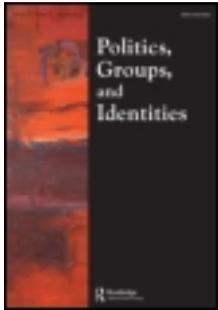


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The capacity contract: Locke, disability, and the political exclusion of “Idiots”

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Underlying Locke’s social compact is a *capacity contract* that hinges political membership on rational capacity. Unlike the sexual and racial contracts that enforce domination, Locke’s capacity contract promises both exclusion and democratic solidarity. This twofold interpretation follows from Locke’s treatment of disability and, in particular, his construction of idiocy as both fundamentally human and analogous to nonhuman animals. As a domination contract, the capacity contract marks some bodies as more vulnerable than others and strips them of political membership to safeguard political legitimacy. The democratic capacity contract, however, sees vulnerability as an essential marker of human life that prompts men to form the social compact to counteract everyday injustices.

Keywords: Locke; social contract; disability; vulnerability; corporeality; reason; democracy; equality

Within the subfield of political theory, John Rawls’s exclusion of people with severe disabilities from the main questions of justice has informed the field’s uptake of disability (2005). Although theorists often disagree with Rawls’s exclusion of disability, they generally agree that people with disabilities constitute a novel category under consideration, as if earlier philosophers overlooked the political dilemma that disability posed to their theories (Carlson and Kittay 2009, 310; Hartley 2011, 120; Nussbaum 2006, 100). True, people with disabilities have appeared in political theory as an oppressed category only recently (Arneil 2009; Young 2006). But because so much of political theory premises political inclusion on human capacity, we should expect disability to have been part of the conversation about political subjectivity *all along*, even before political theory took up the question of identity politics.

In fact, disability appears often in John Locke’s writing and it plays a key role for Locke in defining the meaning of personhood and limiting political membership. While Locke draws upon sensory, physical, and emotional disabilities to help define key concepts, his treatment of intellectual disability – or idiocy, as he calls it – plays a distinct role because of the importance he gives to rationality. Idiots appear in Locke’s earliest political writings, *Two Tracts on Government* and *Essays on the Law of Nature*, and in his most significant publications, *An Essay Concerning Human Understanding* (henceforth *Essay*) and *Two Treatises of Government*. In Locke’s

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Essay, he uses idiots to disprove the maxim of innate ideas and test the limits of species membership, and in the *Second Treatise*, he excludes idiots from political membership.

Despite disability's constant circulation in Locke's thought, few scholars focus on his treatment of disability or, more specifically, his construction and political exclusion of the idiot. When political philosophers examine Locke's treatment of disability, they tend to discuss it as a small part of a larger analysis, for instance, commenting on the history of disability in Western political thought (Arneil 2009), on the limits of Lockean equality (Waldron 2002), or on the idiot's role in confounding Aristotelian notions of species (Ayers 1981). While in disability studies scholars have described how Locke influenced the medicalization of intellectual disability, they focus less on linking Locke's account of disability to his political theory (Braddock 2001; Goodey 1994; Goodey and Stainton 2001).

Understanding Locke's treatment of disability provides a new way to read his social contract as a *capacity contract* that bases political membership on a threshold level of capacity and excludes anyone who falls below. My interpretation is consistent with critical contract scholarship, pioneered by Pateman's (1988) sexual contract and Mills's (1997) racial contract, both of which unmask contractual equality as a ruse for domination (Mills 2008). As Ackerly argues, domination contracts are social contracts "*among some people with certain power* about which people or categories of people are 'persons' in the sense of being cognitive equals" (2008, 77 emphasis original). While Locke's capacity contract is a domination contract – by privileging the more over the less able – my analysis also shows how domination contracts *are* capacity contracts: political exclusion is justified on the supposed deficient capacities of women, nonwhites, and the less powerful.

Yet, Locke's work on disability also reveals another and more emancipatory side of the capacity contract. This side of the capacity contract sees vulnerability as an essential marker of human life that prompts men to form and maintain the social compact amid personal incapacity. My reading of the capacity contract as a *democratic contract* follows from Christine Keating's work on the postcolonial sexual contract and its ability to promote both exclusion *and* solidarity (2011). While Burgess and Keating acknowledge the social contract's proclivity toward domination, they also encourage us to reinvent a more participatory and democratic contract (2013). As I will show, Locke helps us see how disability helps build solidarity in his *Second Treatise* and contemporary politics.

My analysis of disability gives us new ways to see Locke's contract and, in addition, helps explain his treatment of an assortment of marginalized groups – like savages, women, mad men, and the physically impaired – who are stigmatized because of their diminished human faculties, but not irreconcilable to human experience. As Hirschmann points out, these deficiencies are due to the imperfect training and exercise of reason (2007, 181). Their location, even if marginal, is a difference of degree, not category. Idiots – and others who similarly lack the faculty of thinking – shift imprecisely between humans and beasts. Understanding idiots' twofold relationship to vulnerability – on both a continuum of vulnerability and below a threshold – will pull Locke's contract in two opposing directions of domination and democratic solidarity – a struggle that continues to impede significant change for people with disabilities today.

