

Contract and Domination

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3

The Domination Contract

Charles W. Mills

Carole Pateman's *The Sexual Contract* (1988) has become a classic text of second-wave feminism, and is widely and deservedly seen as constituting one of the most important challenges of the last 20 years to the frameworks and assumptions of "malestream" political theory. Moreover, its influence is not restricted to gender issues, since it was the inspiration for my own book, *The Racial Contract* (1997), which has also become quite successful in the parallel, if not as well-established, field of critical race theory. The impact of both books, of course, originates in part from their refusal respectively of "pink" and "black" theoretical ghettoization for a frontal conceptual engagement with a (male, white) intellectual apparatus, social contract theory, that has historically been central to the modern Western political tradition, and which has been spectacularly revived in the past three decades as a result of John Rawls's *A Theory of Justice* (1999h). Pateman and I are saying that the history of gender and racial subordination requires a rethinking of how we do political theory, that it cannot be a matter of some minor, largely cosmetic changes – a few "she's" sprinkled in where there were previously only "he's," a pro forma (if that much) deploring of the racism of Enlightenment theorists – before continuing basically as before. As such, the goal is a revisioning of the tradition that we both want the white male majority of practitioners in the field to accept and to incorporate into their own work.

What, though, is the specific nature of this challenge for contract theory in general, and Rawlsian normative theory in particular? As readers will have seen from our opening dialogue, Pateman is quite hostile to the project of trying to retrieve the contract for positive ends. So in this and the next chapter, I want to make a case for generalizing

this revisionist version of the contract and turning it to the theorization of gender and racial justice. My claim will be that the concept of a "domination contract" can be fruitfully employed to overturn the misleading framework of assumptions of mainstream social contract theory, thereby better positioning us to tackle the pressing issues of "non-ideal theory" that, far from being marginal, in fact determine the fate of the *majority* of the population.

The "Contract" as Protean

Let me begin – in the "underlaborer" tradition of analytic philosophy – with some preliminary clarificatory distinctions. For if Pateman's book has been read in divergent and contradictory ways, as it has, then to a significant extent this interpretive variation goes with the conceptual territory. There are at least three major sources of the ambiguities in Pateman's revisionist contract: one endemic to the literature in general, even just the mainstream variety; one arising distinctively from her radical and unfamiliar non-mainstream use of the idea; and one generated by divergences in terminology.

The general problem is the astonishing range of the ways in which the idea of the "contract" has historically been employed, ironically – or then again, not ironically at all – coupled with the fact that in most cases it is actually doing no work, and is, in effect, otiose, a disposable part of the argument. (With only slight exaggeration, one could quip that in the long history of social contract theory, very few actual social contract theorists can be found.)

To begin with, there is the notion of the contract as in some sense, whether stronger or weaker, descriptive/factual. For example, the contract as ur-sociology or anthropology, providing us with a literal account of what actually happened. Or, more weakly, the contract as a plausible hypothetical reconstruction of what might have happened. Or, more weakly still, the contract as a useful way of thinking about what happened – the contract "as if" – though we know perfectly well it did *not* happen that way. Then within this "descriptive" sense, whether robustly or thinly conceived, there are additional differences (cross-cutting the above) of, so to speak, the object of the contract. Is it a contract to create society, or the state, or both? And, to introduce further complications within these categories, is society envisaged as an aggregate of individuals or a transformed collective community, and are rights alienated to the state or merely delegated to it? Then there is the contract as normative. For example, the contract as the outcome of a collective-bargaining agreement that brings morality into existence as a conventionalist set of principles. Or the contract as a way of elucidating

and codifying pre-existing and objective moral principles, whether grounded in natural law or human interests. Or the contract as a thought-experiment, a device for generating moral intuitions about justice through the strategy of combining prudential motivation with ignorance of crucial features of the self.

So the concept has been used in radically different ways – the contract as literal, metaphorical, historical, hypothetical, descriptive, prescriptive, prudential, moral, constitutional, civil, regulative ideal, device of representation. It is no wonder then, that, as David Boucher and Paul Kelly conclude in an introductory overview of social contract theory: “The idea of the social contract when examined carefully is seen to have very few implications, and is used for all sorts of reasons, and generates quite contrary conclusions” (1994a: 2). Or as Will Kymlicka concurs in an encyclopedia essay: “In a sense, there is no contract tradition in ethics, only a contract *device* which many different traditions have used for many different reasons” (1991: 196).

Moreover, as if this bewildering array of distinctions were not enough, a further complication is that Pateman's peculiar use of the contract idea revives a strand of the contract tradition that has been so marginalized and ignored that it does not even have a name in the secondary literature: what I have called elsewhere the “domination contract” (Mills 2000). Though Pateman herself does not explicitly make the connection in *The Sexual Contract*, and though I have never seen them linked in discussions of her work, a case can be made that the sexual contract develops an idea whose nucleus is actually originally to be found in Rousseau's “class contract” of his 1755 *A Discourse on Inequality* (1984, 1997a). Seven years before publishing the *Social Contract* (1968, 1997d), Rousseau in his *Discourse on Inequality* (1997a) condemned and set out to explain the *non-natural* “political” inequalities of class society, which are the result of “a sort of convention,” and that consist in “the different Privileges which some enjoy to the prejudice of the others, such as to be more wealthy, more honored, more Powerful than they” (p. 131). He offered a “hypothetical and conditional” (p. 132) history of technological progress in the state of nature, which eventually led to the development of nascent society, private property, growing divisions between rich and poor, and a state of war. In Rousseau's reconstruction, the wealthy, alarmed by this threat to their property and security, promised to the poor new social institutions that pretended to offer justice, peace, and impartial social rules for the mutual benefit of all. But in actuality these institutions

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. (p. 173)

Rousseau's contract is therefore a bogus contract, contract as scam – in the words of Patrick Riley (2001a: 4), “a kind of confidence trick on the part of the rich.” In its uncompromising demystification of the consensual illusions of mainstream contract theory, it anticipates by a century Marx's later critique of supposedly egalitarian liberalism as a mask for the differential power of a capitalist ruling class. The later *Social Contract*, of course, would go on to outline an ideal contract that prescribed how society *should* be founded and what kinds of institutions would, through the “general will,” be necessary to achieve genuine political egalitarianism. But in *Discourse on Inequality*, Rousseau is describing, if only in a “hypothetical and conditional” sense (1997a: 132), what might *actually* have happened.

The point is, then, that a clear precedent exists in the Western contract tradition for the idea of an exclusionary manipulative contract deployed by the powerful to subordinate others in society under the pretext of including them as equals. Yet whether because of the unacceptable radicalism of the idea, its polar incongruity with a mainstream conception for which, underneath all the variations listed above, a legitimizing consensuality is the crucial common factor, or the brevity of his treatment, Rousseau's first contract is hardly discussed in the secondary literature, whether on social contract theory in general or on Rousseau in particular. It is mentioned, for example, neither in David Boucher and Paul Kelly's (1994b) anthology on social contract theory, nor in Christopher Morris's (1999b) anthology, nor in Stephen Darwall's (2003) anthology, nor in three encyclopedia essays on the subject (Laslett 1967; Kymlicka 1991; Hampton 1993). Even *The Cambridge Companion to Rousseau* (Riley 2001b) devotes only a few paragraphs to it – not an entire essay, nor even a subsection of an essay.

