

Charles Mills

Charles W. Mills earned his PhD in philosophy from the University of Toronto and is currently the John Evans Professor of Moral and Intellectual Philosophy at Northwestern University. He specializes in critical race theory, African-American philosophy, and social and political philosophy; within these areas, he works particularly on Marxist social theory and on issues pertaining to race, gender, and class. His first book, *The Racial Contract* (1997), won academic accolades for its groundbreaking critique of classical contractarian theory and mainstream political philosophy. In the past two decades, Mills has delivered over two hundred presentations and public addresses on race, class, and gender in philosophy. He is also author of *Blackness Visible: Essays on Philosophy and Race* (1998), *From Class to Race: Essays in White Marxism and Black Radicalism* (2003), *Contract and Domination* (with Carole Pateman, 2007), and *Radical Theory, Caribbean Reality: Race, Class and Social Domination* (2008).

In *The Racial Contract*, Mills offers both a model for understanding racial domination and a critical race analysis of social contract theorists from Hobbes to Kant. In the modern philosophical era, contractarian social and political philosophers have emphasized the values of equality, rights, and autonomy among all individuals at the same time that they implicitly or explicitly have excluded non-white peoples from moral and political personhood. The state of nature in classical contractarian theory, for example, is populated by non-white savages or 'idle Indians' who fail to demonstrate human industriousness and rationality in appropriating and transforming nature; the creation of a society from a state of savage wilderness and idle wasteland requires the intervention of white men. Mills argues further that although the terms of the social contract have now been formally extended to all peoples, the legacies of the racial contract remain largely ignored in contemporary mainstream political philosophy. In recent years, a minority of philosophers have begun to grapple seriously with racism, shifting away from abstract theories of justice towards developing anti-racist political-philosophical theory.

The Racial Contract

Introduction

White supremacy is the unnamed political system that has made the modern world what it is today. You will not find this term in introductory, or even advanced, texts in political theory. A standard undergraduate political philosophy course will start off with Plato and Aristotle, perhaps say something about Augustine, Aquinas, and Machiavelli, move on to Hobbes, Locke, Mill, and Marx, and then wind up with Rawls and Nozick. It will introduce you to notions of aristocracy, democracy, absolutism, liberalism, representative government, socialism, property-owning democracy, and libertarianism. But though it covers more than two thousand years of Western political thought and runs the ostensible gamut of political systems, there will be no mention of the basic political system that has shaped the world for the past several hundred years. And this omission is not accidental. Rather, it reflects the fact that standard textbooks and courses have for the most part been written and designed by whites, who take their racial privilege so much for granted that they do not even see it as *political*, as a form of domination. Ironically, the most important political system of recent global history—the system of domination by which white people have historically ruled over, and, in certain important ways, continue to rule over nonwhite people—is not seen as a political system at all. It is just taken for granted; it is the background against which other systems, which we *are* to see as political, are highlighted. This book is an attempt to redirect your vision, to make you see what, in a sense, has been there all along.

Philosophy has remained remarkably untouched by the debates over multiculturalism,

canon reform, and ethnic diversity wracking the academy; both demographically and conceptually, it is one of the 'whitest' of the humanities. Blacks, for example, constitute only about 1 per cent of philosophers in North American universities—a hundred or so people out of more than ten thousand—and there are even fewer Latino, Asian-American, and Native American philosophers.¹ Surely this under-representation itself stands in need of an explanation, and in my opinion it can be traced in part to a conceptual array and a standard repertoire of concerns whose abstractness typically elides, rather than genuinely includes, the experience of racial minorities. Since (white) women have the demographic advantage of numbers, there are of course far more female philosophers in the profession than nonwhite philosophers (though still not proportionate to women's percentage of the population), and they have made far greater progress in developing alternative conceptualizations. Those African-American philosophers who do work in moral and political theory tend either to produce general work indistinguishable from that of their white peers or to focus on local issues (affirmative action, the black 'underclass') or historical figures (W.E.B. DuBois, Alain Locke) in a way that does not aggressively engage the broader debate.

What is needed is a global theoretical framework for situating discussions of race and white racism, and thereby challenging the assumptions of white political philosophy, which would correspond to feminist theorists' articulation of the centrality of gender, patriarchy, and sexism to traditional moral and political theory. What is needed, in other words, is a recognition that racism (or, as I will

argue, global white supremacy) is itself a political system, a particular power structure of formal or informal rule, socio-economic privilege, and norms for the differential distribution of material wealth and opportunities, benefits and burdens, rights and duties. The notion of the Racial Contract is, I suggest, one possible way of making this connection with mainstream theory, since it uses the vocabulary and apparatus already developed for contractarianism to map this unacknowledged system.² Contract talk is, after all, the political lingua franca of our times.

We all understand the idea of a 'contract', an agreement between two or more people to do something. The 'social contract' just extends this idea. If we think of human beings as starting off in a 'state of nature', it suggests that they then *decide* to establish civil society and a government. What we have, then, is a theory that founds government on the popular consent of individuals taken as equals.³

But the peculiar contract to which I am referring, though based on the social contract tradition that has been central to Western political theory, is not a contract among everybody ('we the people') but among just the people who count, the people who really are people ('we the white people'). So it is a Racial Contract.

The social contract, whether in its original or in its contemporary version, constitutes a powerful set of lenses for looking at society and the government. But in its obfuscation of the ugly realities of group power and domination, it is, if unsupplemented, a profoundly misleading account of the way the modern world actually is and came to be. The 'Racial Contract' as a theory—I use quotation marks to indicate when I am talking about the theory of the Racial Contract, as against the Racial Contract itself—will explain that the Racial Contract is real, and that apparent racism

of the terms of the social contract in fact uphold the terms of the Racial Contract.

The 'Racial Contract', then, is intended as a conceptual bridge between two areas now largely segregated from each other: on the one hand, the world of mainstream (i.e., white) ethics and political philosophy, preoccupied with discussions of justice and right in the (idealized) abstract, on the other hand, the world of Native American, African-American, and Third and Fourth World⁴ political thought, historically focused on issues of conquest, imperialism, colonialism, white settlement, land rights, race and racism, slavery, Jim Crow, reparations, apartheid, cultural authenticity, national identity, *indigenismo*, Afrocentrism, etc. These issues hardly appear in mainstream political philosophy,⁵ but they have been central to the political struggles of the majority of the world's population. Their absence from what is considered serious philosophy is a reflection not of their lack of seriousness but of the colour of the vast majority of Western academic philosophers (and perhaps *their* lack of seriousness).