Disability and vulnerability in Locke's *Essay*

Readers familiar with Locke's *Second Treatise* will recall that human faculties are fundamental to his theory of political equality ([1690] 2004, 2.4), but less well known is Locke's explanation of human faculties in the *Essay*. The *Essay* explores the prevalence of deficient and *unequal* faculties, extending upward to the perfect intelligence of angels, down to the entirely deficient idiot. Scholars contest the precise relationship between Locke's *Treatise* and the *Essay* and, for

some, the tensions between them are irresolvable (Dunn 1984, 30; Laslett 2004, 84). In contrast, Waldron reads the *Treatise* with the *Essay* to argue that Locke grounds political authority in the “ordinary intellect” of everyday people, including the poor and uneducated (2002, 103). Others argue that Locke exploits differences in rationality to sanction political domination, particularly toward the poor (Hirschmann 2007; MacPherson 1962), women (Hirschmann and McClure 2007), the insane (Mehta 1992), savages (Squadrito 2002), and criminals (Dilts 2012; Kingston 2008). I suggest that tensions between the *Essay* and *Treatise* may be most productive when they remain unresolved: Locke can emphasize men’s shared vulnerability when he needs to promote democratic solidarity, but he can also draw on differences between men’s faculties to justify political exclusion.

The main task of Locke’s *Essay* is to determine the limits of human understanding (Uzgalis 2007) and disability plays a prominent role symbolizing common defects. Locke breaks with traditional opinion that locates morality in innate ideas, instead arguing that human understanding derives from experience. He divides human faculties into two categories – sensation and reflection – and he uses different corporeal defects to signify human limits in both. Locke’s close attention to human frailties perhaps arises from his medical training detailing various ailments and remedies (Dewhurst 1984). Regardless, Locke exploits corporeal defects such as blindness, deafness, madness, paralysis, and idiocy to help characterize common defects in human understanding. For Locke, corporeality makes all men defective in relation to God, but when these defects are so severe as to annihilate faculties of perception, men resemble lower forms of life on the great chain of being.¹

Blindness captures well Locke’s ability to exploit the symbolic value of corporeal defects. Locke uses blindness to represent the absurdity of innate ideas, the inability to know real essences, the consequences of lazy thinking, and universal human vulnerability in relation to God. Locke encourages “any one try to fancy any Taste, which had never affected his Palate; or frame the *Idea* of a Scent he had never smelt: And when he can do this, I will also conclude that a blind man hath *Ideas* of Colours, and a deaf Man true distinct Notions of Sounds” (*Essay*, 2.2.2). Locke uses the same rationale – that a blind man can know the color of pansies – to attack scholastic attempts to determine species’ real essences (4.6.5). Locke also argues that blindness is analogous to impaired or inattentive senses within nondisabled bodies. While “it is impossible for a blind man [. . .] to read a legal notice displayed in a public place,” it is similarly “difficult for one who sees badly” (1997, 85; see also 2.2.4). Finally, when Locke describes men living in a “fleeting state of Action and Blindness,” he means to capture all men, not just the blind, in relationship to God’s perfect intelligence (4.16.4; 2.21.50). In this way, Locke uses blindness to symbolize men’s shared vulnerability.

Similarly, Locke turns to physical defects to symbolize corporeal unruliness and to explore the meaning of liberty. In the chapter “On Power,” Locke describes a man who involuntarily hits himself due to a “convulsive motion” and another man with palsy whose legs are incapable of “obeying the determination of his Mind” (2.21.11). For Locke, “so far as a Man has a power to think, or not to think; to move, or not to move, according to the preference or direction of his own mind, so far is a Man *Free*” (2.21.8). Accordingly, for these paralytic bodies, Locke argues, “nobody thinks he has in this liberty: everyone pities him as acting by necessity and constraint” (2.21.9). Yet, Locke argues that the paralytic is capable of liberty: whenever he prefers to be stationary rather than in motion, his motionlessness is voluntary (2.21.11). In addition, Locke encourages readers to consider moments of bodily unruliness within “our own bodies,” most evident in the fact that no man can control the beating of his heart (2.21.11). Locke thus treats sensory and physical disabilities on a continuum of human capacities that limit understanding and freedom but fail to detract from human standing altogether.

When Locke considers defects in the faculties of perception and retention, however, he suggests that men can come to resemble beasts if their defect is severe. Due to their undeveloped or degraded faculty of perception, Locke compares fetuses to vegetables (2.1.21) and the old who have lost their memory to oysters, cockles, and the “lowest degree of Animals” (2.9.14). Rather than residing along a spectrum of human capacities, fetuses and the senile resemble a different category of life form altogether.

