Republican Policing: From Consent to Contestation

William Smith

Policing by consent is an influential frame of reference for police forces, policy makers, and members of the public in appraising the means and ends of law enforcement in Anglo-American societies. The doctrine is nonetheless vulnerable to powerful philosophical and political objections, which suggests that an alternative paradigm is necessary. This article draws on recent republican political theory in elaborating a doctrine of policing by contestation. This republican conception does not rest the legitimacy of policing on the supposed consent of the policed, but on the availability and adequacy of the means through which the policed can contest arbitrary interference at the hands of the police.

Policing involves the pursuit of social control through surveillance and the threat or use of sanctions (Reiner 2012, 5). The emergence of professional, municipal police forces as the paradigmatic form of modern policing was a process that triggered considerable conflict and opposition (Miller 1977, 12). The political elites involved in pioneering these agencies thus appreciated the need to shore up their legitimacy through narratives that could communicate their essential character to both members of the public and the police. The doctrine of "policing by consent" played a particularly important role in pursuing this aim in England and Wales (Shannon 2021, 129–73). The core idea of this doctrine is that "the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour, and on their ability to secure and maintain public respect" (Loader 2016, 429).

The doctrine continues to influence and inform public debates about policing in the United Kingdom, exemplified by the 2023 "Final Report" of the Casey Review into the London Metropolitan Police (the "Met"). The Met commissioned Baroness Casey to undertake this review in response to public outrage about the kidnap, rape, and murder of Sarah Everard by a serving officer. The broader context of the review included pervasive distrust of the force among Black and brown communities and declining trust among many other segments of the population. The "Final Report," which is highly critical of the Met, draws heavily on the doctrine of policing by consent in framing its recommendations. It contends, for instance, that "the Met has become unanchored from the Peelian principle of policing by consent set out when it was established … [it] should introduce a new process with Londoners to apologize for past failings and rebuild consent, particularly with communities where this is most at risk" (Baroness Casey of Blackstock 2023, 22).

The doctrine of policing by consent has been far less significant in the historical development of policing in the United States than in the UK, but it nonetheless has some purchase on current discussions about policing. The insistence that police must secure the consent of the public is, for example, a core feature of the reform agenda associated with "procedural justice," which underpins the recommendations of the "Final Report" of the President's Task Force on 21st Century Policing (2015). This report was published against the backdrop of the ongoing cycle of police violence against Black and brown communities in the US.[1] Procedural justice aims to transform police behavior and culture through "principles that would move policing away from aggressive, often antagonistic enforcement toward an emphasis on compassion, cooperation, and respect" (Sierra-Arévalo 2021, 82). The general proceduralist goal

William Smith (wjcsmith@cuhk.edu.hk, Hong Kong) is Associate Professor in Government and Public Administration at the Chinese University of Hong Kong. He works in contemporary political theory, with a particular focus on civil disobedience, direct action, deliberative democracy, the ethics of policing, international political thought, and the political philosophies of John Rawls, Hannah Arendt, and Jürgen Habermas. He is the author of Civil Disobedience and Deliberative Democracy *(2013) and has published in a wide range of international journals, including* Ethics & International Affairs, The Journal of Political Philosophy, *and* Political Studies.

doi:10.1017/S1537592724000574

of cultivating respect between the police and the public is both informed by and entirely in keeping with policing by consent (Hough 2021, 7–9).

The claim that police should strive to secure the approval of the public is appealing, at least on commonsense assumptions about the type of policing that might proliferate in the absence of such a concern. The contention of this article is nonetheless that policing by consent should not be treated as the most compelling frame of reference in debates about policing in the UK and the US.[2] This contention will be supported through reference to serious deficiencies within the doctrine of policing by consent and—in a more constructive spirit—through outlining a viable alternative to it. That alternative is to be found in the civic republican emphasis on *contestation* on the part of those subject to discretionary interference at the hands of others. As Philip Pettit (1997, 185) puts it, "it is only if I can effectively contest any such interference—it is only if I can force it to account to my relevant interests and ideas—that the interference is not arbitrary and the interferer not dominating." The republican idea of *policing by contestation* that will be set out here holds that the legitimacy of policing is not conditional on the supposed consent of the public, but on the accessibility and adequacy of the mechanisms through which the public can challenge the actions of police.

This article aligns with an emerging trend in the field of contemporary political theory toward subjecting policing to conceptual and normative scrutiny (Del Pozo 2023; Galoob and Monaghan 2023; Heath 2023; Hough 2021; Hunt 2019; Jones 2022; Monaghan 2023a; Nathan 2022). This trend constitutes an important reversal of the unfortunate tendency on the part of political theorists to treat policing as a marginal concern, at least in comparison to "sovereignty, legitimacy, consent, social contract, violence and all of the other concepts regularly used by theorists grappling with the nature of state power" (Neocleous 2021, 46).[3] The argument that is set out here is informed by the assumption that conceptual and normative analysis should at least include, and perhaps even proceed from, an engagement with the *public doctrines* of policing that developed alongside the emergence of professionalized policing agencies with a state mandate for law enforcement and public order. This, in turn, rests on the conviction that, despite their contested histories, such doctrines often have a genuine influence on the way in which policing is carried out and evaluated within public political debate.[4] It is, at the very least, difficult to defend the relevance of alternative conceptions of policing without showing how such alternatives build upon or depart from these more familiar ideas.

The argument is elaborated in three stages. First, I take a closer look at policing by consent as a public doctrine that became influential in popular debates about policing in the UK and, to a lesser extent, the US. Second, I begin the task of sketching a republican theory of policing that aims to avoid the deficiencies associated with policing by consent. This entails showing how republican aims are better served by a peacekeeping model of policing than by a crimefighting model. Third, I argue that the necessary and significant scope for discretion in policing points toward the need for two republican principles: (1) the policed should enjoy effective opportunities to contest the police and (2) policing should be subject to a deliberative process of regulation and oversight. The discussion draws to a close by considering two objections to the account of republican policing set out here.

1. Policing by Consent

The emergence of professionalized police forces in England and Wales was accompanied by the elaboration of a set of ideas about the proper ends and means of policing, which gradually coalesced into the "Peelian principles." These principles were named after Robert Peel, the British home secretary who drew on his prior experience of forging a system of social control in occupied Ireland in establishing the Met in 1829 (Emsley 2013, 11).[5] The principles identify crime prevention and order maintenance as the proper goals of policing, while holding that maintaining public support and demonstrating impartial service to law are the most reliable means of achieving these goals. The principles have over time come to be seen as constitutive features of a doctrine of "*policing by consent*," which is celebrated in policing histories and textbooks and on a range of public-facing digital platforms. The UK government, for example, describes policing by consent as a "long standing philosophy of British policing" that "refers to the power of the police coming from the common consent of the public, as opposed to the power of the state" (UK Home Office 2012).

The feature that is most significant here is its status as a *public* doctrine in the UK, which means that it constitutes a normative framework that is generally recognized as a salient point of reference in debates about policing across the public sphere. According to Ian Loader (2016, 427), the Peelian principles associated with the doctrine have become "a material and structuring presence in the life of police organizations: they guide the training of officers; they populate mission statements; they tell cops and citizens what policing is for and how it is supposed to be conducted."

This formulation identifies two related functions of the doctrine. First, it contributes to the self-understanding of police forces through stating core values and broad expectations of officer conduct. This does not mean that the principles serve as guidelines for operational decisions or performance appraisals, but they are a component part of the shared organizational culture in the shadow of which more detailed rules are formulated and reviews conducted (Emsley 2013, 20). Second, the principles contribute to the expectations of the public about the aims and values that are supposed to be realized by the policing system to which they are subject. The principles, as Loader (2016, 428–30)

https://doi.org/10.1017/S1537592724000574 Published online by Cambridge University Press

suggests, lack the detailed content necessary for fine-grained evaluations of police conduct, but still serve as a general standard against which the most serious and blatant failings on the part of police might be condemned.

The doctrine of policing by consent is sometimes described as a constitutive feature of a "British" or "London" approach to policing that can serve as a "model for elsewhere" (Emsley 2013, 15). There is, in fact, some evidence that "the London model strongly influenced the rise of bureaucratic law enforcement agencies in the United States" (Websdale 2001, 24), though it also appears to be the case that "only some parts of the 'London model' spread to early US cities" (Monaghan 2023a, 153). There are numerous reasons for this, but the fact that policing in the US exists on a historical continuum with slave patrols, racial segregation, and the ongoing social control of the Black population is arguably the most significant factor (Dulaney 1996, 2; Hadden 2021; Reichel 1988). These differences mean that policing by consent is far less influential in the US than the UK.[6] The doctrine nonetheless exercises a modest but notable influence on debates about policing in the US, as illustrated by its aforementioned role in procedural justice. Mike Hough (2021, 80), for example, contends that any of the nine Peelian principles "could be inserted almost without change into a modern procedural justice training manual." This, as noted, is due in part to the emphasis that procedural justice places on police earning the trust of the public through conduct perceived as respectful and impartial. Policing by consent has also exercised some influence on conceptions of police professionalism and police training manuals in the US (Fielding 2018, 5–20).