So given this absence of any developed analysis in the literature, it is perhaps less surprising that the distinctive features of Pateman's “contract” should not have been recognized as homologous to Rousseau's, though centered on gender rather than class. For in *The Problem of Political Obligation*, whose subtitle is *A Critical Analysis of Liberal Theory*, Pateman gives a detailed discussion – indeed one of the most detailed in the secondary literature – of this “fraudulent” contract, which “has no basis in ‘nature,’” but “is a result of a particular form of social development”: “It is a contract that gives ‘all to one side’ and is based on inequality; its function is to maintain and foster that inequality by legitimizing political regulation by the liberal state” (1985: 148,

150). Her later "sexual contract" can be seen as extrapolating this demystificatory contract to the analysis of gender relations, though as I said she does not explicitly connect them herself in the later book. At any rate, I want to suggest that we formally recognize this use of social contract theory as a strategy for theorizing domination within a contract framework, since, as I will argue below, it provides a conceptual entry point for importing the concerns and aims of radical democratic political theory into a mainstream apparatus. And because the formal act of naming an entity helps to make it more real for us, incorporating it into our discursive universe, I move, as proposed (Mills 2000), that we call it the "domination contract."

Finally, the third factor accounting for ambiguities in Pateman's position is terminological. "Contractarianism" is usually taken in political theory to be coextensive with social contract theory in general, and as such to be a very broad umbrella covering many different variants (as illustrated above). In particular, as both Will Kymlicka (1991) and Jean Hampton (1993, 2001) point out in essays on the subject, the Hobbesian variety of contract theory, which derives morality from prudence as a conventionalist set of rules for coordinating the constrained advancing of our interests in a social framework, is radically different in its crucial assumptions from the Kantian variety, for which the contract is merely a regulative ideal, and morality inheres in the objective categorical imperative to respect others' personhood. The former kind leads to David Gauthier's *Morals by Agreement* (1986), the latter to John Rawls's *A Theory of Justice* (1999h), two books obviously quite different in their prescriptions for social justice despite their common contract identity. For this reason, some ethicists and political philosophers, such as T. M. Scanlon and Stephen Darwall, think the distinction is so crucial that it needs to be made explicit in our terminology, and they differentiate accordingly between *contractarianism* (the Hobbesian use of the contract idea) and *contractualism* (the Kantian use of the contract idea) (Darwall 2003). In this vocabulary, Gauthier would be a contractarian, but Rawls would then be a contractualist.

Now Pateman speaks generally about "contract theory" in the opening pages of *The Sexual Contract* (1988). But it turns out that she is using the term in a restricted sense, for she specifies that "property" is crucial to her argument, though this is not "property in the sense in which 'property' commonly enters into discussions of contract theory," as including material goods and civil freedom. Rather, "The subject of all the contracts with which I am concerned is a very special kind of property, the property that individuals are held to own in their persons" (p. 5). And she goes on to say:

I shall refer to the [most radical form of contract doctrine], which has its classical expression in Hobbes' theory, as *contractarian* theory or *contractarianism* (in the United States it is usually called libertarianism . . .) . . . For contemporary contractarians . . . social life and relationships not only originate from a social contract but, properly, are seen as an endless series of discrete contracts. . . . From the standpoint of contract, in social life there are contracts all the way down. (pp. 14–15)

When Pateman uses the term *contractarianism*, then, it is really this restricted version of contract she has in mind (Hobbesian/libertarian), involving contracts "all the way down," not social contract theory in general. And obviously this would not be an accurate characterization of Kantian contract theory, for which the will is to be determined not by subjective inclination "all the way down" but rather objective universal moral law. For Kant, the normative bedrock of societal interaction is supposed to be the categorical imperative to respect others as ends in themselves. So when Pateman writes that in contract theory "universal freedom" is always "a political fiction," since "contract always generates political right in the form of relations of domination and subordination" (p. 8), one has to remember that her implicit reference is primarily to contract in the specific term-of-art sense she has previously stipulated. Clearly from our opening dialogue she is dubious about the "contractual" variety also. But given what various theorists have seen as the crucial differences between the two kinds, the extrapolation of her indictment to the Kantian version does not, to say the least, follow straightforwardly. At any rate, I will contend that more argument needs to be given to establish her case. I am going to proceed, then, on the assumption that the very strong statement made in the jacket copy on the paperback edition of *The Sexual Contract* – "One of the main targets of the book is those who try to turn contractarian theory to progressive use, and a major thesis of the book is that this is not possible" – is mistaken as a general characterization of contract theory, and try to demonstrate precisely the opposite: that social contract theory, including Pateman's sexual contract, *can* be so turned.

Hampton, Pateman, Okin: Toward a Theoretical Synthesis

So what I now want to do is to argue for a version of the sexual contract which does not preclude using contract theory to address issues of gender justice, and which can be seen as a particular instantiation of the domination contract. Since two of the most prominent feminist advocates of social contract theory were the late Jean Hampton and the late Susan Moller Okin, I will try to show that, suitably modified, Pateman's sexual contract is not at all in necessary theoretical opposition to their

views, as is conventionally supposed. In fact I will claim that it can be thought of as *complementing* them, and should indeed be synthesized with them to produce a distinctively feminist contract theory that is all the more powerful *precisely* for its recognition of the historic (and ongoing) patriarchal restriction of the terms of the contract.

Consider first Jean Hampton. In her essays on contract, Hampton (1990, 1993, 2001) makes a crucial point that will be useful for us in developing the idea of the domination contract. She reminds us that unlike the contemporary Rawlsian contract, which is merely a normative thought-experiment, at least some of the classic contract theorists (though not Kant) "intended simultaneously to describe the nature of political societies, and to prescribe a new and more defensible form for such societies" (Hampton 1993: 382). So for them the contract was both descriptive and prescriptive. Moreover, Hampton believes that – suitably attenuated – this descriptive side of the contract should be revived. For once we realize that contract is basically a matter of "imagery," a "picture," we should recognize that it is not vulnerable to standard literalist objections (for example, that no promises are actually exchanged to support governmental structures), as it is essentially just expressing the insight that "authoritative political societies are human creations," "conventionally-generated" (1993: 379, 382–3).

So the first great virtue of contract theory for Hampton is its capturing of the crucial factual/descriptive truth that society and the polity are human-made – not organic "natural" growths or the product of divine creation. And this insight is, of course, distinctively modern, demarcating the conceptual universe of the modern period from that of antiquity and medievalism. Thus we get Hobbes's famous anti-Aristotelian characterization of the commonwealth as "an Artificiall Man; though of greater stature and strength than the Naturall" (1996: 9). The polis is not natural but constructed, artificial. Similarly, contemporary commentators such as Michael Walzer suggest that: "Perhaps the most significant claim of social contract theory is that political society is a human construct . . . and not an organic growth" (1995: 164). Banal as it may seem to us now, this insight was revolutionary in its own time, and I will argue below that indeed its full revolutionary significance has yet to be fully appreciated and exploited. For once we understand how far the "construction" extends, we will recognize that it can be shown to apply to gender and race also.

