

## Epoch: Going Beyond a Racial Reckoning

### MARISSA JACKSON SOW'S "WHITENESS AS CONTRACT"

**Michael Rogers:** Welcome back from the break. We're going to go ahead and get started with our second panel for today. At this point, I'd like to introduce Kameron Powell, who will introduce our highlighted author—Marissa Jackson Sow.

**Kameron Powell:** Good afternoon, everyone, and welcome back from the break. I hope it was refreshing. We are going to get started with our second panel for the day. My name is Kameron Powell, and I'm extremely delighted to introduce our next speaker and our highlighted author, Marissa Jackson Sow.

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Now, Marissa Jackson Sow is an attorney, but she's also a writer and a scholar whose work focuses on identifying and remedying race and gender-based human rights violations, especially those committed against Black and Indigenous people in western states. Drawing from her own family's history, Marissa has committed to using law, politics, art, and culture to build power for people of African descent.

Currently, she's exploring the amplification of Black feminist narratives as a strategy for rectifying human rights violations as a government fellow with the Open Society Foundations. For her next endeavor, Marissa will join St. John's University School of Law as an Assistant Professor and Faculty Director of the Ron Brown Center for Civil Rights in 2021.

Now today, she will explain the theory of "Whiteness as Contract" as a new prism of analysis for the structural and physical violence that those raced as Black endure at the express direction of the state. First defining the theory and then moving on to some palpable examples of white racial contracting in colonial American courts, federal law, and contemporary local and Indigenous American government.

She will seek to disabuse you of the prevalent notion that race is foundational and/or biological or natural, but rather that it is a legal designation meant to aid a white-body politic and hoarding capital enforcing exploited labor. She will then lead a discussion of how racial contracting impacts legal education; and finally, she will close her

presentation with proposals for paradigmatic shifts and concrete actions that law schools could make to divest from white racial contracting and dismantle white supremacy on campus.

People, may we all give a very warm welcome to Marissa Jackson Sow.

**Marissa Jackson Sow:** Thank you so much, Kameron. Before I go into my talk, I want to also thank Dontay, Michael, Rayshaun, Majidah, Hannah, the Seattle University Law Review, Seattle U Chapter of BLSA, the Law School, broadly. Also, to the panelists of Deans that preceded me this afternoon, a fantastic conversation. I hope that my remarks today will certainly just build on what the Deans have already talked about and provide a little bit of theory to undergird the conversation that was had before. I want to give special thanks to Michael for leading prep and helping me not get confused with time zones and things like that, but certainly thank you to all the organizers for what has been a fantastic event.

What I'm going to do today is I'm going to talk to you for twenty-five to thirty minutes, I'm actually setting a stopwatch now to make sure that we don't go over, and I'm going to try to address three main things. I'm going to talk to you about the theory of "Whiteness as Contract" itself as I wrote about in my paper. I'm going to talk about the costs and the benefits of the theory for a few more minutes. Then as a final measure, I'm going to try to link the paper to the theme of this year's symposium, which is how we could use the theory of Whiteness as Contract in legal education.

With that, I will get going. I'd like to just sort of introduce this all by saying that the paper and the theory have grown out of my mission to understand why human rights law and anti-discrimination or civil rights laws have failed to properly confront or combat racism and white supremacy. Throughout the course of my study of this issue, I have realized that human rights and civil rights are not matters necessarily of morality as pertains to race but of power. Because of that, moral arguments have only really worked when dealing with the rights of white people vis-à-vis other white people.

As an example, I recently finished a fellowship with the Office of the High Commissioner for Human Rights at the United Nations. As part of that fellowship, I was told along with my other fellows that genocide as a concept does not apply to Black people. As a human rights lawyer myself, it is not the first time I've heard that. There's a body of scholarship that promulgates that concept. Given that the word genocide means the mass killing of people in so far as people who are not white people, then the idea that genocide could not happen to people who are not white is patently absurd.

Why and how does this type of thinking persist? Then I'll take you back in time to 2014 when I was clerking in my hometown of Detroit, where a very dear friend of mine, who also happens to be white and was clerking for another judge at the time in the same courthouse, told me something that has guided my scholarly inquiries ever since. She told me, "When something doesn't make sense, Marissa, follow the money." We happened to be talking about the water shutoffs that had just begun in Detroit and that persisted through March 2020. These shutoffs didn't seem to make any sense, and so I decided to follow the money.

I bring that up because *Whiteness as Contract* is actually the second installation of a series of papers. The first of these papers dealt with Detroit's water shutoffs squarely, and it led me to create this theory by departing from Charles Mills's theory of *The Racial Contract*. In *Whiteness as Contract*, I branch off from his theory in search of another theory that would account for whiteness impact upon Blackness, one that explains the role of the law in giving whiteness meaning and force, that not only explains the whys of whiteness but also the hows of whiteness.

