Living in Nowheresville: David Hume's Equal Power Requirement, Political Entitlements and People with Intellectual Disabilities

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ABSTRACT: Political theory contains two views of social care for people with intellectual disabilities. The favor view treats disability services as an undeserved gratuity, while the entitlement view sees them as a deserved right. This paper argues that David Hume is one philosophical source of the favor view; he bases political membership on a threshold level of mental capacity and shuts out anyone who falls below. Hume's account, which excludes people with intellectual disabilities from justice owing to their lack of power, but includes them in charity, is morally deficient. The shortcomings of Hume's theory underscore the necessity of having a view of justice which ensures that people with intellectual disabilities are not marginalized. In defending the entitlement view, I integrate philosophical analysis and concrete examples of policy issues.

KEYWORDS: Benevolence, Charity, David Hume, Desert, Entitlement, Intellectual Disability, Justice, Rights

I n the United States, children's disability services are an entitlement program. The 1990 Individuals with Disabilities Education Act requires public school districts to provide free, appropriate special education to children with intellectual disabilities (ID) between the ages of three and twenty-two. Adult disability services, by contrast, are discretionary. While Medicaid guarantees institutional services for individuals who qualify, home- and community-based vocational and residential services are optional benefits that states may provide or deny.[1] Because states help as many people as they budget for, there is immense variation in services from state to state (Braddock 2017).

Political theory contains two rival views of social care for adults with ID.[2] The favor view treats disability services as an undeserved gratuity. Material support is a

matter of charity—society does not owe it and individuals have no right to it. The entitlement view treats long-term care as a deserved claim. Social safety net benefits are a matter of justice—they are owed as a human right and required as a social duty.[3] There has been extensive philosophical debate about whether people with ID are included in the demands of justice (Putnam et al. 2019). A common attitude is that they are not. Licia Carlson and Eva Kittay point out that "many philosophers and lay people have presumed that while charity is appropriately bestowed on people who cannot function as rational agents . . . , these individuals have no claim to just treatment" (2010, 7–8). Ideas have consequences, and this attitude translates into public policy action. An Illinois gubernatorial candidate once told me that, if elected, he would strip my adult son David, who has ID, of the Medicaid benefits he receives and would end his tax-funded residential and vocational services. If David needs help, he said, I should ask for voluntary contributions from friends and neighbors, charities and churches. Most politicians are not so blunt—but by consistently voting against adequate funding, and by not honoring legal settlements (Illinois has been out of compliance with the *Ligas* Consent Decree for several years),[4] they treat adult services as a favor, not a right.

In this paper I argue that David Hume is one philosophical source of the favor view. He propounds a version of what Stacy Simplican calls the capacity contract, which "bases political membership on a threshold level of capacity and excludes anyone who falls below" (2015, 4). Hume stands historically between John Locke and John Rawls, both of whom also believe that obtaining the benefits of justice requires cognitive competence.[5] Martha Nussbaum (2006, 45–49) briefly examines Hume's position—I elaborate her analysis by drawing on recent Hume scholarship. Hume presents a two-tier view of moral consideration. In the first tier are obligations of justice—they include the powerful and exclude the weak. In the second tier are obligations of humanity—this is where the vulnerable find support and aid. Hume's perspective, which excludes adults with ID from justice but includes them in charity, is morally deficient. The shortcomings of his theory are instructive—they illustrate why favor accounts of social welfare disability services in general fail.

In defending the entitlement view, I follow the principle of empirically-informed philosophy by blending together sociological facts and philosophical argument (Engster 2015). I also follow the principles of emancipatory research by assuming a social model of disability, a commitment to social change and close association with the lived experience of disability (Shakespeare 2017, 160).[6] Julie Minich asserts that in disability scholarship the "scrutiny of normative ideologies should occur not for its own sake but with the goal of producing knowledge in support of justice for people with stigmatized bodies and minds" (2016). As Karl Marx states, "philosophers have only interpreted the world in various ways; the point is to change it" (1977, 131).

A Tale of Two Campaigns

Tale 1

Adults with ID like David often have difficulty meeting their own basic needs and require assistance with activities of daily life. Many cannot function independently, live in facilities staffed by professional caregivers and will need residential and vocational support their entire lives. But such services are often inadequate. In 1961, President John Kennedy appointed a panel of experts to develop a plan for improving the living conditions of people like his sister Rosemary. "Those of us who have seen [individuals] live in the shadows know that a country as rich as ours cannot possibly justify this neglect," he scolded. But sixty years later many remain in the shadows (The Arc 2011). In 2020, 473,000 adults with ID were waiting for government-funded services. Individuals can wait for years, with no guarantee that they will ever gain access to personal assistance, housing, therapies, employment supports and transportation (United Cerebral Palsy 2020, 14). Those like David, who are served, are often underserved because of inadequate funding and staffing shortages (The Arc 2017; Friedman 2019).

Illinois ranks seventeenth in per capita income, well above the national average. But while average per capita expenditure on services for adults with ID is $110, Illinois spends only $49—forty-seventh in the nation (Carmody 2017). In an effort to increase funding on a local level, counties have created Developmental Disability Service Boards through public referenda. Some years ago, my county proposed such a measure. The campaign, *Show You Care*, asked voters to approve a small property tax increase. It would have cost the owner of a $200,000 home $61 a year and would have raised $13 million annually to provide housing, jobs and transportation. The referendum was voted down by a margin of two-to-one (Nagel 2013).

Tale 2

Historically, care for adults with ID was provided in state-operated centers that isolated them from their communities (Carey 2009; Wehmeyer 2013; Trent 2017). In the 1960s, self-advocates, family members and government agencies began demanding a shift from segregated institutions to a system of living in mainstream society as full citizens. The 1990 Americans with Disabilities Act and the 1999 Supreme Court *Olmstead* decision grant them the right to receive long-term care in the most integrated setting appropriate to their needs.[7] Tens of thousands of people with ID live in community-based group homes and participate in vocational programs operated by private non-profit agencies. Assistance with daily tasks as well as job and life skills training is provided by Direct Support Professionals (DSPs), but a nationwide

shortage of DSPs is threatening services. The root cause of the workforce crisis is inadequate Medicaid funding to service providers—in particular, non-negotiable wage rates set by state governments. Across the U.S., DSP pay is below a living wage, resulting in annual turnover of forty-five percent and vacancies of more than nine percent. In Illinois, average DSP pay in 2019 was $11.96 per hour—below jobs in retail, warehouse and food service. Since agencies cannot pay a competitive wage, they have difficulty hiring and keeping qualified caregivers. Staff shortages undermine quality of services, causing disrupted routines and safety risks for clients as well as few activities that include them in community life (President's Committee for People with Intellectual Disabilities 2017; American Network of Community Options and Resources 2017; Institute on Community Integration 2018; National Core Indicators 2019; United Cerebral Palsy 2020).

