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DIALOGUE: *THE RACIAL CONTRACT TODAY*

The Racial Contract revisited: still unbroken after all these years

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In this reply to my four (very friendly) critics, I take the opportunity to clarify some points about how I meant the “racial contract” as a theoretical intervention to be understood, and to offer some suggestions about how the idea could be further developed. I begin with some familiar distressing points about the slowness or actual reversal of racial progress in recent years. I then argue that (a) this depressing reality vindicates a structural analysis of race (race as “white supremacy”) that (b) can be captured in a revised version of the social contract metaphor (the “domination contract”), which would then provide (c) a superior normative framework for challenging the whiteness of Rawlsian social justice theory, as part of (d) a general rethinking of liberalism and contractarianism to address social subordination in nominally liberal Western societies, especially (e) if intersectional concerns are incorporated into the apparatus.

Keywords: the racial contract; white supremacy; Rawlsianism; liberalism; critical race theory; intersectionality

Introduction

I want to begin by thanking my four discussants – Desmond Jagsmohan, Keisha Lindsay, Anna Marie Smith, and Jack “Chip” Turner – for their very detailed, thorough, and complimentary engagement with my work. The “final trimester” of one’s academic career is naturally a time for soul-searching and reflection on how much one has actually accomplished, and how one’s intellectual progeny are going to turn out. So it is reassuring to receive such positive assessments from one’s (somewhat younger) peers. I also want to express my gratitude to Anna Marie Smith in particular for taking the initiative to organize, first, the 2013 American Political Science Association (APSA) conference panel, “Revisiting ‘The Racial Contract,’” from which the original versions of two of these papers (Jagsmohan’s and Turner’s) came, and, second (along with Jagsmohan), this discussion in the pages of *Politics, Groups, and Identities*. I am indebted to all of you, as well as the journal editors, especially Ange-Marie Hancock, for providing this opportunity to talk about the book. It is an unfortunate manifestation of the realities of my home discipline, philosophy, that the reception of my work on race and white supremacy has often been more enthusiastic outside the profession than within it. Indeed, for some purists it is questionable whether I am really doing philosophy at all, and this symposium (for any who read it) will doubtless only reinforce their skepticism. How – you might wonder – could social justice as a central philosophical theme have taken such a strange turn as to make mainstream Rawlsians’ *exclusion*

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of race and racial justice seem natural to them rather than bizarre? That is one of the paradoxes of the way the philosophical literature has developed that I will be trying to explain in this reply.

This essay is being written in 2014, and the three-year period of preceding, current, and forthcoming years – 2013 for the original APSA panel, 2014 as I am writing now, and 2015 when I presume the discussion will actually appear – is full of various important civil rights anniversaries. Last year, 2013, was of course the 50th anniversary of the March on Washington and the 150th anniversary of the Emancipation Proclamation; the current year is the 60th anniversary of the *Brown vs. Board of Education* decision and the 50th anniversary of the Civil Rights Act; and next year (as I write), 2015, will be the 50th anniversary of the Voting Rights Act and a century and a half since the end of the Civil War. But whatever celebrations were or will be organized to commemorate these important dates, the mood should really have been, or be, melancholic rather than celebratory. For the depressing reality is not how little has changed – since obviously some things have changed a great deal, including the first African American Presidency – but how much *would still have to change* for genuine racial equality to be realized in the US. The metric should not be how far we have come from slavery and Jim Crow (a very low bar), but how far we still are from what should not be the excessively demanding norm of equal race-irrelevant citizenship in a modern Western liberal democracy. I began my 2013 APSA panel presentation by quoting a then-recent *New York Times* column from Blow (2013, A19) referencing the March on Washington, and it is certainly worth quoting again:

[W]e have hit a ceiling of sorts. As we get closer to a society where explicit bias is virtually eradicated, we no longer have the stomach to deal with the more sinister issues of implicit biases and of structural and systematic racial inequality. ... And I worry that there is a distinct and ever-more-vocal weariness – and in some cases, outright hostility – about the continued focus on racial equality. ... In this moment, blacks and whites see the racial progress so differently that it feels as if we are living in two separate Americas. ... In fact, a 2011 study by researchers at Tufts University and Harvard Business School found, “Whites believe that they have replaced blacks as the primary victims of racial discrimination in contemporary America.”

What was true then is unfortunately no less true now (though the claim of the “virtual eradication” of explicit bias is obviously far too sanguine). Blow’s column was accompanied by a valuable table illustrating the huge white/black racial gap in perceptions of the extent of unequal racial treatment in various social settings, and the combination of static or worsening racial conditions together with a radically bifurcated racial awareness of them is as striking as ever. The 60th anniversary of *Brown* has been marked by the continuing resegregation in education that Smith’s (2015) article so devastatingly documents, while the strategic weakening of the Voting Rights Act by the 2013 Supreme Court *Shelby* decision vividly instantiates the pattern of racial progress and retreat under white supremacy mapped by Jagmohan (2015). In effect, a century and a half after the end of the Civil War, black Americans are still fighting for the consistent implementation of the 14th and 15th Amendments. What I described in 1997 as the racial contract is very much alive and well,¹ while the “epistemology of ignorance” that now safeguards it is as active as ever, from the white men and women in the street who are convinced that they are the real victims of racial oppression to the Supreme Court Chief Justice who can see no moral or conceptual difference between drawing racial distinctions for the purposes of racial subordination and drawing racial distinctions for the purposes of remedying that subordination.

Race as structural domination (“white supremacy”)

Given my analysis in the book and in my subsequent writings, none of this is, unfortunately, that surprising to me. Since I first started working systematically on race as a philosopher some 20

years ago, I have argued that *white supremacy* rather than *white racism* should be our primary focus. If the term seems too polemical, then substitute, say, structural white domination. But whatever the preferred phrasing, it is this reality that the “racial contract” as a critical concept was intended to highlight, and to introduce as a subject of discussion into the political philosophy and political theory of the period. To cite Turner’s (2015) list of some of my crucial claims in the book, I see white supremacy as systematic (not anomalous deviations from an egalitarian norm generally realized), international (the Euro-creation of a transnational white polity), enduring (not dissolved with postwar decolonization and civil rights victories), political (a variety of group rule unnamed in our textbooks), and differentially benefiting “whites.” And as my book title indicates, of course, I am also claiming that this political system can illuminatingly be viewed as resting on a white “contract.” Jagmohan’s (2015) detailed reconstruction of the ways in which US antebellum slavery and postbellum Jim Crow can be conceptualized as founded on white political will and consent provides a welcome vindication of this claim, at least for the US. Race is not an “anomaly” but a key constituent of the architecture of the polity, hence the rationale for a fundamental modification of social contract theory. If in the mainstream racially obscurantist narrative the social contract among everybody brings the raceless liberal-democratic polity into existence,² the racially informed narrative needs to insist that in actuality the white racial contract brings the non-liberal-democratic white-supremacist polity into existence.

