

Consent

Legacies, Representations, and
Frameworks for the Future

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Chapter 16

Afterword

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16 Afterword

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Content Notes: This chapter contains discussion of police violence against people of colour, especially black people, and police violence against women.

Sudeshna Chatterjee's concluding chapter in this volume highlights a key point that has recurred throughout the contributions: the necessity of intersectional approaches for scholarship on consent. Chatterjee argues that consent as a reproductive justice issue is inherently tied to racial justice, and that the social contract is also fundamentally a racialised (indeed, a racist) one. As she writes, 'to disrupt coloniality and power hierarchies, the goal is not to stop at consent, but to start with it and to continually, systematically, and historically interrogate who (gets to) consent(s), why, to what, when, and how'.¹ These questions must take into account not only gender and sexuality, which have traditionally been emphasised in scholarship on consent, but also race, class and socioeconomic status, cultural backgrounds, and the impact of colonialism and capitalism. A collection like this opens up many new questions and pathways for future research; here, we focus on one issue that underscores the importance of intersectional thinking on consent for future work in this field: the relationship between policing and (non-)consent. This issue is not new; contemporary discussions are indebted to decades of activist work by Black feminist abolitionists like Angela Davis, Mariame Kaba, and Ruth Wilson Gilmore, whose ongoing calls to abolish the police have received renewed attention in the past few years.² While the Black Lives Matter campaign has protested police violence against Black people since it was founded in 2013 by three Black women, Alicia Garza, Patrisse Cullors, and Opal Tometi, after the 2012 shooting of 17-year-old Trayvon Martin, this movement gained global attention following the murder of George Floyd on 25 May 2020. Calls to defund the police in North America have rightly focused on the institutional racism of the US police force (stemming, in part, from enslavement and its legacies), while in the UK attention has turned to institutional misogyny, following a series of high-profile cases of police officers murdering, raping, and/or abusing women. The violent police response to protests and vigils in the wake of the rape and murder of Sarah Everard by a serving Metropolitan police officer amplified anger and calls for abolition – even as the UK Conservative

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government introduced laws limiting the right to protest and paving the way for further police intervention in protests. While recent calls to abolish the police in the UK have been criticised as an example of white feminism addressing an issue people of colour have been protesting for decades only when it has been found to affect white women's experiences, an intersectional approach that acknowledges the connections between racism and misogyny can create a more unified movement to defund the police. Such a movement must recognise the specific racialised trauma of people of colour who have experienced long-lasting and ongoing violence at the hands of the police, affirming both similarities and disparities in experiences of 'who (gets to) consent(s), why, to what, when, and how' in relation to policing.³

The question of who gets to consent is fundamental to British conceptualisations of policing, which have historically been underpinned by a commitment to a form of collective consent.⁴ Often misattributed to Sir Robert Peel, UK Prime Minister in the 1830s and 1840s, and founder of London's Metropolitan Police Force in 1829, the notion of 'policing by consent' was in fact formulated by Charles Reith in the 1940s to emphasise the interrelation between police and community: 'the historic tradition that the police are the public and that the public are the police'.⁵ Notably, the UK Government underlines on the gov.uk website the collectivity of the consensual agreement: it is not possible for an individual to 'withdraw [their] consent from the police, or from a law'.⁶ If an individual is prevented from retracting consent, then upon which collective, made up of whom, does consent depend? And, if there is no voluntariness either way, is this really consent?

In recent years, policing by consent has been increasingly interrogated. In 2022, Chantelle Lunt founded the Operation Withdraw Consent (OWC) project. In its press release, Lunt, who left the police force in 2018, writes:

Policing by consent is a myth. The Public did not consent to the explicit targeting of people based solely on their race, gender or sexual orientation. We never consented to the enforcement of one set of laws for us, and another set for the rich and powerful.⁷

Lunt articulates the violence involved in policing by consent, which claims to rely on the shared trust and mutual consensus of a nebulously defined public, yet prevents individual revocation and remains tacit in its boundaries. In 2022, the Metropolitan Police appointed Baroness Louise Casey to oversee an independent investigation into its culture. Published in March 2023, and ultimately finding the Met to be institutionally racist, misogynistic, and homophobic, Casey writes in the final report that 'the Met has become unanchored from the principles of policing by consent. Consent is not passive but relies on the police operating with transparency, to be willing to explain their decisions and their reasons for it'.⁸ Casey finds that many members of society, who are specifically targeted and dehumanised by the police, are excluded from the unwritten social contract of 'policing by consent'.⁹

