

CROSS-SOVEREIGN POLICING AND THE CONSTITUTIONAL CRISIS OF ACCOUNTABILITY

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A quiet transformation in American policing has produced a constitutional rupture that escapes judicial recognition and democratic control. Through federal deputation and joint task forces, police officers now wield overlapping federal and state authority, often without statutory authorization and beyond public oversight. These arrangements enable local officers to enforce federal priorities and federal agents to operate through local institutions, while evading the legal frameworks that ordinarily render public authority visible, attributable, and accountable. A deputized city officer may conduct a federally directed raid yet be insulated from constitutional tort liability, criminal prosecution, civilian oversight, and departmental discipline. Conversely, a federal agent embedded in a local department may carry out arrests using city credentials and infrastructure yet remain beyond the reach of state law and municipal accountability. This enforcement regime, which this Article terms cross-sovereign policing, has emerged as a persistent blind spot in the law's remedial and oversight architecture.

This Article offers the first constitutional account of cross-sovereign policing as a structural pathology that has unraveled the doctrinal, institutional, and democratic foundations of public control over coercive power. It demonstrates how cross-sovereign policing fractures attribution, extinguishes remedies, and sidelines democratic governance, and it advances a framework to reconstruct police accountability across sovereign lines. The intervention operates on three levels: conceptual, doctrinal, and institutional. Conceptually, it shows how cross-sovereign policing collapses attribution, the structural guarantee that keeps coercive power traceable, contestable, and constrained. Officers act under overlapping authority, but no sovereign is held to account. The result subverts federalism's logic, turning a system meant to divide and restrain power into one that diffuses and insulates it. That collapse disables both civil-remedial doctrines and state criminal enforcement tools meant to check unlawful coercion. Section 1983, the primary civil remedy for constitutional violations by state officials, is denied when courts formalistically treat deputized officers as federal. Bivens claims against federal officers are rejected as novel even when the abuse mirrors routine police misconduct. Supremacy Clause immunity, originally a shield for federal officers against state obstruction, has been extended in cross-sovereign contexts to bar local prosecutions based on asserted federal authority. Institutionally, cross-sovereign partnerships circumvent internal and civilian oversight by bypassing review boards, departmental discipline, and local legal constraints on police conduct.

In response, the Article provides a legal blueprint for reconstruction. It combines doctrinal repair with structural redesign to keep coercive authority visible, contestable, and constrained. Doctrinally, it advances a functional attribution test for Section 1983, a new federal cause of action for cross-sovereign misconduct, and a historically grounded narrowing of Supremacy Clause immunity. Institutionally, it recommends fiduciary disclosure duties, public registries of deputized officers, conditional cooperation statutes, interstate compacts, and state constitutional tort regimes. Together, these reforms rebuild the constitutional and legislative architecture necessary to restore legal responsibility and democratic control over cross-sovereign policing.