

CONSENT

Interdisciplinary Forum
30 Nov–2 Dec 2021

ABSTRACTS

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DAY 1

KEYNOTE ADDRESS

CONSENT: Layers of Meaning **Professor Clare Delany**

The idea of consent has many layers. Visible elements include information given by one person followed by voluntary agreement given by another person - who has capacity to understand the information and choices available. But beneath these formal elements of information exchange, are much richer layers of meaning about what it means to respect, empower and promote a person's autonomy and autonomous choices. This keynote address will discuss ethical meanings of autonomy and how these philosophical ideas can enrich our understanding and transform our practice of consent across many disciplinary fields and in our communication with others.

SESSION ONE: COVID-19

Spatial Injustice in the Pandemic City **Professor Alison Young**

Academic engagement with urban environments has burgeoned, including investigations into spatial justice and law's imagination of the city. Drawing on ethnographic exploration of lockdown in Melbourne, Victoria, I examine the impacts of governmental 'stay home' orders in a range of material localities during the State of Emergency in Victoria. These include: the domestic space of the home; the street as a space of everyday interaction as well as a space of protest; the spaces occupied by or allocated to those who engage in rough sleeping or who are without stable housing; and, finally, hotel rooms, used during the pandemic to house people experiencing homelessness, returned travellers in quarantine, and evacuated detainees. These struggles raise questions of spatial justice, a way of thinking about how we create material atmospheres in urban environments, and how those are experienced by citizens.

Surveillance Technologies: Considerations of Consent in COVID-19 **Gabby Bush and Dr Simon Coghlan**

Can you remember the first time you scanned a QR code and checked in? What did the app ask from you? In 2021, we find ourselves in a place in time where QR codes are mandatory for entry in most places we need or wish to go. In this new world of technological engagement, it is important to examine consent and the role it plays in the information we give to our public health officials. How do we understand consent for technologies? What degree of consent have we given to platforms that are tracing our movements throughout COVID19? And when the tracing is over, do we know where the data goes? The coronavirus pandemic gave rise to a sort of monitoring by the state that we were quite unaccustomed to. While many citizens were content with aspects of the tracing, many also had concerns about matters such as privacy, misuse of data, and surveillance creep. The issue of our consent plays a major role in understanding the issues raised by widespread tracing and monitoring.

The Willingly Unvaccinated: What Will Democracy Tolerate? **Dr Darrin Durant**

The cohort that has elected not to be vaccinated against Covid-19 in Australia are a small minority (under 10% eligible population). Forcible coercion is unethical. Nudging consent is pragmatically occurring but how to maximize nudging I leave to others. Instead, I ask what happens if we consider the minority status literally? What does liberal democracy owe to minorities? The liberal part of liberal democracy commits to protecting minorities (and democratic pluralism) via a regime of rights and independent institutions. If intolerance is the unwillingness to put up with disagreeable groups and ideas, is it illiberal to sanction the unvaccinated minority? No, bland indifference or bystander pluralism is not really tolerance. Nor does tolerance promise free passes to extreme speech or acts. Instead, intolerance is warranted if two conditions are satisfied: pragmatic reciprocity is lacking, and an intolerant response is proportionate. In each case we cannot avoid asking truth questions about vaccine efficacy and Covid-19, so truth as a value in liberal democracy rears its head, and we will have to face whether the anti-everything protest movement (umbrella group for anti-vaxx) is worth tolerating too. Hint: problems of 'celebrity interview' and naivety about mainstreaming the far-right shape tolerance of anti-vaxx.

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DAY 2

SESSION TWO: DECOLONISATION

Lawful relations: archive, agency, consent? **Associate Professor Ann Genovese and Dr Crystal McKinnon**

We are both members of a collaborative group of jurists and historians, working on a project called *Lawful Relations: From Encounter to Treaty*. As part of our research, we uncovered information about an 1889 journey of two Aboriginal men carrying a petition around the broader Warrnambool area. They were collecting signatures primarily from the non-Indigenous community to petition the then Prime Minister Alfred Deakin on behalf of Framlingham residents to prevent its closure. It appealed explicitly to the 'justice and humanity of their request', because, as the petition states, the Aboriginal people living at Framlingham were the 'original possessors of the soil.' The petition as material object was thought lost, but we have found it in the archives. Thinking with the

petition as a legal form, and as an historical artefact, we wish to complicate the terms of relationship between 'consent' and dispossession', and suggest that the story in the past, as well as the present, is never as straightforward as merely recognising that land was taken without authority. There are conducts of life and law, that occur between peoples in a place, that make the stories we tell ourselves ambivalent and mediated by temporal context. Our provocation is to remind that saying 'sovereignty was never ceded'; or the 'land was taken without consent' is only ever a gesture unless decolonisation is embodied and practiced; and we will bring our perspectives as jurist and historian to bear in the discussion.