The basic premise of Whiteness as Contract is that whiteness is not foundational, it's not biological and it's not natural. Rather, whiteness and race more broadly is an agreement. Whiteness, I argue, is negotiated and defined by those who have chosen to label themselves as white. It is capital that they have chosen to share with some and withhold from others since modern racial formation began. Whiteness is a resource that has been protected by and enshrined in law in the United States; and despite formal revocations over time of racial democracy and capitalism, such as those outlined in colonial Virginia courts or in the Marshall-and-Taney-era Supreme Court, the structures and hegemony erected by this racial formation largely remain.

In fact, I argue our entire geopolitical system has racial formation and ordering at its roots. Whiteness, as constructed, as structured, and systematized in society, ensures that law and government will never apply to people raced as white and people raced as non-white in the same ways. I argue that whiteness is defined, undergirded, negotiated, and maintained by commercial contracting, by government contracting and very importantly, by the interruption of Black and Indigenous peoples' rights to contracting. That contracting broadly pertains to property, of course, and so whiteness is also maintained by limiting Black and Indigenous proprietorship.

The paper doesn't only talk about those contracts that we think about as classically legally enforceable. It also talks a great deal about social contracting. Charles Mills's theory of the Racial Contract was an attempt

to decolonize the theory of social contracting. My theory of Whiteness as Contract actually seeks to decolonize classical contract theory.

Whiteness as Contract recognizes that governance and membership in a body politic is also contractual and that a tacit contract exists around race. Other scholars have recently referred to it as Social Compacting and some have called it Charter. The paper sets forth many of the elements of commercial contracting exist within this social context as well.

To establish the theory, as I mentioned, I used Charles Mills's theory of the Racial Contract as a point of departure, but I also built upon Cheryl Harris's theory of Whiteness as Property. Those works by themselves and separately mete out what I consider to be devastating blows to the ideas that contracts are private affairs that are not impacted by race or politics. I think they also undermine the prevalent belief among lawyers that constitutions and laws more broadly are not contracts.

Once having firmly established that race is a legal construction meant to consolidate economic wealth and power amongst those people raced as white and that this construction is bargained for, I started to approach the creation of what I considered to be Whiteness as Contract. Then I have two sub-theories that I built out based on the work of some personhood scholars.

The first sub-theory proffers that the rights to property and contracting authority as the preserves of whiteness render proprietorship and too much contracting on the part of Black people verboten. That those rights are severely curtailed for Black people. That this, thus, prevents Black people from being able to rely upon any privity with the state. That the exclusion from proprietorship and exclusion from contracting basically serves as almost like a permanent bar to Black people from enjoying a reliable right to own, possess, or even be present upon any property within the state with any expectation of physical integrity.

I use as an example a case we're all familiar with involving Christian Cooper in Central Park. Just the ability to be present in Central Park without having your presence, your possession of a space be called into question; and your life being imperiled, thereby and therefore.

The second sub-theory posits that Black people are, therefore, constructed out of full humanity, out of full citizenship, and out of a reliable expectation of life and safety, reduced to a status of permanent tenancy where their labor and capital are required for the functioning society and where their labor and capital are not required, they're regarded as, I should say, we are regarded as squatters and trespassers. I want to turn to a couple of examples that I hope will give some life to the theory.

In the paper, I mentioned that in July 2020, there was a Mississippi State Elections Commissioner named Gail Welch. She posted on

Facebook that she was really concerned about a potential increase in Black voter registration in the state. She said, and I quote here, “I’m concerned about voter registration in Mississippi. The Blacks are having a lot of events for voter registration. The people in Mississippi have to get involved, too.” Her post went viral. She was rapidly condemned for her remarks. I think she got to stay on as a commissioner but I’m not sure.

Welch claimed that her remarks were, number one, private. That number two, they were not racist. She claimed that she meant to encourage and not suppress voter turnout. This is true. She explicitly called for white voter mobilization so that Black people in Mississippi, whose interests, in her view, conflicted with the interest of white people in Mississippi would not obtain these sorts of Electoral victories they sought at the polls. In Welch’s view, there are the Blacks and then there are people. When she says, “People,” she clearly meant white people.

I will take us sort of a few months along in time to January 6, 2021. I’m sure that day is emblazoned in our memories as we watched insurrectionists storm and ransack Capitol Hill in what was an apparent attempt to kidnap and murder members of Congress as well as the former Vice President. Of course, despite the heroics of some of the police officers on the scene, there was also some visible tolerance, if not outright cooperation by members of law enforcement with the rioters, calmly telling them they shouldn’t be in the lawmaking chambers, even as the members of Congress hid and feared for their lives, opening the doors and the gates for them to allow folks to storm federal property.

