

Mental handicap and citizenship

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Abstract

Mentally handicapped people have been taken in philosophical work as an obvious exception to the canons which are applied to other, 'rational' individuals. This paper argues that mentally handicapped people should be accorded the same rights as others. If there are human rights, then mentally handicapped people are entitled to them as humans; and if there are rights which apply in general to citizens, the same rights apply equally to mentally handicapped people. The argument for the inclusion of mentally handicapped people as citizens is first, that there is a presumption of inclusion: if citizenship is accorded to all other individuals, there is no reason why citizenship should not be accorded to mentally handicapped people on the same basis as others. Second, mentally handicapped people cannot successfully be excluded without effectively challenging the presumption of inclusion applied to other groups. Third, and perhaps most important, there are positive reasons why mentally handicapped people, as a particularly vulnerable group, need to have rights to protect them against particular abuses.

Imagine the case of a person who lacks many of the capabilities taken for granted in ordinary life. This person - call him Adam - has not, from an early age, developed at the same rate as others. Adam is unable to walk, not because he lacks the physical equipment to do so, but because he has never learned. He cannot feed, or dress, or clean himself. At the age of eighteen, his abilities are barely comparable to those of a child of eighteen months - a comparison which is misleading, because Adam lacks a young child's awareness and responsiveness, because he cannot be handled like a young child, and because his physical development makes the task of learning to use his limbs and to co-ordinate different from a young child's.

This is not a 'thought experiment'. People like Adam are relatively unusual, but they do exist. A census of mentally handicapped adults in institutions in Scotland found that, out of twelve and a half thousand people in institutional care, over one in eight could not eat, speak, use a toilet or get around indoors without help. Almost half could not dress themselves, wash, or get around outside; most could not cook, shop or use money [1]. Severely mentally handicapped people often live in institutions, because their families are unable to cope with them. The institutions are usually medically supervised - a point which can lead to mistaken inferences, because the inmates are not ill, and their condition is not susceptible to medical treatment. The residents receive intensive care; they are fed, clothed, cleaned. They are protected; the society they live in is separate from the world outside.

In such a context, it may seem absurd to address the issues of 'rights' and 'citizenship'. The case of mental handicap - or 'idiocy' - is something of a paradigm in political philosophy. Writers refer to 'idiocy' or 'mental deficiency' as if it were an obvious exception to the moral canons they apply in other cases [2]. Haksar argues that humans have rights which animals and 'congenital idiots' do not [3]. Feinberg refers to 'human vegetables' [4]. Berlin, perhaps a little carelessly, credits Bentham with the 'last word' in writing:

'Is not liberty to do evil, liberty? If not, what is it? Do we not say that it is necessary to take liberty from idiots and bad men, because they abuse it?' [5]

Some writers have considered mentally handicapped people, amongst others, as 'marginal cases', exceptions from the normal considerations which are applied to moral agents. [6] This seems to imply that there are at least two classes of people - those to whom the normal principles governing moral and human rights can be taken to apply, and those to whom it does not. In this paper, I wish to argue that such a distinction is inappropriate and misconceived. If there are rights which apply to all of us as citizens, the same rights apply equally to mentally handicapped people. And, if it is possible to establish that these rights

apply to people with the most severe mental handicaps, they apply a fortiori to those with less severe handicaps who may nevertheless have been denied the rights available to others.

The issues are important ones. The denial of rights to mentally handicapped people has included not only tokens like limitations of the right to vote, but use of drugs to control their behaviour, admission to institutions without their consent, or compulsory sterilisation. Patients have commonly been refused any personal possessions or personal clothing - Jones et al found, out of 104 hospital wards surveyed, 52 where less than half the patients had personal possessions, and a further 19 where no-one did. Wards may have had mass cleaning facilities, with patients standing naked in line waiting to be bathed. 11 wards in the survey had no doors on toilets; 9 had no partitions. [7] The Normansfield report describes patients who were themselves unable to move being confined to bed by harassed staff. The physical conditions were crumbling around the patients; repairs were not done; the report describes patients being moved to avoid leaks in the roof [8]. But this is only a part of the story. There has been a long line of scandals in mental institutions involving neglect, cruelty and degrading treatment of mentally handicapped patients [9]. They includes routine violence, with people being slapped or kicked (e.g. South Ockendon, Brookwood), but it also includes some disturbing individual cases: a young boy strapped to a pillar for misbehaving (The Silent Minority); a patient turned upside down and his hair used to mop up vomit (The Secret Hospital); a patient whose penis was lacerated after nurses used a toilet brush to clean his behind (Normansfield). These cases may be extreme, but they reflect a general pattern in which individuals are dehumanized; the establishment of rights is part of an attempt to ensure that such people in vulnerable circumstances are protected at least to some degree.

