

# “Police Yelp”

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*This Note discusses failed police accountability measures and suggests a new intervention, “Police Yelp,” that focuses on community control over police officers. The Note discusses the current institutional measures that have attempted to control police but have failed, largely due to their reactive and institutional nature. To better control police and ensure they are policing as communities want to be policed, this Note argues for community control over police through a democratic process, similar to the way that users interact with businesses on Yelp. The Note draws on power shifting as articulated by Jocelyn Simonson, among others, which advocates for shifting power from the elite to the everyday residents who are subjugated to the deadly power of police. Through “Police Yelp,” residents will be given the authority and platform to report on every interaction they have with police, and police departments will be required to take action against their officers based on those reviews by residents. In this way, “Police Yelp” gives the power back to the community to determine how, when, and by whom they want to be policed.*

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#### INTRODUCTION

After being beaten by Police Officer Michael McSpadden outside a parking garage in Baltimore, John Bonkowski found himself in a hospital with a fractured ankle and broken jaw.<sup>1</sup> From his hospital bed, Bonkowski looked up his assailant by searching “Officer Michael McSpadden” on Google.<sup>2</sup> He found that McSpadden had a documented history of violence: dragging, kicking, and stomping a handcuffed woman; breaking a man’s wrist; punching a handcuffed man; and beating a man unconscious with a police baton.<sup>3</sup> And yet McSpadden had remained on the police force for years while at least five complaints of excessive force stacked up against him.<sup>4</sup>

Officers committing this type of repeated misconduct and facing no major consequences is ubiquitous. Although the officers generally do not face consequences, cities spend enormous amounts settling with victims on behalf of

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1. Mark Puente, *Some Baltimore Police Officers Face Repeated Misconduct Lawsuits*, BALTIMORE SUN (Oct. 4, 2014, 11:35 PM), <https://www.baltimoresun.com/news/investigations/bs-md-police-repeaters-20141004-story.html> [https://perma.cc/8H3U-QGUD].

2. *Id.*

3. *Id.*

4. *Id.*

such officer misconduct.<sup>5</sup> More than \$3.2 billion has been spent within the past decade to settle such claims, \$1.5 billion of which involved officers with repeat claims of misconduct.<sup>6</sup> For example, the City of Detroit settled ten claims involving Officer Lynn Moore between 2010 and 2020.<sup>7</sup> For more than 7,600 officers across the country, cities have made at least two payouts due to repeated lawsuits and claims of wrongdoing.<sup>8</sup> More than 1,200 officers have been the subject of at least five payouts, and more than 200 had ten or more payouts.<sup>9</sup> These numbers highlight the extent to which police misconduct is tolerated by institutions while residents pay the price, both in tax money and physical injuries.<sup>10</sup>

Generally, police officers are not chosen by the communities in which they police.<sup>11</sup> In many lower socioeconomic communities and communities of color in particular, the officers do not respond to the desires of the residents, they are not trusted by the residents, and they are not held accountable to the residents.<sup>12</sup> As a result, the residents being policed fear calling the police when needed and do not want to collaborate with the police.<sup>13</sup> Yet, police officers are given immense power to monitor, control, and use force against these community members, and they are given wide discretion in deciding when and how to use this power.

For many years, institutional measures have tried and failed to hold police accountable. As indicated above, many officers facing misconduct charges have faced similar charges in the past, suggesting that the consequences for the previous actions were insufficient to deter future misconduct. Civilian review boards have proven ineffective.<sup>14</sup> The exclusionary rule, meant to incentivize proper actions by police through excluding evidence at trial, has not had its intended effect.<sup>15</sup> Civil rights claims under 42 U.S.C. § 1983 generally fail due to lack of information or

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5. Keith L. Alexander, Steven Rich & Hannah Thacker, *The Hidden Billion-Dollar Cost of Repeated Police Misconduct*, WASH. POST (Mar. 9, 2022), <https://www.washingtonpost.com/investigations/interactive/2022/police-misconduct-repeated-settlements/> [https://perma.cc/89ZT-4NSX].

6. *Id.*

7. Allegations included use of excessive force, illegal arrests, and wrongful searches. *Id.*

8. *Id.*

9. *Id.*

10. *See infra* Section I.C.

11. *See* M. Adams & Max Rameau, *Black Community Control Over Police*, 2016 WIS. L. REV. 515, 529 (2016).

12. *See* Jocelyn Simonson, *Copwatching*, 104 CALIF. L. REV. 391, 398 (2016) [hereinafter Simonson, *Copwatching*]; *see also* I. Bennett Capers, *Rethinking the Fourth Amendment: Race, Citizenship, and the Equality Principle*, 46 HARV. C.R.-C.L. L. REV. 1, 2 (2011) [hereinafter Capers, *Rethinking*] (pointing to a study that found 42% of Black individuals have a real fear that they will be arrested for a crime they have not committed to show that levels of distrust between minority communities and police are high).

13. *See* Mark Harrison Moore, *Problem-Solving and Community Policing*, 15 CRIME & JUST. 99, 113 (1992).

14. *See id.* at 116–17.

15. Barry Friedman & Maria Ponomarenko, *Democratic Policing*, 90 N.Y.U. L. REV. 1827, 1866 (2015).

qualified immunity.<sup>16</sup> When an incident between an officer and a resident occurs, the police often work together to create a black box of information that is practically impenetrable by residents.<sup>17</sup> Even when civil rights cases are successful, the officer is almost always indemnified and cleared of wrongdoing by their department.<sup>18</sup>

Now is the time to consider transformative solutions outside of the law. This Note offers one such solution as a thought exercise to encourage innovative ways to combat this issue of police violence. This Note argues that, to merit the use of this deadly power—this state violence—those subject to it must be able to control the police’s use of it. If the government’s use of violence against communities is for the benefit of community residents and meant to keep communities safe, then community members must be able to control the government violence inflicted upon them. They should be able to decide policing policies and personnel. Indeed, people who have been harmed by the police, either personally or through loved ones, often indicate that they want the officers involved to be punished, and they want “assurance that something similar won’t happen in the future.”<sup>19</sup> Individuals should be empowered to demand improvements when police officers act improperly and removal for officers who do not respond to these demands.

How might this happen? This Note proposes a possible mechanism drawing from the contemporary moment of crowdsourcing information, technological connectivity, and transparency. Situated at the intersection of scholarly literatures and dialogues of governance, accountability of policing, policing and race, and the power of community, this Note attempts to engage with and build upon works by others who have furthered the idea of community building. This Note builds on the theory of power shifting, which takes power away from the police and gives it to the community being policed. Drawing from abolitionist framing, this Note offers a creative suggestion to divest this power and place it within the community. “An abolitionist ethos . . . requires deploying imagination and experimentation. . . . [A]bolition does not demand a particular model or a singular tactic.”<sup>20</sup> The intervention proposed in this Note is just one partial solution to the goal of having a safer and more empowered community.

What if police officers were subject to public reviews, similar to the way that restaurants are subject to Yelp or professors are subject to student evaluations? After any contact with police, community members could evaluate their interactions on a national website based on how appropriate, necessary, and effective the interaction was. These evaluations would include a numerical rating of the officer,

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16. *Id.* at 1869.

17. See Alexander et al., *supra* note 5; see, e.g., ESTHER LIM & DAISY RAMIREZ, ORANGE COUNTY JAILS: A REPORT BY THE AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA JAILS PROJECT 86 (2017), <https://www.aclusocal.org/sites/default/files/ocjails2017-aclu-socal-report.pdf> [<https://perma.cc/Y7GP-CL6C>].

18. Friedman & Ponomarenko, *supra* note 15, at 1869.

19. Joanna Schwartz, SHIELDED: HOW THE POLICE BECAME UNTOUCHABLE, at iv (2023).

20. Vincent Southerland, *The Master’s Tools and a Mission: Using Community Control and Oversight Laws to Resist and Abolish Police Surveillance Technologies*, 70 UCLA L. REV. 2, 77 (2023).

and there would be progressively significant repercussions for low ratings, ultimately resulting in the termination of the officer’s employment if the rating does not improve. This kind of “Police Yelp” would shift policing power back to the community to determine by whom they want to be policed, in what manner they want to be policed, and in what situations they want to be policed. It would do so by directly tying resident feedback to mandatory changes by police departments regarding their officers and policies.