This difference in category is due to the importance that Locke places on perception and memory, the latter of which is essential to all other faculties. If memory is “wanting,” then “all the rest of our Faculties are in a great measure useless” (2.10.8). Deprived of memory, the mind cannot move from the mere awareness of objects to conceptualizing objects as ideas, and hence can never reason. Although memory is essential, Locke acknowledges that no man possesses it perfectly, leaving perfection to God and “some superior created intellectual Beings” only (2.10.9). Locke also describes different levels of defects in men’s memory. The dull and stupid have minds that fail to move “quick enough” and thereby they “[lose] the opportunity” for action (2.10.8). The perfectly ignorant man “loses the Idea” instantaneously – so quickly as to have never existed at all (2.10.8).

Defects that impede men’s faculty of reason are the most significant because reason is the faculty most vital to Locke’s definition of personhood. According to Locke, birth does not bestow species membership. Instead, the faculty of thinking separates the meaning of *man* from *person*. Man, according to Locke, is “nothing but a participation of the same continued life ... united to the same organized body” (2.27.6). A person, however, “is a thinking intelligent being, that has reason and reflection, and can consider it self as it self” (2.27.9). Locke stresses the dependence of personhood on consciousness, arguing, “without consciousness, there is no Person” (2.27.23), and again, “Self is that conscious thinking thing” (2.27.17; 2.27.9). Limitations in sensation or perception impede human understanding, but defects that annihilate reasoning faculties defy Locke’s definition of personhood.

Locke uses several figures throughout the *Essay* to explore the absence of reason – fetuses, the old, and changelings – but he returns most often to the idiot, across all four books of the *Essay*. Despite idiocy’s prominence, its precise deficiency is difficult to determine, as the idiot’s defect shifts according to its surrounding cast of characters and whichever task Locke has at hand.² When Locke aims at the main task of the *Essay* – to discern the limits of human understanding – he places idiots next to the defects of all men as they all fall short of God’s perfect intelligence. Occasionally, however, when Locke challenges the coherence of species, we find idiots alongside changelings, as well as drills, dogs, hogs, and horses (3.6.41, 3.6.12). Locke thus describes cognitive deficiency both as a universal continuum along which all men are fallible and as a threshold under which some men fall.

Idiocy and rationality

When Locke first introduces the idiot in Book 1 of the *Essay*, he uses the idiot to help dismantle the maxim of innate ideas. If innate maxims exist, Locke suggests that we should find them in “Children, Ideots, Savages, and Illiterate People” (1.3.27). Locke concludes, however, “’tis evident that all *Children* and *Idiot* have not the least Apprehension or Thought of them” (1.2.5). Although a child recognizes his nurse and the savage loves hunting, Locke finds no impression “on the Minds of *Naturals*.” (1.3.27). Locke thus depicts the capacity for understanding both in terms of degree – for instance, with infants, children, and savages – and as a sharp dichotomy between idiots who cannot learn and all others who can.

Locke attributes the idiot’s absence of ideas to an internal defect, making the idiot corporeally different from other men. In *Essays on the Law of Nature*, Locke writes:

If this law of nature were written in our hearts, why do the foolish and insane have no knowledge of it, since the law is said to be stamped immediately on the soul itself and this depends very little upon the constitution and structure of the body's organs? Yet therein admittedly lies the only difference between the wise and the stupid. (1997, 99)

In the *Essay*, Locke similarly argues that the “Organs of the Body” are “the only confessed difference between [Naturals] and others” (1.2.27). Locke’s understanding of idiocy as a bodily defect likely drew on the work of Thomas Willis – a medical contemporary and lecturer of Locke – who was among the first to chart multiple causes of idiocy (Gabbard 2008; Willis 1971). Importantly, Locke’s indictment of the body’s organs signals permanent bodily difference between idiots and other men. Unlike children who learn the law of nature, idiocy is forever.

Men can come to resemble idiots, however, and this is a point Locke often strikes to castigate the ill results of indolence among men without corporeal defect. Locke speculates into the “great difference in men’s intellects, whether it rises from any defect in the Organs of the Body particularly adapted to Thinking; or in the dullness or untractableness of those Faculties, for want of use.” (4.20.5). In the *Law of Nature*, Locke distinguishes between the dull “who make no use of the light of reason but prefer darkness” and those “through natural defect the acumen of the mind is too dull to be able to bring to light those secret decrees of nature” (1997, 113, n. 34). In these passages, Locke uses the distinction between bodily difference and indolence to disparage most men, not idiots, because only the former merit blame for their failure to use their reasoning ability. In order for Locke’s disparagement to work, however, it must hinge on the lower status of idiots, a likeness most men would want to reject.

This bodily difference affects idiots’ standing as they occupy an indeterminate space between mad men and beasts. In Book 2, Locke offers a history of human knowledge, arranged from brutes, idiots, and mad men – a chronology that proceeds from the absence of abstraction to the excesses of it. In the beginning, “brutes come far short of men” (2.11.7). Because brutes can compare simple ideas – albeit in a very limited fashion – Locke maintains that they can reason. However, they lack the faculty of abstraction and, for Locke, this is why “the Species of *Brutes* are discriminated from Man” (2.11.11). Although the inability to abstract separates brutes from man, Locke’s depiction of reasoning faculties on a continuum blurs species’ boundaries.

