

Contract and Domination

Carole Pateman and Charles W. Mills

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Introduction

Carole Pateman and Charles W. Mills

For some three decades feminist scholars have been re-examining and criticizing standard approaches and interpretations in political theory and political philosophy. On a smaller scale, a similar exercise by scholars of race has been underway for the last 20 years or so, although it has really only taken off in the last decade. In both cases, however, the general tendency has been for this body of work to be seen as marginal to proper theoretical endeavors and as appropriate only for gender, African-American, and ethnic studies departments. So the very basic challenges posed to the academic enterprise of political theory, whether in political science or political philosophy, have for the most part been bypassed.

Our two books, *The Sexual Contract* and *The Racial Contract*, published respectively in 1988 and 1997, were contributions to this revisionist political theory but they took a new direction by confronting mainstream contract theory, which had received little attention in the new critical scholarship on gender and race. The simplicity and attractiveness of the idea of a "social contract" have made it an immensely powerful, influential, and long-enduring political concept, with an impact far beyond political theory; even public figures sometimes refer to a social contract. As Pateman (1988: 1) wrote in the opening paragraph of her book: "The most famous and influential political story of modern times is found in the writings of the social contract theorists." Anyone with a standard liberal arts education will have encountered the concept in one course or another, and will have at least a passing familiarity with the names of Thomas Hobbes, John Locke, Jean-Jacques Rousseau, and Immanuel Kant. Precisely because of contract theory's centrality to the modern Western political and, more generally, humanist tradition, it cannot be ignored in the investigation of the issues of gender and race,

especially since – with the publication of John Rawls's *A Theory of Justice* in 1971 – it has once again become extraordinarily widespread. But nobody had sought before to relate the numerous studies of sexism and racism either to classic theories of an original contract or to contemporary contract theory. This was Pateman's innovation for patriarchy, emulated a decade later for race and white supremacy by Mills.

In *The Sexual Contract*, Pateman reread the classic theorists of an original contract from a feminist perspective and argued that the standard commentaries on the texts provided only half the story. The social contract said to justify the government of the state was discussed and dissected but there was silence about the other dimension of the original contract – the sexual contract held to justify the government of women by men. She then explored two major institutions of modern society constituted by contract: marriage and employment. These singular contracts are about property in the person and create *relationships* – relationships of subordination. Contract is standardly seen as central to freedom, so her conclusion was that it was necessary to move beyond contract if there is to be a free social order.

Inspired by Pateman's book, Mills argued in *The Racial Contract* that European expansionism and the establishment of white/nonwhite relations of domination could be seen as similarly constituting "race" as a structure of exclusion. So rather than being genuinely egalitarian and inclusive, the social contract was predicated on regarding people of color (Native American and Australian "savages," African slaves, non-white colonial peoples) as less than equal, and so not worthy to be included as free individuals in the (white) polity.

Thus we both excavated the role of the classic theorists in justifying the patriarchal, racial, and imperial structures that have shaped the modern world, and examined the legacy of these structures in societies whose historical self-conception is so thoroughly, and misleadingly, informed by notions of individual freedom and equality. For three centuries there was no doubt that white women and nonwhites were deemed inferior to white men, were second-class citizens or outside citizenship altogether. The difficulty of writing about sexual and racial power today, especially in the rich countries, is that it exists in a context of formal equality, codified civil freedoms, and antidiscrimination legislation. People are thus encouraged to see any problems as a matter of discrete remnants of older discrimination or the outcome of unfortunate, backward individual attitudes. We tried to show how contract in the specific form of contracts about property in the person constitute relations of subordination, even when entry into the contracts is voluntary, and how the global racial contract underpins the stark disparities of the contemporary world.

Our pioneering efforts struck a chord and our books have been widely read and commented upon. Increasingly they are being taught together, not just in political theory and philosophy courses but also, for instance, in sociology, gender studies, ethnic and racial studies, anthropology, English literature, and postcolonial theory. A jointly authored book, then, seemed like a natural development. Not only would this enable us to develop our arguments further, answer our critics, and argue about the future of contract theory, but it would give us a chance to talk about the sexual and racial contracts in combination rather than in isolation. In the last chapter of her book, Pateman had stated that she had exaggerated when she had written of the sexual contract as (the missing) half of the story of the original contract. The story needed to be told again because the original contract was sealed by white men (Pateman 1988: 220–1). Similarly, Mills had conceded in a long endnote at the start (Mills 1997: 137–8 n3) that in making generalizations about whites and nonwhites he was abstracting away from gender relations of domination and subordination. So in a sense, the two contracts have been waiting to be brought together.