In 2017 a group of Illinois agencies formed the *They Deserve More* Coalition to lobby state lawmakers to increase funding. Reimbursements were flat for nine years until 2017, when the Coalition secured two small pay raises totaling $1.25 per hour. In 2020 the Illinois General Assembly raised wages to $14.50, still less than the $15 minimum wage. Also in 2020, a consulting firm hired by the state recommended a DSP wage of $22.50—which would require an additional appropriation of $330 million in 2021. The legislature budgeted $170 million—a significant increase, but only half of what is needed to stabilize the system (*They Deserve More* 2020; McManus 2020, 2021a, 2021b).

The name of the *Show You Care* campaign suggests that adequately-funded disability services are a favor—the *They Deserve More* moniker insists they are an entitlement. *Show You Care* emphasizes charity—*They Deserve More*, justice. *Show You Care* focuses on the benevolent provider—*They Deserve More* on the entitled recipient. The view of disability services represented in *Show You Care* finds support in Hume's idea that, because people with ID are unequal in power relative to able-minded citizens, social support for them is a favor, not an entitlement. Hume's view is flawed in multiple ways: (1) adults with ID are not included in justice, (2) if they are included in moral considerations beyond justice, they are not included equally, and (3) if they are included equally, they are not included equally for the right reason.

The Concept of Justice

Justice means, most basically, giving each person their due. Distributive justice concerns the fair allocation of benefits and burdens among persons in society.[8] The concept of justice belongs to a group of ideas which are closely related.[9] First, justice involves desert—treating people as they deserve to be treated, giving them what they are owed. Second, justice is related to entitlement. To deserve something is to

be entitled—to have a justified claim—to it. Third, justice concerns rights. Rights are entitlements to a deserved good that are held by one person against another person or social institution for some reason. Fourth, justice is connected with obligation. If someone has a right, then others have a duty to treat them in a certain way. Rights are more than privileges or favors that depend on sympathy and that may be provided or refused at will. They are owed and must be honored as a matter of obligation.

There is a conceptual contrast, which Hume (1967, 473) recognizes, between natural virtues like benevolence, which are human instincts, and artificial virtues such as justice, which are human inventions. Benevolence is doing good for others out of concern for their welfare. Charitable acts cannot be demanded, but are freely given or denied. Justice, by contrast, means entitlements, rights and obligations. It is about giving people what they deserve and are rightly due. Joel Feinberg elaborates on these two kinds of moral transactions. Benevolence concerns "gifts and services and favors motivated by love or pity or mercy" (Feinberg 1980, 142), which are optional rather than required. Justice involves "dutiful actions and omissions called for by the rights of other people. These can be demanded, claimed, insisted upon" (Feinberg 1980, 142).

Beyond these general notions, justice has particular meanings. Because people with disabilities are both "nature's hostages [and] society's victims" (1998, 54), Anita Silvers says, material and formal justice address two different injustices and populations.[10] People with cognitive disabilities are naturally and essentially dependent; they require practical and economic assistance. People with physical or sensory disabilities are artificially and contingently dependent; they require access to opportunities. Biological limitations and social environments interact in complex ways to increase or decrease functional ability. Some of David's limitations are essential and inevitable (i.e., biologically determined) while others are contingent and changeable (i.e., socially constructed).[11] Material justice concerns how societies allocate goods which significantly affect people's lives. It supplies resources and support, especially to those with cognitive disabilities. Formal justice concerns fair opportunity. It equalizes social access that broadens participation, especially of those with physical or sensory disabilities. Material justice, which provides economic resources necessary for welfare, cannot bring the equal opportunity that formal justice can. Formal justice, which creates a level playing field that corrects for social disadvantages, cannot supply the safety net benefits that material justice can.

The disagreement between Silvers (1998) and Kittay (1999; 2005) concerns which type of justice people with disabilities are owed. Consider this syllogism:

1. Autonomy and independence ground social inclusion.

2. People with disabilities are not and cannot be autonomous and independent.

3.   Therefore, people with disabilities are socially excluded.

Silvers affirms 1 but denies 2, arguing that with appropriate accommodations and access people with disabilities can be independent. They are not socially included because of contingent social arrangements which can be changed. Instead of offering welfare benefits, society should remove barriers and give equal opportunity to people with disabilities. Kittay—by contrast—affirms 2 but denies 1, arguing that dependency, not independence, grounds moral claims on others. While accommodations may include people with physical or sensory disabilities, who are capable of autonomy, they will often exclude people with ID, who are inevitably dependent. Some of the disadvantages of ID are natural, not constructed—no amount of social accommodation will make David self-sufficient, as proponents of the social model like Adrienne Asch acknowledge. "Not all problems of disability are socially created and, thus, theoretically remediable. No matter how much broad and deep social change could ameliorate or eradicate many barriers encountered by [people with disabilities], in no society would it be as easy . . . to have [a disability] as not to have one" (Asch 1999, 1652).[12] Silvers accepts something like the equal power requirement, but argues that appropriate social accommodations will make it possible for people with disabilities to achieve roughly equal power—and thus enjoy political inclusion. Kittay and I reject this analysis.

It is a false dilemma to separate social access and welfare support. Formal and material justice are not mutually exclusive—many people with disabilities are owed both. Society can both enhance internal resources (by promoting independence through education and employment) and enhance external resources (by helping individuals through income support and personal assistance). Justice calls for equal opportunity as well as material aid (Engster 2015, 169–182). Legislation like the ADA has helped with non-discrimination—but budget appropriations in states like Illinois do not provide adequate financial support.