This may sound outlandish, but perhaps the question is, why does this not already exist? In a society that highly values consumer preferences and the opportunity to provide input into how one would like to receive services, our communities are denied the opportunity to meaningfully control the most important aspect of life: our safety. Why are we still subject to police violence from officers who provide services based on their own opinions and those of institutions, rather than the opinions of the community?

Not only would this improve police personnel, the appropriateness of police actions, and the safety of residents, but it would also help police. When individuals are involved in their governance in this way, they are more likely to view police actions as legitimate, more likely to trust the police, and therefore more likely to cooperate with the police. Increased trust and cooperation by the community would make police efforts more effective, because police officers would be able to work with the community rather than against it.

In Part I, this Note will go through the existing problems with police accountability and the lack of community control over police. Part II will discuss power shifting and five interventions that are, to varying degrees, aligned with the power-shifting framework. Part III will lay out the solution of “Police Yelp,” which draws from the theory of power shifting through community evaluation. This Part will argue that “Police Yelp” is a valid mechanism worth considering. It will also address the potential dangers of community control and the structural obstacles this solution would need to overcome. Ultimately, the Note will conclude that this solution, while imperfect, would be a useful step towards needed community control over police.

## I. THE EXISTING PROBLEMS WITH POLICE ACCOUNTABILITY AND LACK OF COMMUNITY CONTROL OVER THE POLICE

This Part will address the power that police wield and how that power harms community members. It will cover how that harm is due in part to a lack of transparency between police and residents. Finally, it will discuss the existing, ineffective institutional accountability measures and point out that these failures are largely due to the institutional nature of the measures.

### *A. Lack of Police Accountability Harms Residents*

It is no secret that police wield immense and deadly power. Policing scholar David Sklansky explains that “the police are both a uniquely powerful weapon

against private systems of domination and a uniquely frightening tool of official domination.”<sup>21</sup> Police in the United States fatally shoot about 1,000 people each year, and they kill even more in ways that do not involve firearms.<sup>22</sup> And that is just the individuals who die. There are many more who are assaulted, raped, falsely arrested, or violated in myriad other ways by officers.<sup>23</sup>

When police use more force than necessary, they “undermine public confidence in all police.”<sup>24</sup> As residents begin to feel distant from police, they start to view the police as “unreliable and uncontrollable.”<sup>25</sup> “The price is that citizens, and particularly those who are afraid, do not call the police and, instead, absorb their losses and live with their fears.”<sup>26</sup> For example, upon review of the Watts Riots, the Los Angeles Police Department concluded that it failed because it had “lost touch with the communities it policed” and therefore lost its ability to enforce the laws.<sup>27</sup>

This distance between residents and police reflects the history of state violence that is rooted in control and colonization of Black communities. Communities with “large concentrations of poor people of color have the most frequent contact with, but the least input into,” policing practices.<sup>28</sup> In fact, some scholars suggest that current police forces inflict violence on Black communities in ways similar to how occupying armies control domestic colonies.<sup>29</sup> Indeed, Professor I. Bennett Capers notes that 56% of Black individuals believe they have been treated unfairly by police because of their Blackness, and 46% of Black individuals believe racism by police officers is “very common.”<sup>30</sup> Thus, while “constitutionally immaculate law enforcement may well be impossible in every case,” to minimize harm inflicted against communities, residents must demand zero tolerance for police misconduct.<sup>31</sup>

### *B. Lack of Transparency Between Community and Police*

Accountability starts with transparency. Erik Luna argues that transparency in policing is necessary for residents to have trust in policing as an institution. Trust in police, he says, “requires systematic visibility of policing decisions and concomitant justifications.”<sup>32</sup>

Yet, because it brings scrutiny and accountability, police are disincentivized to

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21. David Alan Sklansky, *Police and Democracy*, 103 MICH. L. REV. 1699, 1808 (2005).

22. Matthew Clair & Amanda Woog, *Courts and the Abolition Movement*, 110 CALIF. L. REV. 1, 7 (2022).

23. *Id.*

24. Debra Ann Livingston, *Brutality in Blue: Community, Authority, and the Elusive Promise of Police Reform*, 92 MICH. L. REV. 1556, 1566 (1994).

25. Moore, *supra* note 13.

26. *Id.*

27. *Id.* at 132.

28. Simonson, *Copwatching*, *supra* note 12, at 392.

29. See Adams & Rameau, *supra* note 11, at 521.

30. Capers, *Rethinking*, *supra* note 12, at 13.

31. Erik Luna, *Transparent Policing*, 85 IOWA L. REV. 1107, 1120 (2000).

32. *Id.*

promote transparency. Few municipalities track misconduct claims by the names of the officers.<sup>33</sup> Most claims settle, which rarely involves an admission or finding of wrongdoing, causing police unions to believe that “there is no reason to hold officers accountable for [such claims].”<sup>34</sup> Therefore, even the municipal officials overseeing police can be unaware of repeated misconduct by their officers.<sup>35</sup>

Highlighting the transparency problem, several initiatives have formed to address this “black box” of policing. The “Police Data Initiative” was launched by the White House in 2015 to “gain a national picture of police use of force” that could directly change the behavior of police and identify targeted improvements.<sup>36</sup> Another initiative, the “Law Enforcement Lookup,” will provide information about police misconduct in New York City.<sup>37</sup> These initiatives respond to the decades when “prosecutors were allowed to portray police officers as untainted and unbiased witnesses, while laws were used to shield the public and the court from the truth regarding the misconduct and misdeeds of those very witnesses.”<sup>38</sup>

The lack of transparency that residents have into police actions runs parallel to the lack of insight police maintain into resident priorities. There is significant evidence that police do not understand what issues most concern residents in the communities they police.<sup>39</sup> This makes sense, as police are held accountable not by residents but by institutional measures, which are not always aligned with resident priorities.

Indeed, part of the conversation regarding police ignorance of community issues is that the officers do not care to learn what the community cares about. Rather, the officers prefer to impose their own values and their own failed institutional accountability measures. Police have “preferred to base their legitimacy on their own professional standards,” which is “intrinsically problematic” because “[i]t makes the police responsible only to themselves and to no one else.”<sup>40</sup> As a result, the police themselves determine what police should focus on, rather than allowing the residents (and taxpayers) to have a say.<sup>41</sup> This in large part creates the disconnect that residents and police feel toward each other. If police impose their own values on communities and are unaware of what the residents value, they will

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33. Alexander et al., *supra* note 5.

34. *Id.*

35. *Id.*

36. Samuel R. Wiseman, *The Criminal Justice Black Box*, 78 OHIO ST. L.J. 349, 356 (2017).

37. ‘Law Enforcement Lookup:’ *Thousands of NYPD Misconduct Files Made Available to Public*, NBC NEW YORK (Oct. 4, 2022, 6:38 PM), <https://www.nbcnewyork.com/news/local/law-enforcement-lookup-thousands-of-nypd-misconduct-files-made-available-to-public/3890958/> [<https://perma.cc/EY2Y-YQYV>].

38. *Id.*

39. *See, e.g.*, Michael S. Scott, *Community Justice in Policing*, 42 IDAHO L. REV. 415, 421 (2006) (“Police commonly report being surprised at community meetings because police come prepared to discuss serious crime, assuming that is what concerns the community most, only to discover that citizens are more bothered by what police conventionally consider low-level offenses.”).

40. Moore, *supra* note 13, at 116.

41. *Id.* at 117.

never be effective in creating a safe and healthy community.

