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TOWARDS A POSTCOLONIAL CONTRACT
Revisiting Malaysia's Grand Bargain

Abstract

The Malaysian Social Contract ("MSC") represents a consensus struck between the three major ethnic groups present in Malaya at the point of Independence from British colonial rule. In it, immigrant Chinese and Indian residents of Malaya were granted full citizenship rights, in return for recognizing the "special position" of the indigenous Malays.

This dissertation provides a *normative assessment* of this Grand Bargain, drawing on the critical insights of Carole Pateman ("The Sexual Contract"), Charles W. Mills ("The Racial Contract") and Christine Keating ("Decolonizing Democracy") to reveal the inter-ethnic and intra-ethnic domination that the MSC creates, hides, and perpetuates. However, echoing Dipesh Chakrabarty's insight that European thought is indispensable, but inadequate, in thinking through postcolonial experience, I argue that contractarian theory requires a recognition of *colonial difference* in order to fully explain domination occurring in postcolonial social contracts.

Therefore, I argue there is space for another critical approach to contract theory, alongside the Sexual and Racial: The Postcolonial Contract, whose theoretical distinctiveness would begin with a recognition of the possibility of *colonized states of nature.* It is my hope that a fully-fledged account of the Postcolonial Contract, beginning with this, would be able to provide a more complete account of the domination that occurs in the MSC, and, more generally, present a novel and productive approach to thinking through postcolonial states and society.

Table of Contents

Abstract **2**

Introduction **4**

Chapter 1: Malaysia's Grand Bargain: A Brief History **6**

Inter-ethnic Dynamics in Colonial Malaya 6

The Malaysian Social Contract 10

Locating and Understanding the MSC 11

Chapter 2: Domination in the Malaysian Social Contract **13**

Inter-ethnic Domination: Legal and Discursive Enforcement of the MSC 13

Intra-ethnic Domination: The Monarchy as Protectors of the Malays 18

In Summary: Indispensable, but Inadequate 22

Chapter 3: Towards a Postcolonial Contract **25**

The Necessary Emptiness of Terra Nullius 25

Two Aspects of the Colonized State of Nature 27

Conclusion **31**

Bibliography **32**

Introduction

In this dissertation, I aim to provide a normative assessment of the Malaysian Social Contract ("MSC"), using the insights of critical contract theory. In this, I seek to reveal that enforcement of the MSC in various ways results in domination, understood as unfreedom and injustice, *between* and *within* ethnic communities. This analysis also reveals contractarianism's inadequacy in accounting for colonial difference – which I aim to address by arguing the case for a Postcolonial Contract.

The first chapter outlines the origins and character of the MSC, to provide essential historical and theoretical context for subsequent discussion of its normative consequences. It begins by tracing the contours of inter-ethnic dynamics in Malaya under British colonial rule and ends with how these dynamics led to the formulation of the MSC as it exists today. I then review several academic treatments of the MSC that, I argue, are typical in their failure to treat the MSC as part of a tradition of social-contractarian thought - thereby falling short of examining its normative implications.

The second chapter seeks to rectify this lapse. Drawing on the insights of Carole Pateman, Charles W. Mills, and Christine Keating (whose collective work I call "critical contract theory"), I hope to uncover the domination that is created, hidden, and perpetuated by the MSC. This, I argue, takes place on two levels: *inter-ethnic* (i.e., between ethnic groups) and *intra-ethnic* (i.e., within the ranks of a single ethnic group). *Inter-ethnic* domination stems from legal and discursive enforcement of the MSC, manifesting itself in stifled freedom of speech and discriminatory economic policy. However, I argue that a larger injustice is created by the MSC's specific enforcement through the discourse of *Ketuanan Melayu* ("Malay Supremacy"). In this, the citizenship of non-Malays is unjustly presented as inauthentic, precarious, and contingent on the largesse of Malays. *Intra-ethnic* domination, on the other hand, presents itself in the submission and submissiveness of non-royal Malays to the rule and judgment of the Malay monarchy. This domination originates, I argue, from the extra obligation carried by the Malay subject, due to the monarchy's specific constitutional role as their 'protectors'. At the end of this chapter, I make a crucial argument: that while contractarian theory is indispensable for revealing

domination under the MSC, it is inadequate for its full explanation – thus requiring a recognition of *colonial difference* to cover this lapse.

The third and final chapter of this dissertation therefore represents my contribution to critical contract theory. Here, I argue for a distinctive type of contract, alongside the Sexual and Racial: The Postcolonial Contract. Its theoretical distinctiveness would begin, I argue, with a problematization of mainstream social-contractarianism's idea of 'the state of nature' – recognizing, in its place, the possibility of a *colonized state of nature* that (1) naturalizes colonial inequalities and cultural distortions, and (2) enables the coexistence of domination with formal language of equality and emancipation. It is my view that a fully developed theory of the Postcolonial Contract, beginning with this, will be able to provide a more complete account of the domination that occurs in the Malaysian Social Contract.

Chapter 1
Malaysia's Grand Bargain: A Brief History

As an account of the origins of the MSC, this chapter begins by describing the key features of inter-ethnic dynamics in colonial Malaya – as both (a) colonially constructed and (b) mutually distrustful. I argue that a shared awareness of these dynamics led to the Malayan founding fathers' specific formulation of their Grand Bargain: as a "social contract" that recognized immigrant Chinese and Indian residents as citizens, and indigenous Malays as possessing an exceptional "special position". Through this contract, ethnic difference is enshrined rather than erased through contractarian language of equality. On this basis, the mutual hostility of the three ethnic groups is thought to be reconciled, enabling a stable consensus on which to build a state.

In the closing section of this chapter, I argue that contemporary readings of this consensus tend to seek to explain it – often not going further than treating the MSC as an interesting case study for students of history, comparative politics, or law. However, it is my view that the MSC's theoretical grounds as a *social contract* – that is, part of a tradition that seeks to theorize, by *contract,* the sovereign's right to rule and the individual's consent to be ruled - warrants an approach that seeks to assess its normative implications.

Inter-ethnic Dynamics in Colonial Malaya

The relations between the three ethnic groups in Malaya – Malays, Chinese, and Indians – have been characterised as (a) colonially constructed and (b) mutually distrustful (Gudeman, 2002, p. 139). Taking these insights further, I argue that the former accounts for the predominance of race-based politics in Malaysia. The latter, on the other hand, accounts for the sense that groups in Malaysia cannot be anything *but* racially differentiated. This section will elaborate these points and how they have built the framework that led to the MSC as it is conceived today.