Moral rights and mental handicap

Rights have been represented in terms of 'benefit' and 'will' theories. The benefit theory suggests that a person has a right when he or she stands to benefit from that thing. So, a child's 'right' to education is a right because the child stands to benefit from the education. The main objection to this view is that people may stand to benefit from an action for which others have a duty, but may still have no right to it: for example, the trustee of a charity has a duty to help someone, but not necessarily to help any particular recipient. There may be duties to mentally handicapped people, but this would not of itself imply that they had rights.

The will theory considers that a person has a right to something when that person is able legitimately to choose how others should act in respect of that thing. There are two problems with this view. One is that we do refer to rights in situations where people would not legitimately be allowed a choice, for example in the 'right to education' (which children cannot opt out of), or in the case of inalienable rights - like the abolition of slavery, which people cannot legitimately opt into. The second is that some people in practice are unable to choose, which may be the case with severely mentally handicapped people; this means that the rights are of limited benefit to the people concerned.

Rein argues that rights are a form of 'claim' which is presented as a demand by or on behalf of people who wish to affect the behaviour of others [10]. A person who has a 'right' is someone who has a claim which can be presented to require others to behave in a particular way. This view resolves many of the problems which arise in the theory of rights, and many of those which apply to mentally handicapped people. If rights are claims, it helps to explain why rights in so many cases are taken as if the will theory applied; it is in the nature of the claiming process that the person who is affected is the most likely to present the claim. It also helps to explain both the force of the 'benefit' theory, and its flaws; claims can be presented on behalf of other people, as well as by the person affected. The recipient of

charity is a supplicant because there is no basis on which to found a claim. Mentally handicapped people have 'claims' to certain forms of conduct.

However, the concept of 'claims' is not sufficient in itself. Why should a claim have any force? Why should one person feel it necessary to present a claim on behalf of another? Why should someone to whom the claim is presented accept that the claim is justified? There are many different types of claim. They may be backed up with the threat of force, by negotiation, by pragmatic considerations, or by personal commitment. None of these is necessarily a claim as of right, a term which is used primarily in two contexts, legal and moral. There are moral norms which affect the way people act; and the term 'moral rights' can be used as another name for claims based in such norms. This might be taken to indicate that rights are a correlate of moral duties, which is the position argued by Benn and Peters [11]. But the concept of rights is, in practice, wider than this simple correlation suggests. Rights consist, not only in duties activated by claims, but in immunities, privileges and liberties - actions which imply, not simple duties, but duties which are only conditional on a range of conditions being satisfied.

This means that, in certain cases, both the will and the benefit theory of rights will seem to be correct. The will theory obtains in those cases where a person may legitimately make a claim of right. The benefit theory illustrates that a right can be considered to exist when a person is likely to benefit in consequence of another person's moral obligation towards him, and a claim can be founded in that obligation. The roots of both approaches rest in the recognition of moral norms which govern one's conduct toward others.

Human rights and common humanity

The precise nature of these moral norms depends, however, on the view that is taken of mentally handicapped people. One justification which is sometimes given for accepting that mentally handicapped people have rights is that they are at least equivalent to animals. If one believes, as Singer does [12], that animals have rights, then mentally handicapped people, as a class of animal, have at least the rights that animals have. Feinberg, similarly, is prepared to concede that 'human vegetables' have rights - but only on the basis that

'since animals have rights, it follows that human idiots and madmen can too.' [13]

And New Society has reported the breathtaking statement of a vivisectionist who, when asked why it was possible to experiment on animals and not on mentally handicapped people, replied

'It's because they have relationships with other people - family, nurses, whatever. You don't experiment on pets for the same reasons.' [14]

The comparison with animals is unfortunate, for two main reasons. First, the moral rights accorded to people are not equivalent to those accorded to animals. Animals can be owned, bought and sold, put into service, or eaten. Second, the behaviour of people toward animals is generally different to the behaviour of people toward other people. The identification of mentally handicapped people with animals is liable to change the way in which other people behave towards them. Wolfensberger argues that the belief that mentally handicapped people are animals is at the root of many of the abuses they have suffered. Institutions are often designed on the basis that the residents are animals, and are likely to behave like animals.