The second important truth captured by contract theory is, of course, the one that the contemporary contract *does* focus on: the moral equality of the contracting parties and its normative implications for sociopolitical structures. Here Hobbes is not the appropriate representative figure since, as noted above (Kymlicka 1991; Hampton 1993,

2001; Darwall 2003), commentators standardly differentiate between the Hobbesian and the Kantian contract. The first is rooted in the rough physical and mental (rather than moral) equality of the contractors in the state of nature, and leads to rational prudence rather than the altruistic regard for others for their own sake, as beings of intrinsic moral worth, that we associate with the second, that of Kant. Thus in the most famous contemporary version of the moral contract, John Rawls's thought-experiment to determine what "the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association" (1999h: 10), this scenario is set up to be not a process of bargaining, but rather, through the veil of ignorance, the modeling of an impartial other-regardingness.

Now it should be obvious that in this weak and minimal sense – contract as committed to society's being a human construct created by morally equal contractors, whose interests should be given equal weight in the sociopolitical institutions thereby established – there is nothing that anybody, including those wishing to theorize gender and racial subordination, should find objectionable about contract theory. Certainly it is not the case that feminists and critical race theorists want to argue, on the contrary, that sociopolitical institutions *are* natural rather than humanly created or that some humans *are* morally superior to others. At this highly abstract level of characterization, social contract theory is unexceptionable.

The problem really inheres, I suggest, in the assumptions that begin to be incorporated, the conceptual infrastructure that begins to be installed, at a *lower* level of abstraction, and the ways in which, whether explicitly or tacitly, they vitiate the accuracy of the descriptive mapping, obfuscate crucial social realities, embed certain tendentious conceptual partitionings (e.g., the private/public distinction), and thereby undercut the transformative normative egalitarian potential of the apparatus. So my claim is that our critical attention should really be directed at these "thicker" auxiliary shaping assumptions rather than the "thin" idea of the contract itself (in the minimal sense sketched above).

Start with the factual/descriptive side. While it is true that society and the state are human creations, it is obviously false, as mainstream contract theory classically implies, that all (adult) humans are equal contractors, have equal causal input into this process of creation, and freely give informed consent to the structures and institutions thereby established. The repudiation of this picture was, of course, the whole point of Rousseau's critique in his depiction of the "class contract." The wealthy have more power than the poor, and manipulate the rest of the population into accepting sociopolitical arrangements to which they would not

actually consent were they aware of their real consequences. So the human equality of the state of nature becomes the unnatural "political" inequality of a class society ruled by the rich. But this plutocratic polity is not to be thought of as the outcome of free and informed choice among symmetrically positioned individuals. Rather it is the outcome of the collusion among themselves of *a social group* with far greater influence, who have their own self-seeking agenda. The real "contractors" (in the sense of those who are controlling things and know what is going on) are the rich. Similarly, in Pateman's sexual contract and my racial contract, men and whites, through a mixture of force and ideology, subordinate women and people of color under the banner of a supposedly consensual contract. So the latter are the victims, the objects, of the resulting "contract" rather than subjects, freely contracting parties, and are oppressed by the resulting sociopolitical institutions.

But note that there is no inconsistency at all between pointing out these usually unacknowledged facts of class, gender, and racial subordination and continuing to affirm the "weak" (arguably defining) contractual assertion of a humanly created society and polity. Contract theory in this minimal sense is not refuted by the actual history of social oppression and political exclusion since it is still true that it is humans (though a particular subset) who have been responsible for this history. The problem is that the *actual* "contracts" and their agents have been quite different from how they have been represented in the mainstream literature. But far from the subordinated being motivated as a result to want to *deny* the role of human agency in creating the resulting polity, surely this is all the more reason for them to want to affirm, indeed insist upon it! Class society, patriarchy, and white supremacy come into being not "naturally" but as the result of collective human causality – in which, however, some humans have a far greater causal role than others, and subsequently benefit far more from the sociopolitical and economic institutions thereby established. The social contract in its guise as the domination contract captures these crucial "descriptive" realities while simultaneously, by emphasizing their "artificial" genesis, bringing them across the conceptual border from the realm of the natural into the realm of the political. Class society, patriarchy, and white supremacy are themselves "unnatural," and are just as "political" and oppressive as the (formally and overtly political) white male absolutist rule (for example, as advocated by Sir Robert Filmer), predicated on white male hierarchy and moral inequality, that is the exclusive target of mainstream contract theorists, and which the contract apparatus prescribes abolishing.

Consider now the normative/prescriptive side. The problem is obviously not that moral egalitarianism among humans is an unattractive moral ideal, but rather that in these actual contracts moral egalitarianism

was never realized. Pateman (1988) and numerous other feminist theorists over the past three decades (Clark and Lange 1979; Okin 1992; Pateman and Gross 1997) have documented the ways in which women have been seen as unequal by virtually all the male theorists of the classic canon, including (with the qualified and ambiguous exception of Hobbes) the very contract theorists who, as paradigmatic theorists of modernity, so loudly proclaimed human equality as their foundational assumption. Moreover, this inequality has been manifest in their drawing of the public/private distinction, their conceptions of marriage, and their view of the appropriate place of women in the sociopolitical institutions supposedly "contractually" established. Though the literature on race is less extensive, a comparable body of work is now emerging here also (Goldberg 1993, 2002; Outlaw 1996; Mills 1997, 1998a; Mehta 1999; Valls 2005). It argues similarly that people of color have generally been excluded from equal status in liberal thought, and have been seen (in my phrase) as "subpersons" rather than full persons, thereby justifying their subordination in the various racialized sociopolitical structures – Native American and Australian expropriation, African slavery, Third World colonization – imposed on non-Europeans by Europe in the modern epoch.

But obviously neither feminists nor critical race theorists are seeking to reject moral egalitarianism as such. Rather their complaint is that this egalitarianism has been *denied* to women and nonwhites both in theory and in practice, and that – at least for those of us still sympathetic to contract theory – a genuinely inclusive "contract" would need to recognize this legacy and prescribe appropriate corrective and transformational measures in the light of its historic injustice.

The real source of the problem should now have emerged clearly. The mainstream story of the contract builds on top of, or conflates with, the eminently reasonable *minimal* assumptions of human sociopolitical agency and human egalitarianism an *additional* set of assumptions that are quite false, radically untrue to the historical record. Only some humans had effective causal input; only some humans had their moral equality recognized. In this fashion, it completely mystifies the creation (in the ongoing rather than *ab initio* sense) of society, denying or obfuscating the various structures of domination that are either transformed (class, gender), or that come into existence (race), in the modern period. Thus when Christopher Morris, in his introduction to his social contract anthology, writes: "There may, however, be some explanatory import to the idea of states of nature and social contracts that should not be overlooked. . . . our political institutions and arrangements are, in some sense, our creations" (1999a: x), the obvious and classic retort is: Just who are this "we"? ("What do you mean *we*, white man?") Did

women create patriarchy? Did nonwhites create white supremacy? Obviously not – these “institutions and arrangements” were created by *some* humans, not all. By its undifferentiated descriptive individualism, by its failure to advert to the existence of, and need to eliminate, “institutions and arrangements” of group domination, the mainstream version of the contract sabotages the radical potential of the apparatus.