Idiots, who represent the historical period between brutes and mad men, further blur this boundary as their deficiencies closely replicate brutish capacities. Idiots “cannot distinguish, compare, and abstract, would hardly be able to understand and make use of Language, or judge or reason to any tolerable degree” (2.11.12). For Locke, “the defect in *Naturals* seems to proceed from want of quickness, activity, and motion, in the intellectual Faculties, whereby they are *deprived* of Reason” (2.11.13, emphasis added). Like brutes, Locke speculates that if idiots can reason, it is minimal only and derived directly from what is most familiar to their senses. At the same time, however, Locke states that idiots are “deprived” of reason, seemingly placing them below the capacities of brutes.

In contrast, Locke sharply distinguishes between idiots and mad men as idiots symbolize the lack of reason, whereas mad men constitute reason’s excess. According to Locke, “mad Men put wrong *Ideas* together, and so make wrong Propositions, but argue and reason right from them: But Idiots make very few or no Propositions, and reason scarce at all” (2.11.13). Locke continues his chronology, comparing a “very sober” man to a mad man, as a sober man can seem mad from undue obsession (2.11.13). Just as men resemble idiots in their indolence or the blind in their inexperience, so too can passion make men seem mad.³

Locke’s “true History on the first beginnings of Human Knowledge” illustrates well the ways in which idiocy’s defect remains indeterminate. When he introduces the idiot in his chronology,

Locke states, “How far *Idiots* are concerned in the want of weakness of any, or all of the foregoing Faculties, an exact observation of their several ways of faltering, would no doubt discover” (2.11.12). Locke leaves open the question of whether idiots have faulty or absent faculties, a difference he states we could discover, but which he seems disinclined to pursue. Moreover, shortly after stating that idiots are deprived of reason, Locke suggests that there are “degrees of Madness, as of Folly” (2.11.13). If there are degrees of folly, then it seems that the difference between brutes and idiots is incremental, not categorical. Like other corporeal defects, Locke locates idiocy along a continuum of capacities and, at the same time, as the absence of reasoning capacity.

Indeed, in Book 4, Locke assigns changelings – *not* idiots – to a status “something between Man and Beast.” Scholars contest the precise difference between the idiot and changeling. For Yolton (1993, 36) and Conn (2003, 44), Locke’s changelings are synonymous with idiots, whereas Krupp argues that changelings are “neither persons nor human” (2009, 80). Goodey and Stainton argue that Locke defines idiots and changelings differently (2001). But Goodey also suggests that Locke’s changeling *is* an “‘idiot’ infant born to normal parents” (1994, 215). I suggest both sides are right. Locke exploits the indeterminacy between changelings and idiots as their ignorance exemplifies the universal limits of human understanding *and* the outer limits of what is recognizably human.

In the seventeenth century, a changeling was defined as a “half-witted person, idiot, [and] imbecile,” as well as a “child (usually stupid or ugly) supposed to have been left by fairies in exchange for one stolen child.”⁴ Locke uses changelings to debunk two misplaced assumptions: “That all Things that have the outward Shape and Appearance of a Man, must necessarily be designed to an immortal future Being, after this Life. Or, second, that whatever is of humane Birth, must be so” (4.4.15; Ayers, 259, n. 12). Locke describes changelings as “drivelling, unintelligent, [and] intractable,” “half Beast, and half Man,” and “ill-formed and mis-shaped productions” (4.4.16). Locke asks, “Shall a defect in the Body make a *Monster*; a defect in the Mind, (the far more Noble and, in the common phrase, the far more Essential Part), not?” (4.4.16) Locke dismisses outward corporeal defects as threats to personhood (2.27.17), ridiculing the idea that “the external Shape of his Body” could determine the “Excellency of a Man” (4.4.15), and thus chastises the killing of infants based on physical defect (3.6.26). In contrast,

we should find that the *Idea* of the Shape, Motion, and Life of a Man without Reason, is as much a distinct *Idea*, and makes as much a distinct sort of Things from Man and Beast, as the *Idea* of the Shape of an *Ass* with Reason, would be different from either that of Man or Beast, and be a Species of an Animal between, or distinct from both. (4.4.13)

Hence, changelings “are something between a Man and Beast” (4.4.13). Assigning a soul to a changeling because of its human shape is like seeing souls in statues (4.4.15).