The difference in the treatment of human rights and anti-racist protestors, whether that be at Capitol Hill, whether that be this summer in New York City, and throughout the country, certainly in the Northwest where many of you are located as well, just the obvious difference in the reaction of law enforcement to what you can call some obvious racist negotiating and then anti-racist social negotiating. In future work, I’m looking forward to examining the role of law enforcement as guardians of the contracting of whiteness itself.

The third example I’d like to turn to is still more recent. If you go back to the second impeachment trial of former President Donald Trump, there was Congresswoman Stacey Plaskett from the U.S. Virgin Islands serving as one of the impeachment managers. Her performance as an impeachment manager was wildly hailed and celebrated, lots of hashtags, #BlackGirlMagic, #VISTrong. She was very proud of the service she was able to render for the country in that role, and yet she can’t vote for president.

Her constituents can’t vote. They’re American citizens who are politically disenfranchised. They don’t have full representation in

Congress. They don't have any voice in the Senate. That has everything to do with the curious case of American colonialism, and the fact that America does have colonies and that none of those colonies is majority white. In fact, the only colony that was majority white at the time is now the state of Alaska—or the remaining colony that is now the state of Alaska. The remaining colonies are overwhelmingly Indigenous and Black people or Afro-descendant people.

To sum up the theory, basically what I am trying to get across to the reader is that whiteness is not biological. It's not based on hereditary traits. We know that. Obviously, there's lines of cases in the Supreme Court where people were determined to be white or not white at any given time, and those designations have of course changed over time. Rather, whiteness is a political status that is continuously and collectively negotiated by a sort of invisible body politic that possesses the status of whiteness itself and recognizes it as an asset.

The asset is bargained for as contracts are bargained for. It's bargained for via a system of separate yet interrelated and coordinated legally enforceable contracts and social contracting, which is often tacit enough to not notice it even though it's given force through our federal state and local laws. This perpetual bargaining exercise is a renegotiation of the invisible social contract that sets forth that those who are raced as white at any given time retain exclusive membership in America's body politic and exclusive control over property and contracting authority; and thus, over capital and power.

Therefore, this racist social contract is bargained for by those people who are racist white amongst themselves, and it functions as a social contract for goods and services, including the continued expropriation of Indigenous lands and the exploitation of Black labor on those lands.

Now, I want to move on to the cost and benefits of this theory. I'll talk about the costs first. The costs are that this theory, it does take something from you. It requires you, if you buy into it, to shed the notion that race is foundational and natural. The prevalent idea of race in our country is that it's something that you are, that is scientific, that is innate to you. Of course, our legal history shows that's not the case and this theory simply just seeks to remind us of that.

Race is real. Its consequences are very real, but race is constructed by humans. It's defined by law. It's designated and assigned. This theory will cost you faith in American innocence and benevolence. It will disabuse you of the myth that racism is tainting a pure and fair democratic project. It may cost you some faith in the sacrosanctity of American institutions, laws, even the Constitution, because the Capitol Hill

insurrection is what happens when people feel that government has broken its part of the contracting of whiteness.

If you actually go back to the original theory of the social contract, way back to John Locke, Locke says you have a social contract with the government, and when the government breaks that contract and there's no way to repair the breach of that contract, you have the right to rebel. When you look at it through that lens, you have to ask yourself if the insurrectionists are just following Locke's orders, then what should we make of that? Then of course, law enforcement is going to let them go and come as they please and of course, many of them are having their charges dropped. They were just protecting a contract that they have with the government. They were demanding specific performance.

I also would like to point to *Dred Scott v. Sandford*, that notorious case. We like to dismiss the opinion as horrible because it's so racist, but it actually just told the story of American society and racial construction. Justice Taney was kind of just making it all plain for us and really helping us to see the origin of our laws, of our government as constructed on top of these racial formations.

The theory will deprive you of the ability to sit on your hands waiting for racism to end itself. It may cost you some faith in diversity and inclusion as a concept and as it's executed in many organizations. It may cost some the comfort of pretending that if they choose not to see white supremacy under the pretense of color blindness, that it doesn't exist, and that people who identify and critique white supremacy are playing the race card.

Now, the benefits. I think there are a lot of benefits. I think there's a lot of hope in this theory. What's amazing about contracts is that they can be revised. They can be broken. They can certainly be formed again. What I mean by that is that to the extent that we have a contract with white supremacy in this country, that contract can be revoked. It can be rescinded. There just has to be the will to do that.