And it is here, I would suggest, that Hampton's contract theory becomes deficient and needs supplementation. Normatively, Hampton (2001) endorses a feminist Kantian contractualism based on the intrinsic worth of all persons (as part, though not all, of a comprehensive ethic). Moreover, as noted at the start, she also argues for the revival of the descriptive dimension of contract theory. This proposal is in keeping with her emphasis elsewhere, for example in her book on political philosophy (1997: xiii–xv), that the subject should not be thought of as purely normative, but as extending to factual issues as well. The political philosopher, Hampton argues, should seek to understand the “political and social ‘deep structure’ which generates not only forms of interaction that make certain kinds of distributions [of resources] inevitable but also moral theories that justify those distributions.” But she never brings these insights together, in the sense of asking how the revived descriptive contract she advocates would need to be rethought in the light of sexist exclusions, or how the descriptive and the normative sides of the contract would now need to be related given patriarchy as a “deep structure” with such a fundamental shaping influence on society (including, reflexively, the very moral theories generated about its founding). Instead, like Morris, she speaks of “political societies as conventionally-generated human creations” (Hampton 1993: 383) and, without asking who these “humans” and these “people” are, glosses the contract claim as equivalent to the assertion that:

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. (1993: 382)

Despite her feminism, then, Hampton does not press the further question of how we should think of this supposedly contract-equivalent “support” once the gender subordination of half the population is taken into account. Pateman's *sexual* contract fills this theoretical gap, making clear that a “contract” of gender domination would more accurately illuminate than the mainstream version not merely the “deep structure” of a society based on patriarchy, but also its justificatory moral theories and how they become “conventionally entrenched.” We would then be better positioned theoretically not merely to apply, in a gender-inclusive way,

the Kantian contractual theory Hampton endorses, but to understand, on the metatheoretical level, why its previous (male) application has been so systematically and structurally, not just contingently, exclusionary. For we would then be in a position to recognize gender *itself* as a political system established by the contract, and prescribing accordingly its own ground rules about the cartography of the social and the appropriate distribution of rights, privileges, and freedoms in the polity.¹

The relation between the normative and descriptive aspects of the contract is thus necessarily more complicated in this revisionist contractualism than it is in mainstream contract theory. In the mainstream contract, a (supposedly) consensual founding establishes an egalitarian moral code. So this is a code we can (supposedly) be comfortable in endorsing. But once the contract is unmasked as really a contract of domination, the code itself needs to become an object of scrutiny for us. Under cover of egalitarianism, the domination contract generates norms, and stipulations about how to apply these norms, that will themselves reinforce domination, and so which need to be interrogated by those seeking to end their subordination by the contract. A greater degree of reflexivity, of self-conscious metatheoretical distancing from and questioning of concepts and values, is therefore required, insofar as the new normative contract has to take account of realities ignored or misdescribed by the terms of the old normative contract – certainly in its original form, but also later, even when nominally updated and purged of its original sexism and racism.

For even when the contemporary contract seems to drop the descriptive dimension, as in Rawls's thought-experiment, it continues tacitly to manifest itself, if only by default, in an underlying factual picture, a version of history, and a set of assumptions about society that continue to reproduce the inequities and obfuscations of the historic contract, and, correspondingly, an apparatus that retains many of its deficiencies. The famous early feminist critique of Rawls, of course, was that knowledge of gender was not one of the things listed as being stripped from

¹ By contrast, Hampton's apparent naivety about Kant is well illustrated when she writes at one point: "Kant also has opponents who, while agreeing that our value is noninstrumental and objective, reject the idea that all humans are of equal value – for example, those who think human beings of a certain gender or race or caste are higher in value (and so deserving of better treatment) than those of a different gender, race, or caste" (2001: 352). But of course *Kant himself* was a sexist and racist, for whom women could only be "passive citizens," while blacks and Native Americans were "natural slaves." (See Schröder 1997; Eze 1997a; Bernasconi 2001a, 2002; Mills 2005b.) The concepts of the sexual and racial contracts enable us to understand how these seemingly contradictory commitments are reconcilable, not merely in Kant but most other Enlightenment thinkers of the period, through the workings of white male moral psychologies and moral boundaries created by the exclusionary "particularistic universalism" of the domination contract.

us behind the veil. Nor was there any awareness, in the "general" social and historical facts we take with us there, of the historic subordination of half the human race – surely "general" enough to have made the cut! By assuming heads of households as the representative contractors, by taking the family as ideal, by not challenging the role of the public/private distinction, Rawls naturalized the family in the same way the classic contract theorists did.

Consider now the reclamatory work of Susan Moller Okin (1989). Okin's insight was to recognize that Rawls's moral contract apparatus had the potential to go beyond Rawls's own conclusions, once we admit a "veiled" knowledge of crucial non-ideal facts on gender:

There is strikingly little indication, throughout most of *A Theory of Justice*, that the modern liberal society to which the principles of justice are to be applied is deeply and pervasively gender-structured. Thus an ambiguity runs throughout the work. . . . On the one hand, as I shall argue, a consistent and wholehearted application of Rawls's liberal principles of justice can lead us to challenge fundamentally the gender system of our society. On the other hand, in his own account of his theory, this challenge is barely hinted at, much less developed. . . . [This] potential critique of gender-structured social institutions . . . can be developed by taking seriously the fact that those formulating the principles of justice do not know their sex [behind the veil]. (1989: 89, 105)

Okin thus seeks to appropriate the contract for feminism, and in the closing chapter of her book shows how such a critique of a gender-structured social order can be developed from behind the veil. Correspondingly, in her review essay on *The Sexual Contract*, she criticizes Pateman for rejecting in principle (as Okin sees it) the attempt "to employ contractual thinking in the service of feminism" (1990: 659). But I would claim that there need be no principled opposition at all between their two approaches once we conceive of them as engaged in different tasks, with Pateman's view of the contract as intrinsically subordinating paradigmatically meant as a characterization of the Hobbesian/proprietary contract in particular. Okin's skepticism about the sexual contract idea – she writes at one point "it is not clear to me what we gain in understanding by tracing [the forms of patriarchal power] to a supposed contract made by men" (1990: 660) – misses the value of a theoretical innovation that can provide the very knowledge behind the veil that Rawls's idealized contract avoids. The gender-structured social institutions Okin cites are precisely what are summarized in Pateman's non-ideal contract: the sexual contract.

So we can, I suggest, bring them together under a division of conceptual labor in a *common* enterprise: Pateman doing the actual non-ideal

contract, Okin doing the ideal normative contract. As emphasized, the relation between the descriptive and normative sides of the contract becomes radically different in this alternative contract theory since the real-life contract is being conceptualized as a domination contract. Thus our aim becomes to dismantle rather than endorse it. As a "contractor" in the original position, one is now making a prudential choice informed by the possibility of ending up female in a society structured by the sexual contract. Gender subordination in its manifold dimensions and implications can thus become the object of normative critique, since these "general facts" are not ignored as in the mainstream contract. The full ramifications of patriarchy not just for the family but society in general (the state, the legal system, the differential status of men and women), as well as typical male moral psychology and dominant androcentric ideology, can all now legitimately be considered within a "contractual" framework.