What is the relationship between changelings and idiots for Locke? Both are deficient in reason and, earlier in the *Essay*, Locke uses naturals and changelings interchangeably as both question the stability and essential markers of the human species. In regard to naturals, “There are Creatures in the World, that have shapes like ours, but are hairy, and want Language, and Reason. There are Naturals amongst us, that have perfectly our shape, but want Reason, and some of them Language too” (3.6.22). Similarly, Locke asks,

Shall not the difference of Hair only on the Skin, be a mark of a different internal specific Constitution between a Changeling and a Drill [baboon], when they agree in Shape, and want of Reason, and Speech? And shall not the want of Reason and Speech, be a sign to us of different real Constitutions and *Species*, between a Changeling, and a reasonable Man? (3.6.22)

These passages speak both to the importance of reason as a requirement for species membership and the strong resemblance between changelings, naturals, and brutes.

When Locke questions the spiritual standing of changelings, he again leaves the answer indeterminate. Early English opinion considered fools closer to God, presuming their mental deficiency left them incapable of deceit and thus absolved from sin (Billington 1984, 17). As Protestants moved away from a belief in Calvinist predestination, however, individual comprehension of God became essential for personal salvation (Goodey 2001). For Locke, human status hinges on reason because reason is “that faculty which comes nearest the excellency of [God’s] own incomprehensible being” (2.1.15). Locke asks, “If *Changelings* are something between Man and Beast, what will become of them in the other World?” (4.4.14) Like his description of idiots in his history of human knowledge, Locke answers, “It concerns me not to know or enquire” (4.4.14). Locke elaborates, however, that all those “capable of Instruction, Discourse, and Reasoning” must answer to God, seemingly excluding both changelings and idiots from the kingdom of Heaven (4.4.14). Exclusion from Heaven carries with it exclusion from politics as well, as men who cannot know the law of nature can never be subject to it.

Epistemological uncertainty

The idiot’s human and spiritual status, however, remains imprecise as indeterminacy infiltrates Locke’s writings as well as the larger cultural context of disability in seventeenth-century England. Definitions of idiocy in the seventeenth century ranged from the uneducated, to private persons, and to the incurably dull (Little, Fowler, and Coulson 1973, 952). Etymologically, idiot derives from the Greek *idiotis*, meaning “private person, common man, plebeian, [or] one without professional knowledge.”⁵ Other terms used in seventeenth-century England included innocents, stupid, dolts, naturals, fools, and natural fools, and we find all of these terms in Locke’s texts. Although similar in meaning, these terms may encompass different kinds of people, as we see by contrasting Hobbes’s Foole with Locke’s idiot. In the *Leviathan*, the fool deceptively enters contracts, whereas Locke’s idiot lacks reason. But there are also reasons internal to Locke’s project that help us understand the idiot’s indeterminate meaning.

Part of the idiot’s indeterminacy derives from the idiot’s partial materialization throughout Locke’s text. Because Locke’s method of understanding requires consulting experience before entering judgment, he often details different ways of life and records anecdotes of subaltern identities. For instance, Locke recounts Garcilasso de la Vega’s depiction of American Indians contracting with the Swiss (*ST* 2.14); Monsieur Menage’s story of the deformed birth of the Abbot of St. Martin (*Essay*, 3.6.26); Prince Maurice’s tale of a talking parrot (2.27.8); a mad man who thought his body was made of glass (2.11.13); and “some *Changelings*, who have lived forty years together” (4.4.13). In contrast, he never refers to any particular idiot. On the one hand, this absence is surprising, given Locke’s empirical method of consulting experience and the detailing of other marginalized identities. On the other hand, this absence is essential. When defined as the absence of thought, the idiot for Locke has no identity – by Locke’s own definition of personal identity. But if degrees of idiocy exist, then Locke cannot risk an example lest the idiot too closely resembles the majority of faulty and irrational men – men he grants political membership and judgment.

Idiocy’s shape-shifting quality also results from Locke’s depiction of human corporeality as itself indeterminate. In the *Essay*, Locke states, “An Accident, or Disease may very much alter my Colour, or Shape; a Fever, or Fall, may take away my Reason, or Memory, or both; and an Apoplexy leave neither Sense, nor Understanding, nor Life” (3.6.4). This indeterminacy is internal to a man’s own body, but also, it spreads to describe men’s relationship to each other. “Other Creatures of my shape, may be made with more, and better, or fewer and worse Faculties than I have:

and others may have Reason, and Sense, in a shape and body very different from mine” (3.6.4). Indeterminacy means that men cannot know fully their relationship to other men or nonhuman animals. Locke heightens this sense of individual indeterminacy by situating it within a world “in so constant a flux” (*Treatise* 13.157; see also 21.224; Nacol 2011). The idiot’s corporeal defect may be distinct, but corporeality is by nature indeterminate.