It doesn't have to be incremental either. Once there's political will to end racial contracting, that racial contracting can stop. We may say, "Well, I never signed on to a racial contract. I never signed on to whiteness." That's true. There's some people who are signatories and then there are people who are beneficiaries, but the signatories and beneficiaries are, I argue, equally empowered to divest from whiteness as a form of capital.

The theory is decolonial. I know that many of us, specifically those of us who are students right now, those of us who are faculty members, are looking for ways to decolonize our curricula, to decolonize the way we teach and the way we're taught. Whiteness as Contract, as a theory, offers a way to decolonize the law. That you're not simply going to your property

class in your first year of your law school and just being taught *Johnson v. M'Intosh* as if the set of facts is completely normal and just. We can understand that that is a case that solidified, that codified colonial expansion and racial oppression.

I think most importantly, Whiteness as Contract provides a new framework that can be used by movement lawyers, by advocates, by policymakers as well in their fights for racial justice. I think that in the case of Detroit, for example, there's a team of wonderful lawyers and the ACLU that have been fighting against the shutoffs as policy in the federal courts in Michigan. They've been appealing to human rights, which is very familiar to me as a human rights attorney, as someone who believes in human rights, but they've been appealing to the morality of human rights and that has never worked. I think certainly in the political era in which we are passing through, there has been an embrace of white supremacy. There's been an embrace of power and capital holding by certain sectors of society, and so appealing to morality tends to work less well in the courts.

What you have to actually point to is what Eddie Glaude at Princeton calls the value gap, or what he talks about in his book about James Baldwin as the American lie. Once you point that out and you talk about the costs of whiteness as contracting and the cost to the American project, the cost of water shutoffs to everyone during a pandemic, that might be a better framework for advocacy and lead more successful outcomes.

I see that I have about seven minutes left, and so I will move us into the third part of my talk, which is how we might use this theory of Whiteness as Contract in legal education. Again, I am not saying anything that you've not heard already at this point in the day, as we've heard these fabulous Deans already talk about their visions for how we have our racial reckoning and move beyond that towards more anti-racist education. I think there's a lot of talk right now that I've been privy to about how to teach race in business law, for example.

This morning, I attended a session on anti-racist ways to teach contracts and property that was offered by the Law School Anti-Racist Consortium. There's actually a lot of energy around these sorts of topics, which is very encouraging. Whenever I take place in these conversations, I always come away with a set of questions that swirl in my head, which are, "Well, how do people actually teach contracts and property without teaching race?" I actually think that you're always teaching race. The question is whether or not you're centering whiteness and normalizing white supremacy as you teach these classes.

The history of race is always there in these cases, like I just cited *Johnson v. M'Intosh*, for example. Contracts and property, in particular,

have always provided insight into how whiteness is negotiated and maintained in the law and in the courts. It's up to faculties—faculty members—to see that and to confront that as they teach, and it's something that we can all do.

I know that there's been talk earlier today about right-grading and honors and ranking. I think we should challenge all of that. I had in my notes, defund grading. I'm not sure that maintaining grading systems is necessary in a law school context. I know that grading systems tend to privilege whiteness over other groups and communities of people. For example, certainly rankings of law schools as well, as we heard from the Deans earlier today. Then in terms of faculty hiring. I am just starting my career as a law professor. I will join St. John's later this year, and so I just came off the hiring market.

There is a paper that was recently written by professors Carliss Chatman and Najarian Peters called the *The Soft-Shoe and Shuffle of Law School Hiring Committee Practices* that resonated a lot with me because they talk about the experiences of people from the side of the faculty. I experienced on the side as a candidate, but the discussions and the hawing that happens in faculties around hiring people of color and changing standards, but always in a way that disadvantages the candidates of color.

As a candidate, at certain schools I experienced people questioning. I had one person question, asked me directly, "Do you think that you're willing and able to teach white people?" It was just such an odd question to ask. There is often a debate about approach, how gradual these changes have to happen. You can just not ask candidates those types of questions.

I don't give a ton of grace because I know that when you make a decision as a faculty that you are willing to change the culture of your school, you're no longer concerned about whether the person you're hiring is going to be a good fit because you've already decided the culture you have is something that needs to be dismantled and discarded. It's really about that faculty political will to revoke the culture of the past that is oppressive, that is marginalizing, and being willing to adopt a new culture. Once you're willing to adopt a new culture, you can create that culture within a couple of hiring cycles.

Finally, in terms of diversity and inclusion, which is very popular right now, all the companies are doing it, all the organizations are doing it, all the institutions are doing it. I want to bring attention to this work of Nancy Leong at the University of Denver who talks about identity capitalism. We have to make sure that law schools are not just simply engaging in identity capitalism to boost their own profiles. The goal is not to simply admit students of color or hire faculty of color just for the purposes of using their diversity as a benefit to the institution. That is a

replication, that is a reification of white supremacy, and it never actually solves the problems of culture and climate on campus.