### C. Failed Institutional Accountability Measures

The institutional measures that attempt to hold police accountable include (1) criminal prosecution, (2) civilian review boards, (3) the exclusionary rule, (4) civil rights suits, and (5) internal department discipline. As the numbers of police violence and repeat misconduct demonstrate, none of these are sufficiently effective in controlling police behavior.<sup>42</sup>

First, criminal prosecution can hold police accountable if prosecutors bring charges against police who violate the law. However, this accountability measure is embedded in the criminal legal system and requires a prosecutor to initiate such a claim. In reality, police are effectively shielded from prosecution, as “prosecutors find themselves in a co-dependent institutional relationship with police, whereby they share ‘norms, resources, and goals.’”<sup>43</sup> This relationship makes it “professionally costly” for prosecutors to bring charges against police.<sup>44</sup> Additionally, self-defense claims raised by police are rarely challenged.<sup>45</sup>

Second, civilian review boards stem from the belief that civilians, not just police personnel, should have the power to investigate police officer wrongdoing.<sup>46</sup> These boards allow community members to participate in oversight boards that investigate civilian complaints of officer wrongdoing.<sup>47</sup> However, the power largely remains with police and municipal officials.<sup>48</sup> In fact, a 2016 study found that for fifteen out of the twenty-four largest civilian oversight boards, a majority of board members were nominated or controlled by police or municipal officials.<sup>49</sup> Rather than allowing participation by all community members, many boards deny certain community members the opportunity to participate, such as those who were formerly incarcerated.<sup>50</sup>

One review of the civilian review boards in the fifty largest police departments found that only nineteen of these investigatory boards have subpoena authority.<sup>51</sup> Many boards lack “disciplinary authority” or any “final decision-making on

42. See Friedman & Ponomarenko, *supra* note 15, at 1865.

43. Clair & Woog, *supra* note 22, at 13.

44. *Id.* at 13–14.

45. *Id.* at 13.

46. See Udi Ofer, *Getting It Right: Building Effective Civilian Review Boards to Oversee Police*, 46 SETON HALL L. REV. 1033, 1039 (2016).

47. *Id.* at 1040.

48. Jocelyn Simonson, *Police Reform Through a Power Lens*, 130 YALE L.J. 778, 817 (2021) [hereinafter Simonson, *Police Reform*]; K. Sabeel Rahman & Jocelyn Simonson, *The Institutional Design of Community Control*, 108 CALIF. L. REV. 679, 703 (2020).

49. Rahman & Simonson, *supra* note 48, at 704; see also Ofer, *supra* note 46, at 1042 (noting a 2015 study of the fifty largest police departments revealed that the majority of those with civilian review boards had a “review board that [was] majority nominated and majority appointed by the mayor (or in combination with the head of the police), thus minimizing the independence of such boards”).

50. Rahman & Simonson, *supra* note 49, at 710.

51. Ofer, *supra* note 46, at 1046.

discipline” and are therefore limited to merely providing advice and recommendations.<sup>52</sup> This means that reviews by civilian review boards often lead to nothing: in 2012, the New York Police Department chose to impose no discipline in more than 40% of cases recommended to them by the civilian review board, and they followed the board’s recommendation in only 9.7% of cases.<sup>53</sup> Because these review boards are created by government officials, they are subsequently constrained by what those officials deem necessary and appropriate.<sup>54</sup> Additionally, some scholars have noted that these boards focus too much on individual complainants and individual incidents of brutality, and they fail to hold police departments accountable for their overall performance.<sup>55</sup>

Third, the exclusionary rule is meant to deter unconstitutional police conduct by preventing the admission of evidence into trial that was found through unconstitutional police actions. This rule is widely considered to insufficiently deter unconstitutional police conduct, in part because suppression hearings are infrequent and temporally removed from the improper police action.<sup>56</sup> The infrequency is partially due to the “often-scant resources” given to defense attorneys and “the power of police in criminal courtrooms” that leads defense attorneys to generally not pursue suppression hearings.<sup>57</sup> “When they do, they rarely prevail.”<sup>58</sup> Moreover, the exclusionary rule only arises when the unconstitutional police conduct successfully found incriminating evidence, and courts are “disinclined to rule for a defendant who has been caught red-handed with the goods.”<sup>59</sup> As such, the law-abiding citizen with nothing to hide is left without a remedy under the exclusionary rule.<sup>60</sup>

Fourth, civil rights claims against police officers can be brought by harmed individuals under 42 U.S.C. § 1983, but they require significant data about police actions that is difficult to obtain.<sup>61</sup> The plausibility pleading standard requires plaintiffs to know facts that would prove their claims at the drafting stage of a complaint.<sup>62</sup> The lack of transparency previously mentioned impedes accountability perhaps most saliently in civil rights claims. Although steps have been taken to improve information accessibility, it remains elusive for most parties. For example, police body cameras have become popular to show video footage of police

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52. *Id.* at 1043.

53. *Id.* at 1047.

54. Southerland, *supra* note 20, at 28–30.

55. *See* Moore, *supra* note 13, at 116–17.

56. Simonson, *Copwatching*, *supra* note 12, at 413; *see also* Capers, *Rethinking*, *supra* note 12, at 46.

57. Clair & Woog, *supra* note 22, at 13.

58. *Id.*; *see also* Sklansky, *supra* note 21, at 1749 (“The exclusionary rule keeps the courtroom clean but does little to stop police illegality.”).

59. Friedman & Ponomarenko, *supra* note 15, at 1866.

60. Capers, *Rethinking*, *supra* note 12, at 45.

61. Simonson, *Copwatching*, *supra* note 12, at 413.

62. *See* Schwartz, *supra* note 19, at 42.

incidents, but digital access is surprisingly limited.<sup>63</sup>

Even when information is accessible, additional barriers prevent successful civil rights suits. The financial requirements of bringing a 1983 claim burden the plaintiff, even if the claim is meritorious. Many lawyers are “disinclined to take a case on behalf of a person whose rights had clearly been violated, unless the potential damages were significant enough that one-third of the plaintiff’s award would adequately compensate them for their time.”<sup>64</sup> This means “if a case did not involve death or a serious physical injury, it was not worth the risk.”<sup>65</sup> Further, to have standing, plaintiffs who were subjected to a harmful police practice once are often required to show that they would be subject to the same harm again in the future, which is practically impossible to prove.<sup>66</sup> Moreover, because the Supreme Court has allowed such broad discretion when determining if officers’ actions can be considered “reasonable,” even highly offensive and harmful actions can be technically lawful under the Court’s precedents.<sup>67</sup> And, even if a civil rights claim succeeds, the officers will likely enjoy qualified immunity.<sup>68</sup> If they do not have qualified immunity, they are almost always indemnified by their department, city, or municipality, such that they ultimately face no financial consequences.<sup>69</sup>

Finally, although departments themselves could impose discipline, they rarely do.<sup>70</sup> In fact, some suggest that department officials “work incredibly hard not to know about repeat offenders.”<sup>71</sup> Data from the Chicago Police Department indicate that an officer who is a repeat offender “can be 99.8% confident that no meaningful investigation or discipline will result from being charged with the abuse of a civilian.”<sup>72</sup> Even if the department wanted to impose discipline, centralized oversight has proven unable to reliably control police conduct due to the amount of discretion consistently delegated to officers.<sup>73</sup>

The institutional nature of these accountability measures denies true community involvement and allows officers to continue reoffending, contributing to distance between officers and community members and resident mistrust of officers. These measures are reactionary and must meet a certain threshold to be triggered. In other words, an officer must violate a law or policy before any of these

63. Wiseman, *supra* note 36, at 349.

64. See Schwartz, *supra* note 19, at 42.

65. *Id.*

66. See Friedman & Ponomarenko, *supra* note 15, at 1868; Schwartz, *supra* note 19, at 161.

67. See Schwartz, *supra* note 19, at 56–58.

68. See Friedman & Ponomarenko, *supra* note 15, at 1869; Schwartz, *supra* note 19, at 73–76.

69. See Friedman & Ponomarenko, *supra* note 15, at 1869; Schwartz, *supra* note 19, at 179.

70. See Darrel W. Stephens, *Police Discipline: A Case for Change*, NAT’L INST. JUST. 1, June 2011, at 6–7, <https://www.ojp.gov/pdffiles1/nij/234052.pdf> [<https://perma.cc/BJT2-L2QA>]; Schwartz, *supra* note 19, at xii, 230.

71. Craig B. Futterman, H. Melissa Mather & Melanie Miles, *The Use of Statistical Evidence to Address Police Supervisory and Disciplinary Practices: The Chicago Police Department’s Broken System*, 1 DEPAUL J. SOC. JUST. 251, 280 (2008).

72. *Id.* at 279.