1. The assumption of primitive and uncontrolled behaviour leads to the creation of 'abuse-resistant' areas.
2. Residents are assumed to be destructive and ready to assault others. The emphasis is on custody and order.
3. They are assumed to be incapable of choice. Lights and temperature are controlled and out of reach.

4. Animals have to be kept. Wards are organised for supervision, not for people to live on.
5. They are assumed to be dirty. There are often mass cleaning facilities.
6. Animals are ineducable, so no opportunities are necessary for development.
7. Animals have no aesthetic sense. Wards are often dull and poorly decorated.
8. There is no need for privacy, property, communication with others or individuality. Animals have no rights. [15]

This may seem exaggerated; the experience of abuses in residential institutions demonstrates that it is not.

'Human rights' are different from the rights of animals. The term refers to a special class of moral rights, founded in the belief that there is a moral code applicable to every person on the grounds of their common humanity. For mentally handicapped people to possess 'human rights', they have first to establish that they are human. However, mentally handicapped people have often been considered as something less than fully human. Locke gives, in his *Essay concerning human understanding*, special consideration to mentally handicapped people, who he refers to as 'changelings'.

"It would possibly be thought a bold paradox, if not a very dangerous falsehood, if I should say that some changelings, who have lived forty years together, without any appearance of reason, are something between a man and a beast. ... If changelings may be supposed to be something between man and beast, pray what are they? I answer, changelings; which is as good a word to signify something different from the signification of man or beast, as the names man and beast are to have significations different from one another. ... The force of these men's question (viz. Will you deprive changelings of a future state?) is founded on one of two suppositions, which are both false. The first is, That all things that have the outward appearance of a man must necessarily be designed to an immortal future being after this life: or secondly, That whatever is of human birth must be so. ... these are monsters. Let them be so: what will your drivelling, unintelligent, intractable changeling be? 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? ... " [16]

[The term 'changeling' is worth a brief digression. The term derives from an ancient superstition, that children were exchanged by fairies or daemons for real children. Changelings were recognised not only by their ugliness, but also by their inability to speak or laugh. Martin Luther wrote, in some astonishment, that "The Devil sits in such changelings where their soul should have been" [17]. The way in which changelings were dealt with was, equally, a subject for superstition and magic. Parents could remove changelings by making their circumstances uncongenial; for example, by ramming a hot poker down their throat, or boiling them over a fire, upon which they would disappear up the chimney and the true child would be restored. This belief survived for centuries. Haffter notes eight recorded cases between 1890 and 1895, in Germany, Scotland and Ireland, where changelings were seriously maltreated, killed or burned alive by their parents [18]. The superstition this represents is an indicator of a basic, underlying prejudice against mentally handicapped people. I think it is probably fair to say that a prejudice has equally developed in favour of treating mentally handicapped people as having feelings; the evidence for this is the repugnance most people feel when confronted with the disturbing catalogue of neglect and brutality in mental institutions. But this is no more than many people would feel in respect of cruelty or ill-treatment towards animals.]

Locke's argument suggests that mental handicap falls into a category somewhere between human and animal - a category of subhuman. Downie and Telfer similarly argue that mentally handicapped people fall somewhere between humans and animals. It appears, they write,

'that we acknowledge three levels of concern. On the lowest level are the animals, who are regarded as having a presumptive right not to suffer. ... Next we have what we may call 'sub-normal' humans, who are not accorded full respect but are not treated like animals either. ... Finally we have the normal humans who are accorded full respect.' [19]

I am uncertain from the context whether the authors wish to describe a position many people actually hold - a description which I think would be accurate - or whether, as I suspect, they wish to imply that these are legitimate values.