Policing by consent has thus become a salient point of reference in public debates about policing, though the degree of its influence varies across the UK and the US (Loader 2016, 429). There is, it should also be noted, variation in how the principles associated with the doctrine might be interpreted; for example, their commitment to legalism might be treated as more central than their commitment to consent (Monaghan 2023a, 50–51). The primary concern here is nonetheless with the important role of consent in public understandings of the principles, particularly as an organizing idea behind the British model of policing.[7] It is arguably the core value of consent, rather than particular formulations of any of the individual principles, that encapsulates the meaning of the Peelian doctrine of policing. It is, in other words, the claim that the police should strive to secure acceptance and cooperation that appears to have become synonymous with the Peelian approach to policing. There are nonetheless serious concerns about treating consent as a core value of policing, which are taken here as a motivation for exploring whether an alternative paradigm might be available.

The first concern is that attempts to take consent seriously in the specific context of policing run up against familiar problems with consent as a general criterion of political legitimacy. It is, for example, difficult to determine how consent can be signaled, whether it can be implicit or must be explicit, the necessary degree of voluntariness, or how consent might be withdrawn (Simmons 1979, 80–81). There appears to be little or nothing in the ordinary run of interactions between police and policed that could reasonably be taken to imply voluntary consent on the part of the latter. This is often true even in situations where police are formally required to secure consent on the part of citizens, as in the US practice of "consent searches":

> Police now make wide use of consent searches, although the data suggest there is precious little voluntary consent going on. In Los Angeles in 2006, where police sought consent to search over 30,000 automobiles, people agreed to be searched more than 98% of the time. In an extensive study in Ohio—where the rate runs at 90 to 95%—motorists told the researcher that they consented because they thought they had no choice. (Friedman and Ponomarenko 2015, 1867)

This might not be concerning for advocates of policing by consent if the doctrine is thought not to apply at the level of the individual. The UK Home Office, for instance, states that what is required is "the common consent of the public" rather than "the consent of the individual"; in fact, "no individual can choose to withdraw his or her consent from the police" (UK Home Office 2012).

This, however, merely shifts the focus from the individual to the collective level, requiring us to ascertain how consent could be inferred on the part of the public as a whole. Robert Reiner (2012, 69) suggests that policing by consent obtains as long as resentment on the part of the policed does not escalate into "a withdrawal of legitimacy from the institution." What might such "withdrawal" look like? The most natural interpretation is that policing by consent will be held to have broken down in the presence of widespread and enduring *dissent* on the part of the public. This, though, risks setting a threshold for consent that is so low as to be empty; as Pettit (1997, 184) argues, it is implausible to infer consent merely on the grounds that the citizenry are not repeatedly "driven to the barricades."

The second concern relates to the difficulties of securing and maintaining the support of the public in societies that are characterized by extensive pluralism and social and economic inequalities. This is a familiar theme in discussions of policing by consent in the context of the UK, where sociologists and criminologists highlight the ways in which social change has undermined the idea of a unitary "public" whose support can be cultivated through impartiality or conviviality on the part of police (Emsley 2013; Loader 2016).

The disaggregated and divided nature of the public means that police in reality tend to prioritize the perspectives of dominant societal groups at the expense of those

https://doi.org/10.1017/S1537592724000574 Published online by Cambridge University Press

subject to domination. The primary function of "consent" in the UK, according to this line of thought, has been to shore up sufficient public support for the police to perform their duties, rather than to allow for individual or collective agency on the part of the policed (Shannon 2021, 131–34). Consent has come to be equated with a general pattern of support for the police on the part of "a broad, non-partisan 'consensual' public constituency" (Jefferson and Grimshaw 1984, 67). The preservation and maintenance of support on the part of this "consensual" public comes at the expense of marginalized or excluded elements of society. The domination of these groups, denigrated as "police property," reflects the perception that "police action against them has majority support, even (perhaps especially) from the respectable and stable adult working class" (Reiner 2012, 94). The police can thus afford to either ignore or mistreat these groups provided that their support across the larger segment of the population remains relatively stable. This dynamic gives the police and their supporters incentive to delegitimize those elements of society that might appear to refuse to consent through, say, riots, protest, or more covert patterns of noncooperation.

The third problem is that attempts to nurture the support and cooperation of the public, even when the disaggregated and divided nature of that public is acknowledged, can contribute to misplaced priorities in policing. This concern is raised by some critics of procedural justice. The proceduralist approach, associated with Tom Tyler, holds that "people's perceptions of police legitimacy will be influenced more by their experience of interacting with officers than by the end result of those interactions" (Quattlebaum, Meares, and Tyler 2018, 6). It thus recommends that officers observe norms of respect and courtesy in their interactions with members of the public, which requires good communication skills, explaining situations to citizens, and listening to their opinions and concerns prior to any action. This latter point is salient, as it indicates that procedural justice allows for, and perhaps encourages, citizens to participate in policing through voicing their concerns to police (Bell 2017, 2073).

This focus on the etiquette of police–public interactions has nonetheless prompted several critics to accuse it of placing too much weight on the manner in which policing is carried out and not enough on the justice of its outcomes. Monica Bell (2017, 2076–81), for instance, suggests that procedural justice improves on previous approaches due to its explicit recognition that securing the consent of racial minorities should at least be a concern for police. The problem, she argues, is that the search for consent through respect and courtesy can become divorced from a concern for the material conditions and policing outcomes that contribute to the collective estrangement of racial minorities from the legal system. The upshot is that "thin conceptions of procedural justice could produce what Jeremy Bentham called 'sham security,' leaving some individuals with a vague sense that they have been treated justly while neglecting more fundamental questions of justice" (Bell 2017, 2082–83).

Brandon del Pozo (2023, 158–59) lays out a critique of Tylerian justice that resonates with this concern, contending that policing cannot achieve the substantive goals upon which its legitimacy should be thought to rest merely through pursuing this form of proceduralism. David Thacher (2019, 110) argues, in a similar vein, that procedural justice is problematic insofar as it lends legitimacy to a system of policing without due concern for the justice of the laws that it enforces. Of particular note is his concern that procedural justice has an uncomfortable affinity with Peel's original aims in crafting a professional police force, which were "to build support and deference for an agency enforcing laws that he knew lacked broad public support." Procedural justice is, of course, a complex perspective that is open to multiple interpretations, but these critiques arguably offer further reasons to doubt the adequacy of a public doctrine of policing that places some form of consent at its center.

2. Toward a Republican Theory of Policing

This thought underpins the proposed turn to civic republicanism as a means of reorienting our normative expectations about policing. The republican tradition is particularly relevant here, as one of its core normative claims is that consent is deficient as a criterion of political legitimacy. The principle of contestation, which Pettit presents as the republican alternative to consent, might therefore serve as the basis for an attractive normative model of policing. The problem is that republicanism, in common with other prominent paradigms in contemporary political philosophy, has not developed a theory of policing that is sufficiently attuned to its character and complexity. This section remedies that problem by contending that republicanism should adopt a peacekeeping model of policing, as a preliminary to showing how contestation can displace consent in a public doctrine of policing.

The foundational commitment of civic republicanism is to freedom as nondomination, defined as a condition whereby persons are protected against forms of interference that fail to track their interests or opinions (Pettit 2012, 7–8). This conception differs from the more familiar idea of freedom as noninterference, which does not capture the distinctive unfreedom that obtains insofar as an agent can exercise choice without interference while nonetheless remaining at the mercy of another. The republican state must foster nondomination through protection of fundamental liberties, the establishment of public laws and societal norms, and the achievement of a condition where all can look each other in the eye without

https://doi.org/10.1017/S1537592724000574 Published online by Cambridge University Press

the fear or deference that derives from being subject to the will of others (83–87).

This in turn requires the state to implement a range of institutions and policies, including "infrastructural" programs that establish a framework within which freedom can be exercised, "insurance" programs that offer protection from debilitating misfortunes, and "insulation" programs that safeguard citizens against threats posed by others (Pettit 2012, 110). The last of these entails the creation of criminal laws that should be restricted "to acts of unlicensed interference with people's basic liberties, as those liberties are defined in the society, and to acts that make such acts of interference more likely in various ways" (119). The role of policing is here situated within the criminal justice system, a network of agencies and institutions that enforce laws through the detection, apprehension, prosecution, and punishment of offenders. The principal function of the criminal justice system, argues Pettit, is "to provide people with a suitable level of public protection against crime, and hence assurance that they are not likely to be subject to the will of criminal offenders" (121).