Finally, insofar as Locke’s epistemology recognizes human limits in understanding, it allows him to leave some of the world’s knowledge beyond men’s control – a point to which his *Essay* repeatedly returns. These limits directly impinge on the status of idiots, as Locke states,

’Tis an hard Matter to say where Sensible and Rational begin, and where Insensible and Irrational end: and who is there quick-sighted enough to determine precisely, which is the lowest Species of living Things, and which the first of those which have no Life? (4.16.12)

Locke’s religious beliefs accord this task to God only. Species’ boundaries are “unknown and undetermined” (4.6.4), arising in part from the internal and invisible maneuvering of the mind (2.1.19). In Locke’s seventeenth-century England, as well as colonial America, determining whether someone was an idiot – a practice common in competency hearings – could spark controversy as these decisions legitimated the confiscation of property (Neugebauer 1987, 1996). Epistemological uncertainty should prevent men from making absolute distinctions between men as well as within men. Rereading Locke’s social contract in light of this epistemological indeterminacy offers us a new way to interpret its foundation.

The capacity contract

Like the *Essay*, the *Second Treatise* is a story about capacities, as Locke’s oft repeated question, *who shall judge*, asks who has the capacities of judgment.⁶ Capacity is central to Locke’s theory of equality, as “Creatures of the same species and rank [. . .], and the use of the same faculties, should also be equal one amongst another without Subordination or Subjection” (2.4). Superior faculties give men power over “inferior ranks of Creatures,” and anyone failing to pass this threshold suffers political exclusion (2.6). Locke’s focus on capacity allows us to see the ways in which his social contract is a capacity contract: only individuals who pass a threshold level of cognitive capacity can consent and therefore merit political membership.

Accordingly, in the chapter “Of Paternal Power”, Locke states, “lunatics and idiots are never set free from the government of their parents” (6.60). Locke’s ability to exclude idiots based on permanent and corporeal defect helps bolster the rational capacities and political standing of other men. While this is one face of domination within the contract, there is also another. The capacity contract gives men the power to measure and patrol each other. By resting political membership on a threshold level of rational capacity, Locke’s contract empowers some men with the examination and removal of defective others (Squadrito 2002).

Scholars, however, find Locke’s exclusion of idiots unproblematic, in part because Locke accords them charity (Arneil 2009, 222), but I believe more important is most scholars’ complicity with Locke’s capacity contract, as they agree that political membership requires a threshold level of cognitive capacity. Indeed, many scholars interpret Locke’s grant of equal capacities broadly, arguing that it covers most men (Waldron 2002) or that it can encompass all people through educational reform that Locke proscribes in *Some Thoughts Concerning Education* and *On the Conduct of the Understanding* (Casson 2011; Forde 2006; Grant 2012). Button describes the “transformative ethos” embedded in Locke’s contract as its purpose is to shape men into citizens, thus making the contract into a tool of cognitive metamorphosis (2008, 89). Even scholars who criticize Locke for his political exclusions often do so on terms that

comply with the capacity contract – arguing that Locke *falsely* attributes inferior capacities to women, nonwhites, and the poor rather than contend that incapacity is an unfair justification for political exclusion (Pateman 2007, 137).

Despite Locke's clear exclusion of idiots and lunatics from the contract, he also describes certain moments in which human incapacity is an essential element that prompts men to form and maintain the contract. Moreover, this vulnerability persists, as men remain inattentive and ignorant after forming the social compact. Importantly, this alternate capacity contract aims at solidarity – not cognitive transformation. Men's vulnerability – both physical and cognitive – prompts them to form a democratic capacity contract, ensuring that all men can appeal to justice.

Prior to the contract moment, Locke describes two ways in which vulnerability and indeterminacy – both cognitive and physical – lead to injustice. The first, and more analyzed, occurs between thieves and innocents as the aftermath of crime threatens to blur the boundary of criminality. Enraged by their victimization, innocent men become bloodthirsty, vindictive, and blind to their own bias (Dilts 2012). Locke avoids the language of cognitive defect in describing vengeance, but he shows us the ways in which men who have no judge to appeal to and who must carry out punishment themselves act amid bias and their inability to see their own bias.

The second pre-contract moment occurs as Locke argues that corporeal vulnerability can leave men unable to protect themselves, which gives men another reason to form a contract. The chapter "On Conquest" describes "Great Robbers" and, as Waldron helps us see, much of Locke's use of the robber is an analogy for the corrupt crown. "What is my Remedy against a Robber, that so broke into my House?" asks Locke. "*Appeal to the Law for Justice*. But perhaps Justice is denied, or I am crippled and cannot stir, robbed and have not the means to do it" (16.176). If the "Great Robbers" are monarchs, unhinged from natural law, then "crippled and cannot stir" equally applies to men living within unjust systems. In this sense, men cannot appeal because the sovereign has confiscated the "means" of justice or their own bodies have thwarted their ability to retaliate. Men enter into the contract knowing that they need political solidarity to ensure that they can appeal to justice even when they are bodily incapable of accessing the means of appeal on their own.

Corporeal vulnerability surfaces in the contract moment itself and prevents some men from contracting together. Locke argues that the consent of the majority is sufficient to form a society, refuting the claim that only "the consent of every individual can make anything to be the act of the whole." Locke states, "such a consent is next impossible ever to be had, if we consider the Infirmities of Health, and the Avocations of Business" (8.98). Locke's linkage of infirmities of health and avocations of business suggest that neither condition denies men political standing, but rather is more a temporal problem of getting to the public sphere in which the decision occurs. Locke's reference to infirmities of health is indeterminate, potentially affecting the body or mind. Like the man who has the right but not the means to persecute the robber, men infirm in health do not forfeit their political right – just the political moment.

