



CAROLE  
PATEMAN &  
CHARLES  
MILLS



CONTRACT &  
DOMINATION



# **Contract and Domination**



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Carole Pateman and Charles W. Mills

polity

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Charles W. Mills

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“Contract of Breach: Repairing the Racial Contract” by Charles W. Mills is scheduled to appear, in a somewhat different version, as a chapter in the forthcoming *Reparations for African-Americans: Arguments For and Against* (Rowman & Littlefield), edited by Howard McGary.



We have been told that our struggle has loosened the bands of Government everywhere. . . . that Indians slighted their guardians and Negroes grew insolent to their Masters. But your letter was the first Intimation that another Tribe more numerous and powerfull than all the rest were grown discontented. . . . Depend upon it, we know better than to repeal our Masculine systems. . . . We have only the Name of Masters, and rather than give up this, which would compleatly subject Us to the Despotism of the Petticoat, I hope General Washington and all our brave Heroes would fight.

US Founding Father and President-to-be John Adams, in an  
April 14, 1776 letter replying to his wife Abigail Adams's  
declaration of her belief in universal natural rights



# 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.

# 1

## Contract and Social Change

*A Dialogue between Carole Pateman and Charles W. Mills*

**Carole Pateman** Most people who know that the authors of this book are a white woman and a black man, both professors, will probably make an (implicit) assumption about our respective backgrounds. The white woman will be assumed to come from a better-off, or at least better educated, stratum of society than the black man. White women have made more inroads into academia in the past quarter-century than black men and professors tend to come from middle-class and professional households, so the assumption is not altogether unreasonable. In this case it is misplaced, but it serves to illustrate the complexities of race and sex. Carole Pateman's parents had only the education that could be acquired by the age of 14, and she left school herself at 16, entering into university later via Ruskin College, an adult education college in England. Charles Mills's father had degrees from the London School of Economics and Harvard, became a professor in Jamaica at the University of the West Indies, headed his department, and became Dean of the Faculty of Social Sciences. On the other hand, when either of them is going about their daily business in the United States, where both now live, they will be perceived and often treated differently. A middle-aged white woman, for example, runs no danger of facing a penalty for driving while black.

**Charles Mills** The complexities of race, class, and sex, yes. It's so difficult to think them all together – like the many-body problem in mechanics – because they're all interacting with one another. My own case is interesting (to move to the personal level), since it's not just class, gender, and race, but nationality and ethnicity also, and how they affect the translation of these three across different national boundaries. In



Jamaica, as you rightly say, I was class-privileged by comparison to you in England: from the Jamaican middle class, my father a university professor, and going to what was then an elite high school, Jamaica College. I was also privileged by gender, obviously, and also to a certain extent by color. When I give talks on American college campuses, one of the things I always make a point of telling undergraduate audiences – usually to the bewilderment of students with little sense of the contingency and relativity of race – is that I’m only black in the US. In Jamaica, with a different set of racial/color rules, I count as “brown” rather than “black,” since blackness isn’t determined by the “one-drop rule” (any black ancestry makes you black) as it is here. So browns constitute a recognized and relatively privileged social category of their own, intermediate between white and black, who especially after Jamaica’s independence in 1962 become prominent in social and political spheres, though whites still have a lot of economic power.

And this has implications in terms of how you think about yourself, and how you see race. In Jamaica, as a middle-class brown kid, I wasn’t very racially conscious, and would have thought of black Americans as puzzlingly obsessed with race.

**CP** Becoming better acquainted with some of the literature both past and in the present on “the race question” has reinforced for me just how bizarre and arbitrary the racial classifications are – and just as the “woman question” should more accurately be termed “the man question,” so this is, in the countries I have been writing about, “the white question.” It is a deeply puzzling question exactly why skin color is so fervently held to signify various attributes, to be a mark of worth and a reason for hatred and homicide. Why should “one drop” outweigh all the other drops? Why is not the whole edifice seen to be ridiculous when, for example, in apartheid South Africa the Japanese were declared honorary whites? That, of course, is a rhetorical question; if I have learnt one thing from my interest in the history of feminism it is that rational argument does not go very far.

**CM** On one level, racial classifications certainly are “bizarre and arbitrary,” as you say. (One manifestation of this was that there was scholarly variation even on an issue as presumably basic as the number of races.) On another level, of course, left theorists in sociology would claim it’s not arbitrary at all, but that the logic is sociopolitical, external, rather than intrinsic to the subject matter. Race is constructed according to particular political projects, and the lines of demarcation are drawn accordingly. So the one-drop rule, for example – which only applies to blacks, not other “races” (by its nature, it can’t be generalized,

for consistency reasons) – arose out of the need in the US to make sure that children of whites and blacks (and subsequent mixtures down the line) had the status of the “lower” race. Given the amount of white male/black female “miscegenation” that was taking place (outright rape and other kinds of coerced sexual relationships), it was important not to permit the growth of a class of “mixed” people with the same status as whites. So it’s “rational” in the sense of being tied to the interests of privileged groups, and the reproduction of that privilege – instrumental political rationality if not scientific rationality.