The problem with identifying the detection and apprehension of criminal offenders as the primary role of policing is that, as sociologists have long argued, crimefighting or law enforcement is a relatively minor part of police work. The emergence of professional policing was, in fact, informed by a much broader account of the functions of policing, as reflected in Patrick Colquhoun's formulation in his *Treatise on the Police of the Metropolis* (1796):

> Police in this country may be considered as a *new Science*; the properties of which consist not in the Judicial Powers which lead to *Punishment*, and which belong to Magistrates alone; but in the PREVENTION AND DETECTION OF CRIMES, and in those other Functions which relate to INTERNAL REGULATIONS for the well ordering and comfort of Civil Society. (Quoted in Neocleous 2021, 125; emphasis and capitalization in original.)

This conception combines the crimefighting function of policing with a general remit to administer and regulate civil society. Professionalized police forces, to be sure, evolved and specialized throughout the nineteenth and twentieth centuries, shedding some of the "service" tasks that characterized their emergence. Police thus no longer perform the full range of administrative tasks envisaged by Colquhoun, such as firefighting or regulating the provision of water, but their routines continue to involve a wide range of activities. This includes, among other things, reacting to disorderly conduct; managing traffic; arbitrating disputes between family members, neighbors, or colleagues; offering help and assistance to persons in difficulty; and—assuming their other professional duties have been properly discharged—the detection and apprehension of criminal suspects (Waddington 1999, 9–15). Egon Bittner (1974, 30) encapsulates this broad role in his much-quoted claim that police might be called to any situation that involves "something that ought not to be happening and about which someone had better do something now!"

The claim that the primary function of policing is law enforcement or crimefighting is, furthermore, difficult to reconcile with the broader republican framework set out by Pettit, which appears far more conducive to models of policing that foreground its role as a form of *societal peacekeeping*. John Kleinig (1996, 27) defends peacekeeping as a salient rationale for policing due to "its deep historical roots, allowing us to see its contemporary manifestations in evolutionary rather than revolutionary terms." He also alludes to the development of social peacekeeping in the republican tradition, as the idea of the "king's peace" gives way to that of the "public peace, a social environment characterized by *ordered liberty*" (27; emphasis added). The peacekeeping account incorporates crimefighting as an important dimension of police work but embeds that particular function in a larger account of the role of policing in the reproduction of social order.

This connection between republicanism and peacekeeping can be tightened through considering the role of policing not merely in relation to insulation programs, but also in the infrastructure and insurance programs that are necessary components of state efforts to promote freedom as nondomination. The infrastructural programs, for example, include the reproduction of the physical environment within which persons interact, such as public space and urban transport networks (Pettit 2012, 111). The role of policing in mediating collective use of these resources, particularly in the context of pluralism and disagreement, is an important dimension of peacekeeping (Kleinig 1996, 28).[8] The insurance programs, for their part, include protection of persons against a range of misfortunes that render them unable to exercise some or all of their basic liberties (Pettit 2012, 112). The role of police in assisting or rescuing persons in emergency situations, including those entirely unrelated to criminal acts or threats, is also important to the peacekeeping model (Kleinig 1996, 25–26).

The proper role of policing within a republican framework can thus be treated as the maintenance of societal peace. The responsibilities of policing under such a model include the insulating role of investigating offenses and apprehending offenders, the infrastructural role of order maintenance, and the insurance role of assisting and rescuing citizens in emergency situations. This holistic framework enables republicanism to avoid the tendency of police and policy makers to focus *only* on the crimefighting side of policing, with the result that the skills and "craftmanship" associated with peacekeeping are neglected and poorly understood (Reiner 2012, 144). This account of the functions of policing is, to be clear, not presented here as unique or distinctive to republicanism, though the republican emphasis on nondomination offers a useful lens through which certain normative expectations on

https://doi.org/10.1017/S1537592724000574 Published online by Cambridge University Press

police can be viewed.[9] This can be illustrated through introducing two constraints that a republican framework imposes upon policing as a form of societal peacekeeping.

The first relates to the idea, briefly alluded to above, that nondomination requires a condition where all can look upon each other secure in their status as equals. Pettit (2012, 84) describes this as the "eyeball test," which requires that persons "can look others in the eye without reason for the fear or deference that a power of interference might inspire; they can walk tall and assume the public status, objective and subjective, of being equal in this regard with the best." The test is introduced by Pettit to establish a threshold for resourcing and protecting in the domain of basic liberties. The specification of the threshold is sensitive to cultural variations across different societies, though there are certain forms of treatment that are incompatible with any plausible application of the test (85).

This is particularly relevant for policing in societies where dominating relationships persist along race, class, gender, or other lines, especially if policing is implicated in the reproduction of these relationships (Reiner 2012, 33). Policing in such contexts fails the eyeball test when it singles out specific groups for harsher treatment than other groups, all the more so if such treatment persists despite it becoming a matter of public awareness and widespread condemnation. It also fails where police privilege the opinions and interests of certain groups at the expense of others, again particularly where these trends are routinely exposed. These failures derive from a range of factors operative at institutional and individual levels, including racism, prejudice, bias or cognitive blindness, dysfunctional incentive structures, political or social pressures, and so on. The eyeball test directs attention not merely to improvements in the nature and conduct of police–public interactions, but also to greater equity in the degree to which communities benefit from the infrastructural, insurance, and insulation functions that are supposed to be delivered in part through policing.

The second relates to Pettit's (1997, 154) claim that "since criminal laws are both delicate and dangerous weapons, there should be a presumption in favour of parsimony." The familiar worry here is that criminal laws are both conducive to nondomination, through insulating us from risks of interpersonal interference, and unconducive, through establishing an intrusive framework that increases the risk of interference on the part of agencies tasked with enforcing these laws. The constraint of parsimony in criminal law means that the state should criminalize activity only reluctantly and where necessary for the protection of citizens, in effect establishing a presumption against interference that should only be overridden by compelling countervailing factors. The application of parsimony to policing is nonetheless complicated by its peacekeeping role, which includes, but is not limited to, the enforcement of criminal laws. It is, for instance, by no means obvious that police should err on the side of noninterference, as some situations might require a more proactive form of policing as a means of safeguarding citizens against interference or rescuing them from harm.

The general idea of parsimony might nonetheless be applied to specific powers that the police possess, particularly those that pose significant threats to the life and liberty of citizens. First, the use of defensive force on the part of police should assume a subordinate character as a proportionate means of last resort rather than a "dominant modus operandi" (Kleinig 1996, 23). This should also be taken to imply a duty on the part of police to de-escalate situations wherever possible, such that powers of persuasion and negotiation are exercised instead of, or at least prior to, resort to force (Braithwaite and Pettit 1992, 111). The general and unremarkable claim that police should adopt a parsimonious approach to the use of force is relevant to normative analysis of policing across a range of domains, such as recent theories that apply norms of proportionality, de-escalation, and negotiation to the strategies and tactics that police adopt toward protest (Del Pozo 2023; Monaghan 2023b; Smith 2018).

Second, and more contentiously, parsimony in policing appears to be compatible with and supportive of discretionary nonenforcement of law by police in certain contexts. Jake Monaghan (2023a, 149) argues that police should in general deprioritize the enforcement of laws that are weakly democratically authorized, particularly where enforcement runs the risk of excessive punishment, domination of minorities, or other high-risk characteristics. This argument should be appealing to republicans in light of their professed concerns about a lack of parsimony in criminal law, whereby many actions with minimal or no discernable detrimental impacts on the liberties of citizens are routinely subject to potential criminal sanction (Pettit 2012, 119). The discerning and strategic use of discretion in exercising powers to arrest or charge, as Monaghan contends, might be an appropriate response to failings in the broader criminal justice system that police are a part of (Monaghan 2023a, 45–47).

The difficulty here is that republicanism has a longstanding mistrust of discretion on the part of public authorities, even operating under the procedural constraints imposed by the rule of law (Lovett 2016, 196–200). The concern is that relying on discretion on the part of police, even where such discretion is exercised in a benevolent fashion, is in effect to put oneself at the *whim* of the police. The police could, after all, exercise their powers in such a way that persons are exposed to the risks of excessive punishment or unwarranted interference. This, of course, is not merely a hypothetical scenario; the extensive powers of the police are often exercised in a manner that is incompatible with freedom as nondomination. Pettit (1997, 154–55) goes so far as to warn that "modern police represent the salient sort of threat to

https://doi.org/10.1017/S1537592724000574 Published online by Cambridge University Press

republican values that the standing army was taken to constitute among traditional republicans." This threat is not reducible to corruption or incompetence on the part of police, but rather arises as a function of the broad discretionary power that is such a familiar feature of policing.