After the contract, Locke uses cognitive defects to ground stability for political society. Locke responds to arguments that entrusting the people will lead to ruin, as they are "ignorant, and always discontented," with an "unsteady Opinion, and uncertain Humour" (21, 223). Importantly, Locke's response avoids defending the cognitive judgment of men, but rather draws on the influence of habit, stating, "People are not so easily got out of their old Forms." Although Locke elsewhere attacks habit for thwarting reason, he draws on these same habitual proclivities to protect the stability of governance.

Moreover, the vulnerability of men extends to sovereigns, thus bolstering stability in a different direction. For Locke, "*Great mistakes* in the ruling part, many wrong and inconvenient Laws, and all the *slips* of humane frailty will be *born by the People*, without mutiny or murmur" (21.225). Locke suggests that sovereigns will err, not due to malfeasance, but rather their own

corporeal vulnerability – that these slips are in some ways unavoidable – and that the people understand this, or at least, this humane frailty is part of the backdrop of why revolutions will not easily occur on “every little mismanagement in public affairs” (21.225). Men’s ignorance, their inattentiveness, and their corporeal limitations help stabilize government.

These moments in Locke’s *Second Treatise* reveal shared vulnerability as the essential binding elements of men’s social contract even as his domination capacity contract remains the more robust version. Nevertheless, readers of today can use Locke’s insight on vulnerability and epistemological uncertainty to rethink the relationship between capacity, disability, and democratic membership. If we choose to do so, then we can draw at least three interlocking conclusions.

First, shared vulnerability and corporeal limitation are the conditions of politics upon which we should focus. Locke’s domination contract ignores the full range of human vulnerability, understanding vulnerability primarily in men’s relationship to the sovereign, thus narrowing the scope of politics. But if we begin with shared vulnerability and corporeal limitation, then we arrive at a broader understanding of politics. Following Tronto, when we focus on shared vulnerability, then “once a democratic society makes a commitment to the equality of all its members, then the ways in which the inequalities of care affect different citizens’ capacities to be equal has to be a central part of the society’s *political* tasks” (2013, 10). Locke’s domination contract depoliticizes these questions by excluding vulnerability from the public sphere.

Second, if the basis for the social compact is human vulnerability, then we should reject the domination contract because it bases political solidarity on a false foundation of equal, stable, and measureable capacities. Moreover, the indeterminacy of all men’s bodies should make us pause before we too quickly follow his charge of exclusion based on inferior capacity. Recall that it is a “hard Matter to say where Sensible and Rational begin, and where Insensible and Irrational end,” especially as this demarcation similarly divides those who can appeal to justice from the rest. Who would Locke entrust with this judgment? While he grants that, “if Men were better instructed themselves, they would be less imposing on others” (4.16.4), he also assumes that most men are too lazy or too busy to pursue rational instruction, and thus unfit to be sovereign over anyone.

Fortunately, Locke’s work contains the seeds of how to rework the contract, which leads to the third and final conclusion. In Locke’s democratic capacity contract, we as citizens stick together and err on the side of justice for the vulnerable, because we are cognizant that we are all vulnerable and limited. Waldron helps us see these new political stakes, even though Waldron takes Locke’s emphasis on capacity to draw the borders of responsibility, rather than uncertainty:

When I catch a rabbit, I know that I am not dealing with a creature that has the capacity to abstract, and so I know that there is no question of this being one of God’s special servants, sent into the world about his business. But if I catch a human in full possession of his faculties, I know I should be careful how I deal with him. (80)

Waldron’s example of the rabbit follows logically from Locke’s domination capacity contract, but it also illustrates why we should find this version of the contract so problematic. To rephrase Waldron’s claim, why should I extend the principle of justice, charity, or little else to anyone I suspect falls below a threshold level of capacity? And who shall be empowered to draw this boundary? Locke’s work on disability – that illustrates the ways in which all of us are prone to corporeal vulnerability – along with his epistemological indeterminacy suggest an alternative way to read this encounter and his social contract.

Specifically, no man is always in full possession of his faculties and no man can be confident in his own judgment denying another man’s consciousness. Moreover, he cannot rely on a mythical social contract moment that transforms his corporeal limitation into cerebral perfection. Therefore, if I cannot know definitively, then I should err on the side of solidarity. Although Locke’s

domination contract may be the more robust, we can use his theory to help reinvent a more expansive democratic contract.