The Circumstances of Justice

In *A Treatise of Human Nature* and *An Enquiry Concerning the Principles of Morals,* Hume examines the principle of justice. First, he considers its origin. Justice is an artificial virtue grounded in a social contract for mutual advantage. Given the mismatch between human needs and individual abilities, we join with others to provide for our necessities. Second, Hume describes its nature. Justice is defined by the conventions from which we derive protection and assistance. It creates a distribution of rights and duties as well as the advantages and disadvantages of social cooperation—particularly concerning property. Third, Hume identifies its circumstances. Justice is invented and maintained in particular contexts—there are extreme situations of abundance and scarcity in which it has no utility and does not arise.

Hume identifies two preconditions that make justice both necessary and possible: psychological facts about human nature and material facts about our natural and social environment.[13] "The extensive generosity of man, and the perfect abundance of everything, would destroy the very idea of justice, . . . because they render it useless; . . . on the other hand, his confined benevolence and his necessitous condition, give rise to that virtue" (Hume 1967, 496). The extreme circumstances in which justice is pointless consist of three facts about the natural and social environment—total isolation, complete abundance and severe scarcity—and two facts about human nature—universal generosity (or malice) and unequal power. If the conditions Hume identifies render justice meaningless, then—by implication—their contraries make justice meaningful. Justice has a point in circumstances of (1) communal living, (2) individual scarcity, (3) social wealth, (4) limited generosity and (5) equal power. These conditions are individually necessary and jointly sufficient for the operation of justice.

Conditions 1, 2 and 3 are conceptual requirements of justice, as well as factually true descriptions of adults with ID in wealthy nations like the U.S. They (1) live in our communities, (2) often cannot meet their own needs and (3) are members of a society with ample resources to care for them. Condition 4—limited concern for others, particularly strangers—while factually true, is not a conceptual requirement of justice. Even if human beings cared about others as much as they care about themselves, condition 4 makes people with ID objects of kindness rather than subjects of rights. Condition 5—individuals have equal power—does not accurately describe people with ID.[14] It is, however, conceptually mistaken: while rights do not require power as a prerequisite, they do create power as a consequence. My analysis focuses on condition 5 (and references condition 4).

Defining the Equal Power Requirement

Hume's fifth criterion for being included in justice is equality of power. He defines power of one person over another in terms of physical strength and mental capacities. Even though they lack power and are vulnerable in different ways, Hume excludes both those without physical strength and those without intellectual abilities. Because there are degrees of physical and mental power, commentators refer to "rough equality of power."

The equal power requirement entails that the weak and disabled are not owed justice since they are not equal in ability to the strong and abled. Hume offers this thought experiment:

> Were there a species of creatures, intermingled with men, which, though
> rational, were possessed of such inferior strength, both of body and
> mind, that they were incapable of all resistance, and could never . . .

make us feel the effects of their resentment; the necessary consequence
. . . is, that we should be bound, by the laws of humanity, to give gentle usage to these creatures, but should not, properly speaking, lie under any restraint of justice with regard to them, nor could they possess any right [against] such arbitrary lords. Our intercourse with them could not be called society, which supposes a degree of equality; but absolute command on the one side, and servile obedience on the other. Whatever we covet, they must instantly resign: our permission is the only tenure by which they hold their possessions: our compassion and kindness the only check by which they curb our lawless will: and . . . the restraints of justice . . . being totally useless, would have no place in so unequal a confederacy. (1983, 25–26, emphasis added)

Hume gives three examples—the power of human beings over animals, the "superiority of civilized Europeans above barbarous Indians" (1983) and the domination of men over women in many cultures.[15] James Harris explains that

in each case, there is no need for rules to regulate behavior, because in each case there is a significant imbalance of power. By virtue of superior physical [or mental] strength, human beings can impose their will on animals, Europeans can impose their will on "Indians" and men can impose their will on women. There is no need of anything like a . . . convention in any of these cases to ensure peace and order—where peace and order is defined in terms of the satisfaction of the desires of the stronger party. Rules of justice come into being only when each party has something to fear from every other party—when each party has means of making the others "feel the effects of their resentment." (2020, 83)

Moral behavior toward those with less power is based on benevolence, not justice—it is a favor, not an entitlement.

Understanding the Equal Power Requirement

Before critiquing Hume's view, it is important to understand why he requires equal power. The reason is that for him justice concerns the assigning of property rights, which involves contracts made between equals (Moore 1976). Property rights are established, Hume says, "by a convention . . . to bestow stability on the possession of . . . external goods, and leave everyone in the peaceable enjoyment of what he may acquire by his fortune and industry. . . . The origin of justice explains that of property; the same artifice gives rise to both" (1967, 489 and 491). Relationships of owning and exchanging property require rough equality of power, Ryan Pollock

points out, "because the goods we acquire are vulnerable to being taken by others, resources are scarce and human generosity is limited" (n.d.). Harris adds that justice secures "the reliability of the procedures whereby property is transferred from one person to another" (2020, 92). Since justice is conceptually related to bargaining about property, there is no necessity to bargain with those who have little physical or mental power.

It might be objected that I unfairly apply Hume's criterion of equal power to an understanding of justice that is not his. "Hume uses the term 'justice,'" Pollock says, "to refer narrowly to the rules that regulate property" (n.d.), and for this the requirement appears necessary. But I apply it to a broad theory of distributive justice which it was not meant to cover.

True. Justice as property rights requires equality in the bargainers and logically entails the exclusion of those without equal power. Given Hume's view, it may not be possible to refute the claim that there is no need to bargain regarding property with those who lack power.[16] Given this limitation on justice, the only place where moral concern for them can be located is benevolence. But rules regarding property rights are only one aspect of distributive justice. When individuals enter the social contract and establish systems of justice that create mutual agreements aimed at maximizing personal security, they must include both those who are self-sufficient (capable of owning property and providing for their own needs) and those who are dependent (unable to do so). Hume's (1967, 484–485) own logic seems to imply this broader view.