The first insight - that race and race relations are colonially constructed – reveals that the political relevance of ethnic identity and difference is, in fact, a legacy of British colonial administration. The purpose of creating separate "official" administrative categories for non-British residents of Malaya – indigenous "Malays", diaspora "Chinese" and labour-

migrant "Indians" – was to calibrate state treatment of each community accordingly. For instance, the Malays, owing to their status as indigenous natives, were subject to a unique 'Anglo-Muslim[1]' law, administered through separate Islamic *syariah* courts (Moustafa, 2018, pp. 37-38), as well as *adat,* Malay customary law headed by Malay kings ("*kerajaan*[2]"). Non-Malays, however, were subject to different legal systems - or else, their own customs and traditions. The British colonial state's policy of differentiated treatment exacerbated a conflation of ethnic identity with political recognition, resulting in the accelerated ideological construction of a Malay ethnic group, possessing a "Malayness" that was defined by setting their own differentiated political culture and legal structures – *syariah, adat,* and *kerajaan* – in contrast to other, non-Malay minorities (Milner, 1998, pp. 158-159).

This ideological hardening of the lines between the communities led to the sense that each group's political needs were fundamentally different: resulting in the belief that only a Malay (or a Chinese, or an Indian) could truly represent the Malays (or the Chinese, or the Indians). From this, ethnic identity began to operate along a *political* axis, and the roots of Malaysia's predominantly race-based logic of formal politics began to take shape: in the formation of political parties that were internally diverse ideologically, but ethnically uniform, such as UMNO[3] for the Malays, MCA[4] for the Chinese and MIC[5] for the Indians – each one basing their respective appeal on the idea that only they, as Malays/Chinese/Indians themselves, could authentically represent Malay/Chinese/Indian interests.

The second insight perceives the three major ethnic groups as inherently *oppositional*. Some of this derives from economic competition between poor, rural Malays, and affluent urban Chinese merchants. Other major axes for confrontation were culture and religion –

[1] A British-led codification of Malay-Islamic law through English jurisprudence, that was wholly different from Malay customary or classical Islamic law. Per Moustafa: "*The law was "Anglo" in the sense that the concepts, categories, and modes of analysis followed English common law, and it was "Muslim" in the sense that it applied to Muslim subjects*." (Moustafa, 2018, p. 38)

[2] "*Kerajaan*": the Malay word for government, literally meaning "the condition of having a *raja* (king)" – suggesting that government in Malay always means a royal polity (Milner, 1998, p. 160), (Milner, 2008, pp. 66-67) also (Smith, 2006, p. 125)

[3] *United Malays National Organization*: set up as a party for Malay nationalism.

[4] *Malaysian Chinese Association*: set up for the Chinese community as a moderate nationalist counterweight to the Malayan Communist Party.

[5] *Malaysian Indian Congress*: a party that sought to provide an nationalist electoral voice for the predominantly Tamil community.

Malays, for example, are overwhelmingly Muslim and therefore refrain from pork and alcohol. No such taboos were observed by the predominantly Buddhist Chinese and Hindu Indian communities. As a result, the three races rarely lived in close proximity, fuelling the sense that three groups were deeply incompatible. But, in no area is the sense of mutual distrust more apparent than in the issue of the Malays' 'special position.' Owing to their indigeneity and numerical majority, Malays have historically seen themselves as the only 'true' Malayans, meriting a 'special position' relative to immigrant non-Malays. This is apparent in the term used by Malays to describe themselves, *Bumiputera* ("sons of the soil"), signalling a special right that is seen as inherent, ancestral, and exclusive – one that is to be protected at all costs, especially from interloping immigrants.

Thus, the basic stances of the three major ethnic groups in relation to each other have come to be accepted, even by Malayans themselves, as implacably confrontational. Every aspect of public life – political, cultural, economic – was understood as taking place against a backdrop of irresolvable rivalry between the Malay, Chinese and Indian communities. This results in the sense that society in Malaysia could not be understood as anything *but* ethnically divided, because mutual incompatibility across multiple planes precludes any possible cross-ethnic unity.

British colonial administrators did not hesitate to exploit these divisions to advance their own extractive industries (e.g. tin mining, rubber plantations). Honed through experience in India, their strategy of divide-and-rule managed to forge a semblance of inter-ethnic stability in Malaya, turning it into one of the Empire's most valuable sources of primary goods (Levine, 2007, p. 99). However, when the British prepared to vacate the Straits colonies in the wake of the Second World War, 'self-government' for Malaya was suddenly imminent. At this moment, the Malayan "founding fathers" - a multiracial collection of elite men, united as much by nationalism as by their own cultural affinities with England - found themselves poised to take over the levers of state.

However, making sense of this transition to self-government presented a problem. As these men did not have recourse to British colonial ideology, they could not, for example, plausibly justify their government on the colonial principle of "civilizing" Malayan savages. There was consequently a need for a new ideological foundation on which their mutually hostile communities could continue to cooperate in the absence of a mediating

(if foreign) arbiter. As the social and political elites of their respective ethnic groups, the founding fathers initially seemed well-placed to forge a 'national unity' based on their shared understanding of Malayan inter-ethnic dynamics. However, at the eve of Independence, the construction of this unity was complicated by the fact that nationalism meant different things for each group. For the Malay community, nationalism was imbued with a kind of conservativism, in their demands for a state that recognized their exclusive ancestral rights: Malaya as *Tanah Melayu* ("the land of the Malays"). For the Chinese community, in an awkward position due to their perceived collective responsibility for the outlawed Malayan Communist Party[6], nationalism presented a chance of rehabilitation as loyal citizens of an independent Malaya. For the Indian community, nationalism was a vehicle for anti-British sentiment, partly inspired by India's struggle for independence (Andaya & Andaya, 1991 (1982), p. 250), and, for some, it also meant emancipation and equality after their experience as imported indentured labourers (Andaya & Andaya, 1991 (1982), p. 179).

These divergent conceptions of nationalism led to the cracks that appeared in British-led discussions for a self-governing Federation of Malaya. Malays were nervous that their special position as 'rightful owners' of Malaya would be diluted by an influx of new non-Malay citizens. On the other hand, Chinese and Indian people worried that without formal and equal citizenship rights, they would forever be "less than" the Malays. This tension was evident in the Reid Commission's report on the Malayan Constitutional Commission, which devoted a substantial portion of a chapter titled "Fundamental Rights" to an (ultimately unsuccessful) attempt to reconcile the desire for universal equality with demands for protection of the Malays' "special position". (Federation of Malaya Constitutional Commission, 1957, pp. Para. 163-165). Thus, the conundrum: how could the Malay community's "rights" be reconciled with the citizenship demands of the Chinese and Indian communities?

6 Whose membership was largely Chinese (Andaya & Andaya, 1991 (1982), p. 252)

The Malaysian Social Contract

The Malaysian Social Contract answered this question, satisfying the demands of the three communities and forming a consensus on which the work of state-building could commence. In its most basic and popularly repeated form, the MSC is articulated as a mutual concession by the three ethnic groups: Chinese and Indian residents of Malaya would be granted citizenship[7], and the "special position" of the Malays as the indigenous people of Malaya would be recognized. The underlying logic of the MSC was therefore not to resolve difference by assuming the basic equality of all individuals regardless of race, as would be typical in other constitutional polities. Rather, it resolves this tension through the candid recognition that individuals can be, and are, inherently different – with this difference always tracking with ethnicity.

