

STATEMENT OF POLICING PROJECT REGARDING POLICING IN THE UNITED STATES

Following the killing of George Floyd in Minneapolis, protests have erupted in many parts of the country, showing widespread concern about policing more generally. We are heartened to see that unlike in past moments of national protest, many leaders of the police community itself—including police chiefs across the country—have joined the chorus of voices condemning Mr. Floyd’s killing. But those same voices must not only speak out about this particular incident, they must also speak out about any systemic issues that perpetuate these events.

Too often, we have focused on “police reform” and “police accountability” in moments like these. Yet, the very fact that we are here once again—as we were after rioting in the 1960s, or after Ferguson in 2014—suggests that police reform and police accountability as we have understood and implemented them simply are not working.

At the Policing Project, we believe many people—particularly policymakers—have a fundamental misunderstanding of what true police accountability must look like. The reforms and accountability measures that are proposed are about individual officer conduct, rather than looking at what is systemically problematic or structurally unsound.

In this country, when people talk about police accountability, they typically mean holding individual officers (and sometimes departments) responsible after-the-fact, for something that has already gone wrong. At the Policing Project we call this “back-end accountability.” This includes most of the ideas we see circulating today: prosecution of police officers, civil rights suits for monetary relief, establishment of civilian review boards (to examine complaints against officers), and body-worn cameras, to name a few.

Back-end accountability is, of course, important in any system. When people engage in misconduct, there should be consequences; this is no more or less true for police officers than anyone else.

But many of the problems of policing in this country are not about individual “bad apples” or particular instances of things that have gone wrong. They are systemic and structural in nature, ranging from the way that use of force is understood and deployed, to the way racial disparities are recorded and addressed, to transparency and candor with the public about matters such as how surveillance technologies are being deployed.

And they also include very basic questions about why the police are considered the right responders for many of the nation’s social problems—from substance abuse, to homelessness, to mental illness. That is why so many who are protesting are talking about “defunding” the police or diverting resources—because policing seems like precisely the wrong approach to addressing these social concerns.

These systemic and structural problems will not be fixed with back-end accountability alone; they require hearing community voices and encouraging democratic engagement around policing—what we at the Policing Project refer to as “front-end accountability” or “democratic policing.”

In other areas of government, when people speak of “accountability” they mean something very different than simply holding individuals responsible after-the-fact. They mean establishing rules, regulations, and policies on the front end (before things go wrong), in a way that is transparent, evidence-based, and provides an opportunity for public input and debate. They mean allowing the public to have a real voice in how it is governed. These, after all, are the very most basic elements of democracy.

It is precisely this sort of democratic accountability that has been missing from policing. In the face of constant and widespread concerns about policing, legislative bodies largely stand silent. We leave the police free to regulate themselves. And though some of them truly do try, many policing agencies are not really hearing what those in the communities they are policing have to say—and the police don't have the capacity to address those concerns anyway, without the rest of government participating. We would not think to regulate or address any other aspect of government this way—through delegation and neglect—and it does not make sense for the police.

Take, as one example, police use of force in Minneapolis. Minneapolis's use of force policy largely parrots the Supreme Court's ruling in *Graham v. Connor*, stating only that uses of force must be objectively reasonable from the perspective of an officer at the moment force is used. Contrast that with the Camden County Police Department's robust policy on use of force, which encourages de-escalation and provides officers with clear guidance as to what is permitted or not. Camden's policy was developed (with our help) with input from the ACLU of New Jersey, the local chapter of the Fraternal Order of Police, and the Camden County community. This is the way governance should work: hearing from stakeholders of all perspectives, incorporating their views, creating clear policy on the front end, training rigorously, and then holding officers responsible. This is what sound governance looks like. It is what advances community interests. And it is fair to officers, who are not left to figure things out for themselves, but instead receive the guidance and training that they and the community deserve.

To take one more example, it is time—as so many are saying at this moment—to rethink the role of policing to address social problems. In truth, there is common cause here with the police, who are being saddled with too many of society's problems. It is time for those who govern us to hear these concerns and address them, rather than simply hoping the police will make these social problems go away. If the present pandemic demonstrates anything, it is that we are not going to police our way out of it and that it is wrong to try. It is time to rethink our entire process of reactive policing, from 911 calls, to how dispatch operates, to the response—including whether police should be co-responding with other agencies, or even responding at all.

In the weeks ahead, if history proves any guide, there will be a great deal of discussion about reform. Our hope is that these discussions look to fundamental front-end reform, that they hear from those affected, and that they require those who govern us to step up and do their job of regulating policing. Not just at this moment, but on an ongoing basis. This should involve the police, of course. We need all stakeholders at the table, having an evidence-based conversation about what works and what needs to change. That is ultimately how we are going to achieve sound policing in this country, in a way that is equitable and assures public safety for all.

The Policing Project at NYU School of Law partners with communities and police to promote public safety through transparency, equity, and democratic engagement. For more information on our work, visit www.PolicingProject.org.