Simplican points out that, in addition to a capacity contract that excludes people who are dependent, Locke has grounds for a solidarity contract that includes them. He accepts "vulnerability as an essential marker of human life that prompts men to form and maintain the social compact amid personal incapacity" (Simplican 2015, 27). Hume, too, acknowledges that we contract with each other because of the mismatch between our needs and our limited ability to meet those needs. Because we are insufficient on our own to achieve a good life—and even if we do, are always vulnerable to losing independence—we join together with others for mutual advantage. We have "numberless wants and necessities" and "slender means . . . to the relieving of these necessities" (Hume 1967, 484–485). It is this "conjunction of infirmity and of necessity" (Hume 1967, 484–485) that leads us to collaborate. "To consider [any person] only in himself, he is [not] provided . . . [the] natural abilities which are in any degree answerable to so many necessities. 'Tis by society alone he is able to supply his defects. . . . By mutual succor we are less exposed to fortune and accidents. 'Tis by this additional force, ability and security that society becomes advantageous" (Hume 1967, 484–485). Hume's argument implicitly supports a solidarity contract that includes all persons within the scope of broad distributive justice.[17]

Hume's explicit view, however, asserts a capacity contract. Justice concerns property rights of capable individuals and does not cover those who are incapable of equal

self-sufficiency. A separate realm of moral concern, benevolence, includes them, but justice does not. It is this view that I dispute. In order to reject the equal power requirement, I deny Hume's starting point—his view of justice itself. A broad view of justice—that it means a fair distribution of benefits and burdens across all members of society—cannot require equal power as a condition. Many individuals (children, the elderly and the disabled) are weak and dependent and yet—I claim—are included in the tier of justice. If justice merely concerns property rights, then equal power is necessary. But if justice means everyone without exception receiving a fair share of resources, opportunity or welfare, then equal power is unnecessary—indeed, it hinders such an allocation. In what follows I both challenge the equal power requirement and replace Hume's view of justice with an alternative account.[18]

Challenging the Equal Power Requirement

Adults with ID are without power in that they lack the cognitive (and sometimes physical) abilities necessary to care for themselves and protect their own interests.[19] Hume's theory about the identity of the parties that obtain justice confronts a number of problems. First, it does not include vulnerable individuals in the realm of justice; second, while it includes them in moral concern, does not do so equally; and third, if it includes them equally, does so for the wrong reason.

The Exclusion from Justice Problem

The first problem for Hume's account is what Gerald Postema (2012) calls the exclusion problem—it does not include those who are vulnerable in the realm of justice. One intuitive purpose of justice is to protect the weak from exploitation by the strong. But Hume leaves the powerless, who most need protection against mistreatment, outside the scope of justice and rights. An early critic, Thomas Reid argued against Hume that justice is particularly necessary in conditions of inequality, for individuals who are helpless and open to harm: "surely to be treated with justice would be highly useful to the defenseless" (cited in Ridge 2010, 157).

Hume's claim that equal power is necessary for inclusion in justice, and so the strong owe nothing to the weak as a matter of right, is badly mistaken. First, it is logically flawed: the conclusion 'A has no right to just treatment from B' does not follow from the premise 'A is less powerful than B.' This pattern of reasoning is a non sequitur because holding rights and possessing power have no relationship whatsoever. Second, Hume's premise is empirically faulty since it treats power as a permanent category. This, however, is a myth (Fineman 2004). Independence and self-sufficiency are temporary—any of us can become disabled at any time and all of us will be dependent on others at some time. Given that we are only temporarily abled, Hume's theory puts everyone at risk of exclusion. Third, it has implausible im-

plications: if the weak have no rights against the strong, then the newborn, sick and elderly are not entitled to moral treatment from healthy adults—future generations are not owed an inhabitable environment by present populations—and people with ID do not deserve tax-funded services from people who are not disabled.

In fact, Hume has things reversed, since it is precisely in situations of unequal power that justice is necessary. This is because, as Brenda Almond says, "rights focus on an issue from the point of view of the victim or oppressed, rather than from the perspective of those with power" (1994, 263). The idea of human rights arose in the seventeenth and eighteenth centuries from the need to check the power of rulers to torture, rob and kill civilians. Nineteenth and twentieth century labor unions formed to equalize the structure of power between workers and employers. Because those in a weak position are at risk for abuses of power, rights safeguard them by protecting their interests from harm. Many of our most important moral duties address the needs of vulnerable parties, not the interactions of equally capable adults. The inclusion of people with ID in justice is not based on power, but on two other notions.

The first ground for inclusion is having welfare interests (Feinberg 1984, chapter 1). To have an interest is to have a stake in something and to gain or lose depending on what happens to it. Ultimate interests are ends (like being a marine biologist or classical musician), while welfare interests are means (like physical health and financial resources) to those higher goals. When welfare interests are blocked, a person experiences serious harm because their entire set of interests is disrupted. A person's most basic interests are needs (Thomson 1987; Brock and Miller 2019).[20] Needs are things that a person cannot do without, something they must have. Needs are related to harm and welfare. To say 'A needs x' is to say 'A will be harmed without x'—and so the statement 'A needs x but it would not be bad for A to lack x' is incoherent. Because people have interests that can be harmed or benefited, we must pay attention to their needs, promote their welfare and help them reach the best life possible for them.

Adults with ID have a welfare interest in vocational and residential programs. Vocational programs provide job training and structured activities. Many—like David's—are conducted in large work centers and involve little meaningful activity, recreation, paid employment or volunteering in the community. Individualized and integrated services are often not financially possible on the meager funding states supply to agencies.[21] Residential programs provide housing. Many adults with ID live in group homes which are plagued by inadequate staffing. Residents like David have complex needs that must be understood in order to be met—but person-centered care and participation in community life cannot be maintained without experienced DSPs.[22] The gap between the operating cost of services and the funding paid by states has grown steadily over the last decade, forcing providers to reduce costs by cutting services. The resulting harm includes social isolation, an absence of productive activ-

ities, a lack of skill development and increased anxiety, depression and aggression (Wolf 2017).[23]

The second ground for inclusion in justice is having inherent worth (Darwall 1992). Personal (or earned) value is based on acquired traits and achievements. It is not owed to everyone, comes in degrees and is gained and lost by individual actions. Human (or basic) value, by contrast, honors the inherent worth and dignity of a person simply as a human being. It is not earned or forfeited, is owed to everyone and is not a matter of degree. Each person—David included—is a full member of the human community and has worth that belongs to them simply by virtue of their humanity. Natural equality entails political equality, Ronald Dworkin asserts: "the weaker members of a political community are entitled to the same concern and respect of their government as the more powerful members" (1977, 199). The fact that ID makes a person unable to do typical things does not mean that people with ID are less worthy of respect. Intelligence (as a form of power) is irrelevant to political inclusion.