73. Moore, *supra* note 13, at 146.

measures can be initiated. Even then, the apathy with which these accountability measures are imposed contributes to the lack of accountability and perpetuates misconduct. One police misconduct expert highlighted the effect that unchecked misconduct has on other officers, particularly new officers: “When that becomes the norm, the few bad apples affect the whole department.”<sup>74</sup>

## II. POWER SHIFTING AS A LENS TO ADDRESS THE ACCOUNTABILITY PROBLEM

This Note argues that, rather than relying on institutional accountability measures, residents should have democratic control over the state’s monopoly on violence.<sup>75</sup> Rather than allowing institutions to determine how to police communities, those subject to the power of police must be given the opportunity to consent to the use of that power. Social contract theorists argue that “consent grounded in public trust provides the very basis for governmental authority.”<sup>76</sup> Organizers M. Adams and Max Rameau have proposed the Human Right to Informed Consent and Self-Determination, based on several international treaties protecting individual rights.<sup>77</sup> This new right, drawing from the right to self-determination, would demand “the right to informed consent of the governed in . . . state use of violence.”<sup>78</sup>

Lack of consent and control is highlighted in communities of color, and “contemporary Black communities do not consent to the terror leveled against [them] by the occupying forces that are local police departments.”<sup>79</sup> Perhaps one powerful way to address racism is by dismantling the system of power (through police occupation) that enforces racist ideas.<sup>80</sup> In this way, the movement for community control over police is both empowering democratic self-governance and promoting the goal of ending abusive police practices.<sup>81</sup>

Before diving into power shifting, I would first like to articulate what I mean by “community.” Community is difficult to define, and communities differ significantly from each other. For instance, racial segregation between communities remains “staggeringly high.”<sup>82</sup> Professor Capers explains how criminal procedure jurisprudence furthers segregation and “methods of policing . . . maintain racialized spaces.”<sup>83</sup> For example, police decisions to stop and frisk individuals are often based

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74. Puente, *supra* note 1.

75. Adams & Rameau, *supra* note 11, at 519.

76. Luna, *supra* note 31, at 1159.

77. Adams & Rameau, *supra* note 11, at 518–19 (pointing to Article 15 of the Universal Declaration of Human Rights; Article 1 of the International Covenant on Civil and Political Rights; and Article 1 of the International Covenant on Economic, Social and Cultural Rights as inspiration).

78. Adams & Rameau, *supra* note 11, at 519.

79. *Id.* at 529.

80. *See id.* at 526.

81. *Id.* at 529.

82. I. Bennett Capers, *Policing, Race, and Place*, 44 HARVARD C.R.-C.L. L. REV. 43, 47 (2009) [hereinafter Capers, *Policing*].

83. *Id.* at 62.

on “racial incongruity”—the presence of a minority in a predominantly non-minority neighborhood, or the presence of a non-minority in a predominantly minority neighborhood.”<sup>84</sup> Professor Michael Scott has noted at least four different definitions of community: “(1) a group of people living in the same locality and under the same government, (2) the district of locality in which such a group of people lives, (3) a group of people having common interests, similarity, or identity, (4) society as a whole.”<sup>85</sup> When I refer to a community in this Note, I am using the term as a geographic indicator that points to a neighborhood or locality with common residents but not necessarily residents who share the same interests or identities. Community members will disagree on what they value, as I will address as part of the pitfalls of my proposal.

#### *A. Importance of Power Shifting*

Jocelyn Simonson argues for shifting power to policed populations.<sup>86</sup> “Power shifting is the underlying principle that the power to define and manage social harm should be administered through a democratic process that centers marginalized communities.”<sup>87</sup> Simonson points to “the racialized history of policing and its potentially inextricable connections to the social control of—and denial of political power to—poor and Black Americans.”<sup>88</sup> Power shifting focuses on the ability of residents to engage in self-governance and reduce the subjugating effects of policing, both of which require power being placed in the hands of those being policed.<sup>89</sup>

Because the policing system is plagued by power imbalances between those who wield the power and those who are subject to it, real change must be from the bottom up.<sup>90</sup> That is, to change police behavior, the underlying power dynamic between the police and communities must change.<sup>91</sup> Power shifting, Simonson argues, is necessary to allow for such “collective resistance to dominant ideas and policies within existing institutions,” a crucial part of our democracy.<sup>92</sup>

The Movement for Black Lives, a racial justice collective, has similarly called for democratic community control of law enforcement agencies, with a transfer of power to the communities most harmed by policing.<sup>93</sup> Currently, the elite, rather than everyday people, overwhelmingly define what constitutes crime, who should be criminalized, and how those who are criminalized should be treated.<sup>94</sup> Power

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84. *Id.* at 65–66.

85. Scott, *supra* note 39, at 435.

86. See Simonson, *Police Reform*, *supra* note 48, at 787.

87. Clair & Woog, *supra* note 22, at 28.

88. Simonson, *Police Reform*, *supra* note 48, at 800.

89. *Id.* at 801.

90. *Id.* at 811.

91. *Id.* at 824.

92. *Id.* at 845.

93. Rahman & Simonson, *supra* note 48, at 681.

94. Clair & Woog, *supra* note 22, at 28.

shifting involves specifically “marginalized populations exposing and rearticulating the way crime is constructed in the public imagination and in their own communities.”<sup>95</sup>

Rather than a one-time transition, power shifting is a continual process always working to ensure that power is distributed equitably and that community deliberation centers the voices of the most vulnerable.<sup>96</sup> Power shifting can be used to achieve three concrete benefits related to policing: (1) legitimacy in government through empowering communities; (2) changed legal standards that are in line with community values; and (3) significantly changed police behavior.

First, power shifting promotes legitimacy in government. A critical component of legitimacy is the perception by the community that police are responsive to community demands.<sup>97</sup> By giving power to the community to democratically control police actions, police will be required to be responsive to resident demands. This is likely inherently beneficial, as emerging social science supports the idea that engaged communities are safer communities.<sup>98</sup> Even if citizen involvement does not prevent crime, it can promote legitimacy, which contributes to greater compliance with law.<sup>99</sup> An involved community “would indirectly reduce crime and fear through increased social interaction, a stronger sense of community solidarity, and thus more effective informal social control in the neighborhood.”<sup>100</sup> In practice, community participation in policing may help reduce the “simmering distrust” between police and residents.<sup>101</sup>

Second, scholars of legal change have noted the power of social movements to alter legal meaning.<sup>102</sup> Historically, courts, rather than community residents, have created Fourth Amendment jurisprudence that defers to police interpretations of reasonableness.<sup>103</sup> Courts rely on “a presumption that police officers have greater insight into crime and are therefore reliable authorities to whom judges should generally defer as expert witnesses.”<sup>104</sup> But there is no reason to assume that police are better authorities on what is reasonable than the community residents who are subject to the use of force.<sup>105</sup>

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95. *Id.* at 29–30.

96. *Id.* at 34.

97. Friedman & Ponomarenko, *supra* note 15, at 1881.

98. Scott, *supra* note 39, at 422.

99. *See* Friedman & Ponomarenko, *supra* note 15, at 1881 (“Numerous studies have shown that individuals are far more likely to comply with the law and to cooperate with law enforcement authorities when they perceive their actions as legitimate.”); Luna, *supra* note 31, at 1161 (“[T]he appearance of fair, equitable procedures affects both the perceived legitimacy of government and individual citizen behavior.”); Scott, *supra* note 39, at 422.

100. Tim Hope, *Community Crime Prevention*, 19 CRIME & JUST. 21, 43 (1995).

101. Simonson, *Copwatching*, *supra* note 12, at 393.

102. *Id.* at 425; Scott, *supra* note 39, at 433 (arguing for involving citizens from the immediate neighborhood in which a crime occurs to shape the legal and social consequences).

103. Clair & Woog, *supra* note 22, at 11.

104. *Id.* at 12.

105. *See, e.g.*, Friedman & Ponomarenko, *supra* note 15, at 1876 (“[T]here simply is no basis for

By shifting power to residents to choose how they want to be policed, residents can shape the law and legal standards. For example, “[w]hat the average police officer may understand as reasonable could stand in sharp contrast to what the average defendant, or the average resident, considers reasonable.”<sup>106</sup> An officer may think that using force against a resident who is turned away from an officer, ignoring the officer’s commands, and walking away is reasonable, while the average resident may consider this unreasonable. Or, consider the jurisprudence on “stops” compared to “consensual encounters.” The Supreme Court has held that police interactions without a showing of force or where a reasonable person would feel free to leave is not a stop and, therefore, does not require even reasonable suspicion.<sup>107</sup> However, we know there are many instances where an individual would not feel free to leave simply due to the presence of an officer. Rather than having courts guess what a reasonable person would think, residents can shape constitutional legal standards by directly supplying that information. This is not unprecedented. For example, politicians have admitted that public pressure, “rather than rational deliberation,” caused the enactment of California’s “three strikes” sentencing scheme.<sup>108</sup> In a similar manner, empowered residents can change legal standards of police actions. Professor Capers has even suggested that an unexplored aspect of community policing is that “police receive their cues from society.”<sup>109</sup> Let’s use that to provide helpful cues that reflect community values.