If mentally handicapped people are subhuman, there is no prima facie case for accepting that they have distinctively human rights. It is difficult to prove that mentally handicapped people are human - as it is difficult to prove that people of different colour skins or different sizes are human. It can be argued that in any case mentally handicapped people should be treated as if they were human, on the basis that human rights fall to all those who might be termed human, however loose the definition. 'Subhuman' life may be valued through 'respect for people's wishes and a kind of extension of respect to all of human stock'. [20]

I think the case for this extension can be stated more positively. Locke argued, in a famous passage, as follows:

"I think I may be confident that, whoever should see a creature of his own shape or make, though it had no more reason all its life than a cat or a parrot, would call him still a man; or whoever should hear a cat or a parrot discourse, reason and philosophize, would call or think it nothing but a cat or a parrot; and say, the one was a dull irrational man, and the other a very intelligent rational parrot." [21]

The position, which seems directly to contradict his assertions about 'changelings', suggests that people are defined as human by their physical appearance. I am not sure that people can be satisfactorily defined as such only by their physical characteristics; the argument has been used to deny the essential humanity of people of different races. What human beings have which makes them human is rather more vague, but nevertheless clearly recognisable: they have, not any 'essential' common feature, but a family resemblance to other human beings. Mentally handicapped people may lack some faculty or set of faculties which another person possesses; but unless one is to argue that some specific faculties are essential to being human, this cannot be a sufficient basis on which to deny their humanity.

Respect for persons

Downie and Telfer argue that the basis of rights is respect for persons. 'Respect for persons' is a difficult term, which can be taken to cover both a generalised respect for all human beings by virtue of their humanity, or some quality about people which is deserving of respect. If 'respect' is simply something which attaches to all people by virtue of their humanity, as in Kant, then the term becomes equivalent in its force to a recognition of 'human rights'. If, however, it has to be justified by reference to something about a person's capacity, respect becomes contingent on that capacity. The presumption of any capacity can be refuted empirically; and the extreme case, like Adam, presents a problem. Is Adam deserving of respect? For those who base respect in rationality or moral capacity, he may not be. A person, Locke argues, is a "thinking intelligent being" [22]. In Downie and Telfer's view, the principle of respect for persons depends to some extent on respect for particular attributes - 'a capacity for self-determination, and a capacity for forming and pursuing ideal values' [23] - which 'sub-normal' humans do not have.

It can be argued that there may still be something about Adam - some quality, characteristic or behaviour - which is likely to merit respect. This is probably true, even in the most severely mentally handicapped people; but as a foundation for a general principle of respect, it is vulnerable to two main objections. One is 'perfectionism'. Haksar argues that some lives are to be preferred to others [24]. Even if there is some positive quality to respect in a

mentally handicapped person, there is likely to be more in someone who is not so severely handicapped - which implies that the kind of respect a mentally handicapped person will be of an inferior kind. The other objection, put by Watson, is that respect is necessarily relative, and that respect for some persons or qualities implies an evaluation [25]. Inevitably, then, some evaluations will be negative, and some people will be rejected on that basis.

An alternative view is that respect relates, not to the attributes or qualities of the person respected, but rather to the approach or attitude of the person who is according the respect. The statement that Adam must be respected is not, then, a statement about Adam himself, but rather a moral injunction which affects the way in which other people should behave towards him - or, in other words, a form of right. This formulation avoids many of the difficulties which are associated with the former view; and, if people are to be considered entitled to respect irrespective of their personal characteristics, there is clearly no basis on which to differentiate the entitlement of those who are mentally handicapped.

Rights and competence

Mentally handicapped people are not, as a matter of fact, either 'human vegetables' or beast-like in their behaviour - except in so far as all humans resemble animals in some respect. Mental handicap is a question of competence; it does not imply, even in the most severely handicapped, an absence of human characteristics beyond physical appearance. On the contrary, many mentally handicapped people are quite capable of participating in society. Nirje reports a series of requests made by mentally handicapped people to a conference in Stockholm. The lucidity of their requests, and the reasonableness of their claims, is striking:

"We all think one should decide oneself what to do during vacations. ...

We want the right to move together with members of the opposite sex when we feel ready for it, and we also want the right to marry when we ourselves find the time is right. ...

We want to have more personal freedom, and not as it is now in certain institutions and boarding homes where you have to ask for permission to shop for fruit, newspapers, tobacco, etc. ...

We want ... to have our own key when we live at home ...

We do not want to be used on our jobs by being given the worst and most boring tasks ...