The great virtue of traditional social contract theory was that it provided seemingly straightforward answers both to factual questions about the origins and workings of society and government and to normative questions about the justification of socio-economic structures and political institutions. Moreover, the 'contract' was very versatile, depending on how different theorists viewed the state of nature, human motivation, the rights and liberties people gave up or retained, the particular details of the agreement, and the resulting character of the government. In the modern Rawlsian version of the contract, this flexibility continues to be illustrated, since Rawls dispenses with the historical claims of classic contractarianism, and focuses instead on the justification of the basic structure of a 'well-ordered' society.⁶

From its 1650–1800 heyday as a grand quasi-anthropological account of the origins and development of society and the state, the contract has now become just a normative tool, a conceptual device to elicit our intuitions about justice.

But my usage is different. The 'Racial Contract' I employ is in a sense more in keeping with the spirit of the classic contractarians—Hobbes, Locke, and Rousseau.⁷ I use it not merely normatively, to generate judgments about social justice and injustice, but descriptively, to explain the actual genesis of the society and the state, the way society is structured, the way the government functions, and people's moral psychology.⁸ The most famous case in which the contract is used to explain a manifestly non-ideal society, what would be termed in current philosophical jargon a 'naturalized' account, is Rousseau's *Discourse on Inequality* (1755). Rousseau argues that technological development in the state of nature brings into existence a nascent society of growing divisions in wealth between rich and poor, which are then consolidated and made permanent by a deceitful 'social contract'.⁹ Whereas the ideal contract explains how a just society would be formed, ruled by a moral government, and regulated by a defensible moral code, this non-ideal/naturalized contract explains how an unjust, exploitative society, ruled by an oppressive government, and regulated by an immoral code, comes into existence. If the ideal contract is to be endorsed and emulated, this non-ideal/naturalized contract is to be demystified and condemned. So the point of analysing the non-ideal contract is not to ratify it, but to use it to explain and expose the inequities of the actual non-ideal polity and to help us to see through the theories and moral justifications offered in defence of them. It gives us a kind

of X-ray vision into the real internal logic of the socio-political system. Thus it does normative work for us not through its own values, which are detestable, but by enabling us to understand the polity's actual history and how these values and concepts have functioned to rationalize oppression, so as to reform them.

Carole Pateman's provocative 1988 feminist work, *The Sexual Contract*, is a good example of this approach (and the inspiration for my own book, though my use is somewhat different), which demonstrates how much descriptive/explanatory life there still is in the contract.¹⁰ Pateman uses it naturalistically, as a way of modelling the internal dynamic of the non-ideal male-dominated societies that actually exist today. So this is, as indicated, a revision to the original 'anthropological' approach in which the contract is intended to be historically explanatory. But the twist is, of course, that her purpose is now subversive: to excavate the hidden, unjust male covenant upon which the ostensibly gender-neutral social contract actually rests. By looking at Western society and its prevailing political and moral ideologies as if they were based on an unacknowledged 'Sexual Contract', Pateman offers a 'conjectural history' that reveals and exposes the normative logic that makes sense of the inconsistencies, circumlocutions, and evasions of the classic contract theorists and, correspondingly, the world of patriarchal domination their work has helped to rationalize.

My aim here is to adopt a non-ideal contract as a rhetorical trope and theoretical method for understanding the inner logic of racial domination and how it structures the polities of the West and elsewhere. The ideal 'social contract' has been a central concept of Western political theory for understanding and evaluating the social world. And concepts

are crucial to cognition: cognitive scientists point out that they help us to categorize, learn, remember, infer, explain, problem-solve, generalize, analogize.¹¹ Correspondingly, the lack of appropriate concepts can hinder learning, interfere with memory, block inferences, obstruct explanation, and perpetuate problems. I am suggesting, then, that as a central concept the notion of a Racial Contract might be more revealing of the real character of the world we are living in, and the corresponding historical deficiencies of its normative theories and practices, than the raceless notions currently dominant in political theory.¹² Both at the primary level of an alternative conceptualization of the facts, and at the secondary (reflexive) level of a critical analysis of the orthodox theories themselves, the 'Racial Contract' enables us to engage with mainstream Western political theory to bring in race. Insofar as contractarianism is thought of as a useful way to do political philosophy, to theorize about how the polity was created and what values should guide our prescriptions for making it more just, it is obviously crucial to understand what the original and continuing 'contract' actually was and is, so that we can correct for it in constructing the ideal 'contract'. The 'Racial Contract' should therefore be enthusiastically welcomed by white contract theorists as well.

So this book can be thought of as resting on three simple claims: the existential claim—white supremacy, both local and global, exists and has existed for many years; the conceptual claim—white supremacy should be thought of as itself a political system; the methodological claim—as a political system, white supremacy can illuminatingly be theorized as being based on a 'contract' among whites, a Racial Contract.

Here, then, are ten theses on the Racial Contract, divided into three chapters.

Chapter 1

Overview

I will start with an overview of the Racial Contract, highlighting its differences from, as well as its similarities to, the classical and contemporary social contract. The Racial Contract is political, moral, and epistemological; the Racial Contract is real; and economically, in determining who gets what, the Racial Contract is an exploitation contract.

Thesis #1: The Racial Contract is political, moral, and epistemological.

The 'social contract' is actually several contracts in one. Contemporary contractarians usually distinguish, to begin with, between the political contract and the moral contract, before going on to make (subsidiary) distinctions within both. I contend, however, that the orthodox social contract also tacitly presupposes an 'epistemological' contract, and that for the Racial Contract it is crucial to make this explicit.