The groundwork for the MSC was laid in the experience of the Alliance coalition's success in the 1955 Malayan Federal Legislative Council Elections – resulting in their views being given prominence in the British-led framing of the Malayan Federal Constitution (Andaya & Andaya, 1991 (1982), p. 261). In these, the first Malayan elections of this scale, UMNO, MCA and MIC - the three largest race-based parties (each led by a man who would later be called a founding father) – ran together as the "Alliance". Each party agreed not to contest where another had a better chance of winning. This strategy was bound to succeed in a country where constituencies were heavily segregated by race, and the Alliance easily dominated the outcome, winning 81% of the vote and 51 out of 52 contested seats (Andaya & Andaya, 1991 (1982), p. 261). This electoral triumph reinforced the notion among the Alliance leaders that reconciling the confrontational stances of their respective constituencies could only be done by mutually recognizing ethnic difference, rather than by erasing or minimizing it in favour of civic equality or ideological/programmatic unity – resulting in this logic underpinning the MSC as articulated above.

[7] Subject to certain conditions, such as residence in Malay of at least 15 out of the past 25 years, a declaration of permanent settlement, and a competence in Malay or English (Andaya & Andaya, 1991 (1982), p. 256)

Locating and Understanding the MSC

The Malaysian Social Contract is not, properly speaking, an official document. It does not exist in a codified or unified form, unlike, say, a constitution or discrete pieces of legislation. Rather, its presence is felt in fragments: scattered in Articles throughout the Federal Constitution, in state economic policy (such as the New Economic Plan), or in political discourse.

However, despite the lack of a definitive consensus on its exact location and nature, academic treatments of phenomena that can be credibly understood as the MSC do exist. For example, Karl von Vorys provides a narrative of the MSC as a historically and politically contingent "Constitutional Contract", its uniqueness resulting from arduous negotiations between indigenous communal groups and a fading colonial establishment (Vorys, 1975, p. 105). Alternatively, William Case offers the MSC as an explanation of the stability of the Malaysian regime, articulating it as a consociational bargain of "consensual elite unity" (Case, 1996, p. 83). Finally, Tamir Moustafa picks up on the MSC's ethno-religious element – the conflation of Malay and Islamic identity – arguing that it has caused the Malaysian "judicialization of religion," (Moustafa, 2018, pp. 1-2) where ostensibly 'neutral' institutions, such as courts of law, are co-opted for specific, ethno-religious causes. These treatments do not use the exact phrasing of the "Malaysian Social Contract", but I contend that they all seek to theorize the MSC using the tools of history, political science, or law.

Despite this academic attention, none of the above approaches treat the MSC as a serious object of critical analysis in itself, nor do they seek to assess its normative implications. This, I argue, is because the MSC is not recognized in these readings as part of the tradition of thought pioneered by the likes of Hobbes, Locke, and Rousseau, refined by Rawls and, more recently, criticised by Pateman, Mills and Keating. I believe there are several compelling reasons for counting the MSC as part of this social-contractarian tradition, and, therefore, that it ought to be approached with the same normative rigour as its European counterparts.

The first reason is in Pateman's observation that social contracts provide a basis for *sovereign legitimacy* (Pateman, 1997 (1988), pp. 1-2). The MSC certainly does this. Like all social contracts, it provides a basis on which the sovereign – the Malaysian state –

acquires the right to rule over citizens. Since the MSC represents a consensus between the Malays, Chinese, and Indians, a state which recognizes and enforces its terms therefore possesses legitimacy through the implied consent of all three groups. Secondly, Mills comments that the social contract is "*classically voluntaristic, modelling the polity on a basis of individualized consent*." (Mills, 1999 (1997), p. 81). The MSC fulfils this criterion as well: firstly, by claiming that each of the three ethnic groups had voluntarily consented to the MSC. Secondly, this consent is individualized, because citizenship rights are not granted to groups, but to individuals. Therefore, the MSC, like any other social contract, creates an individualized obligation for every member of each group to obey the sovereign – even if the sovereign prescribes a special position to the members of one group over others. For these reasons, a compelling case can be made for understanding the MSC as part of the social-contractarian tradition. This, I argue, enables a normative assessment of the MSC that unmasks the domination that it creates, hides, and perpetuates.

Chapter 2
Domination in the Malaysian Social Contract

This chapter seeks to reveal the domination that is created, hidden, and perpetuated by the MSC. I borrow my methods and definition of contract-enabled domination from Carole Pateman and Charles Mills, who write in their joint volume *Contract and Domination* that their work is a *descriptive* and *normative* effort to "*characterize and condemn societies of gender and racial domination as* ***unfree*** *and* ***unjust***." (Pateman & Mills, 2007, p. 4) **(emphasis added)**

Thus, in revealing domination in the MSC, I seek to describe its two faces: (1) the unfreedom of individuals and groups, despite the wider narrative of freedom that is it ostensibly guarantees, and (2) the injustice of unequal treatment of individuals or groups based on ethnicity, despite a premise of the social contract being the assumed political equality of all. I argue that instances of this unfreedom and injustice occur on the following two levels:

i. ***Inter-ethnic domination***: non-Malays are dominated by Malays, evidenced by (a) unequal political and economic rights, and (b) the perception that non-Malay citizenship is contingent on the largesse of the Malays.
ii. ***Intra-ethnic domination***: within the Malay community, non-royal Malays are dominated by the Malay monarchy, evidenced by the Malay subject's submission, and continued submissiveness, to the rule and judgment of their kings.

Inter-ethnic Domination: Legal and Discursive Enforcement of the MSC

Revealing the inter-ethnic domination that occurs under the MSC requires an investigation of its enforcement, which I argue occurs along two axes – *legal* and *discursive*. *Legal* enforcement of the MSC is generally done in two ways, what I call *negative* and *positive* enforcement. *Negative legal enforcement* occurs through the stifling of speech perceived as a threat to the Malay special position. An example of this is the enforcement of the Sedition Act 1948 and, before its repeal, the Internal Security Act 1960 ("ISA"). Under the terms of these laws, public discussion about issues that might harm "social harmony and national unity" are off limits, on pain of criminal charge. While

these laws ostensibly apply to any kind of hate speech or slander, in practice the only topics that are considered off limits are the terms of the MSC: i.e. the special position of the Malays, Islam, or the Malay royalty (Chin, 2018, pp. 178-179).

The role that these laws perform in the MSC merits comparison to the coercive apparatus of the state in the Racial Contract. Mills argues that these apparatus – e.g., the police and penal system – act as enforcers of the Racial Contract, working "*both to keep the peace and prevent crime among the white citizens, and to maintain the racial order and detect and destroy challenges to it*" (Mills, 1999 (1997), p. 84). The Racial Contract reveals that "race-blind" criminal legislation is, in practice, always enforced solely according to the terms of white people - disproportionately affecting and harming people of colour. A similar dynamic can be traced in the MSC. The Sedition Act and ISA sought to criminalize harmful speech, presumably to maintain an overall level of inter-communal peace. But, in effect, the only speech judged 'harmful' is that which is perceived as questioning the Malay community and their special position. This is domination by any measure: both in the unjust understanding of 'harm' solely in Malay terms, and in the outsize role of Malays in deciding (1) what constitutes 'criminal' speech, and (2) the parameters of acceptable public discourse.