This republican warning should orient our thinking, though it is wrong to conclude that removing discretion on the part of police is a desirable or feasible aim. First, as Monaghan (2023a, 72) suggests, the exercise of discretion in policing can conform to a clear pattern of enforcement or nonenforcement. The emerging literature on policing in political theory is often concerned to craft principles that could serve as general guidelines to police discretion (Del Pozo 2023, 70–72). The exercise of police discretion in light of these principles would subject it to a kind of informal regulation through norms, which republicans often defend as either a complement or an alternative to formal legal regulation (Pettit 2012, 127–29).

Second, as Pettit affirms, attempting to eliminate discretion on the part of government agents is likely to be counterproductive from a republican perspective. As he puts it, "having a dedicated, detailed rule for every situation … would mean denying all possibility of fitting government action to the needs of particular cases" (1997, 175). It is, in particular, important to note that this is not a reluctant concession to reality, as the flexibility and responsiveness afforded by discretion is identified as a necessary component of the "best" regulatory framework for realizing republican aims (175).

Third, and perhaps most importantly, discretion in policing is not incompatible with, and in all likelihood requires, mechanisms of oversight and accountability (Monaghan 2023a, 173). The need for such mechanisms is likely to be greater to the extent that policing *departs* from core elements of the peacekeeping model sketched here, such that—for example—police are insufficiently inclined or incentivized to adopt the parsimonious, discretionary norm of nonenforcement defended by Monaghan. Pettit (1997, 155) takes the shortcomings of modern policing as a basis for contending that "any republican is going to want to have the police operate under more demanding constraints, and answer to a more restrictive brief, than is generally the case in contemporary democratic societies." This points toward the general republican response to the threat of domination at the hands of government, which is to insist that the governed retain the power to *contest* its actions. The following section will show how this insight can contribute to and shape a public doctrine of policing.

3. Policing by Contestation

The preceding discussion gives some indication of the substantive aims of policing as one of a range of republican initiatives for pursuing freedom as nondomination. This is a necessary preliminary for exploring how that freedom can be protected in light of the discretion that is a necessary and significant dimension of policing. The basic idea is that citizens should be in a position to contest police power that is perceived as a form of arbitrary interference, which should in turn activate appropriate forms of deliberative regulation. This idea is the core component of "policing by contestation," which is offered here as an alternative to "policing by consent" as a public doctrine of policing. Its character as a public doctrine is important, as it reflects the aspiration to elaborate a framework that can serve as a common point of reference for debates about policing in the public sphere. The discussion proceeds through discussing the ideas of contestation and deliberative regulation in turn.

Policing and Contestation

The core requirement of the republican account is that *policing must be subject to effective contestation on the part of those who are policed.* The idea of contestation holds that "the non-arbitrariness of public decisions comes of their meeting, not the condition of having originated or emerged according to some consensual process, but the condition of being such that if they conflict with the perceived interests and ideas of the citizens, then the citizens can effectively contest them" (Pettit 1997, 185). The idea of contestation, as noted above, is the republican alternative to consent as a criterion of legitimate authority. It offsets the shortcomings of consent through entitling all citizens to challenge police, particularly those whose experiences and perspectives might otherwise be marginalized. In so doing, it embodies a commitment to empowering citizens through a range of political and legal resources.

The guiding assumption is that a contestatory regime should be cultivated against the backdrop of a democratic state, which aims to guarantee for its citizens an individualized, unconditional, and efficacious influence over the direction of government (Pettit 2012, 239). This entails the establishment of the political rights associated with liberal and republican perspectives, including freedom of speech; the right to vote and stand for office; the right to petition government; and freedoms of association, assembly, and protest.

The republican perspective set out by Pettit offers further clarification about the normative conditions that should be met by institutions and mechanisms set up to facilitate contestation. The contestatory regime must, for one thing, be *inclusive*, such that those subject to discretionary authority have an effective voice for contestation. This voice, as Pettit suggests, can be amplified through groups that have the credibility to articulate a diversity of societal perspectives, though always on the proviso that such groups are also likely to contain internal points of differences and disagreement (Pettit 1997, 190–94). The contestatory regime must, furthermore, be *responsive*, such that discursive interlocutors receive a proper hearing and

https://doi.org/10.1017/S1537592724000574 Published online by Cambridge University Press

an appropriate reply on the part of public authorities (195–200). This does not entail that contestation must succeed in, say, reversing an unwelcome decision or securing some kind of compensation. In particular, contestation should ordinarily not succeed if its target is a decision that passes what Pettit describes as the "tough luck" test. This means that the outcome is attributable to the contingencies of imperfect institutions operating in conditions of pluralism and disagreement, rather than a malign or alien will that operates beyond the influence of those subject to it (Pettit 2012, 176–79).

The focus of contestation in relation to policing can include the actions of individual officers, the strategies, priorities, policies, and practices of particular forces, and the design of the broader policing system that these actors and agencies operate within. The diversity of these potential focal points of contestation suggests that it would be a mistake to attempt to realize a contestatory regime through one particular institution or mechanism. The most suitable means of subjecting the actions of individual officers to contestation might, for example, be quite different to the most suitable means of subjecting institutional reform proposals to contestation.

The difficulty of dependence on a particular institution or mechanism is also suggested by the commonsense observation that any such resource is likely to manifest different strengths and weaknesses. A mechanism set up to facilitate interaction between police and members of the public, for instance, might overperform as a means of securing inclusion of diverse perspectives but underperform as a means of achieving suitably responsive policing. The republican perspective thus envisages that a plurality of institutions and mechanisms should be available to citizens in contesting police power. This is compatible with the broader republican account of government, which treats contestation as a process that can run through legislative bodies, parliamentary committees, legal channels, independent complaints committees, ombudsmen, participatory forums, and civic associations and social movements (Pettit 2001, 169–72). These resources are insufficient by themselves as a means of fostering a contestatory regime, though each might play an important function as components of a holistic framework where weaknesses in one element are compensated by strengths in another element.

There are three elements of a contestatory regime for policing that should be noted here. The first is the need for accessible and effective mechanisms of holding officers and agencies to account in the light of conduct that is unlawful or unprofessional. This means that there must be confidence in contestation as an effective means of securing redress for arbitrary treatment, which might culminate in punishment, compensation, reparation, or reform of police practices. This is an obvious and basic requirement, but it is nonetheless worth emphasizing in light of pervasive concerns about inadequacies in the current legal oversight of policing. Ben Jones (2022, 366), for example, offers a powerful critique of institutional failings that contribute to "police generated killings." These killings occur because "bad police tactics create a situation where deadly force becomes necessary, becomes perceived as necessary, or occurs unintentionally." The law fails to hold officers to account for such killings due to qualified immunity, an unduly charitable attitude toward what constitutes a "reasonable" use of lethal force, and failure to insist upon clear and consistent guidelines about the use of force at local and national levels. These failures mean that police forces lack proper incentives to reform or abandon tactics that have been implicated in police killings, such as choke holds and neck restraints, failure to use distance and cover, confronting suspects without backup, and no-knock warrants and raids. Jones recommends a range of sensible measures to incentivize changed practices, including enhanced risk of criminal penalties, civil suites, revocation of police licenses, stricter limits on the use of force, and enhanced constitutional protections for individuals against bad tactics (374–75). The public case for such measures is arguably strengthened through the language of policing by contestation, which posits a clear, intuitive, and highly communicable rationale for subjecting policing to far more responsive forms of legal oversight than is currently the case (Schwartz 2023).

The next element are forums that enable communities subject to policing to articulate and direct their grievances toward the police. These forums offset a functional limitation of law or administrative oversight mechanisms, which is that the latter tend to be activated only after serious forms of misconduct occur and come to light. The role of contestatory forums is to provide regular and routinized opportunities for the policed to challenge the priorities and strategies of police agencies that operate in their neighborhoods. This should allow for a more proactive form of contestation, whereby problems that the policed experience at the hands of the police are detected and addressed at an earlier stage than would be possible under a regime that relied solely upon legal or administrative oversight.

The wave of reforms associated with the increased emphasis on community policing could perhaps be seen as facilitating a kind of contestatory practice. These schemes, such as the establishment of regular beat meetings in Chicago and community partnerships in Los Angeles, aim to facilitate a collaborative process whereby police and citizens identify, prioritize, and address problems. The iterated nature of these schemes, according to some, enhances their capacity to serve as means of monitoring police and holding them to account. Archon Fung (2003, 360), in his analysis of Chicago beat meetings, observes that "the poor quality of police performance and their shirking is a frequent topic of beat

https://doi.org/10.1017/S1537592724000574 Published online by Cambridge University Press

meeting discussions." This scheme, he notes, tends to secure relatively high levels of participation from poor neighborhoods, though he also observes considerable variation in the quality of problem-solving and available support for the process across the beats (359).