We demand to have more information about our handicap ..." [26]

More severely mentally handicapped people can be taught to perform basic activities; their competence can be improved. Even a person like Adam, representing the most grossly handicapped condition, might be able to learn to feed, clean, and perhaps to dress himself, subject to his physical rather than his mental capacity. He can react to the people around him; he can learn to play; he can express emotion, in a recognisably human manner. Perhaps as much could be said of certain animals, but to describe animals in these terms is to compare them with humans; it is not to deny that mentally handicapped people behave as humans. As we move from cases like Adam's to less handicapped people, competence grows; they are able to verbalise, to count, even to handle money, although their ability still falls markedly below the standards of competence generally applicable in society and expected in normal intercourse.

The belief that rights are dependent to some degree on competence - a case made by Ackerman, for example [27] - is linked with the will theory of rights. A person has a right only if that person has the right to choose; and this seems to entail that a person must have the capacity to choose. Hart puts forward an argument which suggests that this may be a misinterpretation. He gives the example of a physically disabled person unable to run after someone who has stolen his watch; he argues that the a person does not cease to be entitled to something on the basis that he is unable to do anything about his rights. [28] To extend

the principle, it would imply that the point is not that the mentally handicapped person cannot choose; it means that the person has the right to choose, irrespective of his or her capacity to do so. The problem with this is that when people are unable to exercise their choice, nothing is done. In Britain, the residents of institutions often receive benefits which are accumulated by the hospitals, with no attempt being made to spend the money for the person's benefit. The hospitals argue that they have no legitimate authority to spend the money in the person's behalf - an argument which, I suspect, has as much to do with the inconvenience of attempting to administer and account for the use of funds as it does from any consideration of the patient's needs or wishes.

The benefit theory implies, on the other hand, that the mentally handicapped person has a right to be looked after - to benefit from the actions of others. I have argued before that people can be considered to have rights of both kinds. To see what this means in practice, it may be helpful to consider again the case of Adam. If Adam has rights, what are they rights for? Clearly, some aspect of these rights will be negative, in the sense that freedom is considered to be negative; Adam can refuse to be interfered with, and has the right to do so. This may be important as a protection from the kinds of abuse which have been common in institutions. Equally there will be positive rights - rights to benefit - and this implies that actions should be taken from which Adam will benefit. More than this, Adam should be presented with choices. In the case of money accumulating on Adam's account, Adam has the right to benefit and the right to object if the service is not what he wishes it to be. Adam may, for example, be presented with a choice of clothing, of decoration, of ornaments. This is liable to be difficult in practice; there may be problems in interpreting what Adam's wishes are. Mistakes might be made. But that is not necessarily an objection in moral terms, because it is morally better to have been given some choice than to be given none at all. There is, too, a further argument for choice, which is both pragmatic and moral; the presence of choices is vital to intellectual stimulation and development.

Adam's case is in some ways less problematic than others, because a person as severely disabled as Adam is likely to live in a very protected environment. The case of 'Jeanette', which was the subject of substantial controversy in the UK, illustrates some of the dilemmas which can emerge in practice - though equally, it throws up more questions than it is possible to answer in the space of this paper. Jeanette was a seventeen year old girl sterilised on the authority of the local authority in whose care she was placed, after a judgment in the Court of Appeal. Her case is pithily described by Heginbotham:

"'Jeanette' is very severely mentally handicapped. The concept of a mental age of five is somewhat meaningless as she is, like all of us, a complex personality. But her intellectual age is certainly no more than two or three and her social abilities are those one would expect of a child of five or six. It is improbable that she will ever grow to understand the nature of contraception. ... As far as is known 'Jeanette' suffers from high blood pressure, grandmal epilepsy which is controlled by anticonvulsive drugs, serious mood swings of an aggressive nature ... Most of this means she should not be given injectible or oral contraceptives, and her high blood pressure is likely to mean that pregnancy would be dangerous. In addition, she self-mutilates and any caesarean abortion or birth would probably be most detrimental to her health as she would be likely to unpick the wound. All in all, the circumstances of 'Jeanette's' case tend towards the extreme." [29]

The argument for sterilisation, in this case, was one in which pregnancy would be considered to undermine her rights - rights, in Heginbotham's words, to a 'fulfilled life', and rights which would protect her ability to make choices for the future. Following this principle, there has been a series of other cases in which mentally handicapped women have been sterilised. In *Re F*, a recent case in the House of Lords (24th May 1989), it has been established that the courts have an 'inherent jurisdiction' to protect persons who are incompetent. The principle is double-edged; it recognises that mechanisms are needed through which the interests of mentally handicapped people may be protected, but there is

also a serious risk that the ascription of 'incompetence' may ultimately diminish rights rather than protect them.