Hume's grounds on which individuals are included in justice, is false: justice (understood as rights) depends on intrinsic worth and on having important interests. Possessing equal power is unrelated to political entitlements.

The Unequal Moral Benefits Problem

Hume answers the exclusion problem by stating that, while the vulnerable fall outside of justice, they do not fall outside of charity—and are thus included in the realm of moral concern. The weak should be given "gentle usage" by the powerful, even though they are owed no "restraint of justice" (Hume 1983, 25). When the Illinois politician told me that David is not entitled to public welfare benefits but should seek private charitable contributions, he based David's welfare on benevolence rather than justice. The principle of humanity, Stan van Hooft says, expresses the "moral sentiment [of] caring-about-others" (2010, 30–33) through feelings of generosity, an attitude of concern and a desire to help anyone in need simply because they are a human person who lacks the capacity to help themselves.

Hume's theory and the politician's view, that welfare needs provided through the social safety net are a favor rather than an entitlement, is widespread. Even if, as Samuel Freeman puts it, "society has a duty to provide basic necessities and some degree of ongoing care for the . . . intellectually disabled . . . , this societal duty has often been regarded as a duty of beneficence or charity and not as a duty of justice that is grounded in the rights of the mentally disabled" (2018, 174–175). Jan Narveson for example, asserts that "our basic duties to each other do not include taking care of each other's [needs]" (2008, 143). Instead, charity is sufficient to fund welfare services like those for adults with ID. "Non-compulsory measures are ade-

quate for any genuine 'needs'. . . . Most [individuals] are pretty helpful to their fellow men: when some people get into a serious scrape due to no fault of their own, others are ready to volunteer assistance. . . . There are many welfare suppliers that are not government agencies—churches, community groups of various kinds, and of course, relatives and friends, all ready to lend a hand" (Narveson 2008, 147).

This claim, however, is wildly optimistic. The humanity reply, while offering vulnerable individuals some measure of moral consideration, encounters what Postema (2012) calls the inequality problem—the benefits it provides are not equivalent to that given by justice. As Freeman says, "charitable duties of beneficence do not seem sufficiently robust to account for the stringency of our moral duties of justice owed to people with severe disabilities" (2018, 175). Michael Ridge agrees: "while the vulnerable do get some moral protection on Hume's theory . . . , these protections are pitifully weak" (2010, 150). Human sympathy has multiple limitations.

First, it is *recipient limited*. The principle of humanity is narrow rather than broad. Human nature is not entirely selfish, but most individuals care primarily about themselves and their intimates. Hume contradicts Narveson's sanguineness by acknowledging "the partiality of our affections"—"our strongest attention is confined to ourselves; our next is extended to our relations and acquaintance; and 'tis only the weakest which reaches to strangers" (1967, 488–489). While benevolence may be enough for acute, short-term crises and for those to whom we are emotionally related, it is not sufficient for chronic, long-term difficulties or for people we do not know. Hume concedes that those in need cannot hope for much from the instinct of humanity: "we should perform but few actions for the advantage of others . . . because we are naturally very limited in our kindness and affection" (1967, 520). Voters in my county, recall, roundly rejected a small property tax increase. Charitable giving in the U.S. is about two percent of income annually, and much of that goes to arts programs, educational institutions and religious organizations, not welfare agencies (Singer 2009, 23–24). Because people with ID require considerable financial support and because human generosity is finite, voluntary philanthropy is not sufficient to fund adult services.

Limited sympathy is a fact of human nature. As Ivana Zagorac puts it, most people have a restricted range of concern that contains "only a few people towards whom we have special feelings, not simply because they are people (since 'the love of mankind' does not exist) but because they are special to us for some reason" (2015, 196). Nussbaum agrees: human kindness is "uneven and partial, felt most strongly toward one's own family, and only sporadically to people at a distance" (2006, 47). It is psychologically unrealistic to expect us to care for all persons who need it. In large, anonymous nations like the U.S., we seldom feel connected to fellow members of society, let alone commitment to them (Van Hooft 2010, 39).

Intimate altruism differs from stranger altruism. We have a natural tendency to respond to the needs of those whose lives are closely linked to ours, but not to those with whom we do not share a relationship. Our sense of associative duties to friends and family is strong, while non-associative duties to strangers often feel weak (Seglow 2010). *Selective altruism* (helping particular individuals we are related to) differs from indiscriminate altruism (helping unidentifiable people we will never meet). People in my social circle who have a personal connection with David may be willing to be taxed $61 a year, while those who do not know any adults with ID may refuse. The principle of humanity is partial—it involves preferential concern for people with whom we are associated. The principle of justice, by contrast, is impartial—it involves universal concern for everyone, including strangers we do not know. Zagorac concludes that "Hume's humanity rarely finds its expression outside of [a] narrow circle. . . . Private relations usually take preference over universal views" (2015, 196).

Second, human concern is *behavior limited*. The principle of humanity is unreliable rather than consistent.[24] Most people have a small range of kindness, Zagorac says: "Hume's average doer of good practices his good deeds on a fairly limited scale. . . . [We do not] always actively take the opportunity to display humanity, even within the circle of those closest to us" (2015, 201).

Minimal altruism differs from costly altruism. Many people will engage in low-cost altruism involving small inconvenience. This happens daily when we give spare change to a homeless person or help someone pick up dropped groceries. But few people engage in high-cost altruism requiring considerable self-sacrifice, like rescuing Jews from the Gestapo or donating large sums to charity. It is rare for us to help strangers, or even intimates, at substantial risk to personal happiness. *Impulsive altruism* (where we do not stop to weigh costs and benefits) differs from deliberate altruism (where we consciously choose to help). Spontaneous heroic behaviors (like rushing into a burning building to save the occupants) are not the same as calculated acts of self-denial. *Sporadic altruism* differs from continuous altruism. Single charitable acts are more common than those that must be repeated. It is easier to help in a crisis, but as the needs of others continue unabated, we step back in compassion-fatigue. People who might be willing to give a one-time gift of $61 to disability services may refuse to give $61 year after year. And people who choose to donate may balk at being taxed. *Gift altruism* differs from taxation altruism. Many Americans instinctively oppose redistributive taxes because of libertarian beliefs in property rights (Dorfman 2014). In the case of *Show You Care*, of course, government was not taking someone's money involuntarily—it was a property owner's free choice to increase their tax burden. But perhaps many unconsciously understood voluntary taxes as equivalent to mandatory tax collections.