The extensive scholarship on community policing goes further in illuminating the deficiencies of these forums as means of facilitating inclusive and responsive contestation (Herbert 2006). Two limitations are particularly grave. First, the responsiveness of community engagement forums can be compromised by the control that police exercise over deliberations and decisions. This control is documented in a study of community policing in Los Angeles, which offers many examples of police containing or deflecting complaints, using engagement as a medium for amplifying police narratives, and coopting citizens in an expansion of police power (Gascón and Roussell 2019, 5–7). The upshot is that inclusion in a consultative process is not equivalent to effective contestation; as Gascón and Roussell (2019 216) put it: "these collaborations are presented as equitable and coequal, but there is a great deal of distance between bringing crime complaints to police and codirecting police strategy, ethos, funding allocations, and personnel deployments and employments."

Second, the responsiveness of forums can be compromised by the control that segments of the community exercise over the process at the expense of other segments. There are, for example, cases where participants use community engagement forums to contest measures that might benefit vulnerable or marginalized groups. Monaghan (2023a, 158) notes a case where Chicago residents and police collaborated at a beat meeting to block the opening of a "halfway" house for rehabilitated drug users and housed parolees. The attempt to block such an initiative on the grounds that "we would prefer not to see it in our neighborhood" is a paradigmatic example of a contestation that should ordinarily *not* succeed. This initiative would, in Pettit's terms, pass the "tough luck" test (Pettit 2012, 177).

There are, as we shall see, changes that might improve community engagement forums, but these are unlikely to fully address the structural and environment factors that limit their adequacy as mechanisms of contestation. This underscores the centrality of the final element of a republican contestatory regime: the networks and associations of *civil society* (Pettit 1997, 241–42). These actors perform a range of functions in facilitating contestation, including serving as a source of direct assistance for persons who have experienced domination at the hands of the police. This role is particularly important in a context where there are multiple channels for contestation; the function of civil society is, at least in part, to offer guidance to persons about the various resources that are available to them.

Their role is also to amplify complaints through collective agency, as networks and associations "command an audibility which individual citizens cannot hope to match" (Pettit 1997, 193). Of note here is that critics of community policing sometimes defend oppositional activism as a far more effective means of subjecting policing to democratic influence than beat meetings or community partnerships. Gascón and Roussell (2019, 221), for instance, credit movements such as the Coalition for Police Accountability for their role in building support for and drafting Measure LL, which restructured the Oakland Police Department's oversight process. There is perhaps a danger in overstating the democratic capacity and credentials of civil society, though it would arguably be a greater mistake to neglect its critical role in amplifying acts of contestation that would otherwise be drowned out in community forums that tend to favor the politically empowered (Monaghan 2023a, 172).

The normative function of civil society in a contestatory regime is also to disseminate information that is highly relevant to the appraisal of policing but which might not otherwise come to light. This dissemination consists of both horizontal sharing of information across civil society and vertical sharing of information between civil society and relevant public authorities. It can include scholarly or activist work that documents the impacts of policing on marginalized and vulnerable communities, which might also contribute to contesting prevailing societal assumptions or official narratives surrounding particular policies or strategies.

The Institute of Race Relations in the UK, for instance, has recently published a study that diagnoses discriminatory and racial tropes in police and government responses to the so-called "county lines" drug distribution networks (Koch, Williams, and Wroe 2023). This study contests the prevailing narrative that police strategy succeeds in treating children and young people caught up in county lines as vulnerable persons in need of safeguarding rather than punitive treatment. It does so in part through presenting extensive interviews and testimony from victims and their families, perspectives that do not receive adequate attention in the public sphere. The study generated a degree of media coverage, which has both amplified its findings and triggered responses on the part of police and policy makers (Townsend 2023). There is, to be sure, already some awareness that research and scholarship is relevant to policing, illustrated by its aforementioned role in shaping the procedural justice paradigm. A republican contestatory regime would nonetheless tend to place more emphasis than advocates of procedural justice on scholarship that informs police and publics about the deleterious *outcomes* of policing strategies.

The most straightforward example of civil society actors increasing public awareness of the impacts of policing is the emerging practice of "copwatching," which has been facilitated by the proliferation of smartphones making it easier for police–public interactions to be recorded by concerned

https://doi.org/10.1017/S1537592724000574 Published online by Cambridge University Press

citizens. Copwatching can range from spontaneous actions on the part of vigilant individuals to more coordinated campaigns that emerge within particular neighborhoods or beats. The latter can involve "groups of local residents who wear uniforms, carry visible recording devices, patrol neighborhoods, and film police–citizen interactions in an effort to hold police departments accountable to the populations they police" (Simonson 2016, 393). This type of monitoring can serve to deter misconduct on the part of police; document it as and when it occurs; and reduce the risk that police officers misrepresent events that culminate in arrests, injuries, or fatalities.

This kind of street-level contestation of police tends not to be at the forefront of the normative literature on policing, which is perhaps unfortunate in light of its significance in documenting some of the much-discussed cases of racial killings by police in recent years. The republican perspective, by contrast, frames such actions as instantiations of civic virtue, specifically that of "remaining alert, especially in dealing with powerful authorities, to the possibility that others may be behaving in corrupt, sectional fashion" (Pettit 1997, 263). This framing contributes to a broader process of educating publics about the importance, and perhaps even civic duty, of exercising vigilance in relation to police–public interactions. It also serves as a normative basis for resisting legal or extralegal interference with the freedom of citizens to film, record, or bear witness to police–public interactions, which would compromise the functional role of civil society in a broader contestatory regime.

The call for vigilance suggests that republicans envisage a relationship between police and policed that is characterized by a considerable degree of expressive mistrust. The practice of keeping the police under something that amounts to a form of community surveillance, for example, expresses unwillingness to take their trustworthiness and reliability at face value. This might seem problematic in light of efforts on the part of reformers to forge relations of mutual trust between police and the public. It should thus be stressed that nothing here is incompatible with the expectation that police should adopt practices that are conducive to building trust among communities. There is also scope for experimentation with practices that might, in the long term, forge relations of trust, as in restorative justice procedures that grant police a mediating role in meetings between victims and offenders (Braithwaite 1999).

The core republican claim is nonetheless that such measures are almost certain to prove inadequate as a guarantor of nondomination in the absence of an effective regime of contestation buttressed by vigilance. A stance of expressive distrust on the part of citizens makes considerable sense as a means of disciplining police forces that might otherwise fail in their duties to insulate communities against the threats of arbitrary interference. As Pettit (1997, 264) puts it, "whatever confidence people feel in the authorities, they will have all the more reason to feel such confidence—to enjoy personal trust—if they always insist on the authorities going through the required hoops in order to prove themselves virtuous."

Policing and Deliberation

A further requirement is that *policing should be subject to regulation through a deliberative process.* Deliberation refers to processes through which problems and issues are diagnosed, claims are weighed, and judgments reached. The substance of these processes is given either by public norms that are accepted as salient among the relevant constituency or by a mutual exchange of reasons geared toward arriving at informed decisions. The space within which deliberation occurs can be a forum that is designed to allow for highly structured and regulated forms of reason-giving, such as law courts, parliamentary committees, or representative minipublics (Fung 2003). Deliberation can also be conceptualized in less structured and more systemic terms, as a dispersed and disaggregated process that involves multiple sites and diverse modes of communication (Parkinson and Mansbridge 2012).

The process of deliberative regulation is a necessary complement to the process of democratic contestation described in the previous section. It functions as a means of channeling the claims that citizens advance about policing into a process of governance, ensuring that their perspectives are not marginalized or ignored. It also functions as a means of filtering these inputs, ensuring that the processes for regulating policing and holding it to account are not overwhelmed or misdirected. There is, on this republican account, a mutual dependence between a practice of contestation that provides content to deliberation and a practice of deliberation that lends shape and impact to contestation. Ian Loader and Neil Walker emphasize the importance of public reasoning in this regulatory process:

> The principle of public reason … adds to the institutional matrix for governing security the expectation that the demands raised in fora of public deliberation are to be called into question, rigorously scrutinized, and defended and revised, in a process aimed at identifying which security claims can reasonably be said to be oriented to considerations of the common interest, rather than being motivated by unbridled emotion, or the pursuit of self or parochial interests. (Loader and Walker 2007, 228)

The focus of deliberative regulation is often reactive, as in investigations of specific complaints against officers brought by citizens or judicial scrutiny of the legality of police tactics or actions. It is, though, also important to note the central role of deliberative regulation in designing and shaping a policing system directed toward the republican goal of an ordered liberty. This work can have a more proactive character in determining the powers and responsibilities of policing, which might involve reallocating

https://doi.org/10.1017/S1537592724000574 Published online by Cambridge University Press

peacekeeping tasks across different state agencies or crafting a regulatory framework for nonstate actors involved in policing or quasi-policing roles. There is, of course, an important role for judicial oversight and a certain degree of self-regulation, but the republican perspective also insists that "policing policies and practices should be governed through transparent democratic processes such as legislative authorization and public rulemaking" (Friedman and Ponomarenko 2015, 1832).