In this fashion, I claim, we can synthesize the crucial insights of Hampton, Pateman, and Okin to produce a feminist contractualism stronger than any of them individually: Hampton's *moral* Kantian contractualism, informed behind the veil by Pateman's *factual* Rousseauian contract, combined so as to generate an expanded variant of Okin's *non-ideal* version of Rawlsian contractualism, all deployed to achieve gender justice. From Hampton, the idea of contract as a descriptive metaphor capturing the key insight of society as a human creation, and the normative endorsement of Kantian contractualism. From Pateman, the idea that the actual contract is an exclusionary sexual contract, not a gender-inclusive one, based on female inequality and inferiority, thereby shaping both society and, reflexively, our ideas about society. From Okin, the idea that a feminist agenda on justice can nonetheless still be promoted in a contractual framework by imagining oneself behind Rawls's veil with knowledge of these non-ideal gender realities. So if in the mainstream contract the circumstances of the creation of the sociopolitical sphere imply the moral endorsement of the institutions thereby created, in the radical use of the domination contract, this is inverted. The characterization of the descriptive contract here serves to alert us to the structures of systemic institutional oppression, which need to be dismantled.

The Domination Contract

Let me now turn in greater detail to the illustration of the contrast between these two contracts, and the ways I think progressives can use the domination contract to address issues of gender justice, and social justice more generally. Consider the table, which summarizes what I see as the crucial differences. The key points are as follows:

MAINSTREAM CONTRACT

DOMINATION CONTRACT

Ethical Framework

Ideal theory

Non-ideal theory

Starting-PointGround zero (state of nature,
original position)

Unjust stage of society

Role of History

None presupposed

Historical account presupposed

Basic Agents

People as presocial atomic individuals

People as members of social groups
in relations of domination and
subordination**Status Norm in Society**

Equality (ostensibly)

Inequality (explicitly)

Economic Transactions

Typically mutually beneficial

Typically exploitative

Juridico-Political Sphere

Egalitarian

Biased toward dominant groups

Human Divisions

Class, race, and gender as natural

Class, race, and gender as artificial

Human Psychology

Basically imported from nature

Fundamentally transformed
by society (*amour de soi* →
amour-propre)**Obstacles to Accurate Social Cognition**Individual bias, "passions,"
"inclination," short-term self-interestDominant-group interests,
dominant-group ideation**Locus of Problems**

Human nature

Corrupting social institutions

Goal of ContractTo create a just society (laws, govt,
etc.)To reinforce and codify unjust
institutions**Heuristic Purpose for Us**Readers' endorsement of the
contract as creating an ideally just
societyReaders' condemnation of the
contract, and corresponding
awakening to systematic social
injustice and the need for
appropriate corrective measures to
realize a just society

First, the overarching framework is non-ideal theory.² In the historic version of the mainstream contract, conceived of (though falsely) as consensual and inclusive, the way in which the polity is founded is supposed to confer on it a positive normative status. As such, the mainstream contract assumes ideal circumstances: society and government are brought into existence in a way that is fair, respecting the rights of those involved. By contrast, we know perfectly well from history that oppression of one kind or another has been the social norm since humanity left the hunting-and-gathering stage. The domination contract begins from this simple reality. Though the contemporary Rawlsian contract drops any historical claims, it nonetheless inherits this orientation in that Rawls sets out to ask what principles people *would* choose in ideally fair circumstances. Thus he makes clear throughout the book that his contract is an exercise in ideal theory, intended to work out "the principles of justice . . . defining a perfectly just society, given favorable conditions," and presuming "strict compliance" (1999h: 308–9). However, he claims that this starting-point is ultimately intended to illuminate the non-ideal: "If ideal theory is worthy of study, it must be because, as I have conjectured, it is the fundamental part of the theory of justice and essential for the nonideal part as well" (1999h: 343).

But a case can be made (and will be made in greater detail in later chapters) that such a starting-point handicaps his enterprise, and certainly the manifest failure in his own work, and in the thousands of articles it has inspired over the last 35 years, to apply his theory to the "nonideal" realities of gender and race does not encourage confidence in it. By definition, problems arise in non-ideal theory that do not arise in ideal theory, and one will need mapping concepts and data sets which cannot be readily extrapolated from those of ideal theory. So it raises the question of how useful, let alone "essential," it actually is. The mainstream contract – unsurprisingly given its conceptual ancestry – tends to abstract away from issues of social subordination, since historically it is really predicated on the experience of the bourgeois white male subject, that subsection of the population emancipated by modernity. By contrast, the revisionist contract, through utilizing the device of the domination contract, makes such issues its primary focus, since (following

² I am using the ideal theory/non-ideal theory distinction in the sense demarcated by Rawls. Both ideal and non-ideal theory involve the utilization of moral ideals, and the attempt to determine what justice requires in a particular situation, so the contrast is not that between moral and amoral approaches. The distinction is rather that ideal theory aims at mapping a perfectly just society, while non-ideal theory seeks to adjudicate what corrective or rectificatory justice would require in societies that are unjust. Rawls's focus is almost exclusively on the former.

Rousseau) it starts not from the state of nature but from an *already existing* unjust society, and then asks what measures of justice would be necessary to correct for them.

At the very least, then, Rawlsian ideal theory needs to be informed by the non-ideal. As just pointed out, to the extent that Rawls's method has been found useful in theorizing gender justice, most notably in Okin's (1989) work, it has been precisely through the *repudiation* of the key Rawlsian assumption of the ideal nature of the family, as a supposed paradigm of human interaction to be sharply contrasted with the interaction of strangers, and thus not requiring justice to regulate it. The disadvantaging of female children and women is only able to appear on the conceptual radar screen through the rethinking of the public/private boundary, and the unsentimental scrutiny of the actual, real-life family. In the case of racial justice, the non-ideal looms even more definitively, since measures of compensatory justice (affirmative action, reparations) presume by definition the need to correct for a history of *injustice* that Rawls's ideal-theory focus sidesteps. It is noteworthy that while in *The Cambridge Companion to Rawls* (Freeman 2003) there is at least a chapter by Martha Nussbaum (2003) on "Rawls and Feminism," there is no comparable chapter – indeed no section in *any* chapter – on race. And apart from the fact that the whiteness of the profession is even more overwhelming than its maleness, apart from the fact that most white political theorists, whether political scientists or political philosophers, take for granted what Rogers Smith describes as the misleading "anomaly" view of American racism (R. Smith 1997), the role of the ideal-theory framework itself must surely be a major contributory factor to this pattern of systematic omission and evasion. What has supposedly been intended to facilitate discussion of the remediation of injustice has served instead to obstruct it.