**CP** Of course, as you say, if the classifications are viewed from the perspective of those in power (who are determined to hang on to their power) then, say, for Japanese to be honorary whites can seem quite “rational.” As I note in chapter 5, legislation was used in seventeenth-century Virginia to override the common law practice of patrilineal descent so that children of slave women inherited their mother’s lifetime bondage and were “black” irrespective of their paternity. But all these stratagems, and the amount of effort required to implement them, sit very uneasily with the insistence that the subordinated naturally lack the capacities to govern themselves, hence the irrationality of it all is never very far from the surface. A good deal of denial and refusal to look and see what is going on is involved in maintaining both racial classifications and the subordination of women. Today, there is still much turning away but, after the successes of political movements over the past few decades, it is harder than it once was.

**CM** Yes, it is harder, but unfortunately still possible. So progressive political theorists have to try to understand a complicated set of interrelations of domination. In the process you make generalizations which have to be heavily qualified, and even then you often don’t get it right. (Thereby vindicating postmodernists, or at least so they would claim.) In the old days, it was straightforward – to be “radical” meant being some variety of leftist, with Marxism as the most prestigious body of radical theory. And gender and race – the “woman question,” the “Negro question,” the “native question” – were an afterthought, if they were thought of at all. Now of course Marxism is dead, so nobody talks about class at all, despite the fact that here in the US the gap between rich and poor is now wider than it has been since the age of the Roaring Twenties. Second-wave feminism, both inside and outside the academy, was for a long time basically white feminism, with women of color being marginalized, and in the black, brown, and red antiracist movements of the 1960s and 1970s, gender usually took a back seat. So in a perverse sense, the Marxist model was emulated by other radical movements,

with class/gender/race respectively being everything, or almost everything, and the others being sidelined. I know that that's another misleading generalization, of course, since socialist feminists were trying to combine the theorization of capitalism and patriarchy. But given the marginality of left theory in this country, they were always peripheral to mainstream feminism.

**CP** Generalizations, even carefully qualified, have not been popular for some time in feminist theory (in the case of men and women, for example, you are accused of setting up "binaries" or believing that men and women are "naturally" antagonistic and so on). But without generalization structures of power tend to disappear into a sea of differences with few criteria to hand to decide which are the more important.

**CM** Yes, "difference" rules – with commonality banished! But as someone who started out on the Marxist left, and retains many of those ideological sympathies, I completely agree that we need to be able to generalize and to develop abstractions, even if they're only approximately true. The challenge is how to do this, given the complexity of social reality.

**CP** In *The Sexual Contract* I spent a good deal of effort trying to analyze the connections between the employment contract and the marriage contract. Employment and marriage are two of the central institutions of modern societies, and are also central to sex and class – and race. The "working class," and especially the aristocracy of labor, was the white male working class. The worker's wife, and the interrelationship between marriage and employment, were erased from the picture, as was the fact that the labor market was segmented according to race as well as sex. So there is a sense in which class was very much part of my book, but critics have paid little attention to my critique of employment. I am usually seen as writing about women – but to do that, or to write about race, is also to write about class since women and nonwhites are mostly found at the lower rungs of the occupational ladder, in casual and part-time jobs and in the ranks of the poor. But that raises a very important question: what does and can "class" mean in the first decade of the twenty-first century?

**CM** In the US, nothing, since everybody is supposed to be middle-class, and pointing out the huge and growing wealth differentials is declaring class war (as against creating the differentials, which is class peace). At the same time the percentage of the work force that's unionized is down

to 12 percent or so, the lowest in decades, with a crisis in the trade union movement, and rollbacks in pensions, health care benefits, and so forth. Certainly the material for left-wing analysis is there. But the problem is mapping a positive alternative, in a world where the left has been so thoroughly defeated and seemingly discredited.

**CP** A knotty problem indeed, not least because the grand utopian designs of the past do not have a good track record. However, we do still need to have as clear a sense as possible of the direction in which we want to move and some ideas about the institutional and other changes required. As far as political philosophy is concerned, some of the fashionable developments seem to me to be in tune with political and economic developments rather than offering a way to an alternative. Contract theory is a good example. Commodification is proceeding at an extraordinarily rapid rate; there is virtually nothing left now that is outside the reach of private property, contract, and alienation. This is one reason why I am much less happy than you with trying to salvage contract theory.

**CM** Yes, I know – this is something we need to talk about. In my work I’m operating with a significantly weaker and less loaded version of contract theory, pretty minimalist in its assumptions. It’s certainly not tied to property in the person, as the specific Lockean contract is. Rather, it’s a conception developed for utilization in a philosophical framework aimed at adjudicating matters of social justice, drawing normatively on central liberal-democratic ideals and factually on the simple insight that humans create the sociopolitical, and in the process themselves. In this weak sense, is “contract” really something you would object to? Surely not.