It also can serve as a way of gaslighting those people who are calling for change. Because if you can just point to your hires and your admins and say, “No, we’ve solved the problem,” but you’re still treating them poorly, they’re still facing micro and macro aggressions, whether it’s in the classroom or in faculty meetings. Then structure matters. Just as it does in American government, it matters in your institution. If you are going to hire a D&I Chief, a Diversity and Inclusion Chief, does that person have power or were they hired just to be a scapegoat?

Those are some of the things I’m thinking about now in terms of how built out this theory, where I might take it in terms of new scholarship, new projects. I will close out at this point and just welcome your thoughts, your feedback, and your questions at this time. Thanks so much.

**Kameron Powell:** All right. Let’s give a very warm virtual hand to Marissa Jackson Sow for that wonderful presentation. They’re clapping, even if you can’t hear us, so you know. Our first question comes from Majidah. She asks, how do institutions perpetuate a system of racial and ethnic identification and anti-Blackness when Arab, Persian and Hispanic/Latinx identifying individuals have to either check the box that they’re white or identify as a different race? How should job applications and school applications change this idea?

**Marissa Jackson Sow:** Well, I think, for example, those boxes are proof again. Those boxes serve as proof of the theory that race is assigned, that it’s designated. That’s how those same communities are raced by the US Census, for example. It is odd because, of course, those communities are not given the benefits of whiteness on the street but for the purposes of statistics are classified as white.

If I’m understanding the question, I think the answer is to stop categorizing those communities in that way, unless they’re actually going to be, I guess, treated as white. Of course, whiteness is not the goal here. We’re trying to divest from whiteness entirely. I would say in the first instance, what I think is the best response to that is to stop classifying or forcing those communities to check that box and so that they can identify as communities of color. Give them their own boxes to check, which I think is helpful because it allows for greater solidarity.

I think when data lies to you, it doesn’t serve your purposes. You would want data that shows how many people from the Middle East, from Iran, from Egypt, for example, are in a certain institution or organization so that you can actually know how they are being treated, as opposed to lumping them as white and then treating them as if they are not people; and therefore, gaslighting that community of people and providing them

with no remedies for the harm that they are enduring. It also deprives other people of color who might want to build with them and use those statistics, those demographics as a way to lobby for social change on behalf of all people of color.

**Kameron Powell:** Great. Thank you so much. The next question is, what is the role of law enforcement officers in creating a new social contract in which those races, Black and people of color, are accorded full political person paid path, and full citizenship?

**Marissa Jackson Sow:** It's a very tough question. It's a very good question. It's very tough for me to answer. As I mentioned in the talk, I'm getting ready to embark on a deep study of policing but policing as enforcement of whiteness. If I follow that to its logical extent, I'm not sure that it has a role that is positive, that might take you in one direction. The other alternative, the reform-minded alternative, would be for government to . . . either nationalize police or provide strong oversights from the national government over all state and local policing that force the police to break with white supremacy, but I don't know how you do that.

I'm thinking back to the summer in New York City where there are police caught on camera driving through Black neighborhoods in Brooklyn, driving through Harlem, playing explicitly racist songs, throwing out the white power sign. Later in the fall, driving through these Black neighborhoods, NYPD cars screaming through bull horns that folks should vote for Donald Trump just as a form of aggression and terrorizing the neighborhood. Again, all caught on camera and posted to Twitter. When you have that level of white supremacist infiltration in an institution and then the institution itself is so decentralized that there's no way to get out the problem, I think that you have to look at some real transformative change or dismantling of that organization altogether.

**Kameron Powell:** It is indeed a hard question to answer, and those hard questions will continue to come. The next question comes from Professor Coleman. She asks, can you speak a bit more to the language we use in law school and in law practice? How should we better attend to it as students, faculty, and as lawyers?

**Marissa Jackson Sow:** In terms of language, I think we all struggle with language. Language evolves, language that is considered to be normal at one point, we can be made aware that it's harmful or not accurate at another. Including, I'm thinking about the way that we conceive of race. Certainly the way that we conceive of sex and gender and gender expression, things like that. Getting used to using pronouns and things like that. That's all tied up in the politics of language. I will say that is something that we have to commit to as an exercise. I have found for myself that reading the literature, for me, like I said, I was already familiar

with Professor Harris's work, and I was also familiar with Charles Mills's work.

I attended the same university where he had been teaching for many years at the time. Really rereading his work helped me and continues to help me frame and reframe my thinking about race, the ideas of diversity, the concepts of inclusion and how that fits into liberal democracy and, as a result, has opened me up to receiving new language, new tools, new strategies. I think reading works like those, some of these radical philosophers and critical race theorists is just extremely helpful for everyone. I will say, things that you've read ten years ago, go back to them and read them again because they still have lessons for us. That is my testimony personally with the great question.