So framing the issue as structural white domination (as against individual “racism”) is what makes this matter “political,” an appropriate investigative subject for political theorists and political philosophers. As someone whose intellectual formation as an adult was in the left tradition, for which the concept of “class society” is central, and who was also influenced by feminist theory’s use of “patriarchy” (adopted and modified from male usage), I naturally found very congenial the idea of conceptualizing racial domination similarly, as a system. Like “class society” and “patriarchy,” then, “white supremacy” is supposed to be referring to a system of group domination, in this case racial domination, which we are to see *as* political. Just as Marxists and feminists would say that different governments can come and go, different political parties can arrive in office or exit office, while these systems endure, so I would claim that white domination should be viewed as a political system in itself whose dismantling will require far more than a black man entering the White House – especially if that black man was only permitted to enter on condition precisely that he *not* raise certain questions and *not* introduce public policy to threaten certain long-established arrangements.

Moreover, the focus on structural dynamics is even more clearly justified as it becomes increasingly evident that white domination can become largely detached from prejudicial ideas and beliefs. White racism is certainly crucial in the installation of this system in the first place, and in originally justifying and rationalizing it. But structural white domination and corresponding systemic illicit white advantage may be maintained and reproduced even with the considerable diminution of racism. As a general principle holding valid for all kinds of entities, including social systems, reproductive causation must not be assumed to be the same as generative causation. The system may be perpetuated by mechanisms significantly different from those which brought it into existence.

Several recent books have underlined this point. For example, Roithmayr’s (2014) *Reproducing Racism: How Everyday Choices Lock in White Advantage* argues that differential white advantage is now “locked in place” by positive institutional feedback loops that have little to do with “racist” choices. Rather, processes and networks have been established by which a “white racial cartel” can continue to reproduce its unfair racial advantage without racist motivation being necessary. Similarly, DiTomaso’s (2012) *The American Non-Dilemma: Racial Inequality Without Racism* suggests, as stated in its subtitle, that preferential white treatment of

their co-racials in exclusionary social networks (“favoritism”) rather than invidious racist treatment of racial outsiders (“discrimination”) constitutes the primary mechanism for perpetuating racial inequality, while Sharkey’s (2012) *Stuck in Place: Urban Neighborhoods and the End of Progress Toward Racial Equality* identifies the “inherited ghetto,” neighborhoods characterized by concentrated and intergenerationally transmitted poverty, as the problem.

Insofar as the respective authors place explanatory priority on one variable rather than its competitors, the basic theses of these books may be in conflict with one another. But in many cases their claims may well be complementary, collectively painting a picture of a white domination reproduced by processes to a significant degree independent of individual racism, which nonetheless consolidate very effectively conditions of unfair ongoing advantage and disadvantage at the system’s different racial poles. The leverage for eventual change hopefully attributed to Gunnar Myrdal’s “American dilemma” (the putative inconsistency between black racial subordination and a supposedly nonracial American liberalism) – misconceived and empirically unsupported even in the time of Jim Crow – will thus become even more attenuated at a time when, in majoritarian white consciousness, “racism” has largely vanished except for that directed against *them*. As DiTomaso puts it: a non-dilemma.

Awareness of this broader social-structural context will also have implications for the reeducation of our moral consciousness and moral sensibility: a moral epistemology sensitized to structural domination as well as the right- and wrong-making characteristics of discrete actions now needs to be developed. As moral agents we will need to work out what duty requires in such a transformed landscape, given that certain kinds of wrongness will not present themselves as such. Smith (2015) draws our attention to a particularly poignant case: school choice. What motivation could be more morally innocent, or more morally commendable, than wanting the best for one’s children? Yet as a white parent faced with such alternatives, the decision to go for the best school by standard metrics will generally mean choosing the “white” school, a choice which – when multiplied – will only perpetuate a segregated school system. Smith points out how under-theorized my discussion in the book is of individual white responsibility vis-à-vis the structures of white domination, and the unfairness of requiring white parents to sacrifice their children’s future given the unlikelihood of “simultaneous mass defection from the ‘Racial Contract.’”

I plead guilty; I was just getting into these issues at the time and (especially in a short book) my comments there were gestural rather than systematically thought out. Far more work in ethics has been produced since then about our moral responsibilities under oppressive social systems. A more recent piece of mine (Mills 2011) in a symposium on the South African philosopher Samantha Vice’s pessimistic assessment of the possibility of white South Africans being able to lead virtuous lives is a better example of my current position. There (following Cudd [2006]) I develop a sympathetic critique of Vice that calls for a white resistance that is substantive but does not – for whites to attain “virtue” – require of them the supererogatory.

So the hypothesis that we should see race in structural terms has arguably long since been vindicated, not only by works such as these but also by many others over recent decades. But one could agree with this claim while still being dubious about my recourse to a “contract” to capture these institutional processes. What, if anything, does this add?