In chapters 5 and 6 we each bring them together and discuss their interaction or, at least, as much as is possible in two essays. The intertwined history of the sexual and racial contracts and how they have shaped the present is frequently forgotten. Or, to put this another way, that Britain, the United States, and globalization are the outcome of a long process of European expansion into the territories of “lesser” peoples, of colonialism, slavery, and the subjection of women, is not at the forefront of political argument. Yet it is virtually impossible to understand why certain patterns of deprivation, inequality, subordination, and violence persist at home and abroad without an appreciation of what has gone before and why it took so long (until the 1970s onward) and required such hard-fought battles before even formal equality was established.

Pateman argues in chapter 5 that the two contracts have been intimately connected since the early modern period when theorists of an original contract were at work. The modern notions of “race” (her argument is about the making of “race,” not racism) and sexual difference emerged together, and the racial and sexual contracts shaped the institutional structures of states and the lives of individuals. The chapter focuses on the United States and Britain and on “black” (African) and “white.” A modern racial structure of white supremacy was first established in the colony of Virginia and extended within a (patriarchal) state that likes to think of itself as the first truly civil order. Arguing that human reproduction, sex, and antimiscegenation are at the heart of the racial contract, and following her approach in *The Sexual Contract* and

in chapter 2, Pateman works with historical examples to illustrate how even women fighting the sexual contract were entangled in the racial contract. The historical background also provides context for the final section of the chapter where she adopts Mills's global focus and turns to a more diffuse sense of "contract." What she calls the global sexual-racial contract is brought together, for the first time, with Norman Geras's contract of mutual indifference, and she argues that attention to the sexual contract helps to explain something about the persistence of widespread indifference to suffering at home and abroad.

Taking a more philosophical and conceptual perspective, Mills likewise proposes in chapter 6 that the sexual and racial contracts be integrated. With the help of a set of diagrams to illustrate the conceptual progression, he suggests that we start thinking in terms of "racial patriarchy," rather than the disjointed "patriarchy" and "white supremacy" which were the main theoretical frameworks of Pateman's and his original books. So if the sexual and racial contracts both relied on a simple opposition between, respectively, male/white contractors and female/nonwhite noncontractors, the racia-sexual contract introduces a more complicated set of "contractual" statuses, in which white women and nonwhite men get to be "subcontractors," and only nonwhite women are "noncontractors." By drawing on some of the vast recent literature on "intersectionality," Mills then tries to show how this modified contract framework better corresponds to the reality of race/gender interaction, where race is gendered and gender is raced.

Our contrasting approaches in these two chapters are indicative of some significant disagreements that we have about contract theory. We did not write a joint chapter or jointly authored book on the interrelationship of the racial contract and the sexual contract because it is doubtful that Mills's view that contract theory can be modified and used for emancipatory purposes and Pateman's view that contract theory should be abandoned can be reconciled. Pateman's "sexual contract" and Mills's "racial contract" are, in a sense, both descriptive and normative in that they characterize and condemn societies of gender and racial domination as unfree and unjust. But Mills, unlike Pateman, argues that contract theory can still be used normatively to help rectify racial and sexual injustice. The chapters, therefore, are written from our different positions to allow readers to see for themselves how these differences play out and to judge for themselves the merits or defects of contract theory.

We begin with a dialogue in which we try to thrash out some of our disagreements. We do not, of course, disagree about everything. We are in complete agreement that there are very serious problems with contemporary contract theory and that the Rawlsian approach, as it stands,

cannot accommodate the questions about sexual and racial power with which we are concerned. Some large and very basic problems about justice lie outside the framework within which mainstream contract theorists ply their trade. Insofar as Rawls's difference principle raises questions about class, the original debate in the secondary literature did at least deal to some extent with issues of economic distribution. But with Rawls's shift to the more metatheoretical terrain of the 1980s essays, and *Political Liberalism* in 1993 (Rawls 1996), even this limited real-world connection has been lost, and there was never any great sensitivity to issues of gender and racial injustice in the first place. Rawls's methodological decision to focus on "ideal theory" and a "well-ordered society" has been of little help in addressing the problems of our non-ideal, ill-ordered, patriarchal and racist societies.