**Kameron Powell:** All right. The next question is along the same vein, but a little bit different. If we depart from reliance upon existing, non-discrimination legal frameworks and an effort to end anti-Black state violence, what will that new legal framework for addressing non-discrimination look like? Who will be the decision-makers? How can lawmakers amplify the movements to do so, and the communities who suffer mostly from those things?

**Marissa Jackson Sow:** Another good, really difficult question. I think the solution is, in the first instance, to enfranchise more people. That's why I brought up the example of Congresswoman Plaskett. America as a project needs to be decolonized. There are millions of people who live under American jurisdiction as American citizens, or as non-U.S. citizen American nationals. I'm thinking about American Samoa right now, who don't have a say, who don't have a voice in Congress or in the government even though the United States continues to extract resources or plant their military bases on their territories. Those people need representation in the government, and, in my opinion, they should be allowed to join the body politic.

I think also there are people in the District of Columbia who should be allowed to join the body politic and have full representation. Once those people start to vote and as we continue to work to enfranchise folks who are even right on the U.S. mainland to roll back felon disenfranchisement, you will have a new body politic that is capable of producing judges and elected officials who can make better decisions from a decolonial framework. I realized that the development of the bench would take time, but the decolonization could happen rather swiftly. We were talking about D.C. statehood now and hopefully that will happen this year.

In terms of what that new legal framework would be, right now we are working with a framework of formal legal equality. It's a framework that it assumes for American innocence in the face of its past. It assumes

that race consciousness is a problem and a violation of American ideals. It also assumes for whiteness as value, as benevolence, as Americanness. It's a very neoliberal framework that accuses the person who is complaining of racism, of being themselves racist. It accuses the complainant, the plaintiff in an employee discrimination case, of never having enough proof.

There's just never enough proof that one can have. What you have then is formal rights that are never met with any remedy. What I would hope is that a new decolonized anti-racist framework would change all of those standards of review, that those burdens of proof would start to look like what they have in the European Court of Human Rights, for example or even in Canada, where the burdens on the respondent to prove that they did not discriminate as opposed to the other way around, if that's helpful. I think we get there by changing the composition of our body politic because as I try to talk about in the paper, the body politic right now is exclusionary.

People of color are here on the land, but they're here just to work. We're extracting capital labor money from them. We're gentrifying them out of their neighborhoods. They don't actually have anything in common with us. They're not people. They're not citizens. They're not stakeholders. Once you get rid of that mind frame, when you shift that paradigm and bring all those people into a place of power on an equal basis, then we won't be talking about Black firsts for much longer. We won't be talking about, is there ever going to be a Black woman at the Supreme Court? We will have people in positions of power, who can reform the law from the inside, even as we're advocating to dismantle and recreate structures entirely.

I'll just close by saying, I think even the constitution could needs to be amended. It'll have to be if we're going to grant statehood or greater representation to the colonies and territories that I mentioned.

**Kameron Powell:** Thank you. Our next question comes from Professor Chang. He asks, are you planning to carry forward the scholarly work directed our forum through the Ronald H. Brown Center for Civil Rights that you're redirecting to St. John's? Assuming yes, have you thought of any specific efforts that you can work towards?

**Marissa Jackson Sow:** Well, I don't know. I'm brand new tenure track scholar, entry level. Coming on as a faculty co-director, I am very excited about the possibilities there. I hope that we will engage in building out a scholarly hub where this type of study can be encouraged. I think a dream of mine would be to invite Professor Mills to campus to speak to students, to speak to the faculty and share. He teaches at the CUNY Grad Center, right in the same city. I hope that's not too unattainable, but it

remains to be seen. What I can definitely promise is that I will be teaching contracts in the fall.

I will definitely be carrying this work forward in my teaching and certainly in my scholarship for years to come. I have actually written a follow up to whiteness contract already. I, just before I got on to speak to you all, just found out it's going to be placed. The work continues. The work continues and I think it's a worthy fight. It always garners a lot of debate, which I think is in itself a benefit. I definitely look forward to remaining in dialogue with all of you about this work, how I can improve it, how I can carry it forward, how I can translate it into meaningful programming at the center and certainly beyond. Thank you. That's a great question.

**Kameron Powell:** All right. We have one more query if you want. We might have time for more than one question. This question is, how do we get non-Black POC or non-Black Indigenous people of color who benefit largely from white supremacy or whiteness to support the revocation of the terms of whiteness and the institution of a new social contract?