Finally, and perhaps most importantly, power shifting can change police behavior. By taking power from the institutions and giving it to community members, residents can demand different behavior by police. Changing police behavior through input is possible; one study revealed that the more an officer considered a problem, the less likely they were to rely on their police methods.<sup>110</sup> “Changing police officers’ views of the sources of the problem changed the nature of the response that seemed appropriate.”<sup>111</sup> Thus, if given the opportunity, residents can change police responses by changing police views and holding officers accountable to new standards.

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thinking that deferring to the police is the answer.”); Simonson, *Police Reform*, *supra* note 48, at 850–51 (suggesting that, under the power lens, the individuals subjugated to police power become experts themselves).

106. Clair & Woog, *supra* note 22, at 12.

107. See Capers, *Policing*, *supra* note 82, at 67 (discussing *United States v. Mendenhall*, 446 U.S. 544 (1980) and *Florida v. Bostick*, 501 U.S. 429 (1991)).

108. See Luna, *supra* note 31, at 1129. The Three Strikes sentencing scheme significantly increases prison sentences of individuals who have previously been convicted of certain felonies. CAL. PENAL CODE § 667 (West 2022).

109. Capers, *Policing*, *supra* note 82, at 77.

110. Moore, *supra* note 13, at 131.

111. *Id.*

### B. *Moving Toward Community Oversight*

Over the years, many different interventions have attempted to give more power to communities to improve accountability and resident interactions with police. This Part will discuss five: (1) community policing, (2) an expansion of civilian review boards, (3) court watching, (4) copwatching/citizen patrols, and (5) democratic rulemaking. Community policing and civilian review boards are state-led interventions, meaning they are situated within the existing institutions of accountability. Court watching and copwatching are people-led (or community-led) interventions that are outside institutional oversight. Finally, democratic rulemaking sits outside either a state- or people-led categorization, as it is a procedure for input into legislation regarding laws controlling police behavior. It has not been implemented but has been suggested by scholars and is worth discussing here. While all of these interventions take important steps in prioritizing community voices, none have achieved nor will likely achieve true community control over police due to their structural limitations.

#### 1. *State-Led Interventions*

Community policing and civilian review boards are state-led interventions because they are rooted to and bound by government institutions. In some ways, these interventions that move towards community oversight—but are rooted in state-led interventions—are the most harmful because the community involvement (however minor) legitimizes the intervention. The state can point out that the community was involved, and therefore the result should be accepted.

##### a. *Community Policing*

Likely the most well-known of these interventions, community policing grew out of concerns that the police had become too distant from the residents and communities they served, and that distance was eroding public confidence in policing and undermining police effectiveness.<sup>112</sup> Community policing is exceedingly varied, but it is based on the idea of encouraging closer ties with local communities, receiving more community input into problems, and making police more responsive to community concerns.<sup>113</sup> For example, it can look like foot patrols, where officers are physically in and connecting with the communities they police.<sup>114</sup>

Community policing has resulted in some improvements, but it continues to “exclude the most marginalized and disadvantaged people,” and it leaves policing in the control of the police.<sup>115</sup> While the heart of the community policing movement

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112. Scott, *supra* note 39, at 416.

113. See Moore, *supra* note 13, at 103, 123; Scott, *supra* note 39, at 435.

114. See Moore, *supra* note 13, at 102.

115. Simonson, *Copwatching*, *supra* note 12, at 402–03; Simonson, *Police Reform*, *supra* note 48, at 837.

is that the police should work with communities, rather than against them, “[t]he theme is community partnership, not community control.”<sup>116</sup> Indeed, community policing was not intended to make police “entirely subservient” to communities.<sup>117</sup> Ultimately, community policing “rarely intrudes much on the operational autonomy of the police.”<sup>118</sup>

*b. Expansion of Civilian Review Boards*

While civilian review boards were mentioned above as an ineffective accountability measure, two scholars, M. Adams and Max Rameau, argue for much more powerful civilian review boards. These would be comprised of residents subject to police power, and they would have “100%-complete authority over the priorities, policies, and practices of the police.”<sup>119</sup> They would provide consent of the community through control over police.<sup>120</sup> The board would be randomly drawn so that every member of the community would have the power to decide how the police should act.<sup>121</sup> Adams and Rameau suggest that this fortified board must include the power to “(1) establish police priorities, (2) set department policies, and (3) enforce the practice of those policies, including the power to hire and fire individual police officers.”<sup>122</sup> In this way, even if a racist officer was hired, for example, “he would be unable to act on his racist attitudes without risking getting fired or arrested.”<sup>123</sup>

Olufemi O. Taiwo, another scholar, has similarly argued for community control over police departments in the form of randomly selected and rotating boards with the power to hire, fire, defund, or abolish police departments.<sup>124</sup> He calls these civilian *control* boards, rather than civilian *review* boards, because they focus more on forward looking policy-making instead of merely reviewing the performance of individual officers.<sup>125</sup> Udi Ofer also argues for a bolstered civilian complaint review board that would include the power to “aggressively investigate” police misconduct, hand out discipline to officers, and identify systemic problems in policing.<sup>126</sup> This would include the ability to review department policies that may lead to violations.<sup>127</sup> His model would be independent from police departments and police policies, with a fixed budget tied to the size of the police department and

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116. Sklansky, *supra* note 21, at 1779.

117. Moore, *supra* note 13, at 123.

118. Sklansky, *supra* note 21, at 1798.

119. Adams & Rameau, *supra* note 11, at 530.

120. *Id.*

121. *Id.* at 532.

122. *Id.* at 534.

123. *Id.* at 537.

124. Olufemi O. Taiwo, *Want to Abolish the Police? The First Step Is Putting Them Under Democratic Control*, IN THESE TIMES (Aug. 25, 2020), <https://inthesetimes.com/article/abolition-communitycontrol-police-abolition-safety-power-whitesupremacy> [<https://perma.cc/Z2N5-CQBF>].

125. Rahman & Simonson, *supra* note 48, at 726.

126. Ofer, *supra* note 46, at 1038.

127. *Id.* at 1049.

membership determined by community groups.<sup>128</sup> Ofer suggests that once the board confirms an allegation of misconduct, that finding should bind the head of the police department to impose the appropriate discipline according to a pre-negotiated disciplinary matrix.<sup>129</sup> Ofer also suggests that, to further transparency, the board must issue an annual report that shows the work it has accomplished in that year and notes any trends, including police department data on practices such as stop-and-frisks, searches, use of force, and arrests.<sup>130</sup>

Vincent Southerland has written about another type of intervention, somewhere between a civilian review board and democratic rulemaking, titled Community Control Over Police Surveillance (CCOPS) laws.<sup>131</sup> Focused on democratic oversight of police surveillance technologies, CCOPS seeks to promote transparency, public deliberation, and community involvement regarding decisions about police use of surveillance technology.<sup>132</sup> It does so by providing communities “an advisory seat at the table” to inform relevant government decisions.<sup>133</sup> CCOPS requires annual reporting by law enforcement and mandates the use of a cost-benefit analysis in its decision about the acquisition and use of surveillance technology.<sup>134</sup> After the required release of the annual report by law enforcement, a public hearing must take place to allow the public to discuss and question information in the report and the use of surveillance technologies.<sup>135</sup> In addition, CCOPS creates a “Community Advisory Committee on Surveillance” to “provide the City Council with broad principles to help guide decisions about if and how surveillance technologies should be used by the City and its municipal agencies.”<sup>136</sup> This committee is meant to reflect the diversity of the local community with a focus on those who “have historically been disproportionately subjected to government surveillance.”<sup>137</sup> CCOPS makes violations of these technology policies a crime and creates a private right of action for violations that can lead to various reliefs, including injunctive relief, declaratory relief, and evidence suppression.<sup>138</sup>

These suggested improved boards are promising and may be able to create more community control over police if implemented as suggested. However, they remain limited in participation to those community members who sit on the board, and the oversight they might have would be limited to those police actions of which they become aware. The model CCOPS legislation has been enacted in around two dozen jurisdictions, but only four have created or rely on a board similar to the

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128. *Id.* at 1038.