The political contract is an account of the origins of government and our political obligations to it. The subsidiary distinction sometimes made in the political contract is between the contract to establish society (thereby taking 'natural', pre-social individuals out of the state of nature and reconstructing and constituting them as members of a collective body), and the contract to establish the state (thereby transferring outright or delegating in a relationship of trust the rights and powers we have in the state of nature to a sovereign governing entity).¹³ The moral contract, on the other hand, is the foundation of the moral code established for the society, by which the citizens are supposed to regulate their behaviour. The subsidiary distinction here is between

two interpretations (to be discussed) of the relationship between the moral contract and state-of-nature morality. In modern versions of the contract, most notably Rawls's of course, the political contract largely vanishes, modern anthropology having long superseded the naive social origin histories of the classic contractarians. The focus is then almost exclusively on the moral contract. This is not conceived of as an actual historical event that took place on leaving the state of nature. Rather, the state of nature survives only in the attenuated form of what Rawls calls the 'original position', and the 'contract' is a purely hypothetical exercise (a thought experiment) in establishing what a just 'basic structure' would be, with a schedule of rights, duties, and liberties that shapes citizens' moral psychology, conceptions of the right, notions of self-respect, etc.¹⁴

Now the Racial Contract—and the 'Racial Contract' as a theory, that is, the distanced, critical examination of the Racial Contract—follows the classical model in being both socio-political and moral. It explains how society was created or crucially transformed, how the individuals in that society were reconstituted, how the state was established, and how a particular moral code and a certain moral psychology were brought into existence. (As I have emphasized, the 'Racial Contract' seeks to account for the way things are and how they came to be that way—the descriptive—as well as the way they should be—the normative—since indeed one of its complaints about white political philosophy is precisely its otherworldliness, its ignoring of basic political realities.) But the Racial Contract, as we will see, is also epistemological, prescribing norms for cognition to which its signatories must adhere. A preliminary characterization would run something like this:

The Racial Contract is that set of formal or informal agreements or meta-agreements (higher-level contracts *about* contracts, which set the limits of the contracts' validity) among the members of one subset of humans, henceforth designated by (shifting) 'racial' (phenotypical/genealogical/cultural) criteria $W_1, W_2, W_3 \dots$ as 'white', and coextensive (making due allowance for gender differentiation) with the class of full persons, to categorize the remaining subset of humans as 'nonwhite', and of a different and inferior moral status, subpersons, so that they have a subordinate civil standing in the white or white-ruled polities the whites either already inhabit or establish or in transactions as aliens with these polities, and the moral and juridical rules normally regulating the behaviour of whites in their dealing with one another either do not apply at all in dealings with nonwhites or apply only in a qualified form (depending in part on changing historical circumstances and what particular variety of nonwhite is involved), but in any case the general purpose of the Contract is always the differential privileging of the whites as a group with respect to the nonwhites as a group, the exploitation of their bodies, land, and resources, and the denial of equal socioeconomic opportunities to them. All whites are *beneficiaries* of the Contract, though some whites are not *signatories* to it.¹⁵

It will be obvious, therefore, that the Racial Contract is not a contract to which the nonwhite subset of humans can be a genuinely consenting party (though, depending again on the circumstances, it may sometimes be politic to pretend that this is the case). Rather, it is a contract among those categorized as white *over* the nonwhites, who are thus the objects rather than the subjects of the agreement.

The logic of the classic social contract, political, moral, and epistemological, then under

goes a corresponding refraction, with shifts, accordingly, in the key terms and principles.

Politically, the contract to establish society and the government, thereby transforming abstract raceless 'men' from denizens of the state of nature into social creatures who are politically obligated to a neutral state, becomes the founding of a *racial polity*, whether white settler states (where pre-existing populations already are or can be made sparse) or what are sometimes called 'sojourner colonies', the establishment of a white presence and colonial rule over existing societies (which are somewhat more populous, or whose inhabitants are more resistant to being made sparse). In addition, the colonizing mother country is also changed by its relation to these new polities, so that its own citizens are altered.

In the social contract, the crucial human metamorphosis is from 'natural' man to 'civil/political' man, from the resident of the state of nature to the citizen of the created society. This change can be more or less extreme, depending on the theorist involved. For Rousseau it is a dramatic transformation, by which animal-like creatures of appetite and instinct become citizens bound by justice and self-prescribed laws. For Hobbes it is a somewhat more laid-back affair by which people who look out primarily for themselves learn to constrain their self-interest for their own good.¹⁶ But in all cases the original 'state of nature' supposedly indicates the condition of *all* men, and the social metamorphosis affects them all in the same way.

In the Racial Contract, by contrast, the crucial metamorphosis is the preliminary conceptual partitioning and corresponding transformation of human populations into 'white' and 'nonwhite' men. The role played by the 'state of nature' then becomes radically different. In the white settler state, its role is not

primarily to demarcate the (temporarily) pre-political state of 'all' men, but rather the permanently pre-political state, or, perhaps better, *non-political* state (insofar as 'pre-' suggests eventual internal movement toward), of non-white men. The establishment of society thus implies the denial that a society already existed; the creation of society *requires* the intervention of white men, who are thereby positioned as *already* socio-political beings. White men who are (definitionally) already part of society encounter nonwhites who are not, who are 'savage' residents of a state of nature characterized in terms of wildness, jungle, wasteland. These savages the white men bring partially into society as subordinate citizens or exclude on reservations or deny the existence of or exterminate. In the colonial case, admittedly pre-existing but (for one reason or another) deficient societies (decadent, stagnant, corrupt) are taken over and run for the 'benefit' of the nonwhite natives, who are deemed childlike, incapable of self-rule and handling their own affairs, and thus appropriately wards of the state. Here the natives are usually characterized as 'barbarians' rather than 'savages', their state of nature being somewhat farther away (though not, of course, as remote and lost in the past—if it ever existed in the first place—as the Europeans' state of nature). But in times of crisis the conceptual distance between the two, barbarian and savage, will tend to shrink or collapse, for this technical distinction within the nonwhite population is vastly less important than the *central* distinction between whites and nonwhites.