The value of the contract metaphor

Here my home discipline must be recalled. The strategic rationale for adapting and modifying contractarianism in the way I am suggesting is justified, I would contend, by its centrality to philosophy as a metaphor for sociopolitical creation, and in addition a metaphor sufficiently striking and memorable to have resonated across many other disciplines. Classic social

contract theory (1650–1800: Hobbes to Kant) is making pronouncements about society and the polity as a whole. Similarly, Rawls's (1999, 6) updated version directs us to center our theoretical attention on society's "basic structure," "the major social institutions," "the political constitution and the principal economic and social arrangements." While the "contract" is clearly false as a literal account, it can be regarded as a powerful and evocative figure for expressing two basic truths, one descriptive and one normative: that society is a human construct (not an organic growth, or a supernatural creation) and that human beings have an equality in the pre-social state of nature that should be preserved in the sociopolitical institutions they create once they leave it.³

If these truths now seem quite banal and obvious to us, it is because they are among the founding axioms of modernity – they were once quite revolutionary indeed. And in fact, I would claim that their revolutionary potential has still not been exhausted, especially once we add to the two basic truths captured by mainstream contract theory a third which is not: that society and the polity are *not* constructed by equi-powerful individuals acting consensually but by social groups acting to establish and maintain their privilege, and that the societies thereby "created" (in an ongoing rather than *ab initio* sense) systemically *breach* the norm of equal treatment. So contractarianism's putatively holistic picture of sociopolitical reality is flawed because of its occlusion of social domination. Insofar as the mainstream contract obfuscates this crucial reality, it misrepresents the way things are, and blocks the development of the contract idea's radical egalitarian potential. As Turner (2015, 473) puts it, where race is concerned we need to add "the axiom of the power of white supremacy in modernity."

The contract as descriptive

Let us begin with the descriptive aspect of the "contract." Hampton (2007, 481) is one of the few contemporary political theorists to emphasize that – albeit in an iconographic sense – the descriptive side of the contract still merits discussion, despite its inaccuracy as history or anthropology:

I will argue that social contract theorists have intended simultaneously to describe the nature of political societies, and to prescribe a new and more defensible form for such societies. The contractarians' descriptive project will strike present-day theorists as obvious and unremarkable, yet in its day it was both controversial and highly important. ... The contractarians' term of "social contract" is misleading insofar as it suggests that people either tacitly or explicitly exchange promises with one another to create or support certain governmental structures. We do no such thing. ... Certain institutions, practices and rules become conventionally entrenched (in a variety of ways) in a social system, and in so far as the people continue to support them, these conventions continue to prevail, and thus comprise the political and legal system in the country.

The point is, then, that in this attenuated sense the "contract" still signifies, descriptively, one important holistic truth about the sociopolitical. But as just argued, it misses another important holistic truth: the power relations among the "people" involved and how these relations undermine supposedly consensual and inclusive "support." Moreover, this failure at the *descriptive* level has repercussions for the success of the *prescriptive* project, since we are then going to be normatively misoriented by the assumption of an intersubjectively recognized moral and political egalitarianism that does not actually obtain.

So the solution, I would claim, is to rethink the contract as a "domination contract" (Pateman and Mills 2007, chap. 3). My inspiration here is Rousseau's (1997, 111–188) *Discourse on the Origin of Inequality*, an iconoclastic and subversive exposé of the contract as a scam, a conspiracy among the wealthy. In effect, Rousseau suggests, we should see the actual contract as a class contract:

[T]he rich, under the pressure of necessity, at last conceived the most well-considered project ever to enter the human mind. . . . “Let us institute rules of Justice and peace to which all are obliged to conform, which favor no one. . . .” All ran toward their chains in the belief that they were securing their freedom. . . . Such was, or must have been, the origin of Society and of Laws, which gave the weak new fetters and the rich new forces. . . . , irreversibly destroyed natural freedom, forever fixed the Law of property and inequality, transformed a skillful usurpation into an irrevocable right, and for the profit of a few ambitious men henceforth subjugated the whole of Mankind to labor, servitude and misery. (Rousseau 1997, 172–173)

The “domination contract” is an attempt to generalize this insight formally. The key idea – very schematic in Rousseau, far more elaborated in Pateman’s (1988) “sexual contract,” and extrapolated to race in my own work – is that the contract figure needs to be fundamentally modified. The orthodox contract as a metaphor presupposes consensuality and good faith among the contractors, thereby profoundly misleading us; the domination contract registers the centrality of manipulation and subordination, thereby providing us with a far more accurate picture. Rousseau’s (white male) poor and working class do at least achieve nominal equality with capitalist modernity, even if Marxists would insist it is undercut by market compulsions. But for gender and race it is different. White women and people of color were not even seen as equals. So if white men become “persons” (albeit differentially economically positioned), white women and people of color do not even attain that status and are more accurately seen as “sub-persons.” As Turner (2015) underlines, I see the “problematization” of personhood as crucial to the revisionist rethinking of the contract, since the assumption that reciprocally recognizing “persons” constitute the vast majority of the polity’s adult population is itself one of the most fundamental misrepresentations conveyed by the apparatus as it stands. We need to formally acknowledge subpersonhood as a category within liberal thought, one that makes sense of what are currently framed as “inconsistencies” and “anomalies” in the tradition’s history (Pitts 2005; Losurdo 2011). And since white women and people of color did not voluntarily consent to the creation of the sociopolitical systems, the “basic structures” (patriarchy and white supremacy), that oppress them, and cannot attain substantive normative equality until these systems are eliminated, a “contract” device that acknowledges these realities will be far more useful in their struggle to achieve socially recognized personhood than a “contract” that ignores them.

So it is not, at least for me – Pateman (1988) is less sanguine about the retrievability of the apparatus⁴ – a matter of rejecting the contract figure as an illuminating way of encapsulating the truths of human equality and the human construction of the sociopolitical, but of *complicating* it so as to register the history of the exclusion of the majority of the population from the promise of liberal modernity. The contract can still do useful theoretical work for us if suitably modified to redress this failure to take the additional step of recognizing the reality of sociopolitical domination.

To the extent that the idea of a contract is found useful outside of social and political philosophy, then (sociology, political science, gender studies, African American, ethnic studies, etc.) it is through the general abstract guidance provided by thinking of society and the polity as the product of consent on the one hand or as the product of domination on the other. The domination contract in general, or the “racial contract” in particular, is not, of course, meant to serve as a self-sufficient aprioristic device that enables one to *dispense* with social-science research. Rather, as illustrated above by Smith’s (2015) and Jagmohan’s (2015) work on, respectively, educational disadvantage and political exclusion, it is supposed to be functioning as a useful construct that, in a dialectical back and forth between different levels, both illuminates the concrete and gives specificity to the abstract. Both of their essays make clear how much more valuable the idea of a domination contract, a racial contract, is for making sense of US history than a consensual racially inclusive contract.