129. *Id.* at 1047.

130. *Id.* at 1051.

131. *See* Southerland, *supra* note 20, at 27–33.

132. *Id.*

133. *Id.*

134. *Id.* at 27.

135. *Id.* at 28.

136. *Id.* at 28–29.

137. *Id.* at 29.

138. *Id.* at 29.

Community Advisory Committee on Surveillance.<sup>139</sup> All four of these are advisory with no binding authority, and “[s]imply put, policies and reports are of little value if law enforcement can simply refuse to abide by them.”<sup>140</sup> All but one group are made up of individuals nominated by the mayor and the city council, with the final group made up mostly of city officials with only one public member.<sup>141</sup> For at least two of the groups, the group members are unpaid volunteers who receive no compensation for their work.<sup>142</sup> Further, public comments have been made, but “primary engagement is not amongst communities potentially disproportionately affected by use of surveillance technologies;” instead, “the primary group identified in engaging in this process is white and in a subset of specific neighborhoods not identified as communities of concern for over-use of surveillance.”<sup>143</sup>

## 2. People-Led Interventions

Court watching and copwatching are people-led interventions because there is no state actor controlling them. This allows them more freedom, but they are less able to effect change, as they have no authority given to them by the state to hold wrongdoers accountable or to change policies.

### a. Court Watching

Court watching encourages ordinary people to observe court proceedings to show support for community members in the courtroom and to collect information on judges and prosecutors.<sup>144</sup> The purpose is to demonstrate to judges the community’s desire for certain defendants to be sentenced in a particular way and to affect judge behavior by being interested spectators in the courtroom.<sup>145</sup> Court watching can “expose injustices, pressure legal officials to ‘shift courtroom policies, practices, and culture,’ and create conditions for judicial accountability.”<sup>146</sup> Yet, a court watcher is merely a volunteer with no authority, and this intervention is limited to interactions that occur in courtrooms.

### b. Copwatching/Citizen Patrols

Copwatching is one of the more radical interventions. It involves groups of local residents who “wear uniforms, carry visible recording devices, patrol neighborhoods, and film police-citizen interactions in an effort to hold police

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139. *Id.* at 33–34. The four jurisdictions are Seattle, Washington, and three cities in California: Berkeley, Oakland, and San Francisco. *Id.*

140. *Id.* at 41, 51.

141. *Id.* at 42–45.

142. *Id.*

143. *Id.* at 61–62.

144. Clair & Woog, *supra* note 22, at 34–35.

145. *See* Scott, *supra* note 39, at 426.

146. Clair & Woog, *supra* note 22, at 35.

departments accountable to the populations they police.”<sup>147</sup> Copwatchers may ask the police on behalf of others, “Is he free to go?” to remind the police of the constitutional rule and that somebody might not feel free to go.<sup>148</sup> By copwatching, residents use their “voice” both in the moment, by observing and consequently deterring police officers from unconstitutional conduct, and after the fact, when the resident can bring their observations to formal accountability institutions and the informal public sphere.<sup>149</sup> In this way, residents are able to “infus[e] their own views of what is ‘reasonable’ or fair into everyday interactions with police officers in their neighborhoods.”<sup>150</sup> This gives traditionally powerless populations the ability to have “direct input into discretionary policing decisions and constitutional norms,” potentially resulting in changing constitutional meanings and police practices.<sup>151</sup>

Similar to copwatching, citizen patrols engage in a type of direct adversarial relationship with police officers. For example, a citizen patrol in New York City, called the Guardian Angels, engages in undercover operations and invites conflict with the police over the alleged unlawfulness of police tactics.<sup>152</sup> At least one public survey found largely positive perceptions of the Angels, suggesting that what the police considered unlawful was not similarly perceived by the public.<sup>153</sup> Thus, these citizen patrols can communicate to the police which actions bother the community and which actions do not, ultimately altering police responses.

Although promising, copwatching and citizen patrols have significant pitfalls. Primarily, it can be dangerous for residents to contest police practices so visibly. Officers can feel attacked, which can lead to escalation of the instant interaction, as well as future interactions with the copwatcher.<sup>154</sup> Copwatching also relies on video, which can be misleading and can intrude on the privacy of both those interacting with police and those observing.<sup>155</sup> Additionally, while observing and reporting police actions is powerful, neither copwatchers nor citizen patrols are given true authority to effect change and instead must work within the existing institutional measures to obtain any accountability.

### 3. Democratic Rulemaking

Two policing scholars, Barry Friedman and Maria Ponomarenko, have argued for proactive legislative authorization and public rulemaking for police actions. They believe that “[t]he regulation of the police involves profound policy questions that

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147. Simonson, *Copwatching*, *supra* note 12, at 393.

148. *See id.* at 423.

149. *Id.* at 407.

150. *Id.* at 395.

151. *Id.* at 396, 425.

152. Christine B. Harrington, *Popular Justice, Populist Politics: Law in Community Organizing*, 1 SOC. & LEGAL STUD. 177, 181 (1992).

153. *Id.*

154. *See* Simonson, *Copwatching*, *supra* note 12, at 431.

155. *Id.* at 432.

must be resolved in democratically accountable ways.”<sup>156</sup> They argue that constitutional law is insufficient to ensure appropriate policing, and police rules and policies should instead be subject to rulemaking requirements such as notice, which allows an opportunity for public participation.<sup>157</sup> Specifically, “opening rulemaking to local community participation will bring voices into the process that may have had no outlet thus far.”<sup>158</sup> This allows the community to control police actions before they occur by proactively requiring authorization of different police actions.

This idea, while innovative, does not account for when police inevitably disregard these rules, or when the rules leave large gaps to police discretion. Change through notice-and-comment rulemaking is intentionally slow-moving, which would impede making changes when necessary. Additionally, this requires residents to monitor rule postings and comment on proposed rules.

All five of these interventions take steps or suggest innovations towards power shifting by focusing more on community control of policing and less on traditional institutional control. While these are beneficial developments, this Note argues that true community control requires taking community participation and power shifting one step further.

### III. POWER SHIFTING THROUGH COMMUNITY EVALUATION—“POLICE YELP”

What if, instead of making more review boards, or encouraging a select few engaged individuals to record officers or serve on a board, we gave the power to control policing directly to *all* individuals? Every resident would have a voice to participate directly in determining the way in which they want to be policed. This could empower communities, legitimize governance, change legal standards, and, most importantly, change the behavior of police.

#### *A. Overview of “Police Yelp”*

As suggested by its name, “Police Yelp” draws from online consumer review forums like Yelp, TripAdvisor, and Amazon reviews.<sup>159</sup> These outlets allow users to share their opinions on products or services based on their personal experiences, which then guide other consumers’ choices and provide helpful feedback for businesses.<sup>160</sup> The reviews are part of a broader movement towards empowerment and democratization of information.<sup>161</sup> The head of Yelp asserts that “consumers are *empowered* by Yelp and tools like it: before, when they had a bad experience, they

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156. Friedman & Ponomarenko, *supra* note 15, at 1836.

157. *Id.* at 1832–34.

158. *Id.* at 1879.

159. Kevin Mellet, Thomas Beauvisage, Jean-Samuel Beuscart & Marie Trespeuch, *A “Democratization” of Markets? Online Consumer Reviews in the Restaurant Industry*, 2 VALUATION STUD. 5, 6 (2014).

160. *Id.*

161. *Id.*

didn't have much recourse. . . . Now the consumer has a lot more power.”<sup>162</sup> The same is true for “Police Yelp”: if implemented, when a resident has a bad experience with police, they would have a direct pathway to demand change.