Positive legal enforcement is the reverse of this, entailing the formulation and implementation of policy ideologically couched in the MSC. This is typically the case for affirmative action designed to increase Bumiputera welfare or economic participation. An example of this was Malaysia's New Economic Policy ("NEP"), introduced in 1970 in the wake of the worst inter-communal clashes in Malaysian history (i.e., the incidents of 13th May 1969[8]). The NEP had two prongs: "*poverty eradication regardless of race*" and "*restructuring society to eliminate the identification of race with economic function*". (K. S., 2004, p. 1). The policy was an earnest effort to address real concerns about the concentration of wealth and economic power in the hands of a single ethnic community (the Malaysian Chinese), and the inter-communal resentment that it creates[9] (K. S., 2004, p. iii) (Andaya & Andaya, 1991 (1982), p. 289). One can sympathize with an approach that, at least in theory, seeks to promote 'race-blind' poverty eradication. However,

[8] A violent and deeply traumatic series of clashes between the Malay and Chinese communities.
[9] A fascinating volume collecting a range of perspectives on the economic power of Chinese ethnic groups in Southeast Asia is listed in the bibliography, edited by Jomo K.S. and Brian C. Folk (K.S. & Folk, 2003).

despite its race-neutral language, the NEP exclusively featured affirmative action aimed at the Malay community - for example, by requiring Malay quotas for (1) equity ownership in private business ventures, (2) professional employment in lucrative managerial and technical positions and (3) financial aid and state funding for higher education (K. S., 2004, pp. 9-16).

A parallel here can be drawn to Pateman's insight on the contradiction between the social contract's fiction of political equality and the unequal treatment of differentiated groups. As Pateman shows in *The Sexual Contract*, the emancipatory rhetoric of the social contract (i.e. fundamental political freedoms) is severely undercut by the existence of unfree contracts – such as the marriage contract, where the domination of men and subjugation of women is enabled by the enforcement of conjugal rights (Pateman, 1997 (1988), pp. 154-155). In a similar way, the MSC is a form of emancipatory rhetoric – promising the emancipation of Malayans from colonial domination, by granting equal citizenship of an independent nation (even if some had a 'special position'). According to these terms, every Malaysian ought to have an equal right to the privileges of citizenship, including participation in the economic sphere. However, as shown, legal enforcement of the MSC results in policy that actively discriminates against the material interests of certain ethnic groups - resulting in racialized inequalities of economic opportunity.

I now turn to *discursive enforcement*, which I argue relies mainly on the MSC's affinity with ideologies of *Ketuanan Melayu* ("Malay Supremacy"). This affinity has been identified by James Chin, a critic of Malay ethnocentrism, who provides the following account of *Ketuanan Melayu's* overarching narrative:

> *The narrative in simple terms is this: the* ***Malay race are the real owners of Tanah Melayu (Land of the Malays),*** *the historical name for Malaya. As the indigenous people of Malaysia,* ***they must dominate politically*** *under the concept of Ketuanan Melayu Islam. Non-Malays can live in harmony in Malaysia, but they* ***cannot have equal political rights*** *and* ***can never hold the top positions*** *in government and key institutions. (Chin, 2020, p. 289)* **(emphasis added)**

He goes on to argue that *"This narrative…"* (*Ketuanan Melayu*)*"… became known as the Malaysian 'social contract'"* (Chin, 2020, p. 289). Thus, Chin identifies a logical

coherence between *Ketuanan Melayu* and the MSC, suggesting that the enforcement of the latter, when connected to the discourse of former, results in the domination of non-Malays. Chin then makes a specific claim about the form of this domination: unequal distribution of power, evidenced by the fact that no non-Malay has ever been Prime Minster or chaired key state-linked private institutions (for instance, the national sovereign fund Khazanah, whose chairperson is always the Prime Minister).

While not disputing his general argument, I believe the domination that results from the discursive enforcement of the MSC through *Ketuanan* is, in fact, of a deeper kind than the formal distribution of power. In contrast, I argue that this particular type of domination is more keenly felt by non-Malays in the perceived precariousness of their citizenship rights. As a result, non-Malays are dominated by the need to constantly mitigate this precarity through public displays of recognition and acceptance of Malay privilege, even when doing so goes against their own interests (for instance, by deferring to Malay leadership in policymaking, or self-censorship when facing injustice).

This injustice, i.e. the precarity of non-Malay citizenship, stems from the *Ketuanan* view that non-Malays ought to be *grateful* for the MSC, as it represents the largesse of the Malays in granting citizenship rights to non-Malays in what is rightfully 'Malay' land. Former Prime Minster Tun Mahathir Mohamad provides the exact mechanism of this logic by conceptualizing the MSC as a quid pro quo[10].

> *"It was to be a quid pro quo arrangement. In exchange for the one million citizenships the non-Malays must recognise the special position of the Malays as the indigenous people." (Mohamad, 2008)*

Hence, under *Ketuanan's* logic, the MSC's terms are immediately collapsed into an agreement between just two groups - i.e. the Malays and the *non*-Malays - thus rewriting the original conception of Malaysian society as a collection of three distinct ethnic groups. Secondly, conceiving the MSC in this way causes it to acquire the status of a *contingent* exchange of privileges: the privilege of citizenship is therefore granted *only as long as* the Malay special position is recognized. This, in turn, applies an *obligation* on the part of non-Malays to hold up 'their end' of the contract.

[10]Malay leaders and successive Prime Ministers have held this view since at least 1986 (Chin, 2020, p. 289).

The potential for domination is evident when the exact composition of the 'Malay special position' is itself unclear. There is no body of work that seeks to definitively theorize and catalogue the privileges that make up the Malays' 'special position'[11]. Some privileges are clearly part of this, by virtue of their centrality in Malay culture - such as reservation land, Islam's status as official religion, and Malay as the country's official language. However, other privileges are not as bound up with identity, yet still claim a place on the menu of Malay privileges - for instance, Bumiputera affirmative action, which is sometimes cast in terms of equitable economics (e.g. the NEP), rather than as a manifestation of the Malay special position.

The ambiguity of what constitutes Malay privileges therefore means that non-Malays run the risk of retribution for *any* perceived slight against the special position of the Malays, however small or imagined. Non-Malays are expected to walk an invisible tightrope, and any stumble along the way is grounds for the Malay community to denigrate the offender as a lesser citizen. An indication of the dominance of this thinking is apparent, for instance, in the epithets widely used by reactionary Malays to slander non-Malays who are seen as challenging Malay privilege: *pendatang* ("visitors") – i.e., a reminder that they, as non-Malays, were never and can never be full members of the Malaysian *polis,* and that their citizenships are, if anything, temporary and qualified. Hence, the MSC with *Ketuanan* causes the citizenship rights of non-Malays to be seen as inherently contingent and unjustly precarious. This, I argue, is the core political injustice experienced by non-Malays under the MSC, and the precise nature of the domination and unequal political rights resulting from its discursive enforcement.