The principle of humanity may motivate a small loss in our own well-being, but does not incline us to deliberately give up much of what we desire in order to help others. Peter Singer (2009, chapters 3 and 4) outlines a number of psychological factors that limit financial generosity in particular: self-interest (we have a right to do as we please with our money), parochialism (we have no duty to help people we do not know), victim invisibility (we respond emotionally to identifiable people, not statistics), diffused responsibility (there are many other individuals who can help), a sense of fairness (we give our share through taxes), moral distinctions (we are responsible for acts that harm others but not for omissions that fail to help them) and futility thinking (we are uncertain that our help actually makes a difference).

The principle of humanity is the disposition to care about the well-being of others, feel their suffering or happiness and do good to them. Benevolence does not offer equal protection because our caring feeling and kind acting are recipient limited (as to who the beneficiaries are) and behavior limited (in terms of what actions we perform and the length of time we act). And so, humanity is *recipient-unequal* (intimates receive it, strangers do not) and *behavior-unequal* (recipients get minor sacrifices, not major ones—they receive support in the short run, not the long run). As Jonathan Wolff (2010, 148) asserts, realism means accepting that human goodwill is limited and that charity is not sufficient to meet the welfare needs of vulnerable people. Empirical data, Daniel Engster says, show that "poverty levels tend to be highest in [nations] that rely most heavily on private individuals and private charities to help the poor. . . . Private donations and charities can play a valuable role in helping some poor individuals to meet their needs . . . , but a caring welfare state appears necessary for addressing . . . economic disadvantage on a broad social level" (2015, 210). Kittay and Feder agree: "charity . . . yields paltry resources" (2002, 8). Individuals with ID cannot rely on the generosity of neighbors, faith communities or service clubs to look after their needs.

Zagorac concludes that "Hume's humanity [is] insufficient in that it is open-ended as to how much action we take and which interests of the weak we take into consideration" (2015, 201). Even if benevolence is a duty rather than something supererogatory, it is an unsatisfactory safeguard for adults with ID. Because the principle of humanity is limited to some people in some ways some of the time, it must be extended by the principle of justice to all people and all their needs all the time. The partiality of humanity must be supplemented by the equality of justice, associative responsibilities of benevolence by non-associative duties of justice.

The Separate but Unequal Problem

Suppose—contrary to fact—that benevolence *did* give equal benefit to the vulnerable as the powerful enjoy through justice. It still leaves them as second-class citizens

excluded from what Ridge calls "the charmed circle of justice" (2010, 150). Even if it provides enough protection, it is not the right kind of protection. The Fourteenth Amendment of the Constitution guarantees equal protection to all Americans. After the Civil War, many southern states passed laws that required separation of blacks and whites. In *Plessy v. Ferguson* the Supreme Court upheld the principle of 'separate but equal'—the doctrine that segregating individuals by race was legal so long as the parallel facilities and services were equivalent. Blacks, however, were given lower quality accommodations. In *Brown v. Board* of Education the Court declared that racial segregation in public schools violates the Constitution because "separate educational facilities are inherently unequal" (Warren 1953). It determined that segregated schools harm black students: "to separate some children from others . . . solely because of their race generates a feeling of inferiority as to their status in the community" (cited in Gilkis 2018).

"Separate but equal" is a categorization problem. Arranging in categories and distinguishing between categories is a central task of reasoning (Magidor 2020). One way to mis-categorize is by *combining together separate things*. To ignore the motivation of an act and classify actions as having equal moral worth because they have identical consequences, for example, is to unite things that should be differentiated. Mis-categorization can also occur by *splitting up things that belong together*. Before the Supreme Court legalized same-sex marriage in Obergefell, it was sometimes said that gay and lesbian couples should have civil unions that are equivalent to marriages, but not marriages. Such an arrangement is separate and unequal. Marriage provides a set of rights and responsibilities as well as social recognition of family status. While civil unions supply the former, they cannot express the latter. This proposal places identical relationships in different categories (Lambda Legal n.d.).

In the same way, Hume presents a two-tier view of moral consideration. In the first tier are obligations of justice—they only include the powerful. In the second tier are obligations of humanity—this is where the vulnerable find safe-keeping. The two tiers, being separate, are inherently unequal. Excluding people with ID from the tier of justice but including them in the tier of humanity makes them second-class persons (just as 'separate but equal' schools made black students inferior to whites and 'separate but equal' civil unions made same-sex couples lesser than opposite-sex couples).[25] By classifying our responsibilities to the weak as duties of humanity rather than justice, Hume mis-categorizes them. The virtue of humanity, the inequality problem points out, is not sufficient to overcome the self-interest of the powerful. But even if generosity was broad, effective and constant rather than narrow, ineffective and sporadic, it would be the wrong sort of moral consideration—one grounded in favors and sympathy rather than entitlements and rights.

Even if, as Hume apparently thinks, benevolence to the vulnerable is a duty, it is the wrong sort of duty (Ridge 2010, 157).

Consider again the difference between humanity and justice. Benevolence is optional and voluntary; it cannot be demanded or expected. Justice, by contrast, is required and mandatory; it concerns rights, entitlements, obligations and desert. As Brian Barry says, "humanity requires that we respond to other's needs whereas justice requires that we give them their due" (1978, 205). The fact that benevolence and justice are distinct moral notions means that kindliness cannot replace respect for rights. Feinberg imagines Nowheresville—a place with humanity but not justice.