In addition, we both take the view that "masculinity," "femininity," and "race" are political constructs. Indeed, once all three dimensions of the original contract — the social, sexual, and racial — are part of the argument, their constructed, political character becomes clear, notwithstanding the classic theorists' use of the language of nature, and the construction is obvious within the framework of contemporary contract theory. But if there are similarities between the designation of sexual and racial differences, there are also differences. Race is, so to speak, a virtually pure construct, with none but the most superficial biological stratum, whereas the division between the childbearing and the non-childbearing halves of humankind is a natural fact, even if the gender differentiations that are taken naturally to follow from that division are not. Men and women also live together in separate households in the closest intimacy, which may make it even more difficult to eliminate oppressive patriarchal social structures than those founded on racial supremacy.

On the other hand, readers will notice that, drawing on her typology of traditional, classic, and modern patriarchy in *The Sexual Contract*, Pateman treats views about "masculinity" and "femininity" found in the classic texts as specifically modern. They form part of the sexual contract and part of a civil society constituted by contract, juridical freedom, equality, and "race." Mills argues that gender structures have a much longer history than race, which only comes into existence in the modern period. So for him the racial contract is distinctively modern, while the sexual contract can be conceptualized as having premodern incarnations. He sees the predominant form of gender ideology in notions of the complementarity of the sexes, notions that nicely obscure male supremacy.

We also both have sympathies with some general assumptions of classic left theory, albeit agreeing that it needs radical revision on issues

of gender and race. In *The Sexual Contract*, Pateman criticized Marx's reliance on exploitation at the expense of subordination, and her wariness about any attempt to retrieve contract theory arises in part from the necessity of the idea of property in the person for the presentation of wage labor as unambiguously free labor. Mills, by contrast, thinks that this connection between contract, capitalist ideology, and property in the person is sufficiently attenuated in Kantian contract theory that it can be adapted for progressive ends.

Another point of differentiation is that Pateman's arguments remain more firmly within the tradition of the classic theorists of an original contract than Mills's, and her analyses, except for the final section of chapter 5, are confined to the development of structures of sexual and racial power in three Anglo-American countries. She explores the development of civil society (that is, "civil society" as the opposite of "the state of nature," not "civil society" in the sense popularized since the late 1980s to refer to associations that exist outside of and often in opposition to the state). The early modern theorists used the term to refer to the modern state, a political order that involved equality, freedom, rights, contract, and consent. The modern state is taken for granted by most contemporary political theorists and, in contract theory, is assumed to come pretty close to being a voluntary scheme. Present-day contract theory has forgotten that its predecessors began from the tricky position that their premise of individual freedom and equality threw the legitimacy of all authority structures into doubt. Its practitioners no longer notice the fancy theoretical footwork necessary to place the state and its sexual and racial power structures out of reach of critical scrutiny.

Mills's argument is in the more abstract tradition of Rawlsian analysis, and the racial contract was projected as being global in its scope. Without abandoning that wide viewpoint, he has more to say here about the United States. But he is using contract in what, in philosophical jargon, would be seen as a "thin" sense, as against the "thicker," more empirically informed sense used by Pateman.

Most fundamentally, despite the complementary character of *The Sexual Contract* and *The Racial Contract*, we disagree about the usefulness of contract theory. We part company on whether, in C. B. Macpherson's phrase, contract theory can be "retrieved" for political progressives so as to deal with male and white supremacy. Our divergence is about whether contract itself, and the theory which hinges on contract, is a major vehicle for the reproduction and perpetuation of central power structures. For both of us, contract is unnecessary to make the moral and political argument for a more just and free social order. But Pateman is more hostile because of the theoretical baggage

it carries and because she sees contract as a central modern mechanism for the reproduction of sexual and racial hierarchies. Mills, on the other hand, thinks that contract theory can still be salvaged and put to egalitarian uses. One reason for his optimism is that his use of "contract" is looser and more metaphorical than Pateman's; he sees "contract" as basically just a figure for representing the human creation of sociopolitical relationships. Whether this difference contributes at least partially to our disagreement – whether in part we are presupposing different conceptions – is left for readers to decide.