This non-consent lies at the historical roots of British policing and has incited reformist activism from the nineteenth century onwards. Peel's formation of the Metropolitan Police was anteceded by the Royal Irish Constabulary (RIC) in 1814, a paramilitary organisation designed to (aggressively) curb Irish rebellion and which, tellingly, became the template for colonial policing. Although the RIC was deliberately contrasted with the Metropolitan's 'policing by consent', the demarcation of the two forces became increasingly illusory. From the 1840s, the overlap between them indicated a tension between policing by consent and policing by coercion that has endured to the present and shaped contemporary scrutiny of, and activism against, the police. Josephine Butler's protest against the Contagious Diseases Acts (1864–1869), which enabled (police)men to abduct any suspected prostitute and incarcerate her in a 'Lock' Hospital (where she would forcibly undergo gynaecological examinations by male doctors), foreshadows both ongoing police predation of women and anti-carceral feminism.¹⁰ Alongside this entrenched misogyny, the classism and racism detected by the Casey Report stems from the RIC and the policing of empire; as Jennifer Fleetwood and John Lea note, following the Second World War 'the British state responded to colonial immigration with colonial policing merged with domestic traditions of general repression of the working class. The result was the current institutional racism of stop and search' (whereby black individuals in the UK are six times more likely than white individuals to be apprehended).¹¹

Out of this historical framework, British police reform and abolitionism have been galvanised, re-ignited in 2020 by the growth of the Black Lives Matter movement and calls to defund the police in the US, and granted greater urgency by the social inequalities engendered by COVID-19. Scholars including Koshka Duff speak alongside platforms such as Abolitionist Futures, exposing the 'epistemic gulf between those who experience themselves as *protected* by the police and those who are *policed* by them'.¹² Where reformers seek to improve policing, abolitionists demand elimination, attacking the normalisation of violence and threat that creates the 'appearance of consent' in maintaining police authority.¹³ Mediating reform and abolition, calls to defund the police argue for resources to be diverted to public health and education, for example, with policing retained as 'a subordinate part of a welfare approach to social harm'.¹⁴

Critics of abolition and defunding (including current Labour Leader, Sir Keir Starmer) contend that US paradigms for police decapitalisation conflict with the UK framework. Where, in the US, defunding is 'meaningful against a backdrop of expanding budgets', this 'logic does not fit the reality of the UK, where police budgets are shrinking' and where forces are already often responsible for providing preventative social support.¹⁵ Serious crimes – such as terrorism – test the viability of abolition and defunding, while care needs to be taken to avoid the 'policification' of social services (which can themselves be historically mired in discrimination towards disenfranchised and minoritised communities).

Nevertheless, in challenging policing as an institution that is imagined to be consented to automatically and unequivocally by the public, incarceration within the ideological is also resisted; scrutiny of policing, as practice and concept, becomes a liberation, enabling alternative social praxis to be imagined. Indeed, this balance between policing and protest is itself implicit in Reith's very ideal of 'policing by consent' – for 'consent is only meaningful if there is the genuine option to *dissent*'.¹⁶

The murder of George Floyd, and the subsequent momentum of the Black Lives Matter movement, intersected with a particular moment in our global histories, where private and public bodies, and the body politic, became inextricably enmeshed. As many bore witness to the harrowing surveillance of the racialised body, a global pandemic was unfolding, a health crisis that heightened sensitivity to our own bodies, to how we encounter and occupy space with the other – a relationality uniquely experienced in the shared isolation of lockdown conditions. But what we also bore witness to was the stratification in health conditions and the conditional access to care: the parallel encounter with the treatment of minoritised, marginalised populations in carceral systems and the disproportionate deaths of said populations unprotected by medico-legal systems.

Protest culture during the pandemic acquired new forms in response to a rapidly evolving environment of bodily policing in public space, one which redefined the very scope of consent. Activism about healthcare access was staged by racial justice and abortion rights activists, at a time when pressures on medical institutions widened existing, entrenched gaps in healthcare. The overlaps in these activist movements exposed the amplified vulnerabilities of bodies coded with multiple marginalities – black women, for example, had a higher mortality rate than white and black men in COVID-19 outcomes, and there was particular tension over timely access to abortions during the pandemic.¹⁷ These movements demanded a radical redress of the medical, legal, and carceral systems, envisioning a culture of consent solidified through the expression 'my body, my choice', albeit in various intersectional iterations (recalling Iqra Shagufta Cheema's exploration of divided feminist responses to the cultural expression of this slogan, *Mera Jism, Meri Marzi*, in the Pakistani community).

