies to particular cases. Law enforcement is not the work of the legislature or of the courts, but of the executive.

A civil police force should be the one and only political instrument that concretely embodies the government's monopoly of authorized force *for internal use*.

If, under less than ideal conditions, the society is in a state of anarchy and war vis-a-vis other societies, military force may also be constitutionally authorized force for *external use*.

In order to simplify the picture of our ideal model, let us think of the civil society as being a unitary state, not a federal state with multiple jurisdictions and police forces (federal, state, county, municipal).

Also let us not stumble over words, such as “sheriff,” “prison warden,” “prison guards,” etc. Any officer of the state authorized to use force to enforce and execute the laws and the judgments of courts is, in this analysis, a civil police officer.

The primary function of a civil police is to see that just laws are obeyed and to prevent injustice from being done; i.e., to prevent citizens from being injured by unlawful behavior and to prevent the welfare of the community from being similarly injured.

In other words, a civil police is primarily concerned with the prevention of crime, with the apprehension of criminals, and with the supervision of criminals after they have been justly tried and convicted.

Since this primary function serves the reign of law and justice, *not* law and order, it is well-performed only if, acting under a limited constitutional authorization, the police operate under rules of conduct that require them to be fair and humane in their handling of criminal suspects after apprehension and before trial. The same principles of fairness or justice that should prevail in the trial of those charged with criminal conduct should govern the actions

of police in the apprehension and interrogation of suspects before indictment and trial.

Is there any other function that a civil police force should perform that is of *almost equal importance, though not primary*?

Yes, in addition to serving the reign of law and justice in a civil society, a civil police should also serve the reign of peace and order. (Please note that the word “order” is appropriately conjoined with “peace,” not inappropriately conjoined with “law.”)

By “peace” I mean civil peace, not the counterfeit of peace that exists between sovereign nations that happen not to be fighting with one another; and by “civil peace” I mean the possibility of settling all differences or conflicts among men by law and by authorized force, and so without resort to violence on their part to gain their ends. (See *Common Sense of Politics*, Ch. 16; also end of Ch. 7.)

By “order” I mean the management of crowds or multitudes on special occasions, such as fires, parades, celebrations, public assemblies, etc.

Beyond these two functions—first, the enforcement of law and justice; and second, the maintenance of peace and order—there are no other civil police functions. The exercise of authorized force is required for nothing else *under ideal conditions*.

One could enumerate a long list of functions performed by police officers in our contemporary society, at the local as well as at the state and federal level, that do not require the exercise of authorized force and so are not properly police functions, and should be functions of other agencies of government.

That these non-police functions are everywhere performed by civil police officers does not result from the fact that our contemporary society is far from the ideal society we have been imagining, but rather from a failure on the part of our society to understand the character and functions of a civil police force, together with a failure to allocate certain public services to appropriate public agencies.

Now let us complicate the picture by departing from the ideal conditions in terms of which we have been describing the character and functions of a civil police force. Let us approach a society more like our own, which is not ideal and under these con-

ditions, let us ask whether we face any special problems concerning the functioning of civil police.

Let us begin by specifying the respects in which our society falls short of ideal conditions.

It conforms to ideal conditions in two respects: it is a society under *de jure* not despotic government; and its framework of government—its constitution—is for the most part just, though it is still subject to improvement by further amendment.

In what respects may it be unjust?

The justice of the constitution does not prevent particular laws, even though constitutional, from being relatively unjust, i.e., less just than some alternative formulation of the law might be.

In addition, the policies and acts of government, other than its laws, may be unjust, for though such policies and acts have the approval of the majority, the *majority can misrule*. Misrule by the majority can be for the private interest of the majority rather than for the public welfare or the common good; and it can also be oppressive to an adversely affected or unjustly treated minority.

When the laws are just and the rule of the majority is for the common good, so that no minority is adversely affected or unjustly treated, all unlawful acts or acts in disobedience to law or in disturbance of the peace are criminal and so raise no special problem for a civil police force.

But under the less than ideal conditions that we are now considering, special problems do arise. In order to understand their nature, even though we may not be able to solve them, let us distinguish a number of ways in which the citizens of a civil society can react to the injustice of particular laws, or policies and acts of government that, in their judgment, represent majority misrule. The enumeration I am now about to make is in the form of a spectrum, descending from action that is entirely lawful and involves no withdrawal of consent to action that is unlawful and involves withdrawal of consent. In between the extremes are actions that are definitely unlawful but do not definitely involve withdrawal of consent.