In both cases, then, though in different ways, the Racial Contract establishes a racial polity, a racial state, and a racial juridical system, where the status of whites and nonwhites is clearly demarcated, whether by law or custom. And the purpose of this state, by contrast

with the neutral state of classic contractarianism, is, *inter alia*, specifically to maintain and reproduce this racial order, securing the privileges and advantages of the full white citizens and maintaining the subordination of non-whites. Correspondingly, the 'consent' expected of the white citizens is in part conceptualized as a consent, whether explicit or tacit, to the racial order, to white supremacy, what could be called Whiteness. To the extent that those phenotypically/genealogically/culturally categorized as white fail to live up to the civic and political responsibilities of Whiteness, they are in dereliction of their duties as citizens. From the inception, then, race is in no way an 'afterthought', a 'deviation' from ostensibly raceless Western ideals, but rather a central shaping constituent of those ideals. . . .

Chapter 2

Details

Thesis #6: The Racial Contract underwrites the modern social contract and is continually being rewritten.

Radical feminists argue that the oppression of women is the oldest oppression. Racial oppression is much more recent. Whereas relations between the sexes necessarily go back to the origin of the species, an intimate and central relationship between Europe as a collective entity and non-Europe, 'white and nonwhite' races, is a phenomenon of the *modern* epoch. There is ongoing scholarly controversy over the existence and extent of racism in antiquity ('racism' as a complex of ideas, that is, as against a developed politico-economic system), with some writers, such as Frank Snowden, finding a period 'before color prejudice', in which blacks are obviously seen as equals, and others claiming that Greek and Roman bigotry

against blacks was there from the beginning.¹⁷ But obviously, whatever the disagreement on this point, it would have to be agreed that the ideology of modern racism is far more theoretically developed than ancient or medieval prejudices and is linked (whatever one's view, idealist or materialist, of causal priority) to a system of European domination.

Nevertheless, this divergence does imply that different accounts of the Racial Contract are possible. The account I favour conceives the Racial Contract as creating not merely racial exploitation, but *race itself* as a group identity. In a contemporary vocabulary, the Racial Contract 'constructs' race. (For other accounts, for example more essentialist ones, racial self-identification would *precede* the drawing up of the Racial Contract.) 'White' people do not pre-exist but are brought into existence as 'whites' by the Racial Contract—hence the peculiar transformation of the human population that accompanies this contract. The white race is *invented*, and one becomes 'white by law'.¹⁸

In this framework, then, the golden age of contract theory (1650 to 1800) overlapped with the growth of a European capitalism whose development was stimulated by the voyages of exploration that increasingly gave the contract a *racial* subtext. The evolution of the modern version of the contract, characterized by an anti-patriarchalist Enlightenment liberalism, with its proclamation of the equal rights, autonomy, and freedom of all men, thus took place simultaneously with the massacre, expropriation, and subjection to hereditary slavery of men at least apparently human. This contradiction needs to be reconciled; it is reconciled through the Racial Contract, which essentially denies their personhood, and restricts the terms of the egalitarian social contract to whites. 'To invade and dispossess the people of an unoffending civilized country

would violate morality and transgress the principles of international law,' writes Francis Jennings, 'but savages were exceptional. Being uncivilized by definition, they were outside the sanctions of both morality and law.'¹⁹ The *Racial Contract* thus becomes the truth of the social contract.

There is some direct evidence of this link in the writings of the classic contract theorists themselves. That is, it is not merely a matter of hypothetical intellectual reconstruction on my part, arguing from silence that 'men' must have meant 'white men'. Already Hugo Grotius, whose early seventeenth-century work on natural law provided the crucial theoretical background for later contractarians, gives, as Robert Williams has pointed out, the ominous judgment that for 'barbarians', 'wild beasts rather than men, one may rightly say . . . that the most just war is against savage beasts, the next against men who are like beasts.'²⁰ But let us just focus on the four most important contract theorists: Hobbes, Locke, Rousseau, and Kant.²¹

Consider, to begin with, Hobbes's notoriously bestial state of nature, a state of war where life is 'nasty, brutish, and short'. On a superficial reading, it might seem that it is non-racial, equally applicable to everybody, but note what he says when considering the objection that 'there was never such a time, nor condition of warre as this.' He replies: 'I believe it was never generally so, over all the world; but there are many places, where they live so now,' his example being 'the savage people in many places of America.'²² So a non-white people, indeed the very nonwhite people upon whose land his fellow-Europeans were then encroaching—and with whom Hobbes was involved through the Virginia Company—is his only real-life example of people in a state of nature. (And in fact, Richard Ashcraft has pointed out that the

phrasing and terminology of Hobbes's characterization may well have been derived directly from the writings of contemporaries about settlement in the Americas. The 'explorer' Walter Raleigh described a civil war as 'a state of War, which is the meer state of Nature of Men out of community, where all have an equal right to all things.' And two other authors of the time characterized the inhabitants of the Americas as 'people [who] lived like wild beasts, without religion, nor government, nor town, nor houses, without cultivating the land, nor clothing their bodies' and 'people living yet as the first men, without letters, without lawes, without Kings, without common wealthes, without arts . . . not civil by nature.'²³

In the next paragraph, Hobbes goes on to argue that 'though there had never been any time, wherein particular men were in a condition of warre one against another,' there is 'in all times' a state of 'continuall jealousies' between kings and persons of sovereign authority. He presumably emphasizes this contention in order for the reader to imagine what would happen in the absence of a 'common Power to feare'.²⁴ But the text is confusing. How could it simultaneously be the case that 'there had never been' any such literal state-of-nature war, when in the previous paragraph he had just said that some people were living like that now? As a result of this ambiguity, Hobbes has been characterized as a literal contractarian by some commentators and as a hypothetical contractarian by others. But I think this minor mystery can be cleared up once we recognize that there is a tacit, incipiently racial logic in the text: the *literal* state of nature is reserved for a nonwhite people; for whites the state of nature is *hypothetical*. The conflict between whites is the conflict between those with *sovereigns*, that is, those who are already (and have always been) in society. From this conflict, one can extrapolate (gesturing at the

racial abyss, so to speak) to what might happen in the absence of a ruling sovereign. But really we know that whites are too rational to allow this to happen to *them*. So the most notorious state of nature in the contractarian literature—the bestial war of all against all—is really a nonwhite figure, a racial object lesson for the more rational whites, whose superior grasp of natural law (here in its prudential rather than altruistic version) will enable them to take the necessary steps to avoid it and not to behave as ‘savages’.