Reframing the repatriated object: Uncovering new meaning from consented access to re(ma)triated knowledge sharing
Dr Vanessa Russ

In understanding the decolonial versus colonial frame, it becomes apparent that to decolonise a colony is impossible. The same goes for the idea of repatriated cultural material which started as a dismantling of the institutions that held ancestral remains of Indigenous peoples around the world; and which today represents a contested space between institutions and concepts of ownership. In this paper, I introduce a third perspective. Taken for the feminist work of people like Alison Bartlett and others, is the question of replacing the masculine idea of repatriation with the feminine idea of re(ma)triation - coinciding that one impacts on access by binding the object to different views of ownership, whilst the other seek to out, what in my experience, is the true objective of most Aboriginal people. That is, the reunification of cultural knowledge and practice to country and community. This paper is an initial attempt to reframe the conversation.

Decolonising the archive through the re(a)-performance of the blak body
r e a

In this presentation the artist, r e a - will discuss *CONSENT & Decolonisation* and contextualise its relationship to their engagement in a research-led creative practice. In addition, r e a will explore the immersive physical senses activated, whilst repetitively walking on country to decode colonial history. This process of *Decolonising the archive through the re(a)-performance of the blak body* and its relationship to: *Look Who's Calling the Kettle Black* series (1992) & *PolesApart* series (2009); further engages with a reclamation of sovereignty of the blak body from its current colonial construct and repositions the work specifically to the Country from which it has emerged - #AlwaysWas!

SESSION THREE: DATA AND THE CONSUMER

Consumer Consent: Assumptions, Agency and Enmeshment
Dr Michal Carrington

Consumer choice and consent are assumptions that underpin modern marketplaces—online and offline. In contemporary marketplaces, however, consumers are tightly enmeshed within socio-technological networks where agency and power is unequally distributed throughout the ecosystem. And these ecosystems—where predictive analytics curate specific content and offerings—can be addictive. Pinterest, for example, has been termed “digital crack for women” (Dvorak 2012). In modern digitally-enabled marketplaces, can we make assumptions of consumer free-will and choice? Is there wiggle-room for the consumer when their every move is analytically predicted? And, in whose interests are the invisible hands of the digitised market moving?

Informed? Consent: New Health Tech and Data Proliferation
Dr Megan Prictor

Informed consent has been a key principle in health care and research since the Nuremberg trials. There it was established that participation in medical experiments must be voluntary, and that people must be told about the benefits and risks before choosing whether to participate. Informed consent is embedded in international legal instruments such as the United Nations International Convention on Civil and Political Rights. Swathes of research over decades have examined how best to achieve truly 'informed' consent in health contexts. Yet if informed consent seemed difficult in healthcare of the 1950s and '60s, it may be even less achievable today. The rise of the empowered consumer has been paralleled by the proliferation of healthcare data collection, use and re-use in ways unforeseen and unforeseeable. New technologies can transform every aspect of our health into data, which itself is transformed, mined, bought and sold. How can informed consent 'keep up'? I will outline how new approaches such as dynamic and semi-autonomous consent aim to meet these challenges. I will question whether consent in healthcare can ever be strong enough to bear the burdens we place on it as a mechanism to protect us and our health data from misuse.

The Visibility Trap: Surveillance, Pedagogy, Consent
Dr Tyne Sumner

The word 'digital' is now categorically ubiquitous. Digital technology, digital strategy, digital humanities, digital ethics, digital pedagogy, digital, digital, digital. But has this unrestrained ubiquity done a certain amount of damage? Accelerated by the Covid-19 pandemic, the digital has also now become bound up in a range of paradoxes: facilitating and empowering access and equity while at the same time being used as a cover for increasingly invasive surveillance practices. This paradox has been especially acute in the context of pedagogy where urgent efforts to adopt new technologies for online education have exposed students and teachers to insidious forms of electronic monitoring, analysis, and control. What are the implications of this surveillant trend for consent? And what does it mean to resist surveillance in virtual learning environments? This short paper will think through some of these questions and speculate on others that may be soon to come.