The advantage of conceptualising the domination of non-Malays in this way is in its potential to refocus the debate on MSC-enabled injustice, away from its effects and towards its deeper causes. In contrast to materialist criticism of the MSC's enforcement on which Chin and other critics tend to focus (i.e. that it results in under-representation of non-Malays at the upper reaches of formal power structures), this argument posits a

[11] The first attempt to catalogue these privileges was probably in Paragraph 164 of the Reid Commission's report on the Malayan Constitutional Commission in 1957. However, this report grounded these privileges in tradition – as privileges that have "always been recognized" (Federation of Malaya Constitutional Commission, 1957, p. Para. 164). Thus, the question of cultural or ideological origins for the formation and character of these privileges remains open-ended, allowing for the ambiguity that characterises the "Malay special position" today.

deeper, more profoundly damaging injustice that cannot be as easily countered by tokenistic efforts to superficially diversify the ethnic makeups of ministerial Cabinets or private sector boardrooms. The further implication of this argument is that efforts to address domination of non-Malays, in order to have meaningful effects, must necessarily recognise and grapple with *discursive* enforcement of the MSC. It remains to be seen whether contemporary attempts to address inter-ethnic inequality, which rely on liberal-nationalist discourses of "national unity" rather than a direct confrontation with *Ketuanan*, will take this step.

Intra-ethnic Domination: The Monarchy as Protectors of the Malays

In this section, I seek to reveal the domination that occurs within the MSC even when separated from discourses of *Ketuanan Melayu* – thereby shifting focus towards domination *within* ethnic communities rather than *between* them. A separation of the MSC and *Ketuanan Melayu* becomes possible when the latter is recognized as a self-contained ideological innovation. The MSC can be plausibly understood as a political bargain involving the *equal agency* of Malays, Chinese and Indians, to form a stable social consensus[12]. Yet *Ketuanan Melayu* is a direct subversion of this conceptualization. It *rejects* the assumed equality of the communities at the point of contract, and fully centralizes and amplifies the role of the Malay community in this story. For this reason, I argue the two narratives can be disentangled. And, by separating the two, it therefore becomes possible to put forward a criticism of the MSC that does not terminate with a criticism of *Ketuanan Melayu*.

Even assuming equal agency between the races and without the discourse of *Ketuanan Melayu*, I argue the MSC continues to create relations of domination, but *within* the Malay community – specifically between the Malay monarchy and the non-royal Malay subject. This domination arises from the constitutionally-defined role of the Malay monarchy as the party *responsible for* the continued integrity of the Malays' special position, creating a dynamic where non-royal Malay subjects must always submit – and remain submissive – to the monarchy's rule and judgment, even in the face of political injustice.

[12] As the readings of von Vorys, Case, and Moustafa suggest in the previous chapter.

This dynamic, I argue, has its basis in Malaysia's colonial experience, in the administrative requirements of the exploitative British colonial administration. Malay society was never as tightly organized as the patrimonial family structures familiar to Europeans, i.e. with clear family units, led by a (male) head who exercised control over decision-making. (Milner, 2008, pp. 188-189). Social leadership roles, when needed, fell opportunistically to village elders, local noblemen or the appointees of hereditary royal houses. It was only with the advent of British colonial rule that the Malays were clearly demarcated into two classes: non-royal Malays and the Malay monarchy. Mirroring the strategies used in India, the British needed an identifiable 'ruling class' in Malaya, to whom 'native issues' could be designated while guaranteeing non-interference in colonial economic activity. The Pangkor Treaty of 1874 set the framework for this: "officially recognizing" a Malay ruler as Sultan of the state of Perak, in return for installing a permanent British Resident whose advice "*on all questions other than those touching Malay religion and custom*" must be "*asked and acted upon*" (Andaya & Andaya, 1991 (1982), p. 155). This "official recognition" of the Malay monarchy had the effect of enabling their inclusion, and the enshrinement of their perceived role, in Article 153 of the Federal Constitution:

"It shall be the responsibility of the Yang di-Pertuan Agong to safeguard the special position of the Malays" (Fed. Const., Art. 153).

Article 153 therefore defines the specific role of the head of state – the *Yang di-Pertuan Agong*[13] ("*Agong*") – as one of "*safeguarding*" the Malay special position, thereby directly connecting the Malay monarchy to its continued integrity and, by extension, to the MSC. As head of state, the *Agong* has all the usual constitutional obligations to act as symbolic protector of all Malaysians. However, through Article 153, a constitutional caveat is placed whereby the *Agong* must merge his dual roles as King of Malaysia and King of the Malays – thus, requiring the head of state to actively and personally defend Malay interests, even, if needed, at the expense of (non-Malay) others. And, if the monarchy is seen as providing extra protection, then it follows that Malay subjects

[13]The *Agong* himself is always drawn from one of the royal families that make up the 'Malay monarchy' - itself not a single royal house, as in European monarchies. Out of the 13 states of Malaysia, 9 are ruled by a royal family whose head possesses hereditary rule over his own state. Every 5 years, the position of head of state (*Yang di-Pertuan Agong* – "he who is made lord") rotates among these 9 rulers, creating a unique rotational monarchy.

therefore owe something more to their kings – over and above what is owed by non-Malay subjects. This, I argue, is how the MSC creates the extra obligation that forms the kernel of intra-ethnic domination within the Malay community. This extra obligation, as I will show, manifests itself politically by causing Malay subjects to submit – and remain submissive - to the rule and judgment of the Malay monarchy.

This exact mechanism by which the Malay subject's extra obligation transforms into submission and submissiveness can be explained by Christine Keating's insights into *compensatory domination* in post-colonial social contracts. Compensatory domination is "*the coercive imposition of one control in one sphere while relinquishing of power in another*". (Keating, 2011, p. 7). In the historical case of the MSC, this occurred in the Malay rulers' decision to permit the wholesale economic exploitation of Malayan resources by British colonizers, while accepting strengthened control over religious and cultural aspects of Malay life[14]. Thus, the loss of native control in one area is compensated for by increased control in another. Compensatory domination then "*acts as a "thickening agent" for conservative social and political formations by generating investments in hegemonic configurations of rule*" (Keating, 2011, p. 7). Hence, the *resignation* of Malay subjects in submitting to the strengthened rule of their monarchs transforms into *consent*, justified by the perceived "extra protection" provided, causing the non-royal Malay to become personally invested in the institution of the monarchy. The emotional significance of this investment is apparent even today, as challenging the *Agong* remains a strong taboo for Malay subjects - seen as the insolent repudiation of the head of state's benevolent protection. Compensatory domination therefore explains the precise origins of the submissiveness of Malay subjects under the MSC: in the weight of extra obligation carried for their royal protectors.