Civil dissent: all efforts by due process of law to rectify the injustice of particular laws or to correct the policies and acts of

government that represent majority misrule, oppress minorities, or do not serve the common good.

All forms of civil dissent consist of lawful behavior and, far from withdrawing consent, confirm it. Hence there is no problem here for civil police.

Moral disobedience or individual disobedience to a particular law based on a conscientious objection to it: such action, while unlawful, is non-violent and is exempt from even latent violence; for the individual behaving unlawfully in this way does not attempt to evade arrest and trial, willingly surrenders himself and accepts whatever judgment the court may see fit to impose. Such disobedience to law involves no withdrawal of consent, no injury to others, no disturbance of the peace, no public disorder, and so it raises no special problem for civil police.

Mass political protest against an unjust law, or a policy or act of government deemed by the protestors to be unjust, oppressive to a minority, or contrary to the common good (miscalled “mass civil disobedience”):

Such action always involves the breach of some law. The law disobeyed may itself be the unjust law being protested against; or it may be a perfectly just traffic law or law against trespass, disobedience to which is employed as the manner in which protest is expressed against the injustice of some other law, or some policy or act of government, or even against some established social institution.

Though unlawful, such action may be non-violent. Yet it always involves *latent* violence which may become *overt* if and when authorized force is employed against the protestors, either to enforce a just law that has been violated or to preserve public peace and order.

Such action usually does not explicitly involve a withdrawal of consent. On the contrary, to the extent that the protestors hope that their action will result in reforms and rectifications of the society and its institutions, such action on their part confirms their consent to the general framework of government.

Nevertheless, mass political protest does raise problems for a civil police force, problems quite special and different from the problems that confront civil police under ideal conditions.

Riot: not just any disturbance of the public peace and order by disorderly and violent conduct, but political protest by violent means, where the unlawful violence is either initiated by the protestors or is latent or incipient violent become overt in response to the use of authorized force against the action of the protestors.

There is no question that such action, being both unlawful and violent, must be curtailed for the sake of public peace and order, as well as to prevent injury to individuals.

There may be some question whether the addition of violence to lawlessness in order to achieve a political result permits the action to fall within the boundaries of consent. Here is action that verges on the borderline of rebellion, which being a return to the state of war, definitely involves withdrawal of consent.

But whether or not consent is withdrawn, tacitly or explicitly, by rioters who are quasi-rebellious, political riots do raise a very special problem for civil police.

One way of stating that problem is to ask whether military or para-military forces instead of civil police should not be employed to quell riots. Certainly, in the case of open rebellion, military force should be the authorized force used; for the rebels are enemies of the state from within, as hostile powers are enemies from without. Rebellion is “civil war”; civil or not, it is war; and civil police are not the appropriate instrument of force to be used in war. Police are peace-officers and law-officers, not soldiers.

The solution of the problem is made more difficult by the necessity of deciding, on scant and vague evidence, whether the rioters are merely political protestors operating within the boundaries of consent or are, instead, rebels making war on the state from within. To use military force against them rather than police is to decide something that may not be decidable at the time the action has to be taken.

Rebellion, open and declared withdrawal of consent, for the purpose of overthrowing the established government by resort to acts of violence and to war if necessary.

This raises no special problem for civil police, just as civil dissent and moral disobedience raise no special problem for them.

The government has authorized force at his disposal to quell rebellion: that force is military force, not police force.

This enables us to see that an essential characteristic of police force, as contrasted with military force, is that police force is not employed against enemies of the state as military force is.

Criminals are not, as such, enemies of the state in the sense in which rebels and hostile powers are.

Even when criminal action is anti-social, or destructive of the public welfare as well as injurious to individuals, the criminal is not a rebel: he does not withdraw his consent; he is not making war on society even if he does use violence to carry out his unlawful actions to achieve some private interest or gain.

Unless the laws were generally enforced and unless the civil peace and public order were generally maintained, the criminal could not profit by his activity. Tacitly or explicitly, he recognizes that he operates within the framework of society, not against it.

We now see that of the four ways, excluding criminal behavior, in which illegal or lawless conduct can take place, only two of them raise special problems for civil police.

As we have seen, no problem is raised by civil dissent (not "civil disobedience") because it involves no lawless behavior or disobedience to law. Nor is any problem raised by individual moral or conscientious disobedience to law. At the other extreme, no problem is raised for civil police by overt rebellion; that calls for military, not police action.