So this difference is not at all minor, but a fundamental one, producing starkly varying theoretical orientations for research agendas. We would expect radically divergent findings to follow from their competing sociopolitical perspectives on such topics as hegemonic moral codes, juridical norms, opportunity structures, the functioning of the state, and so forth. Through operationalizations appropriate to the social sciences, the abstractions of the contract metaphor can be brought down to earth and tested against the sociohistorical and sociopolitical realities. Indeed, the success of *The Racial Contract* as a text widely assigned by progressives in courses in many disciplines across the US over the last 17 years (update to Turner's figures: more than 34,000 copies sold at the time of writing) surely rests in part on its effectiveness in condensing within a straightforward, readily graspable narrative a history sharply at variance with that conventionally taught in high school and many university courses. So even if one is skeptical about the usefulness of the contract concept as a normative device for theorizing rectificatory justice, as Jagmohan (2015) is, I am sure he would agree – as illustrated in his own essay – that it has had considerable value simply as a demystificatory descriptive device for dramatizing the central and far-reaching impact of white supremacy on the making of the US and the modern world.

The contract as normative

But let me turn now to the specifically normative use of the contract idea, Hampton's "prescription of] a new and more defensible form for such societies," and try to make a case, notwithstanding Jagmohan's dubiousness, for its potential here also. Rawls says we should think of the contract as a "device of representation" for normative theory. But the normative theory he means is the theory of distributive justice for a perfect "well-ordered" society, a society which is "a cooperative venture for mutual advantage" whose rules are designed for everyone's reciprocal benefit and in which people generally follow the rules (Rawls 1999, 4). Clearly real-life societies, such as white-supremacist societies, are quite deviant from such an ideal. Rather than being cooperative ventures for mutual advantage, they are coercive and exploitative ventures whose rules are designed to benefit a subset of the population (in this case, whites) rather than the population as a whole. Let us call these coercive and exploitative societies "ill-ordered" societies. So the question then is: will the principles of justice for ill-ordered societies be the same as the principles of justice for well-ordered societies?

The answer would obviously seem to be no: ill-ordered societies will need principles of corrective justice to dismantle structures of group domination, which by definition do not exist in well-ordered societies. Rawls's defenders will, of course, insist that such principles can nonetheless be derived from the principles of distributive justice of ideal societies. But are they correct in this claim? I suggest that a perfectly just, well-ordered society will be so remote from our actual societies, so different in its makeup, that deep metaphysical, epistemological, and moral divergences will fatally handicap the attempt to extrapolate ideal principles of justice to nonideal societies like our own.

To begin with, the social ontology will be different. If, as critical philosophers of race claim, "races" are social constructs produced by discriminatory practices (Taylor 2013), it follows that they would not even exist in an ideal, well-ordered, nondiscriminatory society. So how are you going to be able to develop a theorization adequate for understanding the dynamics of, and the strategies for reforming, a white-supremacist polity when your theoretical starting point is a polity where races (whites and people of color) are not even social existents?

Secondly, and relatedly, the epistemology necessary for discerning oppression will be handicapped because of the lack of exposure to the intricacies and subtleties of *de facto* group domination. From the vantage point of a well-ordered society, crude *de jure* oppression may be easy to spot. But think how much work feminist theorists and critical race theorists have had to do in

recent decades to make manifest a gender and racial subordination that has gone underground, and which no longer overtly proclaim – indeed explicitly deny – their continuing existence. In her in-depth study of the various means by which continuing white educational advantage is maintained in a nominally post-racial epoch, Smith (2015, 519) points out the crucial role played by the ideology of “colorblindness:”

The US Supreme Court ... has also erected formidable barriers against race conscious voluntary policy-making and collective action that is intentionally designed to promote integrated schools. ... The cunning of the ideology that legitimates white race privilege has become ever more sophisticated since Mills published [*The Racial Contract*] in 1997. ... According to the colorblind perspective that is almost hegemonic in our basic structure institutions ... we are obliged to find [such reform initiatives] unconstitutional and morally suspect on the basis of the very same egalitarian critique that was previously launched by the civil rights movement against *de jure* racism. In both cases, the collective action addressing the problem of *de facto* racism was struck down as unconstitutional in the name of fairness and equality.

An “ideal theory” epistemically unprepared for tracking such juridical maneuvers will not only not be helpful, but also will be actively *harmful*, likely to endorse rather than condemn such putatively “colorblind” Supreme Court judgments.

Finally, no less an authority in the Western tradition than Aristotle (2000) distinguishes “distributive” from “rectificatory” justice, and insofar as Rawls locates himself in this tradition (Rawls 1999, 9–10), he too would have to be committed to differentiating them. Jagmohan (2015, 500) writes that for Rawls, “the principles of justice arrived at in the original position will race backward across time and wipe away all institutions and practices antithetical to justice, erasing their vestiges and thus guaranteeing that there would be no need for restitutive justice – distributive justice will have to do just fine.” But I disagree. Admittedly, Rawls’s ignoring of the issue of rectificatory/restitutive justice throughout the half-century of his professional life does leave the reader with the impression that distributive justice will be sufficient, and certainly later-generation Rawlsians have done little to correct this impression. But corrective justice is conceptually distinct from distributive justice. Insofar as Rawls (1999, 8), at the start of *Theory*, does formally differentiate “compensatory justice” from the kind of ideal-theory justice he is doing, and, in his final book, *Justice as Fairness* (Rawls 2001, 64–66), does locate race and gender under non-ideal theory, governed by different rules than the two principles of ideal justice, it is clear that he would have to be theoretically committed to treating them differently, even if he never specified how. The principles of justice necessary to correct the wrongs of ill-ordered societies will in crucial respects necessarily be quite different from the principles of justice for well-ordered societies. (Here I disagree with Tommie Shelby; see Mills [2013].) At the very least, the derivation of these principles – principles of transitional justice to take us from our ill-ordered racist society to Rawls’s well-ordered non-racist society – would require that ideal theory be put in some conceptual relationship, some bridged linkage, with nonideal theory. And that would mean that along with the theorization of a well-ordered society, we would need a parallel theorization of an ill-ordered society to make clear what needs to be corrected for. But nowhere in Rawls or in the vast secondary literature produced over forty years of commentary and elaboration on his work has such a theorization been developed.

