

lawmakers. Simply put, the ends/means decision is “what they [the lawmakers] thought they were doing, and why they did it that way” (p. 202). However, it is still not quite clear, even considering his impressive critiques of original public meaning approaches, why Drakeman’s choice is superior to them.

All three books reviewed here are important additions to constitutional theory and interpretation. What makes them especially significant is how they reengage larger swaths of political history in their attempts to elucidate or even reinterpret particular uses of interpretive modes over time. As I suggested at the outset, constitutional theory too often takes a narrow or cramped view with respect to the importance of the development of political history and sometimes even ignores it completely. These works show just how important careful historical analyses are to constitutional theory over time. The dividends are worth the effort.

The Ethics of Policing: New Perspectives on Law Enforcement. Edited by Ben Jones and Eduardo Mendieta. New York: New York University Press, 2021. 311p. \$99.00 cloth, \$35.00 paper. doi:10.1017/S1537592721003777

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The *Ethics of Policing* is an impressive and timely collection of essays written by scholars from various disciplines and backgrounds. With this work, editors Ben Jones and Eduardo Mendieta aim to illuminate “what ethical principles should guide police, where current practices fall short, and what strategies hold the most promise for addressing these failures” (p. 4). The book is divided into four parts: part I deals with the role of policing; part II presents competing viewpoints on use of force; part III addresses racial bias and resistance; and part IV reflects on the ghosts of policing’s past, present, and future. I examine each in turn.

In part I, Tracey L. Meares begins by discussing the clash between effective and lawful policing. Meares argues that we should view policing as a public good and thus conceptualize its role as such. Yet, not everyone experiences policing as a “good” because the cost of producing that ‘good’ is uniquely borne by racial minorities (namely, young Black men); therefore, it is hard to say that policing is truly a public good. The work highlights the carceral state’s penchant for Black male adolescents (e.g., see Carl Suddler, *Presumed Criminal: Black Youth and the Justice System in Postwar New York*, 2020, and Douglas J. Flowe, *Uncontrollable Blackness: African American Men and Criminality in Jim Crow New York*, 2020). Jake Monahan argues that policing is a political profession and that, as such, the norms in policing are partly responsible for law enforcement strategies (e.g., zero tolerance or broken

windows). He posits that police departments lack epistemic and improvement norms, which are key to knowledge acquisition and production, as well as to accountability in policing; there remains significant resistance within police departments to incorporate these norms, arguably because to do so would increase accountability. Michael Sierra-Arévalo posits that idealized depictions of “real” police work such as fighting crime, which is seen as dangerous and masculine, “shape the structure, operation, and culture of US police departments” (p. 68). Examining the narratives accompanying service awards, the author finds that “warrior policing” (61.67%) is awarded more often than “guardian policing” (28.33%). There is parity between women and men being awarded for warrior policing; however, a significantly larger portion of women (43.75%) than men (14.05%) receive guardian policing awards.

Michael Walzer begins part II by acknowledging that policing in America is dangerous. That fact, however, does not release police from their obligation to protect lives, including those of criminals. He argues that the boundaries between zones of war and peace are eroding. Soldiering and policing both require the use of force but have vastly different goals and rules of engagement. Walzer argues that, within a zone of peace, the death of an innocent person is always disproportionate to the force that should be used. Franklin Zimring advocates for a set of clear and specific administrative guidelines for when officers should *not* shoot and when they should *stop* shooting. Police kill hundreds of unarmed suspects each year in situations where using a nonlethal response would not have put the officer’s life in danger. Zimring argues that if police were concerned with both police injuries and the number of people killed by police every year, they would collect data on both and analyze it to assess what situations put officers at the greatest risk. The author says that neglecting to record this data ensures that there will be no accountability. David Klinger disagrees, arguing that policing is done in the real world and that critiques wrongly assume that police have complete knowledge of aggressors. Klinger therefore outlines a prioritization-of-life framework for police based on McCarthy’s Ethical Model for hostage situations: it prioritizes the lives of (1) innocent citizens, (2) police officers, and (3) suspects, in that order.

Given the highly thoughtful nature of the rest of the chapters in parts I and II, I found it surprising that Klinger’s framework leaves no room for police misconduct or unethical behavior. The author provides two extremely violent examples to which the framework is applicable; however, these examples perpetuate the narrative that “real” policing is very dangerous. To evaluate Klinger’s argument, it might be helpful to recall a 2017 Pew poll that found that only 27% of officers have ever fired their gun while on the job. Yet 83% of Americans believe police

fire their guns at least once in their career, and 30% believe that police fire their weapon multiple times per year (Rich Morin and Andrew Mercer, “A Closer Look at Police Officers Who Have Fired their Weapon on Duty,” *Pew Research Center*, 2021). In addition, the police death rate has decreased 68% over the past 40 years (Franklin E. Zimring, “Police Killings as a Problem of Governance,” *Annals of the American Academy of Political and Social Science*, 2020). Lastly, Klinger does not explain how the framework applies to the hundreds of cases per year when police kill unarmed residents.