Relatedly, the domination contract is necessarily *historical*. Though contemporary poststructuralism is something of an exception, radical political theory, whether of class, gender, or race, traditionally emphasizes the importance of investigating the real history that has brought us to this point, and that explains who the major political players are and what are their agendas. Thus it seeks to contest both mystified histories and ahistorical naturalized accounts that deny *any* history, which simply sever the present from the past. Marx (to cite a very unfashionable figure) was famous for excoriating liberals and those he dubbed the "vulgar" economists for their timeless and decontextualized portrayal of the "free exchange" between capitalist and worker, without attention to the sequence of events (for example, the enclosures in Britain) that had reduced people who had previously been able to make a living from the land to workers with only their labor-power to sell. In the radical

use of contract he pioneers, Rousseau establishes the precedent by giving an alternative narrative – naive by our standards, but expressing underlying truths nonetheless – of the origins of class inequality. Similarly, Pateman offers in her book (1988) an “as if” account of the origins of patriarchy, while I – comparatively advantaged by the fact that European expansionism takes place in the modern period, accompanied by a massive paper trail – was able to draw on actual events in describing how global white supremacy was established (Mills 1997). But in all three cases, the crucial point is that the non-ideal structure of domination in question, whether of class, gender, or race, is not “natural,” not the outcome of the state of nature, but a sociohistorical product. The greater realism of radical contract theory as against mainstream contract theory is manifested in its recognition that the “contract” is really (*à la* Hampton) a way of talking about the human creation of sociopolitical institutions as the result of previous sociohistorical processes, not *ex nihilo* from the state of nature.

And this history is, of course, one of group domination and subordination rather than the classically individualist social ontology, and transactions among equal individuals, of the mainstream contract. I do not at all mean by this to endorse a communitarian position of the Sandelian variety (Sandel 1998), since, in agreement with many critics, I believe, *contra* Sandel, that people can and should gain a cognitive and normative distance from their socially assigned identities. My point rather is Rousseau’s, and later Marx’s, classic claim – now a political axiom among progressives – that society is most illuminatingly seen as a system of group domination rather than as a collection of individuals. So it is as members *of* social groups that individuals originally come to consciousness and agency, even if they later react against their socialization, and their differential status within the “contract” is tied to their group membership. The general facts of history and society that people take behind Rawls’s veil apparently do not include the subordination of women or the subordination of nonwhites. (There is, of course, some sensitivity to class issues.) But we are certainly not bound by Rawls’s ignorance. What makes radical contract theory better suited to make use of the device of the veil is its demystified, non-idealized view of recent human history as largely a history of social oppression, so that groups in interlocking patterns of domination constitute the real social ontology. The class, sexual, and racial contracts each capture particular aspects of social domination (while missing others), so that, whether singly or (ideally) in combination, they register the obvious fact that society is shaped by the powerful acting together, not individuals acting singly.

As such, the domination contract, which makes groups the key players, is obviously truer to the actual history of the world. If, as

argued at the start, contract in the minimal sense does not specify who the crucial human actors are that create the sociopolitical world, then a group-based contract theory is not a contradiction in terms, and should be embraced by us as a more useful philosophical concept for political theory. The descriptive side of the contract is more accurately represented in the domination contract, and is certainly vastly more illuminating as a conceptual framework for orienting the prescriptive contract, since it points us toward the really important moral issues, viz., how do we dismantle these structures so as to achieve genuine egalitarianism. With such knowledge behind the veil, Rawlsian contractors would not be able to ignore gender and racial subordination as they currently do.

As a corollary, in understanding human motivation, one needs to take account of people's group membership, and how, whether privileged or subordinated, it shapes their psychology. Rousseau's famous critique of his social contract predecessors was that "They spoke of Savage Man and depicted Civil man" (1997a: 132). A healthy *amour de soi* had been socially corrupted into an unhealthy *amour propre*, which contractarians like Hobbes, not recognizing its social genesis, then took to be part of the human condition as such. Similarly, in Marx's critique of a specifically bourgeois vision of *homo economicus*, in feminist theorists' work on the production of "male" and "female" traits by gendered parental upbringing, in critical race theorists' analyses of "whiteness" and its psychological influence on its possessors, the conceptual door is opened to a much richer set of resources for theorizing actual human motivation and its social shaping than in the impoverished psychological framework of mainstream contract theory.

The relation between equality as a value and the contract also needs to be rethought. The mainstream contract is, of course, famous for its nominal egalitarianism, its emphasis that in the state of nature all men are equal, whether in physical and mental abilities, as in Hobbes, or in moral status, as in Locke and Kant. Hence the deep connection between social contract theory and conventional narratives of modernity, the promise of the American and French Revolutions. And this equality is then supposed to translate itself (in the societies created by these equal men) into a juridico-political equality, equality before the law and equality of citizenship, and in economic (and other) transactions that are non-exploitative in nature.

But however attractive this may be as an ideal, it obviously bears no correspondence with real life for the majority of the population, even in the modern period. Rousseau's concern is that the artificial class inequalities of society undermine this moral equality, and in Marx's more sophisticated treatment this is elaborated into the point that

formal equality at the level of the relations of exchange is substantively undercut by economic compulsion at the level of the relations of production. But for gender and race, the situation is even worse. As feminists have long documented, in the case of gender, the "equality" was originally not even nominal, let alone substantive, since with the qualified exception of Hobbes, all the major contract theorists saw women as inferior to men, and so as appropriately to be regulated by male authority. Moreover, this theoretical inferiority was, of course, also manifest practically, in real life, in legal and political institutions. So the value that is perhaps most intimately associated with the social contract tradition – equality – was not at all meant to be extended to half the human race. Likewise, as various theorists of race and imperialism have pointed out, once one examines the representations ("savages," "barbarians") and the experiences of people of color in the modern period – expropriated and exterminated Native Americans and Australians, enslaved and later Jim-Crowed blacks, colonized non-Europeans – it becomes clear that both in theory and in practice, only white men were equal. Not merely as a matter of fact, but as a matter of proclaimed moral and legal norms, nonwhites had an inferior to non-existent schedule of rights – and were thus non-citizens or at best second-class citizens. How, then, can it make sense to conceptualize society as if, in the modern period, equality becomes the generally accepted norm, when in fact such a small section of the population were actually seen as equal?

In the domination contract, by contrast, this reality is frankly faced: *inequality* is the actual social norm obtaining for the majority. The evasive conceptual assimilation of the status of white women and non-whites to the status of white men that is embedded in the mainstream contract, thereby burying the distinctive problems the former groups face, is thus precluded. Correspondingly, the radical contract recognizes that the crucial juridico-political institutions are not egalitarian in their functioning either, but biased in various ways by class, gender, and racial privilege. The huge body of literature standardly ignored by contract theorists – the original left analyses of the workings of the state in capitalist society, the more recent work on the gendered and racial state (MacKinnon 1989; Anthony Marx 1998; Goldberg 2002), as well as all the biases in the legal system – can then legitimately enter here, rather than being conceptually blocked by the otherworldly and completely fanciful pictures of a neutral juridico-political realm assumed by the mainstream contract. And far from fair and reciprocal advantage being the norm – Rawls suggests, absurdly, that we think of society as *actually* (not just ideally) being "a cooperative venture for mutual advantage" (1999h: 4, 109) – exploitation of various kinds – of class, gender, and

race – is the norm (Sample 2003a). Accordingly, one of the main aims of the normative contract will be the elimination of these structures of exploitation – unequal chances for the poor and working class, sexual exploitation, differential white advantage and corresponding wealth (Shipler 2004; K. Barry 1984; Oliver and Shapiro 1995) – that the individualist perspective of mainstream contract theory tends to obfuscate.³