Hobbes has standardly been seen as an awkwardly transitional writer, caught between feudal absolutism and the rise of parliamentarianism, who uses the contract now classically associated with the emergence of liberalism to defend absolutism. But it might be argued that he is transitional in another way, in that in mid-seventeenth-century Britain the imperial project was not yet so fully developed that the intellectual apparatus of racial subordination had been completely elaborated. Hobbes remains enough of a racial egalitarian that, while singling out Native Americans for his real-life example, he suggests that without a sovereign *even Europeans* could descend to their state, and that the absolutist government appropriate for nonwhites could also be appropriate for whites.²⁵ The uproar that greeted his work can be seen as attributable at least in part to this moral/political suggestion. The spread of colonialism would consolidate an intellectual world in which this bestial state of nature would be reserved for nonwhite savages, to be despotically governed, while civil Europeans would enjoy the benefits of liberal parliamentarianism. *The Racial Contract* began to rewrite the social contract.

One can see this transition more clearly by the time of Locke, whose state of nature is normatively regulated by traditional (altruistic,

non-prudential) natural law. It is a moralized state of nature in which private property and money exist, indeed a state of nature that is virtually civil. Whites can thus be literally in this state of nature (for a brief period, anyway) without its calling into question their innate qualities. Locke famously argues that God gave the world ‘to the use of the Industrious and Rational,’ which qualities were indicated by labour. So while industrious and rational Englishmen were toiling away at home, in America, by contrast, one found ‘wild woods and uncultivated wast[e] . . . left to Nature’ by the idle Indians.²⁶ Though whites share the state of nature for a time with nonwhites, then, their residence is necessarily briefer, since whites, by appropriating and adding value to this natural world, exhibit their superior rationality. So the mode of appropriation of Native Americans is no real mode of appropriation at all, yielding property rights that can be readily overridden (if they exist at all), and thereby rendering their territories normatively open for seizure once those who have long since left the state of nature (Europeans) encounter them. Locke’s thesis was in fact to be the central pillar of the expropriation contract—the principal philosophical delineation of the normative arguments supporting white civilization’s conquest of America,’ writes Williams²⁷—and not merely in the United States but later in the other white settler states in Africa and the Pacific. Aboriginal economies did not improve the land and thus could be regarded as non-existent.

The practice, and arguably also the theory, of Locke played a role in the slavery contract also. In the *Second Treatise*, Locke defends slavery resulting from a just war, for example, a defensive war against aggression. But this would hardly be an accurate characterization of European raiding parties seeking African slaves, and in any case, in the same chapter

Locke explicitly opposes hereditary slavery and the enslavement of wives and children.²⁸ Yet Locke had earlier had investments in the slave-trading Royal African Company, and assisted in writing the slave constitution of Carolina. So one could argue that the Racial Contract manifests itself here in an astonishing inconsistency, which could, however, be simply resolved by the supposition that Locke saw blacks as inferior humans and thus as subject to a different set of normative rules.²⁹

Rousseau's writings might seem to be something of an exception. After all, it is with his work that the notion of the 'noble savage' is associated (though the phrase is not actually his own). And in the *Discourse on Inequality's* reconstruction of the origins of society, everybody is envisaged as having been in the state of nature (and thus to have been 'savage') at one time or another. But a careful reading of the text reveals, once again, crucial racial distinctions. The only natural savages cited are nonwhite savages, examples of European savages being restricted to reports of feral children raised by wolves and bears, child-rearing practices (we are told) comparable to those of Hottentots and Caribs.³⁰ (Europeans are so intrinsically civilized that it takes upbringing by animals to turn *them* into savages.) For Europe, savagery is in the dim distant past, since metallurgy and agriculture are the inventions leading to civilization, and it turns out that 'one of the best reasons why Europe, if not the earliest to be civilized, has been at least more continuously and better civilized than other parts of the world, is perhaps that it is at once the richest in iron and the most fertile in wheat.' By contrast: 'Both metallurgy and agriculture were unknown to the savages of America, who have always therefore remained savages.'³¹ So even what might initially seem to be a more open environmental determinism, which would open the door to racial

egalitarianism rather than racial hierarchy, degenerates into massive historical amnesia and factual misrepresentation, driven by the presuppositions of the Racial Contract.

Moreover, to make the obvious point, even if some of Rousseau's nonwhite savages are 'noble', physically and psychologically healthier than the Europeans of the degraded and corrupt society produced by the real-life bogus contract, they are still *savages*. Leaving the state of nature, as Rousseau argues in *The Social Contract*, his later account of an ideal polity, is necessary for us to become fully human moral agents, beings capable of justice.³² So the praise for nonwhite savages is a limited paternalistic praise, in no way to be taken to imply their equality, let alone superiority, to the civilized Europeans of the ideal polity. The underlying racial dichotomization and hierarchy of civilized and savage remains quite clear.

Textual silence also speaks loudly. In his critique of the darkneses of the French Enlightenment, political theorist Louis Sala-Molins points out the evasions in *The Social Contract's* supposedly principled condemnation of all slavery: 'Rousseau, who resolutely condemned classical slavery, did not notice that the slave trade and the ordeal of Negroes in the Caribbean raised a philosophical problem. . . . I challenge anyone to find and show me the smallest little line where Rousseau condemns the kidnapping of Africans and their enslavement in the Antilles. It does not exist.' The indictment of ancient Greek and Roman slavery was one thing; the indictment of the contemporary enslavement of Africans was apparently another. Indeed the most famous contemporary codification and juridification of slavery was to be found precisely in the French *Code Noir*. Yet, as Sala-Molins emphasizes, the startling fact is that Rousseau never mentions it in his writing, focusing exclusively

instead on the slavery of the ancient world: 'The Greek or Roman slave can serve as a term of comparison. . . . The Negro slave, the Negro, naturally a slave, does not fit the criteria of the comparable.'³³ In Susan Buck-Morss's summary: '[Rousseau] declared all men equal and saw private property as the source of inequality, but he never put two and two together to discuss French slavery for economic profit as central to arguments of both equality and property.'³⁴ So which 'men' was he really talking about?