The problem of creating deliberative mechanisms to regulate policing is both urgent and difficult. The previous section expressed caution about proposed solutions that depend on one particular institution or resource. It also touched upon the deficiencies of participatory forums that have been set up under the broad heading of community policing. Civil society can offset some of these deficiencies to some degree, but it cannot stand in place of a regulatory framework that is capable of channeling the influence it generates into a process of democratic governance (Habermas 1997, 372).

The pathway toward deliberative regulation might involve pragmatic experimentation with the range of institutional designs that have proliferated under the heading of "democratic innovations" (Smith 2009). These designs, which include citizens' juries, citizens' assemblies, deliberative polls, and citizens' initiative reviews, share certain features that might offset or avoid the shortcomings of, say, beat meetings. Their membership is not self-selecting but rather consists of a small number of participants who have been selected through sortition in order to broadly represent the diverse perspectives found across a much larger population. It is also possible to oversample for certain backgrounds or characteristics, which is attractive if the goal is to amplify the voices of marginalized groups. Their agendas are not generally set by the principal stakeholders, but by independent actors with responsibility for designing and facilitating deliberation. Stakeholders can present their perspectives to participants, alongside a range of other relevant parties, but do not control the process. These design features are intended to strengthen the epistemic quality of deliberation, which in turn is intended to increase prospects for reaching informed, other-regarding outcomes and decrease the chances of partisan, self-seeking settlements (Fishkin 2009).

The use of democratic innovations as a mechanism for the deliberative regulation of policing could be adopted in an experimental fashion, alongside more familiar and established tools. Their cost and resource-intensive nature compared to forums that rely on self-selection is a practical obstacle to advocating their use as a replacement for regular beat meetings in large cities. It is, perhaps, more feasible to embed democratic innovations in a more selective and strategic fashion. There are at least two potential approaches worth introducing here.

The first, more familiar, approach is for public authorities to set up a forum as a means of either creating recommendations or testing proposals relevant to policing. The relevant bodies, such as police or policy makers, would then be obliged to respond to the recommendations. The willingness of public authorities to invest the resources necessary to establish such a body is likely to be greater in contexts where problems in policing have become impossible to ignore and established methods of forging solutions have run out of road. This can be illustrated through noting a recent decision of a local authority in London to convene a citizens' assembly (CA) to craft recommendations on the future of neighborhood policing. This decision was taken against the backdrop of the widespread publicity surrounding the Casey Review into the Met, introduced at the beginning of this article, particularly its damning criticism that "Londoners' voices are missing from how London is policed" (Baroness Casey of Blackstock 2023, 23). The CA is comprised of randomly selected participants in a process overseen by Involve and the Sortition Foundation, two independent organizations with a track record for organizing similar events. The process is yet to be completed, but the local authority and the Met have already committed to engage with the process and respond to the final recommendations.[10]

The second, less familiar but perhaps more promising, approach is for civil society groups to organize democratic innovations to contest public policy or police practices. The claim here is not, to be clear, that civil society can stand in place of a regulatory process, but that it can filter public opinion through an autonomous deliberative process that enhances its capacity to influence or steer institutional actors. The thought is that policy recommendations that are reached through a deliberative process could be presented by skillful and effective advocates as more credible than preferences that are reported in opinion polls. The most potent contexts might be where deliberative recommendations *converge* with positions that already enjoy popular support. This might seem counterintuitive, as it would appear that a deliberative process would be adding little of value in such circumstances. In fact, as Cristina Lafont argues, the convergence of deliberative and nondeliberative opinion supplies social critics with important rhetorical ammunition:

> It can effectively counteract arguments to the effect that the majority's support for some popular policy is due to the citizenry's lack of information or unfamiliarity with the complexity of the problems involved; or that it is due to irresponsible wishful thinking that fails to take the potential consequences, legal constraints, or any other relevant dimensions into account that allegedly only experts (but not ordinary citizens) can fully grasp. (Lafont 2020, 122)

This can be illustrated through the case of cannabis or opioid possession. As Monaghan (2023a, 171) notes,

https://doi.org/10.1017/S1537592724000574 Published online by Cambridge University Press

there is considerable evidence that a growing majority of citizens in the US endorse decriminalization of cannabis, reallocation of police priorities, and treatment of drug users rather than incarceration. This public support, though, has yet to be translated in a uniform fashion into legislation or revised policing strategies. The use of deliberative forums could bolster the case for reform simply through counteracting the risk that majority support is dismissed as uninformed. It could, furthermore, empower both external critics of police forces that, for whatever reason, resist moves to deprioritize arrests for cannabis or opioid possession and internal police administrators who want to steer their officers away from these practices. The use of democratic innovations in such situations thus complements and helps to realize the general republican aim of parsimony in peacekeeping.

Deliberative forums organized by public authorities and civil society have contrasting strengths and weaknesses. The former can offer a somewhat greater likelihood of directing deliberative opinion toward institutions or agencies with decision-making power but are also more prone to cooptation and restricted agendas (Curato and Böker 2016, 183–84). The latter can operate with greater independence from public authorities but at the cost of increased dependence on private sponsorship and reduced access to decision makers (Parkinson 2006, 117). The salient point here is nonetheless that reasonable skepticism about tried-and-tested attempts to subject policing to greater deliberative regulation should not obstruct attempts to experiment with different institutional designs. The design options available for soliciting and filtering citizen input into public policy are now far more varied, with far more accumulated experience about their use, than would have been the case during the initial wave of interest in community policing (Gastil and Knobloch 2020). And the strengths and weaknesses of these emerging mechanisms again underscore the republican case for pluralism. Experimenting with institutional designs is one dimension of a broader set of processes that aim to subject policing to democratic contestation and deliberative regulation.

The principle of deliberative regulation presupposes that at least some of these processes will involve discrete or dispersed reason-giving among citizens. It therefore departs somewhat from Pettit's (2012, 268) suggestion that "deliberative regulation of collective decision-making does not entail a great degree of deliberative conduct." His thought, in brief, is that what is important for republicanism is not deliberation per se but regulation through policy-making norms that emerge through episodic bouts of deliberation. Once such norms become accepted, the need for deliberative interaction among members becomes less pressing. This is particularly the case where "the system is working well" and "the institutions established will not be called into question" (268).

The account of regulation presented here, by contrast, envisages a need for actual deliberation about policing, which should be steered by bouts of contestation on the part of the policed. The reason for this is, in part, due to the deficit of deliberatively generated policy-making norms in policing compared to other branches of executive and administrative power. There are, for example, no nationwide guidelines regulating the use of force across the US, a gap that is increasingly untenable in light of profound changes in police tactics and the availability of weapons and technology that would have been unthinkable in previous eras (Friedman and Ponomarenko 2015, 1851). Another, more straightforward, reason is that the regularity and intensity of anti-police protest suggests that policing is not perceived as a system that is "working well." There is, in particular, a familiar cycle whereby racialized killings in the US trigger protests and, in some cases, extensive urban disorder (Schneider 2014). The growth of police abolitionist movements and the diffusion of alternative models of community security and peacekeeping is indicative of an institution that is very much being called into question (Vitale 2017). This context suggests a pressing need for informed and inclusive deliberation about the proper design and delivery of policing in democratic societies.

Conclusion: Between Realism and Idealism?

This article has set out the basic elements of a republican conception of policing, which replaces the traditional focus on the "consent" of the policed with an insistence on contestation by the policed. This conception is subject to two rather different objections. First, it might appear *unrealistic* to contend that policing by consent should be displaced by an emphasis on contestation. It appears even more unlikely in light of the historical pedigree of this doctrine and its continuing appeal to police forces and reformers. Second, it might appear *undesirable* to propose an account of policing that appears to leave intact core features of the prevailing system of policing. The demand to replace the current policing model with alternative forms of security provision is, after all, a prominent dimension of the policy agenda promoted by movements such as Black Lives Matter. It is beyond the scope of this article to fully address these concerns, but it is at least possible to gesture toward a preliminary response.

The concern that the argument is unrealistic might be allayed through emphasizing the points of continuity between policing by consent and policing by contestation. There is, on both accounts, an avowed emphasis on the interests and opinions of those subject to policing. The normative advantage of contestation over consent is that it *amplifies* the interests and opinions of the policed by creating channels through which their complaints and concerns can be filtered into a regulatory process. It thus

https://doi.org/10.1017/S1537592724000574 Published online by Cambridge University Press

offsets the concern that an emphasis on consent, for all its connotations of agency, does not address the practical issue of how the policed might signal their disapproval of the police. This is a genuine difference between the two approaches, but it is not clear why those with a sincere concern for the interests of the policed should resist the turn to contestation. It is, furthermore, important to recall that the goal of this discussion has been to set out an alternative to consent as a foundational principle for a public conception of policing. It does not take a stand on the content of the more applied guidelines that might be adopted in, say, police training manuals. The reorientation of policing around a norm of contestation establishes an open-ended process with multiple pathways; some of these might retain elements of policing by consent, including the Peelian principles that are an entrenched feature of the self-understanding of some police agencies (Reiner 2012, 47).