In addition, the group interests of the privileged, and their resulting desire to maintain their privilege, will become both an ideational obstacle to achieving social transparency and a material obstacle to progressive change, which will need to be taken into account in theorizing the dynamics of social cognition and the possibilities for social transformation. For both the mainstream contract and the revisionist contract, accurate factual and moral cognition is crucial. But for the mainstream contract, the obstacles to attaining this desired objectivity are generally conceptualized in individualistic terms. For the domination contract, on the other hand, there is an additional category of cognitive obstacles that are generated by the vested interests in the established order of the dominant group, and their differential power over social ideation. So that whole set of problems that in the Marxist tradition is associated with the subject of *ideology* can enter here. If for mainstream contract theory social transparency is the ideal, here social opacity is the norm, and hegemonic conceptual and normative frameworks will have been shaped by the fact of group domination. So again, one will be equipped with a far more sophisticated and realistic view of the workings of the polity and its dominant illusory self-conceptions than in the mainstream contract. One will be beginning from the elementary political fact – and how could this be ignored by any serious political theory? – that dominant groups will in general want to preserve their hegemony, so that it is by no means just a matter of coming up with a more convincing picture of a just society.

Finally, apart from (I would claim anyway) all of these obvious merits, the domination contract has the great and overwhelming virtue of conceptualizing class, gender, and race *as themselves artificial*, not natural as in the mainstream contract. So it is not merely that society is seen as a complex of groups in dominance and subordination, but that the formation of the groups *themselves* is a product of the contract(s). The familiar claim of recent radical democratic theory that gender and race are “constructed” – not just the systems (patriarchy, white

³ Rawls's left-liberal, social democratic contract is, of course, good on class – that is its main strength, from a radical point of view – though even here some on the political left argued that it did not go far enough, and was unrealistic or evasive about the implications for political power and people's social status of the economic inequalities it left intact. See, for example, Peffer (1990).

supremacy) organized around them, but what we take to be gender and race themselves – is thus perfectly accommodated.

Rousseau deserves the credit for this too, though, as noted, the lack of discussion in the secondary literature of his class contract, and his own notorious sexism, means that he has not been fully recognized for it. As underlined at the start, the social contract as it comes into its own in the modern period emphasizes the “artificiality” of society and the polity. These are human-made, not organic growths as in the discourse of antiquity, and the descriptive side of the contract expresses that insight. But Rousseau goes a startlingly radical step further: he suggests that in a sense humans themselves are artificial, human-created products. What to his predecessors were “natural” divisions of class he sees as a result of domination and convention. It is not merely that we make our institutions – we also make ourselves.

And the implications are that for the domination contract in general, dramatic social transformation, both good and bad, is pivotal. In this respect it contrasts with the more limited scope envisaged for changing ourselves in the mainstream contract. Hobbes sees humans as naturally self-seeking individuals who have to learn to constrain their propensity to maximization of short-term advantage for society to function. But this is not a radical metamorphosis. Nor are Lockean humans, who already largely obey natural law in the state of nature (though prone to bias in their own case), dramatically altered by their entry into society. And for Kant’s Christian vision, of course, we are always characterized, as fallen humans, by our “radical evil,” whether in society or not. But Rousseau differs from his fellow contract theorists in offering “a secular narrative of Fall” (Brooke 2001: 110), in which “a corrupt society is the cause and a debased human nature the effect” (Hullung 2001: 67).

Extended from class to gender and race, this gives us the sexual and racial contracts, which in a dialectical relationship both consolidate in an oppositional relationship with one another the entities of men and women, whites and nonwhites, and create these groups themselves. So the (bad) contractual transformation of the non-ideal descriptive domination contract is far more thoroughgoing than in the mainstream descriptive contract. It is social institutions that form and corrupt us, an account “locating the origins of evil not in any original sin by the First Couple but in the consequences of the organization of human societies” (Brooke 2001: 111). And the implications for the (good) contractual transformation envisaged in the ideal prescriptive contract are, correspondingly, far more sweeping than in the mainstream version, since radical contract theory then points us toward the necessity not merely of dismantling these structures of domination, but *the contractors themselves* as intrinsically gendered and raced beings. As Marx

envisaged a classless society, so the sexual and racial contracts, emphasizing the constructed nature of gender and race, open up for us the possibility and desirability of a genderless and raceless society.

Objections and Replies

I now want to consider some objections that might be made to this proposed revisionist contractualism.

(1) The “domination contract” is an idle fifth wheel, not doing any work, and not necessary to theorize normatively about these issues.

The claim is not that it’s necessary, but that it’s helpful, in pointing us toward and highlighting certain important realities not usually discussed in this framework, and which the mainstream contract apparatus tends to obfuscate. So it’s not a matter of logical implication but conceptual orientation, heuristic value, pointing us *there* rather than *here*. Besides, the “fifth wheel” accusation is standardly made about the Rawlsian contract also, so arguably the domination contract is no more vulnerable than it is.

(2) “Contract” is just a metaphor, which doesn’t explain anything, and that goes for a “domination contract” also; what we need is empirically informed sociopolitical theory about the actual causal mechanisms of oppression.

Many philosophers have long argued that metaphors do in fact do cognitive work. But in any case, the domination contract is no more meant to substitute for empirical sociopolitical investigation than the mainstream contract is. It’s not competing with such work but complementing it, providing at the level of abstraction appropriate to political philosophy an intellectual framework that can be utilized by theorists with widely differing views on what the causes of social oppression are, while remaining agnostic and uncommitted about which of these accounts is most convincing. So theorists with quite divergent perspectives can at least get together on this common minimalist platform.

(3) Whether the contract is one of “domination” or not, endorsing this apparatus ties one to a liberal framework.

I see this as a virtue, not a weakness – a way of mainstreaming issues typically discussed only in radical circles, piggybacking on to a respectable apparatus (isn’t the goal of progressives to convert others and not just preach to the choir?). Besides, it’s “liberal” only in terms of endorsing liberal values, not in its social ontology – it explicitly rejects liberalism’s atomic individualism for an ontology of individuals *as* members

of social groups. So it arguably retains the key insight of progressive theory, viz the oppressive role of class, gender, and racial structures.

(4) Liberal values themselves are suspect.

What's the alternative? Besides, what's wrong with moral equality, autonomy, self-realization, equality before the law, due process, freedom of expression, freedom of association, voting rights, and so forth? Sounds pretty good to me. The real problem historically has been the restricted extension of these values to a limited population, or the emptying of nominal freedoms of any real substantive content by oppressive social structures. But the whole point of mapping a "domination contract" is to be able to track, and ultimately eliminate, these problems. Consider the alternatives: (i) Marxism: presently moribund in the absence of an attractive socialist project, historically weak on normative issues, and in any case arguably parasitic on liberal values for what little normative argumentation has been given in the tradition (for example, claims about liberal equality being undercut by class domination). (ii) Communitarianism: vulnerable to the charge of relativism, and in any case the backward-looking orientation of the dominant variety is particularly uncongenial for traditionally subordinated groups like women and racial minorities, for whom the "good old days" (coverture? slavery? colonialism?) were not so good at all, and are somewhat less likely to inspire nostalgia. (iii) Poststructuralism: famously better at deconstruction than positive reconstruction. Besides, if demands for gender and racial justice are conceptualized as just the will-to-power of the subordinated, how on earth will this legitimate them? (iv) Feminist ethic of "care": many feminists have moved away from their original strong endorsement of this alternative, conceding that even if (in some cases) we need more than justice, we do definitely need justice.