“Police Yelp” would be a way for any individual who interacts with police to share their thoughts on the interaction and how the police handled the situation. It would be an online national database where individuals could upload images and videos of their interaction, write a blurb with their thoughts, and rate the officer on a scale from one to five regarding how appropriate the officer was. For example, imagine an officer uses force against a resident, and the resident thought the force was excessive. The resident could take pictures of their injuries and write a comment stating, “*Officer Smith tackled me to the ground and was very rough with me. This was unnecessary because I was compliant. I was merely taking a second to respond to his commands, which were confusing.*” That review provides constructive feedback to inform police as to how residents interpret their actions, and it is a useful warning that Officer Smith may need intervention on when force is merited before being allowed on the street again.<sup>163</sup>

Any individual directly interacting with police or any bystander who observes an interaction could post a review. Posts would range from extremely significant issues of misconduct to minor issues, such as “*The officer seemed very rushed,*” which may help inform staffing issues. Videos and photos would be encouraged, but not required, in order to post on the site. Police departments would have no power to edit any ratings or remove anything from this database. Perhaps the database would be minimally monitored by a small group of residents in each community to ensure the site is not abused. This group of residents could be formed through a rotating, random selection, similar to the suggestions for the improved civilian review boards.

Every rating of three or fewer stars would be reviewed by the department, which would be required to post a response to the review online. If the review describes an innocuous interaction, such as a disgruntled resident who received a speeding ticket, nothing would happen to the officer.<sup>164</sup> The department would

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162. *Id.*

163. As an example of an individual providing feedback on officers, Afroman recently wrote songs and filmed music videos displaying home footage and descriptions about a search that law enforcement conducted of his house. Afroman said that the search warrant was “fictitious,” signed by a “racist judge,” and led to no charges, but caused him to repair damage to his home inflicted by the officers. He chose to write songs about this incident to tell others what happened and make a profit off the bad situation, saying “I want to see people look at me and say what a sport, what a peaceful positive move to make under such bad circumstances.” Rachel Treisman, *Afroman Put Home Footage of a Police Raid in Music Videos. Now the Cops Are Suing Him*, NPR (Mar. 24, 2023, 4:54 PM), <https://www.npr.org/2023/03/24/1165822372/afroman-police-raid-lawsuit-music-videos> [<https://perma.cc/SR8W-9GXA>].

164. However, repeat comments about things that seem innocuous could be used to inform changes in police policy to better reflect community concerns. For example, if residents consistently complain about officers spending time relocating unhoused individuals instead of spending time on a problem that actually bothers residents, the department should alter their policy to reflect this prioritization.

simply post a response to the comment explaining why it believes no action against the officer is required. However, if there is a substantive claim, such as one of excessive force, racism, or disregard for the resident's request, the department would have to investigate, including watching the body camera footage if available. Unless the review is refuted by evidence, the department would be required to put the officer on probation and have them complete required training. When responding to the individual's comment, the department would have to articulate their understanding of the incident and explain the actions they took in response, explaining the probation and the training that the officer will be put through. Once an officer receives three ratings of this kind, they must be fired.<sup>165</sup> The department would have no discretion to keep the officer or even to move them off the streets into an administrative role. It would be an automatic firing with no severance, and no other police department in the country would be allowed to hire them.<sup>166</sup> This represents the zero-tolerance residents must have towards inappropriate policing.

If sufficiently egregious, one incident alone could result in the firing of an officer. To facilitate this decision, there would be a "recommend termination" check box on the site that the individual could select for the officer they are reviewing. This should be used sparingly and would not automatically result in a firing, but the department would be required to extensively review this incident. If the department decides not to comply with the recommended termination, the department would have to post a thorough explanation of their decision. Because "community participation should focus not so much on consensus but rather on 'amplifying the political voice of marginalized residents,'"<sup>167</sup> one bad rating can overcome a high average.<sup>168</sup> Thus, while an officer could be reasonable or even great most of the time and accumulate good ratings, this would not prevent a single bad review from resulting in his or her termination.

While this system would effectively punish wrongdoing, it would also benefit good officers. High ratings would help determine promotions, bonuses, and raises. Officers consistently receiving five stars and positive comments should be first in line for promotions. Officers with an average rating below four stars should not be promoted, because these officers would have received ratings of three stars and below.

This democratization of policing, like the democratization of markets, necessitates "the disappearance of the expert" and instead "appealing to the

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165. If there are three reports from the same incident, this would count as only a single low rating.

166. The reviews would be linked to an officer through their department and badge number. This would require all officers to clearly display or verbally provide this information to every individual with whom they interact.

167. Clair & Woog, *supra* note 22, at 34.

168. See Simonson, *Police Reform*, *supra* note 48, at 802 ("The consensus-based proposals for reform from most democratizers do not come with a state aim of shifting political power; indeed, they may run the danger of reinscribing, rather than shifting, power imbalances.").

judgment of ordinary consumers.”<sup>169</sup> For “Police Yelp,” the ordinary consumers are residents. The one-to-five rating given by a resident would not only be their opinion, but also the tool of democratization-as-participation that would contribute to policing policy and personnel.<sup>170</sup> This “Police Yelp” review would provide a venue for residents to supply their views of what is and is not a reasonable police response to specific situations. Based on these reviews, officers and departments would need to change their policies to maintain high rankings.

Allowing resident participation would result in information sharing because residents would have full access to all posts about what officers are doing, how other residents are responding, and how the police department is dealing with these reviews.<sup>171</sup> This input by residents is not just traditional “community participation” but “participation with a purpose,” seeking “authorship over those decisions that have material repercussions for the welfare and well-being of groups of people.”<sup>172</sup> If residents decide something is inappropriate, the police department must respect that and demand change from their officers. In this way, providing transparency into the accountability measures imposed against police actions deemed unreasonable would provide for greater trust and understanding between residents and police. This “non-reformist reform” shifts power from the law enforcement institution “to those who have historically been the targets of [that] institution[.]”<sup>173</sup>

“Police Yelp” would provide similar feedback regarding reasonableness that copwatching does because residents could collectively say “this was inappropriate/unreasonable.” However, unlike copwatching, “Police Yelp” would create required department responses to community evaluations with limited discretion. Additionally, “Police Yelp” would encourage participation by every individual who interacts with police, rather than simply those who elect to copwatch. This widespread participation has the added benefit of reducing the stigma of being stopped by police. Residents would see that police interactions are common, and therefore, simply interacting with police does not suggest the resident did anything wrong. This would also facilitate cooperative interactions between community members and police because community members would have more trust in the officer, and they would know that if something did go wrong, the officer would be held accountable.

“Police Yelp” would also eliminate some of the concerns of copwatching, such as its visibility and contention in the moment with the officer. “Police Yelp” would not require the resident to escalate the immediate situation. Rather, both the

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169. Mellet et al., *supra* note 159, at 14.

170. *Id.* at 20.

171. Additionally, collective decisions may be inherently better because they were made as a group. *See* Rahman & Simonson, *supra* note 48, at 721 (“Scholars of new governance or democratic experimentalism have . . . often pointed to the value of participatory input as a way to improve collective decision-making and to make government more effective.”) (emphasis omitted).

172. *Id.* at 699.

173. Southerland, *supra* note 20, at 77.

individual and the officer would know the individual would likely evaluate the officer immediately after the incident, incentivizing the officer to behave appropriately and the resident to wait until the officer is gone to initiate any animosity. In this way, “Police Yelp” would shift power to the residents to determine how they want to be policed, and it would enable them to shape legal standards and officer behavior.

### *B. Challenges to “Police Yelp”*

#### *1. Potential Dangers of Community Control*

Although “Police Yelp” reduces many of the dangers present in copwatching, some of these dangers would inevitably remain. While the individual would not have to visibly confront or record the officer, there would still be the risk that an officer reads a review and either later encounters the same individual by chance or seeks out the individual. In this case, the danger of reporting on the officer may still be very real for the individual. To combat this, reports can be made anonymously with few details regarding the incident. For example, perhaps a review reads “*I interacted with Officer Smith in October 2022. He was incredibly rude. He stopped me and asked me what I was doing in the area for no reason.*” If more information is needed to identify or investigate the officer, the group of residents monitoring the database could reach out to the reviewer to meet confidentially.