Instances of this submissiveness, even in the face of injustice, appear in the sporadic political crises that Malaysia has experienced throughout her history. The most recent example is the putsch of February 2020 (Chin, 2020, pp. 288-291), which overthrew Malaysia's democratically elected, multiracial *Pakatan Harapan* ("PH") coalition and replaced it with the ethnocentric Malay-Muslim *Perikatan Nasional* ("PN") coalition - which consisted of Malay defectors from PH itself, UMNO, and PAS, a predominantly

[14] As shown in the terms of the 1874 Pangkor Treaty, mentioned earlier in this chapter.

Malay Islamist party. In the intervening week between the dissolution of the PH government and the formation of a new one, it was unclear which coalition had enough of a parliamentary majority in order to form a government. To resolve this, the *Yang di-Pertuan Agong* chose to hold a series of one-to-one, closed-door meetings with 90 Members of Parliament, to personally ask of each who commanded their confidence as Prime Minister (New Straits Times, 2020). At the end of these interviews, the *Agong* decided that Muhyiddin Yassin, a senior minister in the PH coalition but who had since defected to PN, commanded enough of a majority to form a new government. With the *Agong's* assent, Muhyiddin was sworn in as Malaysia's 8th Prime Minister soon after.

These events are notable in that it presents a clear example of democratic norms being subverted in favour of the judgment and rule of the Malay monarchy. The normal response in a Westminster-style democracy in cases of loss of confidence is to dissolve Parliament and hold fresh elections. This could have been the response of a monarchy that took its constitutional role seriously. Instead, by conducting those interviews, the *Agong* chose to act in a much more politically strident fashion, setting a dangerous precedent of direct intervention by an unelected head of state in the democratic process. And, tellingly, his decision to do so was treated as a lawful exercise of his royal prerogative – evidenced in the facts that no constitutional crisis was triggered, and that his ultimate decision to appoint Muhyiddin as Prime Minister was widely accepted, even by the PH coalition.

Criticism of the *Agong's* unprecedented intervention in the democratic process has not appeared in contemporary analyses of the 2020 putsch. The reason for non-Malay silence is easy to imagine – *Ketuanan Melayu* makes the *Agong's* position inviolable, and even veiled criticism of the institution from non-Malays would result in the dire consequences outlined in the previous section. Even James Chin only goes so far as to point to the coup as proof of the ongoing relevance of *Ketuanan Melayu* and its agents in Malaysian politics, paying little attention to the role of the Malay monarchy in subverting democratic norms (Chin, 2020, p. 296). More striking is the lack of *internal* criticism of the *Agong's* intervention, that is, criticism from democratically minded Malay politicians and commentators. No serious demand was made by Malay leaders to take the question of government back to those who were to be governed – not from, for instance, Anwar Ibrahim, a lifelong democrat and reformist, nor Tun Mahathir, who is no stranger himself

to being at odds with the monarchy[15]. This silence, even when speaking out would be a reaffirmation of the democratic norms which are in the interests of both Malays and non-Malays, speaks to the political effects of the intra-ethnic domination created and perpetuated by the MSC.

In Summary: Indispensable, but Inadequate

The preceding sections have sought reveal the specific kinds of domination that are created by the MSC, using the descriptive insights of the critical contract theorists. However, this section will make the case that some instances of this domination cannot be fully explained by either classical or critical contract theory. These are a) the contingency of non-Malay citizenship and b) the acquisition of the Malay monarchy's role as "protectors" of the Malays, and the extra obligation that it creates.

In the first instance, part of this can be traced to the fact that the MSC is built on *explicit* ethnic differentiation, in contrast to the *implicit* racial segregation that Mills identifies in the Racial Contract. In the Racial Contract "*the crucial metamorphosis is the preliminary conceptual partitioning and corresponding transformation of human populations into "white" and "nonwhite" men*" (Mills, 1999 (1997), p. 12). This metamorphosis, he argues, is completely obscured by contractarian explanations of predominantly white liberal-democratic polities (such as the United States). It occurs without the knowledge of the individual and subsequently creates the moral universe in which non-white people are always considered 'less than' her white counterpart. This is, to me, the Racial Contract's singularly most powerful insight, and at first glance, offers the best chance of explaining the inferiority (i.e. contingency and insecurity) of non-Malay citizenship. However, its explanatory power is lessened when considering that the implicit moral inferiority of non-white people under the Racial Contract is of a different kind than the inferiority of non-Malays under the MSC, which is built, instead, on the *explicit* recognition of ethnic difference, rather than its insidious obscuration. This sort of explicit racial recognition and partitioning is unexplainable by contractarian theory - which assumes the first principle of, according to Mills, "*the freedom and equality of all men in the state of nature"* (Mills, 1999 (1997), p. 15). Thus, the Racial Contract alone cannot fully explain

[15] Most notably, the instrumental part he played in removing the constitutionally-enshrined legal immunity of the Malay monarchy. (Abdul Hamid & Ismail, 2012, p. 929)

the MSC's moral universe, nor can it fully account for the inferiority of non-Malays under the MSC.

Similarly, the Malay's extra obligation to their rulers cannot be fully explained by either classical or critical contractarianism. For example, Hobbes' premise of the fundamental, natural equality of man results in a commonwealth instituted by covenant, wherein each individual is *equally obligated* to obey the will of the sovereign, in exchange for *equal justice and protection* (Hobbes, 2008 (1996), pp. 228-229). But nowhere does Hobbes grapple with the possibility of a covenant or commonwealth that a) affords preferential protection for some individuals, particularly on the basis of race, or b) results in a dynamic where some individuals are *more obligated* to the sovereign relative to others.

Christine Keating has gone further in explaining domination in specifically post-colonial contexts, via her insights into compensatory domination. However, I argue that compensatory domination only helps to explain how this extra obligation transforms into submissiveness and silence in the face of injustice. Its account of the "thickening" of resignation into consent is, in my view, incomplete as an explanation of intra-ethnic domination in the MSC, falling short of accounting for the development of the Malay monarchy's role of "protector", which instantiates the Malay subjects' extra obligation in the first place. Moreover, her explanation is less clear about how these relations of colonial domination are carried through time, even after colonial rule ends.

The presence of these 'unexplainable' facets of domination has echoes of Dipesh Chakrabarty's insight that European thought is indispensable, but inadequate for 'thinking through' postcolonial modernity (Chakrabarty, 2000, p. 16). In this case, social-contractarian theory is *indispensable* for revealing the domination that the MSC hides – but is also *inadequate* in its inability to fully account for certain aspects of domination in the postcolonial MSC. Hence, in the following chapter, I will put forward the argument that, to cover this lapse, social-contractarian theory needs a fuller recognition of *colonial difference* – that is, the irreducible difference existing between the colonizer and the colonized.

This is not to say that 'colonialism' has been categorically ignored by contract theorists. Mills discusses a "colonial contract" in *The Racial Contract*, arguing that it is a *subcontract* of the Racial Contract, one that "*legitimated European rule over the nations*

in Asia, Africa, and the Pacific" (Mills, 1999 (1997), p. 25). However, while valid, Mills diminishes its significance by articulating colonialism in this way. To Mills, the colonial contract serves only to connect 'the colonies' to a much larger argument about the Racial Contract – showing how white supremacy replicates itself in colonized spaces. As a result, the colonial contract is buried under a critique primarily aimed at injustice in predominantly white, developed, and colonizing (rather than colonized) polities (i.e., the United States and Europe). Even Keating, who goes further than many in recognizing the uniqueness of domination in temporally post-colonial social contracts, does not define the postcolonial contract as a unique contract, of its own type entirely.