Mentally handicapped people and children

There are distinctions made, in claims for human rights, between different categories of human being, and in particular between the rights of adults and children. The United Nations Declaration of the Rights of the Child does not explicitly deny to children the rights that adults have, but clearly it conceives of those rights in different terms to the rights of adults. A child is treated as specially vulnerable 'by reason of his physical and mental immaturity'. The UN Declaration further asserts that the child,

"for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and in any case in an atmosphere of affection and of moral and material security." [30]

Children gain a set of rights which are not explicitly available to adults. There may be some advantage in extending similar considerations to many mentally handicapped people, who are equally vulnerable, and need conditions which will foster the fullest development of their personality.

It is attractive to consider cases like Adam's, or Jeanette's, in a similar light; but there are potentially serious disadvantages in treating mentally handicapped people as if they were children. The special rights which children gain have to be offset against those which they lose. Children are not able to vote, to work, to leave home, to marry, or to have sexual relationships - and so are unable to exert rights which many adults, including mentally handicapped adults, would consider basic. A mentally handicapped person may have the vulnerability to exploitation and the limited competence of a child; but the same person may also have the aspirations and interests of an adult. The range of options open to children is substantially less than those which mentally handicapped people would wish to have - and, unlike children, mentally handicapped people will not be able to look forward to a future time when they will be enabled to participate fully in society.

However, because mentally handicapped people often have limited social competence, because they are vulnerable to exploitation and abuse, and because they may suffer serious harm without some kind of protection, there may in some cases have to be special treatment which takes account of their disadvantage. This is an argument, not for the reduction or limitation of their potential field of activity, but for increasing it. Harris represents this as a case for greater equality:

"To regard people as equals is precisely to recognise that they are not equally able to protect themselves, or further their own interests or are necessarily the same in any other sense. It is because of inequalities that people are in danger of arbitrary and ill usage, tyranny, exploitation and so on. To regard people as equals is to take a stand on how they are to be treated, not to make a remark about their capacities." [31]

Harris's argument is made in respect of children; the differences between mental handicap and childhood imply very different approaches to the problems, but the principle is the same. A United Nations Declaration on the Rights of Mentally Retarded Persons, promulgated in 1971, begins with the principle that mentally retarded people should receive the same rights as others, to the greatest degree feasible; but, in cases where the mentally handicapped person is unable to exercise these rights, there must be appropriate safeguards against abuse.

Citizenship

The claim made by and for mentally handicapped people is a claim for full adult citizenship - "the right to have rights" [32].

Citizenship may rely in theory on a demonstration that the person who wishes to be recognised as a citizen meets the criteria for citizenship. The idea that people must qualify in order to have rights is not one which is generally accepted. Although there are societies which exclude large numbers of residents from citizenship, the normal pattern of citizenship in developed countries is not that people are excluded until they are able to demonstrate grounds for inclusion, but that they are included unless there are specific grounds for exclusion. The basis for such a position is, in part, emotional; there are strong negative associations with the attempt to exclude particular groups from membership of a society, a reaction conditioned in part by the historical experience of fascism in Europe. But there is also a rational basis, which is the argument from consistency. If rights are accorded automatically to people on the basis on age, place of birth, or legal status, then on the face of it mentally handicapped people have the same rights as others. The possession of the legal status of citizenship, for example, entitles people to the rights and duties of a national.

However, the argument from consistency does not imply that mentally handicapped people must be citizens. It implies only that they should not be excluded from citizenship in cases where others are not excluded. But there may be cases in which people may legitimately be excluded from citizenship. The concept of citizenship is defeasible, in Hart's sense of the word: the concept of 'defeasibility' implies an ascription of right which is subject to refutation [33]. There may, for example, be something in a person's behaviour or actions which leads to a denial of citizenship - a position which applies to those who have been convicted of criminal acts, or under the Mental Health Acts to people who are mentally ill and mentally handicapped and who are considered dangerous to themselves or to others. Committal leads to a loss of liberty and other civil and political rights. [34] Although the 1983 Mental Health Act takes a more moderate view of mental handicap than its predecessors, the principle is still contained within it that mentally handicapped people who are considered dangerous have to be distinguished from others who might equally be considered dangerous.