The “whiteness” of Rawlsianism: Jim Crow justice theory

Moreover, it needs to be recalled that in the case of the US, we are dealing with the Western nation more thoroughly structured by white supremacy and corresponding racial injustice (not merely *de facto* but *de jure*) than any other. No other Western nation had large-scale plantation chattel

slavery on its soil in the modern period (Canada had small-scale slavery, largely domestic); no other Western nation (again, by comparison with Canada) was as ruthless in its treatment of its indigenous population. *The United States was built on racial injustice* – it is as simple as that. If you are serious about social justice, how can this not be a central concern for you? In addition, Rawls (1999, 8) himself tells us that ideal theory is only instrumental – “The reason for *beginning* [my emphasis] with ideal theory ...” – since its point is to establish a foundation for properly doing nonideal theory, and it is nonideal theory that deals with the really “pressing and urgent matters” of correcting injustice. Why then, over a period of more than forty years, have we not moved on from this beginning?

The nonphilosophers reading this journal, unexposed to the Arctic whiteness (pre-global warming anyway) of the profession (both demographic and conceptual), may think that I am exaggerating. I can assure them that I am not. Here is a simple manifestation of the utter marginality of racial justice to Rawls’s thought: nowhere in the 2000 pages of his 5 books does the phrase “affirmative action” – the most important postwar measure of racial justice in the US – even appear (Mills 2009). Yet this is, I remind the reader, the political philosopher standardly judged by his supporters to be the most important American theorist of justice (and maybe of the world) of the twentieth century. Nagel’s (2003) report on Rawls’s views in a brief article on Rawls and affirmative action is also noteworthy. Nagel tells us here that Rawls intimated to him that he did support affirmative action, and found it constitutional, but Nagel concedes that no direct reference to it can be found in Rawls’s writings. Instead, the textual record is so ambiguous that Taylor’s (2009) article, “Rawlsian Affirmative Action,” perhaps the most detailed ever on the subject, concludes that Rawls’s principles (primarily the principle of pure procedural justice) would generally *rule out* any but the weaker kinds of affirmative action, let alone anything more radical, such as reparations. Is it inappropriate to ask why, if Rawls supported affirmative action, he did not just say so loudly and clearly, in an article in, say, *Ethics* or *Philosophical Review*, thereby throwing his considerable intellectual weight and Harvard prestige behind a highly controversial policy? And as I emphasized at the start, this silence is definitive of Rawlsianism more generally. Nowhere in such companions and guidebooks of recent years as Freeman’s edited *Cambridge Companion to Rawls* (2003) and authored *Rawls* (2007), Lehning’s *John Rawls: An Introduction* (2009), Mandle’s *Rawls’s A Theory of Justice: An Introduction* (2009), Maffetone’s *Rawls: An Introduction* (2010), Lovett’s *Rawls’s A Theory of Justice: A Reader’s Guide* (2011), and Voice’s *Rawls Explained* (2011) are there more than scattered sentences or single paragraphs on the issues of race, racism, and affirmative action. The latest entry in this Jim-Crowded vision of justice, Mandle and Reidy’s massive Blackwell *Companion to Rawls* (2014), does have a page and a half on race (out of nearly 600!), but it is merely a listing of negative racial indicators, not part of any theoretical rethinking of the apparatus. Racial justice is simply not a matter of concern to this literature.

I suggest that such silences and exclusions have a broader significance within the Western philosophical tradition that needs to be brought out. In his *A Short History of Distributive Justice*, Fleischacker (2004) argues that far from dating back to antiquity, as contemporary theorists of justice assume, distributive justice as a concept is actually a product of modernity, attributable to François-Noël (“Gracchus”) Babeuf (tried and guillotined in 1797 for his membership in the “Conspiracy of the Equals”). The premodern conceptions derived from Aristotle’s (2000) distinction in the *Nicomachean Ethics* between distributive and rectificatory justice are actually fundamentally different from the modern ones, because they link justice to social status rather than simple humanity, and do not extend to property rights. It is only with modernity, Fleischacker (2004) contends, that distributive justice in our contemporary sense emerges, and even then, of course, it is not really general at all but limited to white males.

But once this revisionist periodization has been accepted, it should also be recognized that the absence within the tradition of any extensive theorization of *corrective justice for subordinated groups* (as against particular individuals who have been harmed) is itself a straightforward manifestation of this very history of domination. For rectification to have been a central philosophical theme, it would have been necessary for these groups (such as white women and people of color) to be seen as moral equals entitled to distributive justice in the first place. But since they were *not* seen as equals – since even today their substantive as against nominal equality is a matter of ethico-juridical contestation – no normative investigation of the principles of rectificatory justice was called for. Rawls’s failure over the course of his professional life ever to discuss “compensatory justice” (and the related failure of his disciples in the vast Rawls industry) is thus not at all aberrant, but quite continuous with the tradition.

Once one confronts, without denial or apologia, this disciplinary history, the implications are quite disturbing. Corrective justice is unarguably the most imperative part of justice, given that all contemporary societies (and all in history post the hunting-and-gathering stage) are ill-ordered. Rawls (1999, 8) himself concedes, as noted above, that these are the “pressing and urgent matters” that should be of most concern to us. The moral imperative should therefore be to end subordination and correct for its legacy. But instead, over most of its history, justice theory within Western philosophy has primarily served to ratify or obfuscate social subordination and illicit group advantage. As Cudd (2006) points out in her *Analyzing Oppression*, insofar as most Western philosophers (white, male, class privileged) have been the beneficiaries rather than the victims of structural subordination, they have had no group-based motivation to investigate and condemn it. Class and gender privilege originally (in the premodern period), and class, gender, and racial privilege later (in the modern period) have produced a discourse putatively normative that has in fact been a discourse of evasion and moral complicity. So we should not at all feel that the antiquity of this tradition gives it any presumptive legitimacy, considering the parallel antiquity of its conceptual and normative malfeasance. Rather, we should be asking ourselves how, in the light of this history, it needs to be rethought to achieve genuine justice for the majority.

Rethinking contractarianism and liberalism

What I am calling for, then, is a rethinking both of contractarianism, and, more broadly, liberalism. Jagmohan (2015) points out correctly that they need to be separated, since non-contractarian liberalisms exist, and they can tackle the problems of racism and white supremacy directly, without the baggage of a “contract.” However, my belief is that the idea of a “domination contract” which (in the specific case of race) incorporates into contractarian discourse – rather than excluding them as “anomalies” to modernity – what Turner (2015) calls the “axioms” of white supremacy and white power can be a useful, indeed superior, “device of representation” for us. Part of my justification for wanting to hold on to the contract idea, apart from its continuity with such an influential strain within the Western political tradition, is its facilitation of a debate with Rawlsianism (albeit a “debate” with as yet no response from Rawlsians!), which has exercised such hegemony over political philosophy over the last four decades.