(5) Insofar as no political theorist (today) would exclude white women and people of color, mainstream social contract theory already takes their concerns into account.

One needs to distinguish substantive from merely formal, nominal inclusion. The well-established feminist critique made by Okin and others shows that just-adding-women-and-stirring, alternating "he's" and "she's" in the manuscript, doesn't amount to a serious rethinking of the polity to achieve gender justice. Rawls's own original notorious assumption that the family can be treated as an "ideal" institution, and the general ignoring in mainstream male literature of the difference gender makes, demonstrates the continuing marginalization of these concerns. And the situation on race is even worse: there is next to no recognition in the work on justice by white political philosophers that

the United States and the former colonial powers have historically been white-supremacist polities, and that racial *injustice* has been central to their history.

(6) The critique of mainstream social contract theory is misplaced, since it's not as if it's trying and failing to do what you want it to do, but that (as an exercise in ideal theory, as you recognize at the start) it's not trying to do what you want it to do *at all*.

If the task of political philosophy is to articulate ideals of a just society, then surely at some stage – even for ideal theory – the ultimate goal must be to bring these ideals into comparison with our own manifestly non-ideal society to see how to make it more just. (If this is *not* the intention, and these ideals are meant just for aesthetic contemplation, then this is a remarkable abdication of the historic role of ethical theory and its link with practical reason!) Rawls himself said that the point of starting with ideal theory was that it would give us a better grasp on the more pressing problems of non-ideal theory. But as pointed out at the start, 35 years later this promise remains largely unfulfilled. So it raises the question: are mainstream contract theorists really serious about social justice or not?

(7) The origins of social contract theory in white male bourgeois thought necessarily contaminate its theoretical assumptions and the structuring of its crucial concepts, for example the “individual” will, in effect, necessarily be conceived of as a male property owner, with a wife at home to do reproductive labor. So this apparatus cannot be reclaimed and turned to progressive ends.

We need to distinguish (ineluctable) logical implication from (weaker) theoretical bias. The history of the “contract” shows it is flexible enough to be radicalized and subjected to reconceptualization, as in Rousseau, as cited, or Okin’s adaptation of Rawls as applied to the family. The task is to rethink (in the light of structures of domination) what would be necessary for the subordinated to realize their “individuality.” But this does not require abandonment of the concept, just an expanded vision of pertinent social obstacles – which is precisely what the “domination contract” sets out to highlight.

(8) By your own concession, the appeal and continuing survival of social contract theory are owed in part to its very simplicity as an image and metaphor. But this simplicity is lost once you start fuzzifying things with not one contract but several interlocking “contracts.” If all these complexities and epicycles are needed, isn’t the original metaphor lost, and shouldn’t the project just be abandoned?

Simplicity is undoubtedly a theoretical virtue, but not the only, or highest, one. More important is adequacy to the field of study. Society is complex, and while the original contract is easier to grasp, this comes at the cost of obfuscating and profoundly misrepresenting the actual social history, and blinding us to pressing issues of social justice. Arguably the central insights of social contract theory are the human-created character of society and the polity, and the commitment (if originally limited) to moral egalitarianism. These insights are retained in the domination contract, though put on a more sociologically informed foundation. So I would claim that more is gained by complicating the contract idea than is lost by the relinquishment of simplicity.

Appropriating the Contract

My recommendation, then, is that we – egalitarians, feminists, critical race theorists, and progressives in general in political theory who are concerned about real social justice issues – work toward a paradigm shift in contract theory, not conceding the contract to mainstream theorists, but seeking to appropriate it and turn it to emancipatory ends. According to the Kymlicka quote cited earlier, contract is really just a “*device* which many different traditions have used for many different reasons” (1991: 196). Rawls, similarly, sometimes refers to his updating of the contract (the veil, the original position) as an “*expository device*” (1999h: 19). So given this essentially instrumental identity of the contract, there is no principled barrier to developing it in a radical way: the domination contract as an “*expository device*” for non-ideal theory. Once one recognizes how protean the contract has historically been, and how politically pivotal is its insight of the human creation of society and of ourselves as social beings, one should be able to appreciate that its conservative deployment is a result not of its intrinsic features, but of its use by a privileged white male group hegemonic in political theory who have had no motivation to extrapolate its logic. Far from being a necessarily bourgeois or necessarily sexist or necessarily racist apparatus, contract theory has a radical potential barely tapped, and can serve as a vehicle for translating into conventional discourse most, if not all, of the crucial claims of radical democratic political theory.

The key conceptual move is simply to strip away the assumptions and corresponding conceptual infrastructure of an individualism once restricted to bourgeois white males and still shaping the contract’s features today, and replace it with an ontology of groups (I. Young 1990). Rousseau’s class contract, Pateman’s sexual contract, my racial contract (ideally combined, of course), can all then be conceptualized as still

being within the contract tradition in the minimal defining sense outlined above, viz, the assertion of, indeed insistence upon, the historic role of human causality in shaping the polity, and the commitment to the substantive realization of moral egalitarianism in its necessary transformation. By contrast, the assumptions of the mainstream contract in its contemporary form, presuming universal inclusion and general input, handicap the apparatus in tackling the necessary task of corrective justice by, in a sense, assuming the very thing that needs to be substantively achieved. Once one adds women of all races, and male people of color (to say nothing of the white male working class), one is actually talking about the *majority* of the population's being excluded in one way or another from the historical contract, and its present descendant! A theoretical device whose classic pretensions are to represent universal sociopolitical inclusion actually captures the experience of just a minority of the population, since inequality has not been the exception but the *norm* in modern societies.

Far from the domination contract representing "minority" concerns, then, it actually provides an accurate depiction of the situation for the majority. And far from being anti-Enlightenment, it has a much better claim to be carrying on the Enlightenment legacy. Getting the facts right is supposed to be an essential part of the Enlightenment mission, and in its mystified picture of the origins and workings of modern polities, mainstream contract theory certainly does not do that. And if the Enlightenment is supposed to be committed to moral egalitarianism and a transformation of society to realize this imperative, then ignoring the ways in which class, gender, and race void nominal egalitarianism of substance is hardly the way to achieve such equality. Through the more accurate descriptive mapping of the domination contract, the emancipatory reach of the egalitarianism of the prescriptive contract can then gain its full leveling scope rather than being, as at present, effectively confined to achieving the freedom and equality of a few.

In sum, a case can be made that radical contract theory, which deploys the domination contract as its descriptive mapping device, is, far from being a theoretical usurper, the *true heir* to the social contract tradition at its best, and it is mainstream contract theory that has betrayed its promise. If war is too important to be left to the generals, one could say that social contract theory is too important to be left to the social contract theorists. We should reclaim it.

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