The Social Contract and Disability

John Locke’s and Jean Jacques Rousseau’s social contracts, though distinct in a number of important ways, require consent to gain legitimacy and derive this consent from an ill-defined notion of ‘reason’ in Locke’s case and “a sum of forces” where man “in giving himself to all, gives himself to nobody” in Rousseau’s case (Rousseau 1755, 20, 21). These liberal philosophers have invited a great deal of scholarly debate about the state of nature and the qualities that render a person a full signatory to the social contract, including raced and gendered analyses of liberalism’s foundational principles (e.g. Charles Mills, Carole Pateman). This paper will primarily discuss the assumptions about physical and mental ability latent within ‘consent’ and ‘reason’ to reconceptualize who the social contract excludes. I conclude that the social contract implicitly delineates an ability contract, where disability as an axis of analysis underwrites and can be used to understand other politically constructed categories such as race and gender.

Locke’s social contract holds reason — the law of nature — at its helm. Since the natural gift of reason qualifies someone to be a signatory, Locke assumes “like faculties, sharing all in one community of nature,” as though reason is a self-evident fact of our natural, pre-social state (Locke 1690, 9). Locke says we may not subordinate those with ‘like faculties’ or use one another “as if we were made for one another’s uses” as “the inferior ranks of creatures are for our’s” (animals) (Locke 1690, 9). In chapter 6, Locke is more specific about the terms of reason and consent. He says that age and “a state of maturity” or adulthood comes with it the “capacity of knowing that law [of reason], a state explicitly denied to “lunatics and ideots,” “children,” “innocents which are excluded by a natural defect from ever having,” and “madmen” (Locke 1690, 33, 34). Locke seems to be referring to a host of cognitive and mental disabilities that would preclude a person from reasonably consenting to a mutual agreement. Those without
‘reason’ (whatever that may entail) are excluded as signatories from a Lockean social contract in the same way animals and children are. Though Locke pays some lip service to women in the context of paternal power and childrearing and Indians in the context of nature and slavery, analysis on the basis of ability produces a broader conceptual delineation that underwrites other politically constructed categories on the basis of reason and consent.

Rousseau’s imagining of civil society maps the sociopolitical origins of human sociability. He spends some time conjecturing (and making certain unsupported psychological claims) about the emergence of human self-awareness, cognition, and social behavior and like Locke distinguishes between humans and animals on the basis of ability. The language of “capable” is deployed by Rousseau to describe the “savage man,” whereas the “civilized man” possesses cunning and a sharp mind and diminished physical faculties (Rousseau 1754, 5). Putting aside the speculative nature of these claims, it is clear that Rousseau assumes a level of physical and mental ability for both the savage and the civilized man. He says “ills” are “of our own making” and that human nature implies “good health,” an essential claim about the human condition (Rousseau 1754, 7). Rousseau also discusses the five senses, the faculty of speech and its ability to convey conventional ideas, and more psychological claims about when man came to understand the concept of property and self-reflection. These elements of his narrative implicitly form Rousseau’s conception of the civilized man and who can participate in the contract, in sharp distinction to the “languages crude and imperfect...like those we find today among various savage nations” (Rousseau 1754, 16). The basis on which Rousseau has excluded ‘savage nations’ from civil society is similar to the manner in which he excludes those who cannot form speech, or who do not understand the concept of property.
There are implications for the terms of a social contract that assume a level of ability. Liberalism’s imagining of the self, an autonomous, property-holding, consenting subject, makes key assumptions about signatories’ cognitive and physical capacity to engage in these foundational principles. Disability can affect the ways people participate politically. Liberal-democratic societies rely on a set of skills to be politically savvy and ensure representation, such as voting, protesting, running for office, holding a job, etc., so conditions such as deafness and muteness are deterrents to participation and impediments at worse, as are depression and anxiety. But there are more than just literal implications for using ability as a lens of analysis. There are ways in which marginalized groups are rendered ‘disabled’ or non-normative in an ontological sense by the terms of the contract.

It is important to note that both Locke and Rousseau make claims about cognition, rationality, and psychology that are by and large baseless and unsupported by evidence. The sorts of atypical cognitive activity that may or may not obstruct consent to a social contract are undertheorized, underresearched, and lack the requisite interdisciplinary communication between philosophy and the sciences. It seems unproductive to discuss which specific cognitive disabilities the social contract excludes without knowing the physiological nature of these conditions. More saliently, Locke and Rousseau have constructed the able-bodied, rational man category for the purposes of their political philosophies similarly to how race and gender are constructed categories for political ends, untraceable cognitively or by medical technology.

Disability, an undertheorized political category, has an unstable definition. It can be taken to mean any number of atypical physical, neurological, and mental occurrences. Rosemarie Garland-Thomson explains how the ability/disability system operates by marking certain bodily variations as abnormal or inadequate, “a culturally fabricated narrative of the body” that excludes
“forms, functions, impairments, changes, or ambiguities that call into question our cultural fantasy of the body as a neutral, compliant instrument of some transcendent will” (Garland-Thomson 5). The language of neutrality and transcendent will is reminiscent of the hypothetical political subject within Locke’s and Rousseau’s texts. Garland-Thomson also posits that integrating disability analysis illuminates the systems of identity categories that operate together “to support an imaginary norm and structure the relations that grant power, privilege, and status to that norm...the disabled figure...act[s] as a synecdoche for all forms that culture deems non-normative (Garland-Thomson 4).

Disability as an axis of interpretation, then, has implications in terms of the ‘disabling’ of other ontological categories in relation to liberal society. Kathy Miriam’s explanation of Carole Pateman’s argument in The Social Contract demonstrates how the idea of consent within the context of sexual relations is underwritten by assumptions about ability, and thus reveals how exclusions based on ability underwrite political categories, in this case gender. The sexual contract conceives of the arena of power relations of heterosexuality not as physical contracts but socialized organizing principles of association that mediate female sexual agency (Miriam 2007, 220). The liberal ontology of ‘freedom’ defines the individual as the owner of his or her property, and in the case of a social/sexual contract, the owner of his or her person (Miriam 2007, 220). The exchange of property in their person, however, presupposes that one can separate a capacity, such as a sexual service, from the self (Miriam 2007, 221). The exchange as an act of sexual freedom relies on this separation, which Pateman argues is incoherent due to phenomenological evidence that the body and the self cannot be separated, and a service like prostitution constitutes a subordinate subject selling the right to their “body for a specified amount of time” to a dominant subject (Miriam 2007, 221). The ways we discursively discuss
rape and sex are very much steeped in assumptions about ability, e.g. the capacity to verbally consent, the cognitive understanding of ownership of one’s property in person, the physical capacity to perform sex, successful procreation, etc. As such, we see how modern conceptions of sexual freedom and agency that are rooted in a liberal framework of autonomy and consent first presuppose a certain level of ability that underwrites the political category of gender as well as “preexisting relations of domination and subordination” that construct the category of gender (Miriam 2007, 221).

A robust and interdisciplinary discussion about ability and cognitive capacity is necessary in regards to liberalism and the foundations of modern civil society. The nature of the ability/disability system remains undertheorized without input from the social and hard sciences, and the Self deployed in liberal theory excludes a faction of subjects. This paper has made the case that we must look at the Self in terms of all its physical, mental, and neurological states (both biologically and ideologically) to understand who the social contract accepts as full signatories in a liberal democracy. Once we begin understanding the ability/disability system, we understand that an ability contract underwrites not only the social contract but also the schema of ontological identities we have constructed for our political ends.