CREATIVE PRESENTATION: User Aggrievance
Debris Facility Pty Ltd

Debris Facility (them/all) is a white settler, queer body corporate found-dead in 2015. As a corporate entity our activities utilise a parasite methodology which ensnares processes of neoliberal identity construction and industrial commodification. They produce wearable works, installations, text, design, performances and interventions which respond to specific contexts and co-workers. They extend their research and pedagogical work through contracts with Liquid Architecture and Victorian College of the Arts. They prolifically exhibit and produce works in local, national and international contexts, in galleries, performance spaces, publications and within (and without) industry. Their work is held in numerous private collections and landfill. They work 24/7 on the stolen lands of the Kulin Nation.

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DAY 3

SESSION FOUR: HUMAN/NON-HUMAN

Living and Dying in the Gallery: Animals as Art
Professor Emeritus Barbara Creed

Beuys' dead hare, Dion's live African finches, Greiner's living maggots/fly and Hirst's living and dying butterflies – what is the purpose of living, dead, and dying animals in the art gallery? In what sense are they art? What does 'consent' mean in this context? Do these works tell us anything at all about the nonhuman or only about the human? Artist Kate Clark creates human faces for taxidermied animal bodies while Patricia Piccinini creates hyperrealist sculptures of human/animal hybrids. Why do some artists work with actual animals while others create their own creatures? Why this interest in the close relationship between human and animal as we dig ourselves deeper into the Anthropocene? Or are we already post-Anthropocene? In the current turn to the material, and away from anthropocentrism, it is argued that nature has its own subjectivity and voice but the human species does not know how to listen. This talk will explore these issues from the perspective of both the human and nonhuman animals in order to raise questions about the role of art and ethics in human and animal lives.

“You are stealing their future in front of their very eyes!” (Greta Thunberg, COP24, Poland, Dec 2018): Climate Change, Inter-generational Justice and the Courts.

Professor Jacqueline Peel

As the most recent report of the Inter-governmental Panel on Climate Change [makes clear](#), climate change is affecting every inhabited region across the globe, poor and rich countries alike. But the most severe impacts from climate change, now and in the future, will fall on those who have contributed the least to the problem, and have the least capacity to shape responses, including First Nations peoples, youth and unborn generations. Leaders meeting at COP26 in Glasgow recognised this reality, with UK Prime Minister, Boris Johnson, [calling for ambitious action](#) lest 'a vast and unaccountable audience of posterity ... judge us with bitterness and with a resentment that eclipses any of the climate activists of today'. Those activists, including the leader of the [Fridays for Future](#) movement, Greta Thunberg, are not waiting for governments and business to act but are increasingly taking their future and that of generations to come into their own hands. Many youth and Indigenous groups are using the courts as a vehicle to push for inter-generational justice on climate change. This presentation discusses the climate impacts faced by the unconsenting and how they are seeking legal redress to reassert their right to a safer climate future.

Groundwater stories: Poetry's Ecocritical Subterrain

Associate Professor A. Frances Johnson

Groundwater connects to surface water but, with rare exceptions (e.g. A. B. Paterson and Henry Lawson), remains largely invisible in settler poetry as a representational entity. As scholar-writer Deborah Wardle has noted, even for experienced hydrogeologists, 'The mathematics may be definitive, the modelling processes exhaustive, but aquifers remain at another level imaginary, always out of sight' ('Beneath my feet' 12). This is not, and has never been, the case for First Nations peoples over many thousands of years. But Indigenous water knowledge and lore was, and still is, often hidden in plain sight as rampant commercial extraction of groundwater takes place without adequate federal and state/territory regulation and oversight.

While contemporary Australian poets generally concede that environmental writing must be 'more than a literary rhapsody about nice places' (Plumwood, 'Shadow places and the politics of dwelling' 139), groundwater remains conceptually and politically invisible for many. How, then, can contemporary poets evoke groundwater's liquid hidden imaginaries? I show how selected poems deploy inventive ecocritical language to map the ecological disfigurements of unchecked water mining. Thus, they bring to the surface groundwater's complex stories and invisible 'deep leads'.