The role of the “racial contract” then – or, more generally, the “domination contract” – is to serve as a “device of representation” in nonideal theory for mapping, in its multiple dimensions, the nonideal reality that needs to be corrected for. (In the following I will focus only on race, leaving the discussion of intersectionality to the end of the essay.) Rawls specifies that the focus for justice theory should be society’s “basic structure,” and here, in nonideal theory, that structure is a structure of oppression. So our starting point would be a racialized basic structure, in keeping with the point made at the beginning of this article that our theoretical framework should recognize the structural nature of white domination. If the contract as it stands is refractory

to incorporating the history of nonwhite racial subordination, then it needs to be modified so it can do so. As Turner (2015, 475) emphasizes, the contemporary version of the epistemology of ignorance manifests itself not primarily in racist claims about “a racial hierarchy of moral worth,” but rather a “sociohistorical ignorance” about the originating causes and ongoing realities of “racial disparities in wealth, power, and overall life chances.” The “domination contract” can therefore play an epistemic part in combating this ignorance, as well as constituting a more appropriate architectonic for representing the ontology of a racialized polity.

Now Rawls’s liberalism famously rests on a Kantianism that makes our duties to “persons” the central moral concept. The actual Kant was a sexist who categorized women as “passive citizens” to be excluded from equal participation in the polity (Schröder 1997) and was not merely a racist but one of the founding theorists, or the most important founding theorist, of modern “scientific” racism, who for most of his life endorsed slavery and colonialism (Mills 2014). But I would insist nonetheless that a nonideal-theory contractarianism inspired by a deracialized Kantianism is, in principle, quite conceivable. A reeducated and reconstructed Kant, Anti-Racist Kant, would judge racial disrespect for others to be a fundamental violation of the categorical imperative and, when implemented as public policy, as an unconscionable transgression of the ground rules of the *Rechtsstaat*. Kant is classically emphatic that in matters of state, contra *realpolitik*, morality must trump all other considerations. And although he provides no principles of rectificatory social justice (unsurprisingly, given the above points), he does famously declare, with respect to rectificatory criminal justice (a subset of nonideal justice theory), that were civil society about to dissolve, it would still be morally incumbent upon us to execute the last murderer before we all go our separate ways. A reconstructed Anti-Racist Kant, then, is not going to be a compromiser on these issues but a hardliner, a militant defender of the imperative of correcting for the numerous injustices done to the racially subordinated – persons wrongly treated as sub-persons – by the history of white supremacy. If the Rawlsian ideal-theory appropriation of Kant has so dominated discussions for the past 40 years that it is difficult even to imagine what the nonideal-theory appropriation of Kant would look like, just remember this uncompromisingness when you speculate about what its crucial features would be.

The general rethinking of liberalism that I am urging is well captured by Turner’s (2015, 472) précis: a critique that “advances liberal self-transparency and self-reform” through “inventorying cognitive errors and biases within the philosophical practice of liberalism,” thereby enabling “a more self-reflexive, self-correcting liberalism to emerge.” Progressives’ cynicism about and hostility toward liberalism as a political philosophy are completely understandable given its long history of complicity with various kinds of oppression (Losurdo 2011; Hobson 2012). But as I argue in Mills (2012), the sources of this complicity are, in my opinion, primarily external rather than internal. A progressive liberalism can be retrieved once we recognize that its dominant exclusionary incarnations have been shaped by the group interests and group experiences of a particular class/gender/racially privileged demographic subset rather than by any immanent conceptual and normative logic of the ideology itself. Thus I posit a “racial liberalism” as analogous to feminist theorists’ “patriarchal liberalism,” that is, a liberalism so shaped by white domination that crucial terms and assumptions of the theory, and their resulting conceptual and normative interrelation, have been foundationally distorted. Simply adopting the existing liberal apparatus for racially emancipatory ends is thus going to be problematic unless these distortions have been recognized and self-consciously corrected for. (Think of the comparable second-wave feminist challenge to the public sphere/private sphere demarcation, and the elucidation of how – in part through simple categorical blinding – it entrenches gender injustice.)

As Turner (2015) emphasizes, for me “personhood” becomes a crucial point of intervention, because liberalism’s promise of equal personhood in modernity is not extended to people of color. Rather, they are conceptualized as sub-persons who, even if grudgingly conceded to be fully

biologically human (monogenesis), do not attain the normative threshold for equal moral/political humanity. (Kant's twin paternity as the father of modern moral theory and the father of modern scientific racism encapsulates this bifurcated normativity with a wonderful neatness.) So by contrast with class domination in orthodox Marxist conceptualizations, here the issue is not a (white) proletariat conceded normative equality but constrained by material/economic barriers, but a population of color who do not even achieve (socially recognized) normative equality in the first place. Deracializing such a liberalism will thus require a fundamental rethinking of the ways in which, both nationally and internationally, overtly and subtly, white personhood was enshrined through the denial of nonwhite personhood, thereby necessitating a racially informed re-articulation of key liberal norms. Turner's (2012) own recent contribution to this enterprise, *Awakening to Race*, is a fine example of how "individualism," a value traditionally associated with the political right, needs to be and can be reconceptualized by progressives so as to further the cause of racial justice.

Intersectionality and the contract

I have left to the last what is the most complicated issue of all – intersectionality, and its relevance not merely for Keisha Lindsay's essay but for how it would affect the discussion of the topics raised in the three other contributors' pieces also. As readers will have noticed, though I spoke generally at the start of the "domination contract," my discussion throughout has been limited to race, in keeping with the theme of this symposium (i.e., *The Racial Contract* [Mills 1997] rather than my work as a whole). *The Racial Contract* is not an attemptedly intersectionalist text, but one that focuses just on race (Mills 1997, 137–138n3), given what I saw as its absence (by comparison with gender and class) from the political philosophy discussions of the period. I unhesitatingly grant, then, Lindsay's (2015) criticisms that my treatment of "wild" space in the book could have benefited from an exploration of the ways in which space is gendered as well as raced for people of color. So the obvious question, especially considering the mandate of this journal, is how a genuinely inclusive "domination contract" could be formulated. (Both of the *Politics, Groups, and Identities* reviewers of my original draft urged me to say more about intersectionality.)