If the concept of citizenship is susceptible to justification by an appeal to some criterion, and the criterion can be shown not to apply to a particular person or group of people, it is disputable whether those people should be considered 'citizens'. For example, one ground of citizenship might be contribution to society. The basis of the disqualification of paupers from voting and civil rights under the Poor Law was (according to Dicey) that they could not be both the beneficiaries of government and exercise a degree of control over it. It is clear that some mentally handicapped people (like Adam) are dependent, in the sense that they receive support from social institutions without making a return. But the same is true of many other people who receive benefits and services, including in different ways old, physically disabled and unemployed people, and the implications of denying citizenship would be equivalent to a return to the Poor Law. A second view of citizenship sees it as membership of a common community [35]. Mentally handicapped people might not participate in a community - it is a feature of severe mental handicap that it makes participation in communal and social life extremely difficult, if not impossible; but the same could be said of many old or disabled people, and of those who choose to live outside a normal community, who are not excluded from citizenship on that account. The only criterion for citizenship to which mental handicap seems to be directly relevant is intellectual or civic competence. But competence is not usually considered an acceptable criterion: literacy tests, for example, have long been rejected in the US on the grounds that they have been used to reinforce the disadvantage of underprivileged groups.

These examples illustrate a general principle. Mental handicap is mainly defined as a class of conditions related to intellectual development; the term relates to pathology rather than outcomes, and there is no single set of behaviours which define 'mental handicap' as such. Where there are differences, they are differences of degree rather than kind. There is in practice no qualifying criterion for citizenship which could exclude people who are mentally

handicapped, other than an exclusion of mental handicap per se, which would not also exclude many other people currently acknowledged as citizens. Adam, the extreme case, cannot move around; but nor can many people who are physically disabled. He cannot speak, but this does not adequately distinguish him from people who are physically unable to speak. He cannot communicate adequately, but nor can many foreigners. The attempt to treat mentally handicapped people as a category fails for the same reason. If the category is defined by any individual criterion, it will take others along with it. If it is defined by a combination or permutation of criteria, it will not exclude some mentally handicapped people - few are like Jeanette - and may well exclude others who are not mentally handicapped. The point here is not that mentally handicapped people cannot be defined as a category; De Roose criticises Lomasky, legitimately, for suggesting that the problem of definition presents an insuperable obstacle to their identification [36]. It is that mentally handicapped people cannot be treated as a distinct moral category, for there is nothing in the definition of the category of 'mental handicap' on which such a moral distinction might be founded.

The essential argument for the inclusion of mentally handicapped people as citizens falls into three stages. First, there is a presumption of inclusion. If citizenship is accorded to all other individuals, there is no reason why citizenship should not be accorded to mentally handicapped people on the same basis as others. Second, although citizenship may be defeasible, mentally handicapped people cannot successfully be excluded without effectively challenging the presumption of inclusion applied to other groups. The idea that people might have to demonstrate their competence before they can leave home, marry or have sexual relationships is clearly repugnant. Third, and perhaps most important, there are reasons why mentally handicapped people need to have rights, both to protect them against limitations and abuses, and to offer scope for their personal development. The 'right to have rights' is central to many of the mechanisms by which vulnerable individuals can be protected within society. [37]

NOTES

- [1] BAKER, N. & URQUHART, J. (1987) The balance of care for adults with a mental handicap in Scotland, (Edinburgh: Scottish Health Service Information Services Division).
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- [4] FEINBERG, J. (1980) *Rights, justice and the bounds of liberty* (Princeton NJ, Princeton University Press).
- [5] Cited in BERLIN, I. (1969) *Four Essays on Liberty* (Oxford, Oxford University Press), p.152
- [6] There are examples in DE ROOSE, F. (1989), "Ethics and marginal cases: the rights of the mentally handicapped", *Journal of Applied Philosophy* 6(1), pp 87-95.
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- [20] DOWNIE & TELFER, op. cit, p.48
- [21] LOCKE, op. cit., Book II, ch 27, s 10
- [22] LOCKE, op. cit., Book II, ch 27, s. 11
- [23] DOWNIE & TELFER, op. cit., p.38
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- [37] My thanks to David Anderson for comments.