> A world without claim-rights, no matterhow full of benevolence . . . , would suffer an immense moral impoverishment. Persons would no longer hope for decent treatment from others on the ground of desert or rightful claim. Indeed, they would come to think of themselves as having no special claim to kindness or consideration from others, so that whenever even minimally decent treatment is forthcoming they would think themselves lucky rather than inherently deserving. . . . A claim-right, on the other hand, can be urged, pressed, or rightly demanded against other persons. . . . Rights are not mere gifts or favors, motivated by love or pity. . . . A world with claim-rights is one in which all persons . . . are dignified objects of respect. . . . No amount of love and compassion . . . can substitute for those values. (1973, 58–59; cf. 1980, 143)

The residents of Nowheresville are objects of charity, not subjects of justice. Respect and concern are not obligatory entitlements, but favors given or withheld at will. Richard Wasserstrom observes that the pre-civil rights southern U.S. was a real-life Nowheresville. While many whites were kind and considerate to blacks, the situation was morally lacking because "it denied to any African American . . .the opportunity to assert claims as a matter of right. . . . It reduced their claims to the level of requests, privileges and favors" (Wasserstrom 1975, 121, slightly modified). According to Hume, being powerless does not mean that vulnerable people lose all protections of morality, but it does exclude them from justice and put them in Nowheresville.

Imagine that Nowheresville has a twin city, Somewheresville. While the residents are treated equally, in Somewheresville they have rights and receive justice, while in Nowheresville they accept favors and are given charity. The two cities are separate but equal. Or not. The problem is that—as with racially-segregated facilities and civil unions—separate treatment is inherently unequal. Even if equal in visible treatment, it is unequal in intangible qualities. The residents act differently before receiving benefits: those in Somewheresville demand and expect decent treatment, while those in Nowheresville beg and hope for it. They also respond differently after receiving ben-

efits: those in Somewheresville feel entitled and have no need to show thankfulness, while those in Nowheresville feel lucky and express gratitude. Finally, the residents are unequal in their sense of personal worth. Being able to make claims is necessary for self-respect. The dignity of those in Somewheresville is affirmed—rights, Feinberg states, enable us "to feel in some fundamental way the equal of anyone" (1980, 151). The moral status of those in Nowheresville is, by contrast, denied—they are deprived of self-respect and feel lesser.

Suppose that Hume's ghost visits Bill Gates who—motivated by benevolence—establishes a charitable foundation to meet the needs of Illinoisians with ID. The program is well-financed and effective—the desperate situation of many people changes for the better as services are fully funded and staffed. While we might be glad that their needs are met, this scenario leaves out something important: the recipients would be beneficiaries who accept favors and rely entirely on the continued goodwill of others, not rights-holders to whom services are owed.[26] Humanity, sympathy and benevolence provide a mistaken kind of inclusion.

Concluding Remarks

My daughter is a program manager at a disability service provider in England, where agencies like hers are known as "charities." "The charity is hiring two additional staff," Sarah tells me—or "the members served by the charity are really enjoying our new activities." Charity—the name is revealing. On the one hand, a charity assists people in need. On the other hand, a charity depends on voluntary help and financial donations. The label suggests that services for adults with ID and the funding they require are favors rather than entitlements.

"Is proper treatment for [people with ID] a matter of justice or of charity?" (1984, 57), Cora Diamond asks. The question is "whether the constraints that there ought to be on our conduct towards [them] are constraints of justice and regard for rights or . . . constraints of compassion and humanity" (Diamond 1984, 57). The favor view treats vocational and residential services as an undeserved gratuity, while the entitlement view insists they are a rightful claim. Hume's thesis about inclusion in justice is a capacity contract which—to quote Simplican again—"bases political membership on a threshold level of capacity and excludes anyone who falls below" (2015, 4). Like Hume, Locke and Rawls also make cognitive competence the foundation of obtaining the benefits of justice.

Locke contrasts 'idiots' and individuals with species-typical intelligence to define the personhood necessary for political participation. Because rational abilities are essential for human equality, people with ID are excluded from political entitlements. As in Hume's theory, they receive charity, but not justice (Simplican 2015, 27). Rawls also denies political standing to anyone outside "the normal range"

(2001, 21) of intelligence. The parties to the social contract must be rational, free and equal—able to exercise the powers of understanding and judgment necessary for social cooperation. Rawls cannot directly include people with ID in justice, Nussbaum argues, because of "the presence of a large asymmetry of power between the [abled and disabled] parties, which makes it no longer mutually advantageous for them to be included as fully equal parties to the social contract" (2010, 77). Rawls indirectly includes them since it would undermine respect for public institutions to exclude them entirely. And, like Hume, he adds that justice is only part of morality—"duties of compassion and humanity" (Rawls 1971, 512) should guide society's conduct toward individuals to whom justice is not owed, strictly speaking.

In all these views—Locke's, Rawls' and Hume's—capacity inequality becomes moral and political inequality. People with ID lack cognitive competence and are excluded from political entitlements of justice. Kittay, by contrast, rejects any form of capacity contract. "A theory of justice that is fully inclusive would determine not just the fair terms of social cooperation among those who can be cooperators. It would consider the facts of inevitable human dependency . . . in determining fair terms for all to live together in a just society" (Kittay 2019, 21). At various times in life we all depend on other people to care for us, so dependency, not power, is the basis for our moral claim on others. Nussbaum agrees: "the right way to ground moral [and political] equality . . . does not involve reliance on a putative power equality" (2006, 42).

Hume's requirement is false: inclusion in justice depends on intrinsic worth and welfare interests, not equal power. Cognitive ability is morally irrelevant when determining rights. Enforcing rights may require power—possessing them does not. The will theory states that to have a right is to be able to exercise that right and direct the behavior of others. Given the imbalance of power, people with ID have no rights against those who are abled. The interest theory, by contrast, states that to have a right is to have fundamental needs that the right preserves. Interests and worth, not power and ability, determine the entitlements people with ID possess (Meyer 2021).

Jerome Bickenbach points out that "the disability rights movement grew out of a rejection of the . . . charitable approach to disability" (2014, 178). *Show You Care*, which appealed to kindness, failed. Even the advocacy of *They Deserve More* has not secured adequate funding. Disability legislation and litigation, by establishing and enforcing entitlements, has been more successful. In 2005, the *Ligas* class action lawsuit was brought by people with ID against Illinois for refusing to comply with the ADA and *Olmstead*. The resulting Consent Decree grants plaintiffs the right to receive services in the community rather than institutions. Since the settlement in 2011, however, Illinois has been out of compliance for depriving service providers of necessary resources to meet the needs of people with ID. In April 2017, civil rights groups filed a motion in federal court arguing that poor quality services resulting

from low reimbursement violate the Decree, and seeking judicial intervention to force the state to provide sufficient resources for programs that support full inclusion. The litigation does not beg favors but demands rights—in 2021 the Illinois General Assembly budgeted an additional $170 million for ID services (American Civil Liberties Union 2017; Equip for Equality 2017; Illinois n.d.). Unlike the failure of *Show You Care* and the modest accomplishment of *They Deserve More*, the success of *Ligas* is slowly turning favors into entitlements for Illinois residents with ID.