This type of transparency and control may also empower community members to conduct their own form of vigilantism. This vigilantism could arise on behalf of residents against named officers, or it could arise in defense of named officers against the reviewer. Some scholars have discussed the dangers of “the vengeance of an angry community.”<sup>174</sup> Others have pointed out that the past few years have unfortunately “normalize[d] the idea that vigilante justice is not just justifiable but is necessary.”<sup>175</sup>

Christian Sundquist has discussed how the Ahmaud Arbery and Kyle Rittenhouse trials “illustrate the danger of white vigilantism.”<sup>176</sup> Sundquist argues that white vigilantism has risen as a direct result of expanded self-defense laws which

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174. Moore, *supra* note 13, at 123–24.

175. David Shortell, Christine Carrega & Josh Campbell, *Vigilante Group Activity on the Rise, Worrying Law Enforcement and Watchdog Groups*, CNN (Aug. 30, 2020, 2:22 PM), <https://www.cnn.com/2020/08/30/politics/vigilante-group-activity-kenosha/index.html> [<https://perma.cc/F79E-RY8R>].

176. Christian Powell Sundquist, *White Vigilantism and the Racism of Race-Neutrality*, 99 DENV. L. REV. 763, 766 (2022). Kyle Rittenhouse crossed state lines to attend a protest in support of Black civil rights and shot three people (killing two) while illegally armed with an AR-15. He is a self-identified militia member, associated with white supremacists, and flashed white power signs. He was found not guilty of all charges. Ahmaud Arbery, on the other hand, was a young Black man on a morning jog who was hunted down and murdered by white vigilantes who reportedly spoke racial slurs as Arbery was dying on the ground. Arbery’s killers were eventually found guilty of murder. *Id.*

allow for “the co-option of state violence to defend the racial status quo.”<sup>177</sup> Importantly, Sundquist also points out that citizen’s arrests stem from racist laws passed in order to provide “a legally acceptable, race-neutral reason to continue the policing of Black bodies through ‘slave patrols.’”<sup>178</sup> Vigilantism comes out of an idea that “there is no social contract to abide by the law when the law doesn’t uphold its end of the bargain.”<sup>179</sup> This includes protection through the law “from the government and wrongdoers alike.”<sup>180</sup> Because vigilantism is generally a result of a “systematic failure of the legal apparatus to punish lawbreakers,” vigilantism should in fact go down to some extent if “Police Yelp” is effective at punishing officers who break the law.<sup>181</sup> The larger issue of vigilantism as an accepted community response is beyond the scope of this Note to address, but this concern regarding vigilantism could be mitigated to some extent by the aforementioned anonymity, for both reviewer and officer.

Additionally, with community control, there is a concern that the community may want the police to act in ways that are inappropriate. For example, some have pointed out that “one of the most vexing problems in controlling police violence is that it is so strongly supported in the most disorderly neighborhoods,” such that even “sweet little old ladies tell [the police] that the cops have forgotten what their nightsticks are for.”<sup>182</sup> This concern leads some to believe that police executives must retain control over “important” things, such as the establishment of departmentwide policies, to ensure continuity and reasonableness.<sup>183</sup>

Although neighborhoods and even individuals within neighborhoods may not agree on which police actions are appropriate, centering the most marginalized residents is crucial, particularly in diverse communities that may come to different conclusions about expressions of state violence.<sup>184</sup> “Police Yelp” is not intended to be a new type of Nextdoor that perpetuates the “Karen problem,” where Black users are silenced or opt out of the platform based on what they read from their neighbors.<sup>185</sup> For example, singling out Black people as “suspicious” is commonplace in some Nextdoor forums.<sup>186</sup> “Police Yelp” would have to combat

177. *Id.*

178. *Id.* at 767.

179. Kindaka Sanders, *The Watchman’s Time to Kill: The Right to Vigilante Justice in the Jim Crow South*, 25 J. GENDER, RACE & JUST. 355, 361 (2022).

180. *Id.* at 362.

181. *Id.* at 389.

182. Livingston, *supra* note 24, at 1573.

183. Moore, *supra* note 13, at 124.

184. Clair & Woog, *supra* note 22, at 34.

185. See, e.g., Makena Kelly, *Inside Nextdoor’s ‘Karen Problem,’* VERGE (June 8, 2020, 10:44 AM), <https://www.theverge.com/21283993/nextdoor-app-racism-community-moderation-guidance-protests> [<https://perma.cc/383J-4EUY>]. The “Karen problem” stems from the stereotypical “Karen,” a white woman who targets racial minorities by “using her white femininity to present herself as a victim, when she is really the aggressor.” Helen Lewis, *The Mythology of Karen*, ATLANTIC (Aug. 24, 2020, 10:24 AM), <https://www.theatlantic.com/international/archive/2020/08/karen-meme-coronavirus/615355/> [<https://perma.cc/T8V8-Q74Q>].

186. Kelly, *supra* note 185.

the potential issue that certain voices would dominate the field, and likely those dominating voices are not the ones that most need to be heard. If there are competing views, perhaps the small group of residents who monitor the database and the police department should gather individuals who have written reviews that are at odds with each other and work to find a standard that satisfies both parties. Additionally, any reports that police are not using enough force will not result in the firing of an officer.

Finally, because communities themselves are subject to racism and power dynamics, community control can bring dangers of historical inequity as well.<sup>187</sup> Because police interact most frequently with marginalized populations, and these reviews should include almost every interaction with police, reviews by marginalized individuals should be the most common on the site. This should serve to uplift their voices and counteract historical inequitable views, to some extent.

## 2. *Structural Obstacles*

Structurally, for a community database such as this, there would be a risk that individuals may simply lodge personal attacks against officers they do not like. However, if there is no potential merit to the review, nothing would happen to the officer. If there is potential merit to the review (meaning that the review is a facially possible claim of misconduct), the department would have to investigate the body camera footage of the incident to determine what occurred. If the footage clearly showed the officer acted appropriately, the department must publish this footage in response to the comment to explain why the officer is not being disciplined.<sup>188</sup> The resident can then respond to this footage if it is incorrect or misleading. In this way, officers would be incentivized to ensure their body cameras are working, and any disapproved personal attacks would be easily dismissed.

A larger obstacle is the issue of how promoting and firing decisions would be made, particularly for police departments that are intensely local. The transparency imbedded in “Police Yelp” should go a long way in easing these decisions, but challenges would likely arise that would need to be dealt with by communities.

Finally, those currently in power (specifically, police officers and their unions) will likely push back against this idea, as it diminishes their power.<sup>189</sup> It is beyond the scope of this Note to attempt to provide a way to convince unions to accept such a proposal. Suffice to say, police unions are incredibly powerful, they protect

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187. Rahman & Simonson, *supra* note 48, at 687.

188. California already considers body camera videos public records and requires law enforcement to release video to the public no later than forty-five days after an incident is recorded, with exceptions for safety, privacy, and public interest. CAL. PENAL CODE § 832.7 (West 2022).

189. In fact, this happened with democratizing restaurant reviews. In 2012, the French version of the Michelin website allowed consumer reviews for the first time, sparking outcry from some of the greatest French chefs concerned about the “impoverishment of culinary expertise.” Mellet et al., *supra* note 159, at 7.

officers, and they would be significant opponents to such a power shift.<sup>190</sup>

#### CONCLUSION

Police accountability measures have long been grounded in institutions—the criminal legal system, the civil legal system, police departments themselves—and these measures have long been ineffective. For the police to be held accountable effectively, and to regain the trust of the community, control must be given to those who are subject to the police’s deadly power. Activists have stated that “democratic civilian control of the police means the community tells the police what to do.”<sup>191</sup> That is exactly what “Police Yelp” aims to do.

“Police Yelp” offers a way to give the community control over policing by providing a voice to every resident who interacts with police. In this way, residents can tell the police what they want them to do, how they want them to do it, and who they want doing it. The hope for “Police Yelp” would be that the residents, rather than the Officer Michael McSpadden, would have the power to determine McSpadden’s actions, such that McSpadden would either quickly learn to interact appropriately with residents or would be removed from the police force. In a world with “Police Yelp,” residents would have been able to say “this officer needs intervention or termination” before any serious use of force occurred, and perhaps the severe and traumatic injuries sustained by John Bonkowski would have been avoided.

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190. See generally Catherine Fisk & L. Long Richardson, *Police Unions*, 85 GEO. WASH. L. REV. 712 (2017).

191. Rahman & Simonson, *supra* note 48, at 705.