Finally, Kant's version of the social contract is in a sense the best illustration of the grip of the Racial Contract on Europeans, since by this time the actual contract and the historical dimension of contractarianism had apparently vanished altogether. So here if anywhere, one would think—in this world of abstract persons, demarcated as such only by their rationality—race would have become irrelevant. But as Emmanuel Eze has demonstrated in great detail, this orthodox picture is radically misleading, and the nature of Kantian 'persons' and the Kantian 'contract' must really be rethought.³⁵ For it turns out that Kant, widely regarded as the most important moral theorist of the modern period, in a sense the father of modern moral theory, and—through the work of John Rawls and Jürgen Habermas—increasingly central to modern political philosophy as well, is also the father of the modern concept of race.³⁶ His 1775 essay 'The Different Races of Mankind' ('*Von den Verschiedenen Rassen der Menschen*') is a classic pro-hereditarian, anti-environmentalist statement of 'the immutability and permanence of race'. For him, comments George Mosse, 'racial make-up becomes an unchanging substance and the foundation of all physical appearance and human development, including intelligence.'³⁷ The famous modern theorist of personhood is also the foundational modern theorist of sub-

personhood, though this distinction is, in what the suspicious might almost think a conspiracy to conceal embarrassing truths, far less well known.

As Eze points out, Kant taught anthropology and physical geography for 40 years, and his philosophical work really has to be read in conjunction with these lectures to understand how racialized his views on moral character were. His notorious comment in *Observations on the Feeling of the Beautiful and Sublime* is well-known to, and often cited by, black intellectuals: 'So fundamental is the difference between [the black and white] races of man . . . it appears to be as great in regard to mental capacities as in color' so that 'a clear proof that what [a Negro] said was stupid' was that 'this fellow was quite black from head to foot.'³⁸ The point of Eze's essay is that this remark is by no means isolated or a casual throwaway line that, though of course regrettable, has no broader implications. Rather, it comes out of a developed theory of race and corresponding intellectual ability and limitation. It only *seems* casual, unembedded in a larger theory, because white academic philosophy as an institution has had no interest in researching, pursuing the implications of, and making known to the world this dimension of Kant's work.

In fact, Kant demarcates and theorizes a colour-coded racial hierarchy of Europeans, Asians, Africans, and Native Americans, differentiated by their degree of innate *talent*. Eze explains: "Talent" is that which, by "nature," guarantees for the "white," in Kant's racial rational and moral order, the highest position above all creatures, followed by the "yellow," the "black," and then the "red." Skin color for Kant is evidence of superior, inferior, or no "gift" of "talent," or the capacity to realize reason and rational-moral perfectibility through education. . . . It cannot, therefore, be argued

that skin color for Kant was merely a physical characteristic. It is, rather, evidence of an unchanging and unchangeable moral quality.' Europeans, to no one's surprise I presume, have all the necessary talents to be morally self-educating; there is some hope for Asians, though they lack the ability to develop abstract concepts; the innately idle Africans can at least be educated as servants and slaves through the instruction of a split-bamboo cane (Kant gives some useful advice on how to beat Negroes efficiently); while the wretched Native Americans are just hopeless, and cannot be educated at all. So, in complete opposition to the image of his work that has come down to us and is standardly taught in introductory ethics courses, full personhood for Kant is actually dependent upon race. In Eze's summary, 'The black person, for example, can accordingly be denied full humanity since full and "true" humanity accrues only to the white European.'³⁹

The recent furore about Paul de Man⁴⁰ and, decades earlier, Martin Heidegger, for their complicity with the Nazis, thus needs to be put into perspective. These are essentially bit players, minor leaguers. One needs to distinguish theory from actual practice, of course, and I'm not saying that Kant would have endorsed genocide. *But the embarrassing fact for the white West (which doubtless explains its concealment) is that their most important moral theorist of the past three hundred years is also the foundational theorist in the modern period of the division between Herrenvolk and Untermenschen, persons and sub-persons, upon which Nazi theory would later draw.* Modern moral theory and modern racial theory have the same father.

The Racial Contract, therefore, underwrites the social contract, is a visible or hidden operator that restricts and modifies the scope of its prescriptions. But since there is both synchronic and diachronic variation, there are many different versions or local instantiations

of the Racial Contract, and they evolve over time, so that the effective force of the (nominal) social contract itself changes, and the kind of cognitive dissonance between the two alters. (This change has implications for the moral psychology of the white signatories and their characteristic patterns of insight and blindness.) The social contract is (in its original historical version) a specific discrete event that founds society, even if (through, e.g., Lockean theories of tacit consent) subsequent generations continue to ratify it on an ongoing basis. By contrast the Racial Contract is *continually being rewritten* to create different forms of the racial polity.

A global periodization, a timeline overview of the evolution of the Racial Contract, would highlight first of all the crucial division between the time before and the time after the institutionalization of global white supremacy. (Thus Janet Abu-Lughod's book about the thirteenth-century/fourteenth-century medieval world-system is titled *Before European Hegemony*.)⁴¹ The time after would then be further subdivided into the period of formal, juridical white supremacy (the epoch of the European conquest, African slavery, and European colonialism, overt white racial self-identification, and the largely undisputed hegemony of racist theories) and the present period of *de facto* white supremacy, when whites' dominance is, for the most part, no longer constitutionally and juridically enshrined but rather a matter of social, political, cultural, and economic privilege based on the legacy of the conquest.

In the first period, the period of *de jure* white supremacy, the Racial Contract was explicit, the characteristic instantiations—the expropriation contract, the slave contract, the colonial contract—making it clear that whites were the privileged race and the egalitarian social contract applied only to them. (Cognitively, then, this period had the great virtue of

social transparency: white supremacy was openly proclaimed. One didn't have to look for a subtext, because it was there in the text itself.) In the second period, on the other hand, the Racial Contract *has written itself out of formal existence*. The scope of the terms in the social contract has been formally extended to apply to everyone, so that 'persons' is no longer co-extensive with 'whites'. What characterizes this period (which is, of course, the present) is tension between continuing *de facto* white privilege and this *formal* extension of rights. The Racial Contract continues to manifest itself, of course, in unofficial local agreements of various kinds (restrictive covenants, employment discrimination contracts, political decisions about resource allocation, etc.). But even apart from these, a crucial manifestation is simply *the failure to ask certain questions*, taking for granted as a status quo and baseline the existing colour-coded configurations of wealth, poverty, property, and opportunities, the pretence that formal, juridical equality is sufficient to remedy inequities created on a foundation of several hundred years of racial privilege, and that challenging that foundation is a transgression of the terms of the social contract. (Though actually—in a sense—it is, insofar as the Racial Contract is the real meaning of the social contract.)