This latter point also suggests the outlines of an answer to the objection that republican policing is an undesirable capitulation to the status quo. The observation that there is a difference between the general concept of policing and the specific institution of the modern police force is by now so familiar as to be hackneyed (Reiner 2012, 4). Policing is a complex process that involves a plurality of actors. If we suppose, for the sake of argument, that a positive case for such plurality can be articulated, then the proper allocation of policing powers and responsibilities within and across state-funded agencies, subsidized or nonsubsidized community bodies, and private companies is a matter that must be determined in and through a public political process. There are, to be sure, powerful reasons for assuming that the state, with its resource base and coordinating capacities, is likely to remain an important agency in structuring the process through which societal peace is pursued.[11] A renewed emphasis on contestation as the main input to a process of deliberative regulation nonetheless opens up the possibility of a radical reimaging of what policing looks like. If, for example, a community converges around a shared conviction that the current system of policing to which it is subject is unsustainable, it should at least be possible, through a mutually supporting and iterated process of contestation and deliberation, to transform that system from the ground up. This is, in fact, an inescapable implication of the republican commitment to empowering the policed through facilitating their contestation of the police.

Acknowledgments

An early version of this article was presented at the 2022 Annual Meeting of the Association for Social and Political Philosophy (UK). Thanks to participants at that meeting for their helpful comments and questions. Thanks also to Philip Pettit and to four anonymous reviewers for this journal for their generous written comments on an earlier version of the paper. The research for this article was supported by an award from the General Research Fund of the Research Grants Council of the Hong Kong Special Administrative Region (Project No. 14610820).

Notes

1 The Black Lives Matter movement raised the profile of police abolitionism and alternative forms of community-led security as part of their resistance to police violence (Boyles 2019; Cobbina 2019; Ransby 2018).

2 These two countries are the most salient to this article, as the argument proceeds from a critical engagement with a public doctrine of policing that has gained more ground in the UK and the US than elsewhere. However, the constructive argument about what could replace this doctrine might have a broader appeal.

3 To be clear, it would be inaccurate to say that political theorists have until now ignored policing. The arguments in this article, in fact, build upon earlier efforts to apply republican ideas to policing, particularly as set out by Braithwaite and Pettit (1992, 106–15). The approach adopted here differs from that earlier effort in rethinking its account of the role of policing (section 2) and envisaging a somewhat greater role for contestation and deliberation in regulating policing (section 3). The main difference, though, is that Braithwaite and Pettit approach policing as merely one element of their broader republican theory of the criminal justice system, whereas this article—in line with the recent contributions cited in the text—treats policing as its primary concern and focus. This enables the specific challenges associated with policing to be engaged in far greater depth and detail.

4 There is, for instance, debate about the origins of the "Peelian" principles that lend content to the doctrine of policing by consent (Lentz and Chaires 2007). This debate is not fatal to the claim that these principles, and particularly the idea of consent, are an important influence on public debate about policing (see, e.g., Steverson 2007, 4–10; see also Emsley 2013 and Loader 2016).

5 There is, in fact, little evidence that the principles were written by Peel or by Charles Rowan and Richard Mayne, the first commissioners of the Met. As Clive Emsley (2013, 11) notes, "they were given their first significant formulation in the work of Charles Reith, writing more than a hundred years after the first Metropolitan Police constables took to the streets of London, and were subsequently taken up and remoulded in twentieth-century policing textbooks."

6 I am grateful to a reviewer for suggesting that I should emphasize the differences between the status of policing by consent in the UK and the US. For more on the similarities and differences between the

historical development of policing in the UK and the US, see Miller (1977).

7 The fact that the term "policing by consent" emerged to describe the broader Peelian approach—rather than, say, "policing by law"—illuminates the centrality of consent for police and publics, particularly in the UK. It is, of course, reasonable to suggest that some or all of the principles could be detached from the idea of consent. The critical comments that follow are directed toward interpretations of the doctrine that take consent to be its core, organizing idea. Thanks to a reviewer for alerting me to the various ways in which the Peelian approach might be interpreted.

8 The role of police in brokering shared use of public space in conditions of pluralism is discussed at length in del Pozo (2023, 61–88) and Monaghan (2023a, 125–48).

9 The account of policing as peacekeeping adopted here is, as should be clear, essentially that set out by Kleinig (1996, 11–29). The three functions listed in the text also correspond to the police powers that del Pozo (2023) identifies as central to the police in democratic societies. For del Pozo's account of the similarities and differences between his approach and the peacekeeping model, see del Pozo (2023, 7–10).

10 For details, see Waltham Forest Council (2023).

11 A powerful and persuasive defence of the role of the state in coordinating a system of "anchored pluralism" is set out in Loader and Walker (2007). See also Meares (2021).

References

Baroness Casey of Blackstock. 2023. "Final Report: An Independent Review into the Standards of Behaviour and Internal Culture of the Metropolitan Police Service." London: The Baroness Casey Review, March 21. https://www.met.police.uk/SysSiteAssets/media/downloads/met/about-us/baroness-casey-review/update-march-2023/baroness-casey-review-march-2023a.pdf.

Bell, Monica C. 2017. "Police Reform and the Dismantling of Legal Estrangement." *The Yale Law Journal* 126: 2054–2150. https://www.yalelawjournal.org/essay/police-reform-and-the-dismantling-of-legal-estrangement.

Bittner, Egon. 1974. "Florence Nightingale in Pursuit of Willie Sutton: A Theory of the Police." In *The Potential for Reform of Criminal Justice*, ed. Herbert Jacob, 17–44. Beverley Hills: Sage Publications.

Boyles, Andrea S. 2019. *You Can't Stop the Revolution: Community Disorder and Social Ties in Post-Ferguson America*. Oakland, CA: University of California Press. DOI: 10.2307/j.ctvpb3zf0.

Braithwaite, John. 1999. "Restorative Justice: Assessing Optimistic and Pessimistic Accounts." *Crime and Justice* 25: 1–127. DOI: 10.1086/449287.

Braithwaite, John, and Philip Pettit. 1992. *Not Just Deserts: A Republican Theory of Criminal Justice*. Oxford: Clarendon Press. DOI: 10.1093/acprof:oso/9780198240563.001.0001.

Cobbina, Jennifer E. 2019. *Hands Up, Don't Shoot: Why the Protests in Ferguson and Baltimore Matter and How They Changed America*. New York: New York University Press. DOI: 10.18574/nyu/9781479819744.001.0001.

Colquhoun, Patrick, 1796. *A Treatise on the Police of the Metropolis*, 2nd edition. London: H. Fry.

Curato, Nicole, and Marit Böker. 2016. "Linking Mini-Publics to the Deliberative System: A Research Agenda." *Policy Sciences* 49 (2): 173–90. DOI: 10.1007/s11077-015-9238-5.

Del Pozo, Brandon. 2023. *The Police and the State: Security, Social Cooperation, and the Public Good*. Cambridge: Cambridge University Press. DOI: 10.1017/9781009215435.

Dulaney, W. Marvin. 1996. *Black Police in America*. Bloomington: Indiana University Press.

Emsley, Clive. 2013. "Peel's Principles, Police Principles." In *The Future of Policing*, ed. Jennifer M. Brown, 11–22. London: Routledge. DOI: 10.4324/9780203435946.

Fielding, Nigel G. 2018. *Professionalizing the Police: The Unfulfilled Promise of Police Training*. Oxford: Oxford University Press. DOI: 10.1093/oso/9780198817475.001.0001.

Fishkin, James S. 2009. *When the People Speak: Deliberative Democracy and Public Consultation*. Oxford: Oxford University Press. DOI: 10.1093/acprof:osobl/9780199604432.001.0001.

Friedman, Barry, and Maria Ponomarenko. 2015. "Democratic Policing." *New York Law Review* 90 (6): 1827–1907. https://www.nyulawreview.org/issues/volume-90-number-6/democratic-policing.

Fung, Archon. 2003. "Survey Article: Recipes for Public Spheres: Eight Institutional Design Choices and their Consequences." *The Journal of Political Philosophy* 11 (3): 338–67. DOI: 10.1111/1467-9760.00181.

Galoob, Stephen R., and Jake Monaghan. Eds. 2023. "Symposium on Policing and Political Philosophy." *Criminal Law and Philosophy* 17 (3): 545–668. DOI: 10.1007/s11572-023-09664-w.

Gascón, Luis Daniel, and Aaron Roussell. 2019. *The Limits of Community Policing: Civilian Power and Police Accountability in Black and Brown Los Angeles*. New York: New York University Press. DOI: 10.18574/nyu/9781479871209.001.0001.

Gastil, John, and Katherine R. Knobloch. 2020. *Hope for Democracy: How Citizens Can Bring Reason Back into Politics*. Oxford: Oxford University Press. DOI: 10.1093/oso/9780190084523.001.0001.