Strikingly, cross-national protests fuelled by opposition to lockdown, vaccination, and masking policies circulated in the same space, at the same time. The abortion rights slogan 'my body, my choice' was alarmingly appropriated by COVID anti-vax and pro-life movements (often with overlaps between the two), couching it in the discourse of 'bodily autonomy' while, in the same breath, violently refusing the principle being extended to *certain* bodies in medical and legal practice.¹⁸

These movements have largely been viewed – and denigrated – as products of particular political and/or religious affiliations: the stronghold of largely right-wing or populist sentiments across the US and Europe.¹⁹ They have also been discredited as a dangerous product of the conspiracy culture circulating pervasively across social media at a particularly disrupted and disputed

period in public healthcare policy. However, this picture of protest culture elides the roots of medico-legal mistrust amongst racialised, minoritised populations. Arya Thampuran's chapter in this volume brought to the surface the violent history of medical experimentation amongst the Inuit community to enhance Canadian military competence in the Arctic. In America, Tom Sorell and Jethro Butler recall the infamous Tuskegee Study, in which 400 black men were used as a control group of untreated sufferers of syphilis, where informed consent was foreclosed and the men who subsequently contracted the illness were left untreated.²⁰ One could also recall the eugenicist sterilisation campaigns in the US for control of racialised and disabled populations.²¹ These have sowed the seeds for enduring suspicion of, and a reckoning with the boundaries – and boundedness – of, the term 'consent' as it has come to be coded through the intersecting axes of race, sex, and space.

Indeed, historically entrenched but endemic healthcare inequities created a breeding ground for COVID-19 conspiracies to gain traction; this was fuelled by the likes of the Rebecca Project, which aligned itself with a particular form of religious conservatism that inspired fears over contraceptives like Depo-Provera.²² The Gates Foundation also became the subject of a suit of allegations – variously discredited – against its history of medical testing on minoritised populations in 'developing' countries, framing vaccine intervention as birth control and an instrument of state power exercised over reproductive rights.

These fears spread extensively through social media, which seemingly served as a point of contact and connection under isolating lockdown conditions. But the power of technology has also extended into the very possibilities of bodily policing and surveillance. Mandated contact-tracing and medical data tracking apps that gained a stronghold during the pandemic have raised concerns over the right to individual voluntary withdrawal, when such technology is framed as a relationally oriented public good, in a notable echo of the concept of 'policing by consent'. The 2022 overturning of *Roe v. Wade* in the US, with intersectional ramifications to legal discourse that Chatterjee's chapter unpacks, has additionally amplified anxieties over 'femtech' such as menstrual/fertility tracking apps, often framed as equipping and empowering women with embodied knowledge, but which have particular challenges for data privacy and protection in a climate of highly regulated reproductive rights.²³

Against this backdrop, it becomes particularly prescient and pressing to develop theoretical and practical frameworks that can accommodate the ever-evolving scope of consent studies. This collection has offered the kind of intersectional, decolonial prism which enables us to collectively think and work *through* these complexities of consent circulating within and across various, individually nuanced spaces.

Notes

- 1 Sudeshna Chatterjee, 'Consent Wars? Towards a Critical-Governmentality Approach to Consent in Post-Roe America', in *Consent: Legacies, Representations*,