**Marissa Jackson Sow:** The same way that you get anyone to revoke that investment. Again, racial identity is fluid. People of color, who are what I would call white adjacent, who are beneficiaries of white privilege and beneficiaries of whiteness broadly, they have to be convinced to divest just like everyone else. There are certainly Black people who at various spheres of their lives may also benefit from white supremacy. I talked about this a little bit in my paper on Detroit, where you have government officials who are also Black, who are perpetuating the water shutoffs because of their proximity to white power structures, all of that happened. Everybody has to divest.

That's what I love about this theory, is that it actually takes race and places it outside of ourselves as humans and it gives us all a challenge. All of us have to interrogate, we have to do sort of a body scan. We have to do a paradigm scan and make sure that we in our own ways are divested from white supremacy and its values and its norms. None of us gets off without homework. Because those people of color who are not white in this country, they might be raised as white as in another country very easily. We should not be surprised that they might be willing and even jealously guarding their proximity to whiteness in that way, because it does confer benefit.

It confers exclusive benefits. The challenge for us is to divest and, ultimately, you have to work with a coalition of the willing. I think one of the next projects that I will work on is what I call subaltern anti-racist contracting, which is what I view preliminarily as what it looks like for

people of color to work together in solidarity to build a new republic. Hard question, but great question.

**Kameron Powell:** As expected from everyone here. This one is a little bit longer. Let me know if you need me to repeat any portions of it. In response to the COVID-19 pandemic and natural disasters that have occurred concurrently with it, mutual aid movements around the nation have mobilized to provide individuals basic necessities that the government either failed to provide or refuse to provide. Do you think this mutual aid framework can be a good tool in response to the government's refusal to recognize the privity between Black people or between those raced as Black, and the state and contractual capacity with the white body politic or its individual members?

**Marissa Jackson Sow:** I think that's exactly what I was just mentioning as that sort of subaltern anti-racist contracting. There's a long history of that. There's a long history of folks saying, "Listen, we're never going to get what we need from the state. Let's take care of each other." It is an indictment of the state. It casts into stark relief the failures of the state to take care of its own. At the same time, this mutual aid work we've seen has been phenomenal. It's been very necessary. I think it is planting the seeds and is also a representative of the harvest of seeds planted generations before, of folks who realize that they had to take care of themselves and that they could do that in solidarity with other communities to make sure that everyone was taken care of in the hardest times.

I'm thinking about what was at the time the height of the pandemic, my local mutual aid group, the Bronx Mutual Aid group in New York and watching African immigrants and West Indian immigrants and African-Americans and Puerto Ricans, and Dominicans and people from Cambodia come together to make sure that everyone was getting food deliveries. I think that's it. That is what we want to see. As those people are sharing food with each other, they're also building political power. They're also starting to organize. They're starting to make demands of the state that translated, in the Bronx community and the surrounding areas, into some interesting political change in November.

I think those, the political change that happens, that mutual aid work, shouldn't be separated from each other. We should look at it as a way of using social action to impact the law because what I don't think we can do is rely on the law as is to push society along. I think we're in a posture where it's going to have to be the other which way. I think mutual aids are fantastic. I wish it didn't have to be that way. I would love to see the state caring for all of its citizens. Given the theory, given Whiteness as Contract, if you are not going to be in contract with the state, you can definitely form a contract with your own communities. You can affect change that way.

While change is coming, you can certainly make sure that you're not just surviving, but you're thriving in your own way. What has happened throughout history is that when a lot of that anti-racist contracting happens, you'll see retrenchments. You'll see intervention in that. In history, early 20th century history, you had a lot of massacres of Black wealth. Tulsa, Rosewood. That's something you have to watch out for. There will be attempts to regulate and interrupt and disturb that work, and that's because that work is powerful and that's because that work can impact society and affect change, including legal change.

That's my take on mutual aids. I think they're fabulous and I think we'll see much more of that as the government continues to, unfortunately in some ways, disintegrate. What is going to have to happen is that we will have to reform some of our government, we will have to rebuild and I'm hoping that the people who are building power with each other will step into those gaps and seek power as elected officials and policymakers.

**Kameron Powell:** Thank you. This next question is specifically what laws not a lot of people know about do you think strongly uphold white supremacy?

**Marissa Jackson Sow:** It's impossible to answer that question in a comprehensive manner in the time that we have. I'll go back to Detroit. The idea that you can shut someone's water off, it's so racist in a city like Detroit, given the makeup of the city, as to be necropolitical. It is that you know you're going to cost people health and life when you implement and execute a policy like that. The law itself is race blind, but everyone knows that the impact is going to be race-specific and we have a lot of laws like that. When you look at what's happening in Texas, for example, right now you can just say, "Deregulation, deregulation, deregulation."