The following chapter will therefore argue that there exists space for another type of contract, alongside the Sexual and Racial. Where the Sexual Contract recognizes the social contract's creation of *sexual difference* (Pateman, 1997 (1988), p. 16), and the Racial Contract accounts for its *racial difference* (Mills, 1999 (1997), p. 12), I argue for a critical approach that accounts for *colonial difference* in the social contract's instantiation: the Postcolonial Contract. It is my view that this will be a theoretically distinct and productive new category and, once fully developed, one that will contribute significantly to ways of understanding postcolonial societies.

Chapter 3
Towards a Postcolonial Contract

This chapter argues that the Postcolonial Contract can begin to recognize colonial difference through the problematization of the contractarian baseline of the "state of nature" – that is, an imagined pre-political state, usually one of perfect equality and freedom, populated by atomistic, rational individuals. The first part of this chapter will trace the role of the state of nature in mainstream social-contractarian thought, arguing that social contracts – and, by extension, the Sexual and Racial Contracts – necessarily require the conceptual emptiness of the colonial concept of *terra nullius* in their respective conceptualizations of the state of nature.

A Postcolonial Contract, on the other hand, would posit a break from *terra nullius*, recognizing instead the possibility of a *colonized state of nature* – occurring when "state of nature" status is ascribed to social contexts which are, in fact, already structured and distorted according to colonially-formed relations of race and power. This, I argue, explains (1) how relations of inequality (e.g. the contingency of non-Malay citizenship) and cultural distortions (e.g. the monarchy's acquisition of the role of "protector") are carried through once colonial rule ends, and (2) why domination resulting from these inequalities and distortions can coexist with formal language of equality and emancipation.

The Necessary Emptiness of Terra Nullius

The concept of the state of nature plays a central role in social-contractarian thought. It provides the grounds for what rights ought to be considered natural or civil, or the degree to which humans are perfectible, or sociable, or self-interested (Somos, 2019, pp. 7-10). However, significant variations exist within the tradition as to how the state of nature is conceptualized – for instance, as a product of 'scientific' inquiry (e.g. Hobbes), as descriptive accounts of man's historical development (e.g. Rousseau and Locke) or, in some cases, as actual lived reality.

The US experience of independence from Britain in the 18th century provides an example of the third case. Public discussion about American independence resulted in a

conceptualization of the thirteen colonies as constitutive of a "natural community" in an *actually existing* "state of nature" (Somos, 2019, p. 7). This distinctly 'American' state of nature then fed into the US constitutional debates, accounting for the development of entirely original and specific conceptions of natural and civil rights, for example, individualized rights of freedom (of conscience, of speech, etc.), property, self-defence, self-reliance and the like (Somos, 2019, pp. 159-162). This example, I argue, serves to reveal a process by which different conceptions of the state of nature can result in wholly unique ways of conceptualizing and guaranteeing political rights and values (liberty, equality, etc.) through social contracts. Thus, it becomes possible that: (1) pre-Independence conditions can be – and have been – conceptualised as "states of nature" and (2) different conceptions of "the state of nature" account for the form and character of states formed through social contract.

However, an equivalency between the American social contract and the MSC is complicated when recognizing the colonial difference between the American and Malaysian experience of gaining independence from Britain - being, of course, that the framers of the US Constitution were themselves colonizers of the North American continent, and not colonized in the way that Malaya was. At the centre of this difference is the colonial concept of *terra nullius*, and the role it plays in the formation of social contracts. Glen Coulthard writes in *Red Skin, White Masks*:

"Because Indigenous societies were considered so low on the natural scale of social and cultural evolution, settler authorities felt justified in claiming North America ***legally vacant, or terra nullius****, and sovereignty was acquired by the mere act of settlement itself."* (Coulthard, 2014, p. 100). **(emphasis added)**

Therefore, to the American settlers, faced with the vast *terra nullius* of 'unoccupied' North America, the state of nature had the epistemic status of a blank slate: a conceptually empty, pre-social and pre-political no-mans-land. Moreover, this particular conceptual emptiness was *needed* by the American colonies, in order to proceed with an exercise of their sovereignty – expressed by filling up that 'empty' space with an image of themselves as a natural community, about to enter into a social contract that would finally create the rights that befitted civil society (albeit, for white men only). Therefore, this social contract

– and by extension, the Racial and Sexual Contract which these social contracts mask – *necessarily required* the concept of the state of nature as *terra nullius*.

Malaya was clearly no *terra nullius*, and the British never treated it as such. Artifacts such as the Pangkor Treaty suggest that Britain's colonial *modus operandi* was to co-opt, rather than erase, indigenous society. This leads to the question that ought to be asked of the MSC and, by extension, the Postcolonial Contract: how could these social contracts conceptualise their own states of nature without recourse to *terra nullius*?

The answer, I believe, lies in recognizing that framers and founding fathers of social contracts can and have seen pre-Independence realities as constitutive of their own respective states of nature. In Chapter 1, I argued the Malayan founding fathers possessed a shared understanding of the ethnic divisions and dynamics that defined their lived reality. Here, I argue that this shared understanding became constitutive of the "Malayan" state of nature – forming a *colonized state of nature* that serves to naturalize a reality constructed by colonialism. Just as the conceptual emptiness provided by *terra nullius* allows for the naturalization of concepts such as freedom and equality, subsequently enshrining them by social contract into *political rights*, the Malayan *colonized state of nature* allows for the naturalization of pre-existing, colonially-constructed relations and distortions, allowing for their subsequent enshrinement in the MSC. This, I argue, is the MSC's – and the Postcolonial Contract's - theoretical uniqueness: in treating colonial inequalities and distortions as a pre-political 'state of nature'.

Two Aspects of the Colonized State of Nature

The rest of this chapter will highlight two specific effects of colonialism[16] that were subsequently naturalized by the *colonized state of nature*. Firstly, it naturalized the colonial conception of Malaya's racial groups as fundamentally different and mutually hostile (as described in Chapter 1). This accounts for the contradiction identified in Chapter 2, wherein I argued that inter-ethnic domination in the MSC is built on *explicit*, rather than the Racial Contracts' *implicit*, recognition of racial difference. Since these differences are naturalized, it therefore renders recognition of difference perfectly compatible with other, equally naturalized, tenets of mainstream contractarian tradition -

[16] And, I am sure, there are many more.

such as "natural" liberty and equality. This is one aspect of the colonized state of nature that the MSC rests on, and it explains how the most insidious elements of inter-ethnic domination continue to exist and remain prevalent – in the politically-recognized "special position" of the Malays, the sense of mutual hostility and irrevocable ethnic difference, and the continued belief in the contingency and precarity of non-Malay citizenship.