**CP** We have some important differences about contract theory. Neither of us, as you put it so nicely in your book, is working with ideal contract theory. But I am more critical than you of the whole enterprise. At the very broad level that you raise now, it is not so much your assumptions that I take issue with – my own work rests on the insight that humans create their own social and political structures and institutions; they are not “natural” – but the notion of “contract” itself. The question I am asking is why, say, social justice has to be discussed or adjudicated using the metaphor of contract.

The most common response is to argue that just or equitable democratic outcomes are most likely, or only likely, if the process through which they are arrived at is one of voluntary agreement, and “contract” captures what is required for such a process. My objection to that line

of argument is that there is more than one form of free agreement and that these are not exhausted by contract. This is a point I made a long time ago in *The Problem of Political Obligation* (originally published in 1979). Although you use a minimalist version of contract theory, “contract” has to have some content. At a very general level that need not involve property in the person but, even without that, there is other baggage. On the one hand, in theories of original contracts – as Rousseau was well aware – the point of the social contract is that in the modern state individuals give up their right of self-government to another or a few others. And, as you and I are arguing, the original contract involves the sexual and racial contracts too.

On the other hand, if you start with a model of two individuals, the model requires that both are self-interested and only act if there is sufficient benefit to each of them taken separately. Now, you might reply that there can be an agreement without going along either of those paths. In that case, I go back to my question. Why introduce “contract” at all? Why not start by trying to move to another model of free agreement? It is very hard to get rid of the baggage, and most political theorists do not attempt to. Why not find other terms for “free agreement talk” that also convey the meaning of a voluntary mutual undertaking and offer some hope at least of moving away from all the associations and assumptions of “contract”? Contract has a valuable commercial place, but my argument is that it should be kept in that place. To see the whole of social and political life as no more than a series of contracts, to see individuals as packages of alienable property and to insist that “contract” is the metaphor for a free society is a very narrow view of humans and what they create. In short, my objection is that freedom has become identified with contract and I want to drive a wedge between the two. Freedom has other forms. Can “contract” be washed clean of the history of justification of subjection?

**CM** A standard distinction drawn in at least some philosophical discussions is that between “contractarianism” and “contractualism.” (Stephen Darwall, for example, has edited a book with just that title: *Contractarianism/Contractualism* (2003).) The former (paradigmatically Hobbes, and theorists inspired by him such as David Gauthier) see morality as conventionalist, as constrained and socially coordinated self-interest, so that the “contract” does really capture the idea of people bargaining with one another. But for the latter, morality is an objective set of other-regarding rules, and the “contract” is really (in Rawls’s phrase) a “device of representation” for getting at what those rules are. So the contract is in fact quite dispensable, as various critics of Rawls pointed out fairly early on. (Similarly, Kant’s hypothetical

contractualism turns the contract into an “idea of reason,” and as such a way of representing what is the really important underlying principle of ethics, viz. the categorical imperative.) You don’t need Rawls’s apparatus to get, say, the principle of equal liberties, or the difference principle – you can get them by arguing from basic considerations of how we should treat other people.

So for philosophers, the picture you paint above (self-interested individuals looking out for their own benefit) would really only apply to “contractarianism” (in this technical, term-of-art sense) not “contractualism.” And relatedly, these philosophers would claim that the negative features you associate with contract (a commercial model of a “free” society as calculated self-seeking exchanges between individuals of the *homo economicus* species), while true of the Hobbesian-inspired versions, are not true of the Kantian-inspired versions.

Of course, one can then legitimately ask (as you do) why even use the language of “contract” at all, if this alternative conception is so remote from the original sense of the term? And why bother to go through all the elaborate stages of setting up the veil of ignorance, etc., if one can get the outcome far more straightforwardly and directly? The argument has been that it serves a useful heuristic purpose – it’s a way of dramatizing the original social contract idea of humans choosing the principles that would regulate a just society. So it’s a “contract” in that attenuated sense, and so (arguably anyway) still linked with the tradition.

I think a significant part of our disagreement on “contract” arises from divergent disciplinary perspectives (political science vs philosophy). As such, I’m not sure how much of our seeming disagreement is substantive and how much is merely terminological and in large part really just hinges on semantics – how we’re using the term “contract,” and what background disciplinary assumptions underlie this use.

**CP** The fact that your career has been in philosophy and mine in political science no doubt has some bearing on how we approach contract theory, but there is more to it than that. First, perhaps I should say that I resisted becoming a philosopher (a path I was urged to follow) because I realized that my interests did not lie in purely philosophical problems. That said, I benefited enormously both from my undergraduate study of philosophy in the heyday of “Oxford philosophy” and from working as a graduate student with Brian Barry, one of the most eminent political philosophers working in the analytical tradition. I have always been keen on bringing together empirical evidence and theoretical argument, and more recently have used historical and legal scholarship. The label “political theorist” allows me to do that and to draw on analytical methods.