Globally, the Racial Contract effects a final paradoxical norming and racing of space, a writing out of the polity of certain spaces as conceptually and historically irrelevant to European and Euro-world development, so that these raced spaces are categorized as disjoined from the path of civilization (i.e., the European project). Fredric Jameson writes: 'Colonialism means that a significant structural segment of the economic system as a whole is now located elsewhere, beyond the metropolis, outside of the daily life and existential experience of the home country. . . . Such

spatial disjunction has as its immediate consequence the inability to grasp the way the system functions as a whole.'⁴² By the social contract's decision to remain in the space of the European nation-state, the connection between the development of this space's industry, culture, civilization and the material and cultural contributions of Afro-Asia and the Americas is denied, so it seems as if this space and its denizens are peculiarly rational and industrious, differentially endowed with qualities that have enabled them to dominate the world. One then speaks of the 'European miracle' in a way that conceives this once marginal region as *sui generis*, conceptually severing it from the web of spatial connections that made its development possible. *This* space actually comes to have the character it does because of the pumping exploitative causality established between it and those *other* conceptually invisible spaces. But by remaining within the boundaries of the European space of the abstract contract, it is valorized as unique, inimitable, autonomous. Other parts of the world then disappear from the white contractarian history, subsumed under the general category of risible non-European space, the 'Third World', where for reasons of local folly and geographical blight the inspiring model of the self-sufficient white social contract cannot be followed.

Nationally, within these racial polities, the Racial Contract manifests itself in white resistance to anything more than the *formal* extension of the terms of the abstract social contract (and often to that also). Whereas before it was denied that nonwhites *were* equal persons, it is now pretended that nonwhites *are* equal abstract persons who can be fully included in the polity merely by extending the scope of the moral operator, without any fundamental change in the arrangements that have resulted from the previous system of explicit *de jure*

racial privilege. Sometimes the new forms taken by the Racial Contract are transparently exploitative, for example the 'Jim Crow' contract, whose claim of 'separate but equal' was patently ludicrous. But others—the job discrimination contract, the restrictive covenant—are harder to prove. Employment agencies use subterfuges of various kinds: 'In 1990, for example, two former employees of one of New York City's largest employment agencies divulged that discrimination was routinely practiced against black applicants, though concealed behind a number of code words. Clients who did not want to hire blacks would indicate their preference for applicants who were "All American." For its part the agency would signal that an applicant was black by reversing the initials of the placement counselor.⁴³ Similarly, a study of how 'American apartheid' is maintained points out that whereas in the past realtors would have simply refused to sell to blacks, now blacks 'are met by a realtor with a smiling face who, through a series of ruses, lies, and deceptions, makes it hard for them to learn about, inspect, rent, or purchase homes in white neighborhoods. . . . Because the discrimination is latent, however, it is usually unobservable, even to the person experiencing it. One never knows for sure.'⁴⁴ Nonwhites will then find that race is, paradoxically, both everywhere and nowhere, structuring their lives but not formally recognized in political/moral theory. But in a racially structured polity, the only people who can find it psychologically possible to deny the centrality of race are those who are racially privileged, for whom race is invisible precisely because the world is structured around them, whiteness as the ground against which the figures of other races—those who, unlike us, are raced—appear. The fish does not see the water, and whites do not see the racial nature of a white polity because it is natural to them,

the element in which they move. As Toni Morrison points out, there are contexts in which claiming racelessness is itself a racial act.⁴⁵

Contemporary debates between nonwhites and whites about the centrality or peripherality of race can thus be seen as attempts respectively to point out, and deny, the existence of the Racial Contract that underpins the social contract. The frustrating problem nonwhites have always had, and continue to have, with mainstream political theory is not with abstraction *itself* (after all, the 'Racial Contract' is itself an abstraction) but with an *idealizing* abstraction that abstracts away from the crucial realities of the racial polity.⁴⁶ The shift to the hypothetical, ideal contract encourages and facilitates this abstraction since the eminently non-ideal features of the real world are not part of the apparatus. There is then, in a sense, no conceptual point-of-entry to start talking about the fundamental way in which (as all nonwhites know) race structures one's life and affects one's life-chances.

The black law professor Patricia Williams complains about an ostensible neutrality that is really 'racism in drag', a system of 'racism as status quo' which is 'deep, angry, eradicated from view' but that continues to make people 'avoid the phantom as they did the substance,' 'defer[ring] to the unseen shape of things.'⁴⁷ The black philosophy professor Bill Lawson comments on the deficiencies of the conceptual apparatus of traditional liberalism, which has no room for the peculiar post-Emancipation status of blacks, simultaneously citizens and non-citizens.⁴⁸ The black philosopher of law Anita Allen remarks on the irony of standard American philosophy of law texts, which describe a universe in which 'all humans are paradigm rightsholders' and see no need to point out that the actual US record is somewhat different.⁴⁹ The retreat of mainstream normative moral and political theory into an

'ideal' theory that ignores race merely rescripts the Racial Contract as the invisible writing between the lines. So John Rawls, an American working in the late twentieth century, writes a book on justice widely credited with reviving postwar political philosophy in which not a single reference to American slavery and its legacy can be found, and Robert Nozick creates a theory of justice in holdings predicated on legitimate acquisition and transfer without more than two or three sentences acknowledging the utter divergence of US history from this ideal.⁵⁰

The silence of mainstream moral and political philosophy on issues of race is a sign of the continuing power of the Contract over its signatories, an illusory colour blindness that actually entrenches white privilege. A genuine transcendence of its terms would require, as a preliminary, the acknowledgement of its past and present existence and the social, political, economic, psychological, and moral implications it has had both for its contractors and its victims. By treating the present as a somehow neutral baseline, with its given configuration of wealth, property, social standing, and psychological willingness to sacrifice, the idealized social contract renders permanent the legacy of the Racial Contract. The ever-deepening abyss between the First World and the Third World, where millions—largely non-white—die of starvation each year and many more hundreds of millions—also largely non-white—live in wretched poverty, is seen as unfortunate (calling, certainly, for the occasional charitable contribution) but unrelated to the history of trans-continental and intra-continental racial exploitation.