In answering this question, I am handicapped by the extent to which philosophy is behind the times, and out of sync with other subjects. Intersectionality's presence within philosophy is virtually nonexistent. And this is hardly surprising, considering that even white women suffer from a "gender gap" in the profession that is the worst in the humanities (about 16–20% representation), while for people of color it is even lower (about 2–3% representation) and as such a much smaller ratio, of course, in relation to their numbers in the population. (The uncertainty in the figures is due to the American Philosophical Association's historic failure to carry out the demographic surveys long standard in other disciplines.) Correspondingly, even today, almost half a century after the birth of "second-wave" feminism, gender is still a contested and controversial subject in the field, as can be confirmed by consulting any of the numerous feminist philosophy blogs complaining about women's negative experiences in the profession, and the difficulty of getting gender to be taken seriously as a properly "philosophical" topic. (For a classic essay on the issue, see Haslanger [2008].) Race has had even more marginal a presence; I discussed the "conceptual" whiteness of the social justice literature earlier. So if gender and race *even on their own* are so "non-philosophical" in mainstream eyes, what would we expect the reception of their "multiplicative" rather than "additive" combination to be? Thus, there is hardly any work in the field to draw on, while the natural constituency for such discussions – women of color – is close to zero percent.

Some illustrative anecdotes. Georgette Sinkler, a former colleague of mine at the University of Illinois at Chicago, once told me that when in the 1980s she and Anita Allen (currently at Penn,

though with her primary appointment in the law school rather than philosophy) tried to form a group of black women in philosophy, they could find only six people (including themselves) in the entire country. Even today, decades later, with the efforts of the Collegium of Black Women Philosophers, founded in 2007 by Kathryn Gines (Penn State), to create a more encouraging environment, black women with doctorates teaching in philosophy departments only number about 30 or so people out of a total national philosophy faculty of more than 11,000. So far as I know, the first philosophy book by women of color with an explicitly intersectionalist approach was only published a few years ago, in 2010: *Convergences: Black Women and Continental Philosophy* (Davidson, Gines, and Marcano 2010). (Angela Davis's well-known (1981) *Women, Race, and Class* is, of course, a pioneering intersectionalist text by a black female philosopher. But it is not itself a work *in* philosophy, since its primary engagement is with the historical and social-science literature.) Two years ago, I taught a graduate seminar at Northwestern in critical philosophy of race for the first time in many years, which attracted many students of color from outside the department, many of whom were to be disappointed by what they saw as the backward state of debate in the readings assigned. To one of them, who asked me for philosophy sources for a term paper he planned to do on the "black queer Atlantic," I had to break the news gently: "My brother, I'm afraid that philosophy has yet to catch up with the black *straight* Atlantic, let alone the black queer one."

So the climate has been very unfavorable for exploring these matters, with few *philosophy* (as against extra-disciplinary) models to emulate, and a generally hostile culture. (As I emphasized above, the Rawls establishment has made no reply to *The Racial Contract* in the nearly two decades since its publication. Nor does it show the slightest indication of doing so in the future.) Nonetheless, I was, of course, fully cognizant at the time of writing it of the long-standing critique initiated by women of color that "race" does not exist on its own as a variable, and that to have two books written by a white woman and a black man, *The Sexual Contract* (Pateman 1988) and *The Racial Contract* (Mills 1997), which pay next to no theoretical attention to race and to gender in their respective discussions, illustrates almost to self-parodic perfection the problem famously identified by Gloria Hull et al.'s celebrated edited collection: *All the Women Are White, All the Blacks Are Men* (Hull, Scott, and Smith 1982). It was for this reason that I would later approach Carole Pateman to suggest that we do a book together that would self-consciously try to bring the two "contracts" into conversation with each other. Since Pateman and I disagree on whether or not the contract can be retrieved for a progressive antisexist, anti-racist politics, we ended up going our separate ways in the book after an opening dialogue between us, but we both wrote intersectionality chapters. So it is really in this book, *Contract and Domination* (Pateman and Mills 2007), that I would self-consciously try to address the challenge of the intersectionality literature of the period by women of color, with the aim of seeing if – and if so how – it could be translated into a social contract framework. I would recommend this text rather than *The Racial Contract* for any readers interested in the development of contractarianism in an intersectionalist direction, though admittedly it will help to have read the latter first. A later dialogue between Pateman, myself, and the audience of a 2008 gender conference in Sweden that we keynoted together also offers some thoughts on the project (Pateman and Mills 2011).

How then should intersectionality be theorized within this framework? In my own chapter in the joint book and in my contribution to our keynote dialogue, I worked with the concept of "racial patriarchy." The Combahee River Collective (2000, 261, 264) classically argued that "[T]he major systems of oppression are interlocking. The synthesis of these oppressions creates the conditions of our lives. ... We know that there is such a thing as racial-sexual oppression which is neither solely racial nor solely sexual." Since I could not, of course, theorize all these oppressions at once, it made sense to me to start with the last two. (This would be my answer to Lindsay's [2015] question about my not examining the role of other identities in the

book.) Race and gender are the most analyzed intersectional combination, and the one highlighted by the Collective; the term “racial patriarchy” already existed in the literature; and since Pateman’s and my original books dealt with the sexual and racial contracts in isolation, it seemed logical to prioritize their combination in a book written by the two of us. (Class and sexual orientation will of course complicate the picture, but I saw this as at least a useful starting point.)

I suggested (Mills, in Pateman and Mills 2007, chap. 6) that the best strategy would be to replace the discrete and non-interacting sexual and racial contracts by an intersectional *racia-sexual contract* (corresponding to “racial patriarchy”). Rather than two disconnected side-by-side power dyads, then, men-over-women and whites-over-nonwhites, with women of color effectively falling between these two theoretical locations, being neither white women nor nonwhite men, I proposed an asymmetrical diamond structure with *four* subject positions (see figs. 1–4 in Pateman and Mills 2007, 171, 173). White men were at the apex of the diamond, full persons and full contractors; white women and nonwhite men were at the two corners of the diamond (though with white women lifted by their racial status above nonwhite men), sub-persons and sub-contractors; and women of color were at the bottom of the diamond, nonpersons and noncontractors. Such a picture, while still obviously falling short of the multivariate reality that would include class and sexual orientation, does at least begin to register the domination contract’s “contractual” complexity of simultaneous privilege and subordination. White men (considering just these two variables) dominate everybody, but both white women and nonwhite men occupy an intermediate position that makes them both privileged on one axis and disadvantaged on another. And everybody is favorably located in comparison to women of color, who suffer not merely multiple but “multiplicative” oppressions (King 1995).