SESSION FIVE | BODILY AUTONOMY

Achieving justice for Sexual Violence: Moving Beyond the Limits of Consent and Criminal Law Dr Bianca Fileborn

Sexual violence is a notoriously difficult harm to address through the criminal legal system. Despite decades of reforms, victim-survivors remain reluctant to report their experiences, conviction rates remain low, and those survivors who do progress through the system describe their experiences as largely traumatic. In short, the legal system functions as a site of harm and injustice for many victim-survivors. In this presentation, I consider why the criminal legal system continues to function in this manner, looking specifically at the definition, operation and limitations of consent as a defining feature of 'what counts' as sexual violence under a legal framework. I argue that we must move beyond narrow and individualistic conceptualisations of sexual consent to consider the structural, social, and cultural conditions shaping our sexual interactions. Moreover, consent as legally defined sets a low bar for what is expected of individuals participating in a sexual encounter. In closing, I consider some alternative avenues for preventing and responding to sexual violence that may better respond to survivors' justice needs.

Sexual harassment and Unwelcomeness – Legal Standard and Social Stereotypes Professor Beth Gaze

Recent events and research have reinforced the pervasiveness of sexual harassment in the workforce and other areas such as education. Sexual harassment law is now over 35 years old, and yet compliance remains a major challenge. Sexual harassment law does not rely on the concept of consent. Instead, harassment occurs where conduct is 'unwelcome.' Although establishing unwelcomeness was challenging in early cases before the law was well understood, courts generally now understand that targets of harassment should not be subjected to being sexualised at work or in education, so acceptable standards of behaviour are rarely controversial. However, the idea of unwelcomeness is contrary to common and persistent stereotypes about male and female sexuality and acceptable behaviours. These stereotypes see male sexuality as active and pursuing, and women's as passive, involving consent or refusal. Implicit gender stereotypes operate to police different behaviours seen as acceptable for men and women. Behaviours indicated by these stereotypes, combined with the devaluation of women's contributions at work, can facilitate a harassing environment.

Permission: Gender Nonconformity, Consent & Public Space Simona Castricum

Permission poses an interesting standpoint to interrogate the intersection of gender, public space, and consent as it relates to bodily autonomy and image. Consent and its relationship to permission is something I've come to understand more definitively through my lived experience of gender transition. Gender nonconformity in gendered spaces all present risks to trans and gender diverse people. Cisnormativity imposes strict rules around what gender is in public space, constructing an apparatus of policing, surveillance, and interrogation. From childhood we are all thrust into an assemblage of gender performativity.¹ For gender non-conforming people this can often occur against our individual will to suit the expectations of the gender binary—community, authority, administrative structures, and morality. I never consented to cisnormative external coercive influences. Instead, I freed myself from the gender binary when I granted myself permission to live authentically, rather than seek permission from a world that would rather I remain invisible and silent. I never consented to transphobia—the violence, ridicule or discrimination that results from

merely being trans in public space. Yet, I am marked by this cisnormative apparatus to receive it every day. The panopticon becomes Halberstam and Crawford's architectural manifestation of 'the transgender gaze', where surveillance and punishment become an inseparable consequence of gender variance.² Beyond permission, my transness, if only I could be someone to you, then who would I be?

^[1] Butler, J. (1990). *Gender Trouble: Feminism and the subversion of identity*. New York, NY: Routledge.

^[2] Halberstam, J. (2001). The transgender gaze in *Boys Don't Cry*. *Screen*, 42(3), 294-298.

CREATIVE PRESENTATION: Risk and Intimacy

Luke George

Luke George creates new choreographic and visual work that takes daring and at times, unorthodox methods, to explore new intimacies and connections between artist and audience. Luke's artistic practice is informed by queer politics, whereby people are neither singular nor isolated; bodies of difference can intersect, practice mutual listening, take responsibility for themselves and one another. He sees dance less as spectacle than as reflexive practice, in which people examine themselves and their values through movement and interaction. He is concerned with relational politics, examining the dynamics of intimacy and collectivity to create 'safe spaces' that allow for care as well as risk.

The Potter's annual interdisciplinary forum program series is co-presented with the Centre of Visual Art (CoVA) at the University of Melbourne.