- and Frameworks for the Future, ed. by Sophie Franklin, Hannah Piercy, Arya Thampuran, and Rebecca White (Abingdon: Routledge, 2023), pp. 218–33 (p. 220).
- 2 See *Abolition. Feminism. Now.*, ed. by Angela Y. Davis, Gina Dent, Erica R. Meiners, and Beth E. Richie, *Abolitionist Papers*, 2 (Chicago: Haymarket Books, 2022); Angela Davis, *Abolition Democracy: Beyond Empire, Prisons, and Torture* (New York: Seven Stories Press, 2005); Angela Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003); Ruth Wilson Gilmore, *Change Everything: Racial Capitalism and the Case for Abolition*, *Abolitionist Papers*, 4 (Chicago: Haymarket Books, forthcoming 2023); Ruth Wilson Gilmore, *Abolition Geography: Essays Towards Liberation*, ed. by Brenna Bhandar and Alberto Toscano (London: Verso, 2022); Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California Press, 2007); Mariame Kaba, *We Do This 'Til We Free Us: Abolitionist Organizing and Transforming Justice*, *Abolitionist Papers*, 1 (Chicago: Haymarket Books, 2021).
 - 3 Chatterjee.
 - 4 'Collective consent' has often been used in the context of technology, with Nighat Dad and Shmyla Khan defining it as 'the consent experienced in the public sphere where the individual does not have the power to define the consent'. Consent, for example in digital spaces, is 'experienced as a collective based on external decisions, and at times predetermined decisions, of what constitutes consent in those spaces'. See Nighat Dad and Shmyla Khan, 'Mera Internet, Meri Marzi: Alternative Imaginings of Consent in Pakistani Online Spaces', in *Gender Hate Online: Understanding the New Anti-Feminism*, ed. by Debbie Ging and Eugenia Siapera (Cham: Palgrave Macmillan, 2019), pp. 69–83 (p. 77).
 - 5 Charles Reith, quoted in Clive Emsley, 'Peel's Principles, Police Principles', in *The Future of Policing*, ed. by Jennifer M. Brown (Abingdon: Routledge, 2014), pp. 11–22 (pp. 12–14).
 - 6 'Definition of policing by consent', Home Office, 10 December 2012 <<https://www.gov.uk/government/publications/policing-by-consent/definition-of-policing-by-consent>> [accessed 23 May 2023]. Countries including Australia, Canada, and New Zealand (all notably former colonies of the British Empire) also adopt a 'policing by consent' approach.
 - 7 'OWC Press Release', Operation Withdraw Consent, 2022 <<https://docs.google.com/document/d/17wzOP-zzzFKUxfI9fyrd1M60ID-XUTYvKbmYRlck88/edit>> [accessed 23 May 2023].
 - 8 Baroness Casey of Blackstock, *Final Report: An independent review into the standards of behaviour and internal culture of the Metropolitan Police Service*, March 2023, p. 18 <<https://www.met.police.uk/SysSiteAssets/media/downloads/met/about-us/baroness-casey-review/update-march-2023/baroness-casey-review-march-2023a.pdf>> [accessed 23 May 2023].
 - 9 *Ibid.*, p. 7.
 - 10 See Elizabeth Bernstein, 'The Sexual Politics of the "New Abolitionism"', *Resources for Feminist Research*, 18.3 (2007), 128–51. Where carceral feminism advocates enhanced prison sentencing for crimes directed towards gender and feminist issues, anti-carceral feminism posits that such measures uphold patriarchal power systems, arguing instead for the re-allocation of police funding towards preventative social and health services.
 - 11 Jennifer Fleetwood and John Lea, 'Defunding the Police in the UK: Critical Questions and Practical Suggestions', *Howard Journal of Crime and Justice*, 61.2 (2022), 167–84 (p. 173).
 - 12 *Abolishing the Police*, ed. by Koshka Duff (London: Dog Section Press, 2021), pp. 10–11. See also <<https://abolitionistfutures.com/defund-the-police>>.
 - 13 Duff, p. 14.

- 14 Fleetwood and Lea, p. 174.
- 15 *Ibid.*, p. 171.
- 16 Duff, p. 14.
- 17 Tamara Rushovich et al., 'Sex Disparities in COVID-19 Mortality Vary Across US Racial Groups', *Journal of General Internal Medicine*, 36 (2021), 1696–1701; Neva Bojovic, Jovana Stanisljevic, and Guido Giunti, 'The impact of COVID-19 on abortion access: Insights from the European Union and the United Kingdom', *Health Policy*, 125 (2021), 841–58; Rishita Nandagiri, Ernestina Coast, and Joe Strong, 'COVID-19 and Abortion: Making Structural Violence Visible', *International Perspectives on Sexual and Reproductive Health*, 46 (2020), 83–89.
- 18 Tina Rulli and Stephen Campbell, 'Can “My Body, My Choice” anti-vaxxers be pro-life?', *Bioethics*, 36 (2022), 708–14.
- 19 Christian Fuchs, 'Bill Gates Conspiracy Theories as Ideology in the Context of the COVID-19 Crisis', *Communicating COVID-19* (Bingley: Emerald, 2021), 91–144.
- 20 Tom Sorrell and Jethro Butler, 'The Politics of Covid Vaccine Hesitancy and Opposition', *Polit Q*, 93 (2022), 347–51.
- 21 Alexandra Mina Stern, 'Forced sterilization policies in the US targeted minorities and those with disabilities – and lasted into the 21st century', *The Conversation*, 26 August 2020 <<https://theconversation.com/forced-sterilization-policies-in-the-us-targeted-minorities-and-those-with-disabilities-and-last-ed-into-the-21st-century-143144>> [accessed 30 May 2023].
- 22 Amit Prasad, 'Anti-science Misinformation and Conspiracies: COVID–19, Post-truth, and Science & Technology Studies (STS)', *Science, Technology, and Society*, 27 (2022), 88–112 (p. 98).
- 23 Renate Klar and Dirk Lanzareth, 'The ethics of COVID-19 tracking apps – challenges and voluntariness', *Research Ethics*, 16 (2020), 1–9; Elliot Mbunge, 'Integrating emerging technologies into COVID-19 contact tracing: Opportunities, challenges and pitfalls', *Diabetes and Metabolic Syndrome: Clinical Research and Reviews*, 14 (2020), 1631–36; Zikan Dong et al., 'Privacy Analysis of Period Tracking Mobile Apps in the Post-Roe v. Wade Era', *ASE '22: Proceedings of the 37th IEEE/ACM International Conference on Automated Software Engineering*, 203 (October 2022), 1–6.

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