Finally, the Racial Contract evolves not merely by altering the relations between whites and nonwhites but by shifting the criteria for who counts as white and nonwhite. (So it is not merely that relations between the

respective populations change but that the population boundaries themselves change also.) Thus—at least in my preferred account of the Racial Contract (again, other accounts are possible)—race is debiologized, making explicit its political foundation. In a sense, the *Racial Contract* constructs its signatories as much as they construct it. The overall trend is toward a limited expansion of the privileged human population through the 'whitening' of the previously excluded group in question, though there may be local reversals.

Notes

1. A 1994 report on American philosophy, 'Status and Future of the Profession,' revealed that 'only one department in 20 (28 of the 456 departments reporting) has any [tenure-track] African-American faculty, with slightly fewer having either Hispanic-American or Asian-American [tenure-track] faculty (17 departments in both cases). A mere seven departments have any [tenure-track] Native American faculty.' *Proceedings and Addresses of the American Philosophical Association* 70, no. 2 (1996): 137.
2. 'Contractarianism' is sometimes used in a more limited way to denote just the Hobbesian version of the contract, as against the Kantian version, which is then called 'contractualism'; see, for example, Stephen Darwall, ed., *Contractarianism/Contractualism* (Malden, MA: Blackwell, 2003). So to avoid confusion, I should just stipulate at the start that I will use *contractarianism* generally throughout to refer to social contract theory of all kinds.
3. For an overview, see, for example, Ernest Barker, *Introduction to Social Contract: Essays by Locke, Hume, and Rousseau*, ed. Barker (1947; reprint, Oxford: Oxford University Press, 1960); Michael Lessnoff, *Social Contract* (Atlantic Highlands, NJ: Humanities Press, 1986); Will Kymlicka, 'The Social Contract Tradition,' in *A Companion to*

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Ethics, ed. Peter Singer (Cambridge, MA: Black-
well Reference, 1991), 186–96; Jean Hampton,
'Contract and Consent,' in *A Companion to*
Contemporary Political Philosophy, ed. Robert E.
Goodin and Philip Pettit (Cambridge, MA:
Blackwell Reference, 1993), 379–93; David
Boucher and Paul Kelly, 'The Social Contract
and Its Critics: An Overview,' in *The Social*
Contract from Hobbes to Rawls, ed. David Boucher
and Paul Kelly (New York: Routledge, 1994), 1–
34; Darwall, *Contractarianism/Contractualism*.

4. Indigenous peoples as a global group are
sometimes referred to as the 'Fourth World'. See
Roger Moody, ed., *The Indigenous Voice: Visions*
and Realities, 2nd edn, rev. (Utrecht: International
Books, 1993); orig. edn 1988.

5. For a praiseworthy exception, see Iris Marion
Young, *Justice and the Politics of Difference*
(Princeton, NJ: Princeton University Press,
1990). Young focuses explicitly on the impli-
cations for standard conceptions of justice of
group subordination, including racial groups.

6. Credit for the revival of social contract theory,
and indeed postwar political philosophy in
general, is usually attributed to John Rawls, *A*
Theory of Justice, rev. edn (Cambridge, MA:
Harvard University Press, 1999); orig. edn 1971.

7. Thomas Hobbes, *Leviathan*, ed. Richard Tuck,
rev. student edn (New York: Cambridge Uni-
versity Press, 1996); John Locke, *Two Treatises of*
Government, ed. Peter Laslett, student edn (New
York: Cambridge University Press, 1988); Jean-
Jacques Rousseau, *Discourse on the Origins and*
Foundations of Inequality among Men, trans.
Maurice Cranston (New York: Penguin, 1984);
Jean-Jacques Rousseau, *The Social Contract*, trans.
Maurice Cranston (New York: Penguin, 1968).
Immanuel Kant is of course also a classic
contract theorist, but for him the contract is no
more than 'an idea of reason'. See 'On the
Common Saying: "This May Be True in Theory,
but It Does Not Apply in Practice,"' in Kant,
Political Writings, ed. Hans Reiss, 2nd edn (New

York: Cambridge University Press, 1991), 79;
orig. edn 1970.

8. In 'Contract and Consent,' 382, Jean Hampton
reminds us that for the classic theorists,
contract is intended 'simultaneously to describe
the nature of political societies, and to prescribe
a new and more defensible form for such
societies.' In this essay, and also in 'The Con-
tractarian Explanation of the State,' in *The*
Philosophy of the Human Sciences, Midwest
Studies in Philosophy, 15, ed. Peter A. French,
Theodore E. Uehling, Jr, and Howard K.
Wettstein (Notre Dame, IN: University of Notre
Dame Press, 1990), 344–71, she argues explic-
itly for a revival of the old-fashioned, seemingly
discredited 'contractarian explanation of the
state'. Hampton points out that the imagery of
'contract' captures the essential point that
'authoritative political societies are human
creations' (not divinely ordained or naturally
determined) and 'conventionally generated'. New
(2007) postscript: I am utilizing this sense of
'explanation', which, it should be noted—a
point on which I have been misunderstood by
many critics—is not 'explanation' in the social-
scientific sense, but (as should have been clear
from the comparison with Rousseau) in the
more abstract philosophical sense appropriate
to social contract discourse.

9. Rousseau, *Discourse on Inequality*, pt 2.
10. Carole Pateman, *The Sexual Contract* (Stanford,
CA: Stanford University Press, 1988). Pateman
is generally dubious about all varieties of con-
tract theory, but her specific critical focus in her
book is really on what she calls 'contractar-
ianism', by which she means Hobbesian/
libertarian contract theory. See our exchange in
chapter 1 of Carole Pateman and Charles W.
Mills, *Contract and Domination* (Malden, MA:
Polity Press, 2007). For me, it is not the case
that a Racial Contract had to underpin the social
contract, since I see this contract as a result
of the particular conjunction of contingent cir-