In part III, Vesla Weaver argues that “substantively... we mis-specify the structure and experience of the American state” (p. 154). The author reminds us that inequality is not simply material, but is also experienced in how the government treats the individual. In support of Weaver’s argument, other research has found that one’s well-being and sense of social obligation can be adversely affected by police contact (Brandon Davis, “Feeling Politics: Carceral Contact, Well-Being, and Participation,” *Policy Studies Journal*, 2021; and Brandon Davis, “Testing Mechanisms: Carceral Contact and Political Participation,” *Social Science Quarterly* 101[2], 2020). Weaver posits that in race-class subjugated communities, people experience the second face of the state: a pervasive predatory regime. Digital portals in Los Angeles, Baltimore, and Milwaukee allow individuals in these subjugated communities to give witness to their experiences with policing. Weaver finds discursive patterns across these communities that allow us to “see what policing *is* through the eyes of those who experience it most directly” (p. 174), calling into question how we go about knowing. Joy James contrasts the activism of Angela Y. Davis, whom James sees as not radical enough for this historical moment, with the late Erica Garner and progressives such as Bernie Sanders, who embody a more disruptive politics. After her father, Eric Garner, was murdered by NYPD officers, Erica Garner led a tireless effort to bring racial and class issues to the political forefront, criticizing establishment Democrats.

In part IV, Sally Hadden takes a historical approach, discussing the history of slave patrols and the development of the modern racial surveillance state. Nicolas de Warren compares policing in America to the cynegetic hunter/predator policing conducted by the Nazi regime. Lisa Guenther discusses the police use of drones and its effect on perception, the production of threat, and the asymmetrical threat that drones pose to insurgent Black life. Daniel Susser discusses statistical discrimination, racial bias in AI, and how predictive policing freezes individuals in a mathematical time and place and robs them of autonomy and the presumption of innocence, inadvertently creating suspicious identities (see Ayanna Howard, *Sex, Race, and Robots: How to Be Human in the Age of AI*, 2020).

I agree that understanding the colonial origins of the nation is essential to understanding the legal order and

how we police. The disciplining, hunting, surveilling, and regulating of the colonized and enslaved were (and are) essential parts of the state’s surveillance apparatuses and disciplinary mechanisms, and they (re)create the special relationship that whites enjoy with the legal order (Brandon Davis, “Predation in State and Nation,” *Race and Justice* 1, 2021). Policing is fundamentally about that legal order. Police are the human embodiment of the state’s monopoly of violence, and because of that, we are obligated to require an accounting of the use of that power.

Informing a Nation: The Newspaper Presidency of

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There are countless books on Thomas Jefferson, and yet his presidency remains understudied. This is because Jefferson was perhaps our most philosophic president and yet one of our most partisan ones. As the founder and figurehead of the first political party, Jefferson embodied a principle: a commitment to limited government organized by the strict reading of a written constitution. This principle preferred consent over unlimited power, and yet Jefferson understood that all constitutions needed an executive who would have to act outside the constitution when required by emergencies or even opportunities. Rather than undermining the constitution, these actions by the executive would in fact strengthen it by creating the conditions by which consent would be possible. Jefferson’s executive would create a “union of sentiment” by harnessing public opinion. This was itself a partisan idea, because the question of the legitimacy of public opinion was one of the most important political questions of the 1790s and would divide the parties through the nineteenth century. It was also an act of founding in its own right: before that public opinion could be harnessed, it would have to be created. Unlike his predecessors, then, Jefferson saw the presidency as a chance to embody public opinion.

In *Informing a Nation: The Newspaper Presidency of Thomas Jefferson*, Mel Laracey offers a new way to see just how Jefferson managed this partisan and philosophic enterprise. Laracey focuses on Jefferson’s relationship with the *National Intelligencer and National Advisor*, a Washington, DC, newspaper that was published “three days a week for all eight years of his presidency and circulated throughout the country” (p. 2). In its first issue published on October 31, 1800, editor Samuel Smith explained, “The design of the National Intelligencer is to *diffuse* correct information throughout the whole extent of the union” (p. 8). By correct information