The history of deregulation has a lot to do with a certain era in American history, in the 1980s where public good was recast as the need for individual good and the idea that, "Why are you sharing all your resources with those people? They should pull themselves up by their bootstraps." You have whole states of people that say, "We don't want anything to do with big government because we want rugged individualism." All of that has very concrete ties to race and it leads to what we're seeing today, which is a situation where certainly people of color and poor people are being impacted disproportionately.

Everyone is suffering, everybody in Texas who is dealing with the climate change and the storm that happened is being impacted. It just shows that racism costs everyone. That's an example of the laws that I would consider to be deeply rooted in white supremacy, even if white supremacy is not evident in the text of the law. Then I think could have an entire conversation around standards for law enforcement and how we

police the police, just as an example. I could talk to you for hours about that, and many of our other laws.

**Kameron Powell:** I'm sure no one here would be averse to that, but we all know your time is valuable. This next question is, since we do have a good mixture of both law faculty and law students here, what can law students do, if anything, to help combat this idea that that race is natural, biological and necessarily foundational to how we enter the profession that we plan to go into?

**Marissa Jackson Sow:** I think once you have that understanding that it's not, once you disavow racial realism and adopt racial constructivism, it will change how you see things yourself. It will change how you practice the law and how you're interacting with your colleagues as you do so, as you interact with the institutions where you work as you do so. I think it should definitely empower you to be an advocate for anti-racism. One thing I really like about the theory is that it offers a form of liberation to people who are raced as white, they don't want people to assume that they now have certain views and have certain values, that they're going to behave a certain way.

I think it also empowers people who are raced as white to take a very active stance in anti-racist efforts, even with their own families and their own communities, their houses of faith and things like that. Certainly it's the case for members of all other communities. I think for me, I used to say when I was working in government race is a real myth. We understand that race is real, but that it's not foundational and that even our own history has proven that we race people in different ways at different times per the needs of the economy. It really is transformative, and it allows you to push for radical change without having to fear that you are denigrating a person's essence because race is actually not essential.

I think that is something that you can take with you as a student in your classrooms, when you're dealing with these tough sensitive cases on race. It'll allow you to demand more teaching around race, more culturally competent instruction around race. Certainly as you graduate and enter your practice it will hopefully influence the way that you practice, whether that is on the deal side or as a litigator or in the non-profit sector.

**Kameron Powell:** Thank you. I think this will be our last question, and then we'll get to our closing remarks. One big thing is accountability. How do we help ensure and work to ensuring that this new social contract that we'll plan to create holds everyone accountable for following it and helping everyone else to benefit from it?

**Marissa Jackson Sow:** Accountability. I'll return for a second to the question of political enfranchisement, the Senate, the House of Representatives, giving D.C. and Puerto Rico and Guam, Northern

Mariana Islands, a voice. One of the reasons why I feel so strongly about that is because once they have political representation in the House of Representatives and hopefully even in the Senate, you have some political accountability, for example, built in through the process. I think Congress members are often held accountable frequently. They're always having to campaign. They're always having to respond to their constituents in a way that even senators don't even have to.

I think that is one form of accountability. At the grassroots level I think it looks different. I think it's us as citizens holding our elected officials accountable or empowering those people who we can hold accountable to hold elected office. I think in the corporate sector, in the realm of private ordering, we want to be strategic about supporting businesses that mean Black Lives Matter when they say Black Lives Matter, that believe that Indigenous and Latinx and AAPI Lives Matter and that is not just marketing. We want to get away from identity capitalism, and we want to do business with corporations that pour into our communities instead of simply extracting labor for the lowest dollar. I think that's the way that we can hold people and institutions accountable as well.

Then of course, I never want to join the crowd of people who just say things like, "Don't boo vote." Certainly if you can participate in civic and political life yourself I think doing so, it's very powerful. I think we've seen the proof of that in recent weeks and months. I think we can continue in that vein and that will be helpful. Then finally, as an interpersonal matter, on the New York City subways, ever since 9/11 they say, "If you see something, say something." That's what you need to do when you see racism. If you see something, say something. Speak up, be that brave person who is going to speak up and call a thing a thing.

Certainly, if you are someone who enjoys racial privilege, definitely try to speak up more so that the burden doesn't fall to your colleagues and comrades of color. What's even better is that when everyone is speaking up against racism together and stamping it out that way, it's definitely possible. I hope we will continue to see more of that.

**Kameron Powell:** Thank you so much. First again, I want to get everyone a virtual and at-home a round of applause for our esteemed author, Marissa Jackson Sow. Now I'm going to pass it on to Vice President of the Black Law Students Association at this university, Dontay Proctor-Mills for our closing remarks.

**Marissa Jackson Sow:** Thank you so much.