Conclusion: building solidarity on uncertainty

Rejecting Locke's domination capacity contract is difficult because of the ways in which cognitive capacity is tightly bound to conceptions of citizenship. Rejecting the contract seems tantamount to rejecting rational capacity's role in political participation. Surely, even the most expansive reading of Locke's democratic capacity contract cannot detach reason from politics. While we may be reluctant to jettison reason from politics, we can also see that building new participatory and democratic capacity contracts may require us to embrace more uncertainty. In this conclusion, I gesture toward the ways in which both sides of the capacity contract operate in the history of the disability rights movement, the *Americans with Disabilities Act* (ADA), and the United Nations Convention on the Rights of Persons with Disabilities (CRPD). These contemporary examples show us how the domination contract compels us to define disability and order differences between citizens as a way to enforce exclusion, whereas the solidarity contract operates under conditions of uncertainty in which we are unable to distinguish between the more and less able.

The disability rights motto of "nothing about us without us" aims to capture all people with disabilities, but Locke's enduring domination capacity contract – that accords more power to the more able – makes building solidarity difficult. As Mitchell and Snyder argue, physically disabled activists often ground demands for equal rights on claims of cognitive competence, thus casting intellectual disability as "true" insufficiency (2006). When political credibility depends on cognitive competence, then disabled activists are compelled to draw distinctions between the more and less able in order to gain political voice (for example, see Anspach 1979).

Likewise, the ethos of the ADA is aligned with Locke's expansive democratic capacity contract, as it states, "physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society."⁷ In practice, however, courts have gotten stuck on how to define disability, thus hinging political judgment to a claimant's measure of capacity. People find themselves too impaired to work, but not disabled enough to win redress (Colker 2005). Congress amended the ADA in 2008 to counteract the court's narrow rulings, but it may be difficult to do so, as defining disability remains central to the ADA.

Thus, both the disability rights movement and the ADA aim to capture all people with disabilities, but the compulsion to define disability – to gain political credibility or make a political judgment – limits their emancipatory potential. Locke's domination contract fuels this compulsion as he builds political standing on a person's measure of capacity. Yet, Locke also offers us a way to envision a more expansive contract based on vulnerability and uncertainty. Contemporary disability rights activists and theorists deploy similar techniques that heighten our sense of uncertainty as a way to build political alliances.

For example, in *Crip Theory*, McRuer (2006) describes how South Africa's Treatment Action Campaign (TAC) used uncertainty about HIV status to build solidarity. The group created T-shirts reading "HIV POSITIVE" to signal both ambiguity about who has HIV and to shift conversations about HIV from an individual's medical status to political solidarity. We can understand this strategy as a democratic capacity contract: individuals build solidarity by creating uncertainty about whose bodies in the public sphere are vulnerable. Rather than trying to eliminate uncertainty for political judgment, activists exacerbate it to diminish divisions between people.

Similarly, and unlike the ADA that makes defining disability central to its mission, the CRPD fails to define disability at all. Indeed, defining disability was the most contentious issue faced by delegates (Kanter 2006) as they worried that any definition would exclude some people with disabilities and falsely set boundaries on a concept that defies easy categorization. Like TAC, the

CRPD is less interested in marking bodies as disabled and, instead, focused more on building alliances between all people – with or without disabilities.

As changing political systems demand different capabilities from citizens, so too does the meaning and significance of disability shift. As Elisabeth Ellis reminds us, “Seventeenth-century English landholders brought very different capabilities to the table than twenty-first century wage-laborers do, and a minimalist contractarianism vindicating the autonomy of the former may end up denying the freedom of the latter” (2006, 546). Rather than asking, is this person sufficiently able to be a citizen, rethinking Locke’s democratic capacity contract prompts us to ask, what kinds of corporeal mishaps are we vulnerable to and what kinds of political alliances do we need in order to enable all people with a range of capacities to participate in the public sphere? Attention to the realities of human vulnerability across the life course prompts us to ask, how can we put our trust in both our uncertainty and our democracy?

Notes

1. For analysis of Locke’s worldview according to a great chain of being, see McClure (1996).
2. My understanding of the idiot’s epistemological role builds on Dilts’s (2012) analysis of the thief in Locke’s *Treatise*.
3. See Mehta on the link and risks between madness and passion.
4. *Oxford English Dictionary*. Accessed July 15, 2011 <http://www.oed.com/view/Entry/30479?redirectedFrom=changeling#eid>.
5. Online *Oxford English Dictionary*. Accessed July 15, 2011 <http://www.oed.com/view/Entry/91049?rskkey=9oBNs8&result=1&isAdvanced=false#eid>.
6. It may seem appropriate to look for solutions in *Some Thoughts on Education*, as Locke outlines how to avoid the miscarriages of reason that the *Essay* documents, but his education advice is problematic. First, Locke targets his educational reform at the sons of gentlemen only and the individualized instruction makes it impossible to universalize (Bradizza 2008). Scholars also raise problems concerning the ways in which Locke’s educational regimen requires fathers’ to indoctrinate their sons into the love of reason based on internal desires for recognition (Grant 2012; Mehta 1992; Tully 1993).
7. Retrieved from http://www.ada.gov/2010_regs.htm

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