Habermas, Jürgen. 1997. *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, trans. William Rehg. Cambridge: Polity Press.
Hadden, Sally. 2021. "Police and Slave Patrols: A History of State-Sponsored White-on-Black Violence." In *The Ethics of Policing: New Perspectives on Law Enforcement*, eds. Ben Jones and Eduardo Mendieta, 205–21. New York: New York University Press. DOI: 10.18574/nyu/9781479803729.003.0010.
Heath, Joseph. 2023. "The Challenge of Policing Minorities in a Liberal Society." *The Journal of Political Philosophy* 0 (0): 1–28. DOI: 10.1111/jopp.12313.
Herbert, Steve. 2006. *Citizens, Cops, and Power: Recognizing the Limits of Community*. Chicago: University of Chicago Press. DOI: 10.7208/chicago/9780226327358.001.0001.
Hough, Mike. 2021. *Good Policing: Trust, Legitimacy and Authority*. Bristol: Policy Press. DOI: 10.51952/9781447355083.
Hunt, Luke William. 2019. *The Retrieval of Liberalism in Policing*. Oxford: Oxford University Press. DOI: 10.1093/oso/9780190904999.001.0001.
Jefferson, Tony, and Roger Grimshaw. 1984. *Controlling the Constable: Police Accountability in England and Wales*. London: Frederick Muller. DOI: 10.4324/9781003398028.
Jones, Ben. 2022. "Police-Generated Killings: The Gap between Ethics and Law." *Political Research Quarterly* 75 (2): 366–78. DOI: 10.1177/10659129211009596.
Kleinig, John. 1996. *The Ethics of Policing*. Cambridge: Cambridge University Press. DOI: 10.1017/CBO9781139172851.
Koch, Insa, Patrick Williams, and Lauren Wroe. 2023. "'County Lines': Racism, Safeguarding and Statecraft in Britain." *Race & Class* 65 (3): 3–26. DOI: 10.1177/03063968231201325.
Lafont, Cristina. 2020. *Democracy without Shortcuts: A Participatory Conception of Deliberative Democracy*. Cambridge: Polity Press. DOI: 10.1093/oso/9780198848189.001.0001.
Lentz, Susan A., and Robert H. Chaires. 2007. "The Invention of Peel's Principles: A Study of Policing 'Textbook' History." *Journal of Criminal Justice* 35 (1): 69–79. DOI: 10.1016/j.jcrimjus.2006.11.016.
Loader, Ian. 2016. "In Search of Civic Policing: Recasting the 'Peelian' Principles." *Criminal Law and Philosophy* 10 (3): 427–40. DOI: 10.1007/s11572-014-9318-1.
Loader, Ian, and Neil Walker. 2007. *Civilizing Security*. Cambridge: Cambridge University Press. DOI: 10.1017/CBO9780511611117.
Lovett, Frank. 2016. *A Republic of Law*. Cambridge: Cambridge University Press. DOI: 10.1017/CBO9781316440698.
Meares, Tracey L. 2021. "Clashing Narratives of Policing? The Quest for Lawful versus Effective Policing and the Possibility of Abolition as a Solution." In *The Ethics of Policing: New Perspectives on Law Enforcement*, eds. Ben Jones and Eduardo Mendieta, 25–38. New York: New York University Press. DOI: 10.18574/nyu/9781479803729.003.0002.
Miller, Wilbur R. 1977. *Cops and Bobbies: Police Authority in New York and London, 1830–1870*. Chicago: University of Chicago Press.
Monaghan, Jake. 2023a. *Just Policing*. Oxford: Oxford University Press. DOI: 10.1093/oso/9780197610725.001.0001.
Monaghan, Jake. 2023b. "Policing Disobedient Demonstrations." *Criminal Law and Philosophy* 17 (3): 653–68. DOI: 10.1007/s11572-023-09653-z.
Nathan, Christopher. 2022. *The Ethics of Undercover Policing*. London: Routledge. DOI: 10.4324/9780429293443.
Neocleous, Mark. 2021. *A Critical Theory of Police Power: The Fabrication of Social Order*. London: Verso.
Parkinson, John. 2006. *Deliberating in the Real World: Problems of Legitimacy in Deliberative Democracy*. Oxford: Oxford University Press. DOI: 10.1093/019929111X.001.0001.
Parkinson, John, and Jane Mansbridge. Eds. 2012. *Deliberative Systems: Deliberative Democracy at the Large Scale*. Cambridge: Cambridge University Press. DOI: 10.1017/CBO9781139178914.
Pettit, Philip. 1997. *Republicanism: A Theory of Freedom and Government*. Oxford: Oxford University Press. DOI: 10.1093/0198296428.001.0001.
Pettit, Philip. 2001. *A Theory of Freedom: From the Psychology to the Politics of Agency*. Cambridge: Polity Press.
Pettit, Philip. 2012. *On the People's Terms: A Republican Theory and Model of Democracy*. Cambridge: Cambridge University Press. DOI: 10.1017/CBO9781139017428.
President's Task Force on 21st Century Policing. 2015. "Final Report of the President's Task Force on 21st Century Policing." Washington, DC: Office of Community Oriented Policing Services. https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.
Quattlebaum, Megan, Tracey Meares, and Tom Tyler. 2018. "Principles of Procedurally Just Policing." Justice Collaboratory Report, January. New Haven, CT: The Justice Collaboratory, Yale Law School. https://law.yale.edu/sites/default/files/area/center/justice/principles_of_procedurally_just_policing_report.pdf.
Ransby, Barbara. 2018. *Making All Black Lives Matter: Reimagining Freedom in the Twenty-First Century*. Oakland, CA: University of California Press. DOI: 10.2307/j.ctvq4c011.
Reichel, Philip L. 1988. "Southern Slave Patrols as a Transitional Police Type." *American Journal of Police* 7 (2): 51–78.

Reiner, Robert. 2012. *The Politics of the Police*, 4th edition. Oxford: Oxford University Press.
Schneider, Cathy Lisa. 2014. *Police Power and Race Riots: Urban Unrest in Paris and New York*. Philadelphia: University of Pennsylvania Press. DOI: 10.9783/9780812209860.
Schwartz, Joanna. 2023. *Shielded: How the Police Became Untouchable*. New York: Viking.
Shannon, Ian. 2021. *Chief Police Officers' Stories of Legitimacy: Power, Protection, Consent, and Control*. Basingstoke: Palgrave MacMillan. DOI: 10.1007/978-3-030-85879-7.
Sierra-Arévalo, Michael. 2021. "Reward and 'Real' Police Work." In *The Ethics of Policing: New Perspectives on Law Enforcement*, eds. Ben Jones and Eduardo Mendieta, 66–90. New York: New York University Press. DOI: 10.18574/nyu/9781479803729.003.0004.
Simmons, A. John. 1979. *Moral Principles and Political Obligations*. Princeton, NJ: Princeton University Press. DOI: 10.2307/j.ctvzxx97q.
Simonson, Jocelyn. 2016. "Copwatching." *California Law Review* 104 (2): 391–445.
Smith, Graham. 2009. *Democratic Innovations: Designing Institutions for Citizen Participation*. Cambridge: Cambridge University Press. DOI: 10.1017/CBO9780511609848.
Smith, William. 2018. "Policing, Protest, and Rights." *Public Affairs Quarterly* 32 (3): 185–204. DOI: 10.2307/26909993.
Steverson, Leonard A. 2007. *Policing in America: A Reference Handbook*. Santa Barbara, CA: ABC-CLIO.
Thacher, David. 2019. "The Limits of Procedural Justice." In *Police Innovation: Contrasting Perspectives*, 2nd edition, eds. David Weisburd and Anthony A. Braga, 95–118. Cambridge: Cambridge University Press. DOI: 10.1017/9781108278423.005.
Townsend, Mark. 2023. "Police County Lines Strategy 'Cruelly Targets' Black Youth in UK." *The Guardian*, November 19. https://www.theguardian.com/uk-news/2023/nov/19/police-county-lines-strategy-cruelly-targets-black-youth-in-uk.
UK Home Office. 2012. "Definition of Policing by Consent." FOI release, December 10. London: Home Office. https://www.gov.uk/government/publications/policing-by-consent/definition-of-policing-by-consent.
Vitale, Alex S. 2017. *The End of Policing*. London: Verso.
Waddington, P. A. J. 1999. *Policing Citizens: Police, Power and the State*. London: UCL Press.
Waltham Forest Council. 2023. "Citizens' Assembly 2024." London: Waltham Forest London Borough Council. https://www.walthamforest.gov.uk/neighbourhoods/crime-and-community-safety/community-safety/citizens-assembly-2024.
Websdale, Neil. 2001. *Policing the Poor: From Slave Plantation to Public Housing*. Boston: Northeastern University Press.