In chapter 3, Mills develops the concept of a "domination contract," which has never been formally flagged as such. (Hobbes's contract is a domination contract in a different sense, in that it is domination freely agreed to, at least in his "commonwealth by institution.") He argues that we need to recognize Pateman as developing a strand of contract theory classically, if very schematically, initiated by Rousseau in *Discourse on the Origin of Inequality*: the exclusionary contract of domination. So in a sense, before the racial contract and the sexual contract, there was the class contract; Pateman discussed this aspect of Rousseau in *The Problem of Political Obligation*. Mills suggests that a distinctively feminist contract theory can be synthesized from the work of Jean Hampton, Susan Moller Okin, and Carole Pateman. He argues that this can be generalized to race and that his "racial contract" falls within this alternative strain of contract theory. The domination contract is meant as a "device of representation" for *non*-ideal theory. It maps not the ideally just society we want to attain, but the non-ideal unjust society we already have and want to get rid of. So the normative task here falls into the realm of corrective justice.

Chapter 4 follows up by attempting to show how this normative use of the domination contract is to be implemented. Mills takes as his example the highly controversial subject of reparations to African Americans, which has been surprisingly brought back to life in recent years (a discussion which complements Pateman's analysis in chapter 5). In a well-ordered society, reparations to blacks, or any other racial group, would not be necessary because no race would have been discriminated against in the first place. (Indeed, races would arguably not even have come into existence as social entities.) But how do we adjudicate such questions in societies like the United States which do have such a history? Mills argues that Rawls's apparatus of the veil of ignorance that blocks crucial knowledge from us can be adapted to the different task of determining rectificatory justice. In this revisionist Rawlsianism, the range of societies among which we must choose does not include societies with no history of racial injustice. So we are forced to make a selection, on self-interested grounds, not knowing our race, among a

subset of possible social orders *all of which* have as their ancestor a white-supremacist state. Thus we must confront the possibility that we might end up as black in a society fundamentally shaped in its "basic structure" by systemic illicit white advantage. Mills argues that, once we face this reality, we will be prudentially moved to choose a society where reparations have been implemented as public policy, and that this is convergent with the moral judgment outside the veil that it is unjust for whites to benefit from, and blacks to be disadvantaged by, racial exploitation.

Mills's expansion of the sexual contract in chapter 3 is his contribution to the "other" contract, and in chapter 2 Pateman engages in the same exercise and develops the racial contract in another direction. She examines the doctrine of *terra nullius* and European expansion into North America and Australia. This embodied the claim found in early modern political theory and international law, and the opinions of colonists, that these territories were empty, uncultivated wilderness without property or government. Rather than proper political societies they were examples of actual states of nature.

Political theorists have recently reread Locke on America, and Pateman also considers Grotius, but the new scholarship gives insufficient weight to the fact that the idea of an original contract was central to the political theory of the period and says little about Australia – where *terra nullius* was, until 1992, part of the law of the land. Pateman argues that Europeans planted themselves and appropriated the lands designated as *terra nullius* to create new civil societies (modern states) to replace a state of nature and can thus be seen as making (it is as if they make) an original contract. The contract takes the form of a settler contract, which is also a racial contract. The Native peoples are excluded from it yet their lives and lands are governed by it. The leading jurisprudence, examined in the chapter, has now overthrown *terra nullius*, at least with respect to prior occupancy and native title. However, the question of sovereignty is carefully excluded from legal and political scrutiny. *Terra nullius* is now a politically and legally bankrupt concept, but this means that an unacknowledged question mark ultimately hangs over the legitimacy of the states created on what were claimed to be empty territories.

Finally, in chapters 7 and 8, we reply to the various criticisms that have been made over the years of *The Sexual Contract* and *The Racial Contract*, at the same time taking advantage of the opportunity to clarify our respective arguments and correct some of the many misreadings in the secondary literature of our respective positions. Nonetheless, even where we think we have been misinterpreted, we are both appreciative of and gratified by the attention both books have

received, and we wish to thank our commentators for taking our work seriously enough to engage with it. We hope that this joint work will be of value both for fellow academics who may have been unclear about our views, for students encountering our work for the first time, and, who knows, perhaps even readers outside universities. Ideally, of course, we would like our books – *The Sexual Contract*, *The Racial Contract*, and this new work – to contribute to creating a world where both contracts have been consigned to the dustbin of history.

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