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African Century Journal

June 2019

Charles Mills wrote a provocative article on Kant (Mills, 2005) that Kant's theories are based on racism in general and on the belief that non-whites were sub-persons. He takes the view that in Kant there is an assumption that non whites were sub-persons or untermensch. He takes personhood as a distinctive idea of either modernity or the Enlightenment. That this is not so has serious consequences for the correctness of the analysis that follows. Far from an idea of modernity the relevant idea goes back through medieval times to Roman Law.

Mills writes: "What I am arguing for, then, is a reconceptualization of our narrative of modernity, ..." (Mills, 2005)p.3 Mills then writes "The idea of a person is linked with a sub-person as figure and ground .."p.6 He writes accurately: "person" then is really a technical term, a term of art, referring to a status... (which) are generally out of reach of non-Europeans, non-whites' p.8

But he fails to take into account the manner in which Roman law dealt with this and that this not modernity is the source point. This failure leads him and Eze down the garden path though their instincts were sound. They both belabour the moral status rather than identifying the legal status as the key originating term even if Kant obscures this point.

Mills creates a category 'sub-person' to cover those lacking in 'personhood', apparently not aware that this category already formally existed but in a different form of expression.

### **Roman Law:**

Roman law recognised slavery as an artificial institution Joseph Long quotes Justinian 'slavery is an institution of the law of nations, against nature, subjecting one man to the dominion of another.'(Long, 1912) p.4 In the period of Empire the right to kill one's slave was taken away.

'Slaves in Roman law were regarded as the property of their masters. They lacked all personal rights and responsibilities ...'(Lewis, 2015) p.185

'The slave was regarded as lacking all capacity, even to form personal relationships. Slave unions were, of course, known, but there was no legal restriction on the master's right to separate partners and their children. It was, however, easy to be misled, and the jurist Paul has to point out that the mere use of standard terms like uxor, pater, and filius in relation to slaves creates no rights, and, as he says elsewhere, it is not easy to tell a freeman from a slave. '(Lewis, 2015) p.188

If it was not easy to tell a freeman from a slave there clearly was no physical or visual distinguishing marks and the fact that a freed slave became a Roman citizen meant there was no understanding of any intellectual or other disability arising from being a slave, particularly as there were specific provisions to allow slaves to manage their master's business on his behalf - the peculium.

'Slaves were used to manage property and goods belonging to their masters – for example, being put in charge of a shop or a ship. For this and other purposes it was usual for masters to grant slaves rights over part of their property, called the slave's peculium. Strictly speaking, this was a private arrangement between master and slave which could be reviewed at any time without legal restriction. But in practice it gave rights to third parties in dealings with the slave and to this extent the master was bound.'(Lewis, 2015) p.188

Slaves were human but had no legal personality so at law were nothing. This form of persona was an attribute or property of a man not identical with being a man. But this 'property' was not in Roman law a 'natural property' but a legal creation.

It should be clear that what Kant is doing is creating a status of 'White', 'Asian', 'Black' and 'American (native)' but presenting these actions as scientific and the distinctions based on nature's law. It should also be clear why race mixing created an issue. Under Roman law a slave's issue remained a slave but given the way Kant had justified his categories of status it would not obviously follow that race crossing should produce only the inferior ... but this is where Kant wants to go and he insists that race crossing does not improve much the inferior but much reduces the superior ( a utilitarian argument) and is against nature (pseudo scientific). Given human history there never was evidence for this and so one must look to the needs of his overt or covert logical argument as the driver of this statement.

### **Kant's motions**

What Kant does is to treat 'races' as on a par with individuals such that one can allocate rights and disabilities to them in the same way that Roman law attributed rights and disabilities to individuals.

Bernasconi quotes Kant:

'...humanity is at its greatest perfection in the race of the whites. The yellow Indians do have a meagre talent. The Negroes are far below them and at the lowest point are a part of the American people's.' (warde & Lott, 2002) p.147

What is significant here is that Kant treats races as if they have potential personality and rights and disabilities. Thus he concludes:

.. 'Americans and Blacks cannot govern themselves. They Thus serve only for slaves' (warde & Lott, 2002) p.152

Mills correctly notes that the procedure here is unscientific in that a scientific statement would not be about an entire class but empirically about individuals and clearly there would be a range of skills so that some whites would lack and some Blacks would achieve it.

“Note that: (i) It would not be enough to say that blacks and Native Americans are less intelligent/autonomy-capable *on average* than whites, since this would allow for the possibility that a few blacks and Native Americans (the “talented tenth”?) *could* make it, while a few whites (the “untalented tenth”?) will not, since the claim being made is the stronger one of complete racial exclusion. (ii) Nor is it enough to say just that *all* blacks and Native Americans are inferior in this way to *all* whites (so the least intelligent/autonomy-capable white is smarter/more autonomy-capable than the most intelligent/autonomy-capable black and Native American) (Mills, 2005) p.16

However this misses the point. Kant is mirroring Roman law and being more declarative than descriptive. Just as a law might determine that all residents of a certain area shall be considered enemy aliens or entitled to vote in a local election - i.e. provides a status, so Kant provides a different status for White, Asian and Black and Native American. While it may sound to Emmanuel Eze (quoted CM p.16) like a transcendental statement i.e because it is true a priori and requires no evidence, this is implausible. It is better understood as a declarative statement and that Kant is in effect ‘legislating’ on behalf of ‘nature’. Kant’s justification for such ‘legislative behaviour’ is his claim that this is nature’s law. Roman law had recognised that slavery was an artificial institution but in Kant it becomes a law of nature - that is the scale of Kant’s racism.

By taking Kant’s claim to be driven by science, despite that Bernasconi’s presented overwhelming evidence to the contrary, Mills misses his target and constructs concepts that are easily shot down. Far worse is the fact that taking the red herring of a proposed scientific base of Kant’s theories they lose all chance of tracing the trajectory of the covert argument. A trajectory that Bernasconi has strongly hinted at without apparently daring to take to its full conclusion

In subsequent parts of this article the implications of the above analysis will be explored and it will be shown how it affects the argument that Mills tried valiantly but unsuccessfully to get off the ground.

## Bibliography

(page numbers refer to longer text version.)

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