Now how does this revisionist picture complicate the issues discussed throughout the essay – the demarcation of the “descriptive” side of the contract, and the need for the incorporation of the “axiom” of white supremacy (given that the “axiom” of patriarchy likewise needs to be incorporated); the demarcation of the normative side of the contract (given that “racial” justice will in certain respects be different for nonwhite men and nonwhite women); the question of personhood (and how white women’s status inferiority is different from that of nonwhite men, and different again from that of nonwhite women); the epistemic intricacies of an “ignorance” not merely racial but gendered; the implications for the rethinking of liberalism and liberal moral responsibilities in a world where supposedly symmetrically positioned liberal individuals are actually differentially located in a matrix of interlocking oppressions; and the challenge of motivating such individuals to join in coalitions with others for a transformative politics? Obviously, while far more complicated than the one-dimensional “sexual” and “racial” contracts, this “racia-sexual” contract is going to be much better equipped to map the intersectional descriptive realities and normative challenges of racial/white-supremacist patriarchy, and more sensitive to the cognitive and organizational obstacles to reforming it. For it recognizes that both race and gender need to be taken into account in modeling the Rawlsian (nonideal) “basic structure,” and that these identities fuse rather than “add”; that corrective justice will accordingly need to be sensitive to different racia-gendered identities and different kinds of racia-gendered wrongs; that insight into one dimension of oppression by no means rules out blindness to others, as the long history of racist white feminism and sexist nonwhite male anti-racism testifies; and that discerning objectively our liberal moral responsibilities will come into conflict with our desire to maintain privilege for ourselves, not only in the case of white male “full” contractors, the primary agents for establishing and perpetuating the system, but also for white female and nonwhite male “subcontractors,” who benefit at least partially from (respectively) their racial and gender identities, and thus have a vested interest in continuing to contribute to the system’s reproduction. The temptation to keep on “subcontracting,” to strive to hold on to one’s advantages, respectively, from racism and sexism (white

women struggling for sexual/racist equality with white men while not opposing white supremacy, nonwhite men struggling for racial/sexist equality with white men while not opposing patriarchy), will be a standing danger to be overcome in coalition building. And the distinctive problems of nonwhite women's location – their need to fight simultaneously racism from their white sisters and sexism from their nonwhite brothers – are also well captured.

So I would claim that contract theory can indeed be developed to theorize intersectionality, at least to a certain extent. Encouragingly, an essay from a recent *Du Bois Review* (10:2 2013) special issue on intersectionality mentions *Contract and Domination* (Pateman and Mills 2007) as a possibly valuable contributor to the debate. Clarke and McCall (2013, 359–360), in a study of intersectionality and social explanation, cite our work in their section on liberalism, both our individual books and our joint book. They characterize *Contract and Domination* as marking an evolution “to ... [a] more flexible and encompassing notion of the ‘domination contract’ that can both bridge and decipher among multiple axes of inequality.” Particularly when the contract is explicitly located within “nonideal” theory, as they summarize my position, “[Mills argues that] ultimately a raceless and genderless liberalism may materialize, but only if the racial and gendered dimensions of liberal theory and society are first made transparent, through an explicit confrontation with the ‘facts’ of racial and gender subordination.” Clarke and McCall cite other authors also (Rogers Smith and Evelyn Nakano Glenn) and note the “real conceptual differences among the approaches outlined here.” Nonetheless, they ultimately conclude that “significant theoretical progress [is being] made in defining how multiple systems of inequality are connected to the canonical traditions of American history and ideology.” So the idea of an intersectional domination contract is for them a legitimate contender in the theorization of this issue.

Why then have I not followed up this project in the years since *Contract and Domination* appeared? Part of the explanation is the lack of uptake by the profession(s). One makes intellectual progress on a subject through having a community of scholars to try out ideas on, go back and forth with, have criticisms raised and discussed. Unfortunately, the demographic unrepresentativeness of the academy makes it difficult to establish such a critical mass for certain disciplines and certain topics. A book by a (very prominent) white female political theorist and a (not unknown) black male political philosopher, drawing on both disciplines and intended to bridge divisions, instead fell victim to them. Pateman and I were both disappointed by how few reviews the book received (though it has been selling quite well). The white male political philosophy and political theory communities are generally not interested in race and gender; white feminists are not that interested in race; nonwhite male race theorists are not that interested in gender; and the people interested in both race and gender – largely women of color – are severely underrepresented even in political theory and, as emphasized, even more so in political philosophy.

Lindsay will probably be shocked to hear that, so far as I know, she is the first woman of color to engage in detail in print with this book, a book published seven years ago, despite the fact that it was specifically and self-consciously aimed in part at addressing intersectionality issues. Until the number of scholars interested in these issues increases, progress in articulating a sophisticated theorization of social oppression and generating a hoped-for stimulus to an emancipatory politics will be limited and slow. Let us hope that the founding of this journal in political theory, and others with a similar agenda like *Critical Philosophy of Race* (launched in 2013) in philosophy, will gradually help to transform both the demography and the intellectual landscapes of these two disciplines. As long as the domination contract remains unrecognized and untheorized, domination will continue.

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Notes

1. I will use *The Racial Contract* to refer to the book, the racial contract (without quotes) to refer to the (racist) reality described and theorized by the book, and “the racial contract” (with quotes) to refer to the (anti-racist) theorization of the workings of the racial contract.
2. The mainstream here is defined by Locke and Kant, the two most important contract theorists for liberalism, since Hobbes uses the contract to argue for absolutism and Rousseau for a kind of “communitarian” direct democracy, guided by the general will.
3. For Locke, Rousseau, and Kant, this equality is moral, whereas for Hobbes it is a rough parity of physical and mental capability.
4. See our opening dialogue, chapter 1, in Pateman and Mills (2007).

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