In between, we have mass political protest, involving lawless and non-violent behavior though usually also involving latent or incipient violence; and the lawless, overtly violent behavior of political riots.

The problem raised by those two forms of lawless behavior (one of which definitely breaches the peace and involves public disorder and the other of which may involve injury to others and certainly threatens public order) can be stated simply as follows: do these forms of unlawful behavior call for police action, in view of their lawlessness, the injuries they may cause, and the public disorder they threaten to create or actually do create; or do they call for para-military or military action, in view of their verging on rebellion?

If neither alternative is entirely satisfactory, should some new device be invented and given authorized force to deal with

such emergencies; for example, is a special “riot squad” as a quite distinct division of civil police the answer to the problem?

The seriousness of this problem need not be underlined for anyone who is aware that much of the resentment against and disrespect for police in recent years stem from their employment against mass political protestors and rioters. It is worth considering, therefore, whether they should be relieved of a function that is so plainly political. To put the matter another way: might it not be worth considering that it is not a proper function of civil police to support the established government against mass political action on the part of groups of citizens, even though that action involves violations of law and violent behavior, and even though it does not definitely involve open and declared rebellion, but only verges on it? It would look as if civil police might be called into action, because their true functions are (i) to enforce the law and prevent injury to citizens, and (ii) to maintain public peace and order through the management of crowds on special occasions or in emergencies. But, on the other hand, the two cases under consideration involve action for a political objective, and are based on a judgment that injustice is being done and that mass protest is needed to get it rectified because civil dissent is either too slow or too ineffective, etc.

I do not know the solution of this problem. I can only say that if civil police should be engaged in these two cases, they should not use force in excess of their authority to use it in order to maintain public peace and order, to enforce the law, to prevent injuries to individuals, and to curtail violence.

Before I turn to the history of police, both conceptual and institutional, let me summarize the functions of a police that is civil because it is an instrument of de jure or constitutional government, and contrast them with the functions of a police that is not civil because it is an instrument of a de facto or despotic government.

Under the constitutional government of a republic, civil police, as an arm of the executive branch, should exercise authorized force

To serve the promotion of justice by

Enforcing all laws made for the common good

Protecting citizens from injury by criminals

Protecting the community from anti-social acts by criminals

To serve the preservation of civil peace

By enforcing the decisions reached in the adjudication of civil litigation

By maintaining public order on special occasions that involve crowds that might become disorderly

By curtailing violence, both incipient and overt, especially the violence that is latent in mass political protests that might turn into riots.

(Whether civil police should use coercive force to quell political riots is left an open question)

Under despotic regimes that are tyrannical, force—unauthorized force—is used in ways that make it almost impossible to distinguish between military and police force, to perform two and only two functions:

To protect the tyrant against internal enemies

To serve the interests of the tyrant—to enforce whatever laws please the prince and are enacted by his will.

(As I have indicated earlier, a society thus governed is in essence a “police state” and it makes little difference whether the police are secret or not.)

Under despotic regimes that are not wholly tyrannical or are only slightly tyrannical because they are mixed regimes, either decadent constitutionalism, e.g., Rome under Augustus or nascent constitutionalism, e.g., England in the age of Magna Carta and for about 300 years thereafter or benevolent despotisms, e.g. Prussia under Frederick the Great,

A police is not civil, because there is little or no difference between the unauthorized military force used by the regime and the unauthorized police force it employs. The police perform the same two primary functions that they perform in the case of tyrannical despotisms: (1) protecting the regime against its internal enemies, and (2) serving the interests of the prince.

In addition, because of the ingredient of some degree of constitutionalism or because of some amelioration of tyrannical rule by benevolence, the police, though still using unauthorized force, may perform certain functions that manifest concern for the common good and the security or welfare of the subjects.

In other words, a police that is not civil may, nevertheless perform functions that resemble those performed by a civil police (such as protecting individuals from injury, maintaining public peace and order, etc.)

But though these additional functions closely resemble these performed by a civil police, it is necessary to remember that the coercive force employed is unauthorized, not authorized, and is not subject to legal restraints or defined limitations. It is nothing but an extension of the power of the prince and is exercised at his pleasure to do whatever he wishes done; he is not constitutionally obligated to exercise it or to refrain from exercising it.

One final comment: in this case, a line may be drawn between a secret police force performing the two main functions of a police that is not civil, and an ordinary police force that is quasi-civil because it performs functions that resemble those performed by a civil police force.



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