Secondly, the colonized state of nature also naturalized the Malay monarchy's acquired role as *protectors* of the Malays, providing a fuller explanation of the origins of the Malay subject's extra obligation to their kings. The pre-colonial political role of the monarch – the "*raja*" - was never one of direct, personal participation in political administration. Rather, the *raja*'s role was primarily ceremonial and aesthetic – in personifying Malay *adat* through dress, manners and attendance to "formal matters" (Milner, 1982, pp. 70-71). The *raja*'s actual political agency was limited to conferring ceremonial titles to individuals who would then administer and tax territories in his name (Milner, 1982, p. 97). This presents a stark contrast with the MSC's conceptualization of the modern *raja* as an active "protector" of the special position of the Malays. The roots of this shift, and the muscular political role that it justifies, can again be traced to the onset of British colonial rule. I have previously shown that British colonial rule had administrative and economic reasons for demarcating the Malay community. However, I contend that this also had distorting effects on the monarchy itself, forcing them to reconceptualize themselves and their political agency – paralleling Ashis Nandy's insight that colonialism distorts the colonized and alters their cultural priorities (Nandy, 1983, pp. 2, 73). The *raja* was now expected – and expects - to directly and actively represent "native" (i.e. Malay) interests in colonial administration, through specifically *political* channels such as "*the durbar of Rulers, the Federal Council, and informal meetings with British officials*" (Smith, 2006, p. 125).

Thus, the British recognition of the Malay rulers, and their subsequent collaboration with the colonial state, transformed a previously detached and politically-aloof monarchy into one that saw itself as activists for the protection of the Malay special position. And, with the British importation of Indian labourers and the growing economic power of Chinese entrepreneurs, most of this 'protecting' involved the 'defence' of Malays from perceived 'non-Malay threats'. (Abdul Hamid & Ismail, 2012, p. 927). The high point of this role was reached in the Malay rulers' eventual rejection of the Malayan Union plan - Britain's

original idea for self-governing Malaya, which was seen as having citizenship requirements for non-Malays that were too lax (Andaya & Andaya, 1991 (1982), pp. 255-256). Hence, the colonially-formed distortion of the monarchy's political role came to form part of the "Malayan" state of nature, leading to its importation into the MSC, and the resultant extra obligation of Malay subjects. This, I believe, helps to further account for the events of February 2020, explaining the Malay monarchy's internal justification for direct intervention in the democratic process – the dimension of 'protecting the Malays' made clearer by the twin facts of the outgoing PH coalition primarily consisting of multiracial parties while the incoming PN being predominantly Malay-Muslim.

In sum, the MSC therefore rests on the naturalization of colonially-formed ideas - at the very least, essential antagonism and difference between ethnic groups, the intrinsic 'foreignness' of non-Malays, and the Malay monarchy as active protectors of the privileges of indigeneity. A naturalization of these colonial inequalities and distortions also explains why the domination that they create can coexist with formal, even constitutionally-enshrined, language of equality. Consider, for instance, the following two Articles of the Malaysian Constitution:

i. ***Article 3(1)****: "Islam is the religion of the Federation; but other religions may be practised in peace and harmony in any part of the Federation."* (Fed. Const., Art. 3(1)).

ii. ***Article 8(2):*** *"Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender…"* (Fed. Const., Art. 8(2)).

Article 3(1)'s second clause provides that other religions "may" be practiced – thus characterizing freedom of religion as *permission,* rather than absolute right. Firstly, this suggests the implied deviancy of non-Muslim/non-Malay beliefs, and the assumed 'default' position of Islam and Malayness in the Federation. Furthermore, the first clause of this Article ("*Islam is the religion of the Federation*") has led to increasing litigation about Malaysia's identity as a Muslim nation (Moustafa, 2018, p. 138), justifying the domination of non-Malays in the suppression of religious freedom in favour of Malay-Islamic interests and sensitivities – such as limitations on the public display of non-Muslim religious iconography. A colonized state of nature can explain this contradiction by recognizing that it stems from a naturalization of the colonial conflation of indigenous

ethnic identity with religious belief, which was a direct result of the British empowerment of the *raja* as head of *both* Malay religion and custom. This led to the explicit recognition of Islam as the "Federation's" religion, rather than as one possible belief-practice among many others in a multicultural, cosmopolitan nation.

Article 8(2), on the other hand, is immediately preceded in the Constitution by a general declaration of universal equality and rule of law[17]. And yet, it claims a bizarre contradiction which essentially states 'no discrimination shall take place… except when it does'. This contradiction is explicable when allowing for the possibility that the Constitution (and the social contract it helped formalize) was developed from a conception of a Malayan state of nature that, in fact, was already structured by colonial inequalities. A permissive approach to discrimination is unproblematic if, as the founding fathers did, one accepts the premise that differentiated treatment based on race is natural and therefore justified.

To summarize, a definitive account of the Postcolonial Contract would have to begin from a recognition of the possibility of *colonized states of nature*, and their role in naturalizing the inequalities and distortions of colonial rule. It would then follow that these colonized states of nature provide the bases for Postcolonial Contracts – the subsequent enforcement of which creates domination that is able to coexist with the formal language of equality and emancipation.

[17] Article 8(1): "*All persons are equal before the law and entitled to the equal protection of the law*" (Fed. Const., Art. 8(1)).

Conclusion

The final section of this dissertation is both a conclusion and a caveat – given the limitations of space, my argument here is restricted to identifying only one possible point of departure for the Postcolonial Contract's recognition of colonial difference: the colonized state of nature.

Other points of departure surely exist. One such example could be in recognising the signatories of Postcolonial Contracts as *colonized subjects*, and the implications of this recognition. Frantz Fanon's insights may be useful here – in exposing the postcolonial bourgeoisie's narcissistic belief "*that it can advantageously replace the middle class of the mother country*" (Fanon, 2001 (1967), p. 120). This could potentially reveal continuities between the colonial and postcolonial state, caused by the inability of the national bourgeoisie to imagine any form of government that differs from the general principles of colonial rule. Thus, in the case of the MSC, the great emancipation promised by Malayan independence simply takes the form of a Malayan, rather than an Englishman, at the helm of a government whose internal logic remains colonial and exploitative.

Consequently, a fully-fledged account of a Postcolonial Contract – at a scale and depth similar to Carole Pateman's *Sexual Contract* or Charles Mills' *Racial Contract* - is, to my regret, not present in this dissertation, and remains an area for future research. Regardless, I believe that I have achieved the objectives set out in the Introduction, that is, (1) to provide a brief account of the MSC, (2) to reveal the inter and intra-ethnic domination that the MSC creates, hides and perpetuates, and (3) to argue for the theoretical distinctiveness of a "Postcolonial Contract", beginning with the recognition of a colonized state of nature.

In concluding this dissertation, I express my hope for a possible future for the Postcolonial Contract: in that it will have significant value in thinking through the experiences of postcolonial societies, and in building bridges of solidarity between ex-colonial states.

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