Illinois still lags behind the rest of the U.S. in providing services that allow adults with ID to lead full lives in the community—many remain in Nowheresville. The Home and Community Based Services Access Act now under discussion in Congress would require Medicaid to provide community services to everyone with ID who is eligible, establish a minimum set of services that states must offer, help create a network of providers to deliver services and provide more federal funding, including resources to stabilize the DSP workforce (Diament 2021a). The Better Care Better Jobs Act—which includes a $400 billion investment in Medicaid—is also moving through Congress. It would expand access to services for people on waiting lists and would address the direct care staff crisis by raising wages (Diament 2021b). These bills would, *contra* Hume, make community-based services an entitlement rather than a favor. Public economic support for people with disabilities is not about showing care, but doing justice.

ENDNOTES

1   Adult disability services are largely paid for by Medicaid, which is funded by state and federal governments and managed by states. In 1965, when the program was established, funds were only available for segregated institutions. In 1981, Congress passed the Home and Community Based Services Waiver Program, which waives the requirement of institutional care and allows states to use Medicaid funds for a broad array of community services.

2   The *libertarian* view holds that the sole function of government is to protect individual liberty—it should not provide for the welfare of individuals who cannot look after themselves, since that would mean taking resources from some, against their will, to help others. The *egalitarian* view holds that both liberty and well-being matter—government should protect basic freedoms and also promote welfare by meeting the vital needs of disadvantaged individuals. In a *libertarian* system of justice disability services are a favor and needy people are looked after through private charity. Negative liberty rights require government to not interfere with personal choice and property. In *egalitarian* systems, by contrast, disability services are an entitlement. The needy are looked after by the state,

with funding acquired through redistributive taxation. Positive welfare rights require government to provide people with particular goods and services.

3   The contrast between *desert* and *gratuity* does not allow that some gratuities are deserved. Unlike a discretionary gift, tipping restaurant wait staff, for example, is often something they are owed. In the same way, some assistance to the needy is deserved and required while some assistance is generous and goes beyond the call of duty.

4   I discuss the *Ligas* lawsuit and settlement later in the paper.

5   I discuss Locke and Rawls later in the paper. Nussbaum (2006, 41–45) and Simplican (2015, chapter 3) analyze Locke. Brighouse (2001), Kittay (2001), Nussbaum (2006, chapter 2), Richardson (2006), Stark (2007), Cureton (2008), Reinders (2008), and Simplican (2015, chapter 4) analyze Rawls.

6   I served on the steering committee and speakers' bureau for *Show You Care*. I serve on the Board of Directors for David's agency, which is a member of the *They Deserve More* coalition. David is a *Ligas* class member; I gave written testimony in support of the 2017 Motion to Enforce the Decree and serve on the Illinois *Ligas* Family Advisory Council.

7   Many states were slow to enact ADA integration measures. In Georgia, two women lived in an institution. When they were ready to move into the community, they remained confined because Georgia funded institutional but not community services. The women sued—and the Supreme Court *Olmstead* decision declared that the unjustified and unwanted isolation of people with ID constitutes discrimination under the ADA's integration mandate and affirmed its directive that states provide services in community settings.

8   In this section I provide a basic survey of well-established ideas—I do not offer detailed critical analysis. As Piet Naude says, "the value . . . of [a] 'generalist' approach . . . is that it serves a heuristic function in the elucidation of a specific focal point" (2007, 167).

9   These concepts should not simply be equated since each has many meanings. To *deserve*, for example, is to give someone something because of the way they have behaved (a high-performing student deserves a good grade) or the qualities they have (a drowning child deserves to be rescued). Many rights claims have nothing to do with desert in the first sense, but do in the second—and the language of desert is compatible with both charity and entitlement (see note 3). Or take entitlement. Fred Feldman and Brian Skow (2015) suggest—wrongly, I think—that the concepts are not identical: *desert* is prescriptive and moral while *entitlement* is descriptive and legal.

10 To say people with ID are "nature's hostages" is to acknowledge the medical model, which defines disability as biological incapacities within an individual. To say that they are "society's victims" is to recognize the social model, that environmental arrangements create limitations. While I distinguish medical and social causes, both play a role in disadvantaging people with ID. And while I contrast intellectual and physical-sensory disabilities, they often overlap and each comes in degrees.

11 Some of the limits which ID brings hold in all circumstances. David's prebirth brain injury disrupts reasoning, communication, free choice and self-awareness. He will never do certain things regardless of social adjustments, even if he can do other things with proper supports. As Ronald Berger says, "while environmental modifications and services can and should be adapted wherever possible, there are practical disadvantages to impairments that no amount of environmental change can entirely eliminate" (2013, 28).

12 Simplican points out that it is not enough to argue that Locke, Rawls or Hume falsely attribute inferior capacities to people with ID. This grants the assumption that capacity *is* necessary for political inclusion and has the consequence of excluding people with ID. Instead, the assumption should be denied: cognitive competence *is not* required since "it bases political solidarity on a false foundation of equal, stable and measurable capacities" (Simplican 2015, 41–43). Engster agrees. "Rather than challenging the autonomy myth that has been the source of exclusion for so many disabled people, social model theorists have merely begged admittance for as many disabled people as possible. The more radical solution . . . is to challenge the autonomy myth and embrace dependency" (Engster 2015, 180) as the ground of political entitlement.

13 In *Treatise,* Hume says that justice is "a remedy to some inconveniences, which proceed from the concurrence of certain qualities of the human mind with the situation of external objects. The qualities of the mind are selfishness and limited generosity; and the situation of external objects is their easy change, joined to their scarcity in comparison of the wants and desires of men. . . . If every man had a tender regard for another, or if nature supplied abundantly all our wants and desires, [then] justice . . . could no longer have place. . . . Encrease to a sufficient degree the benevolence of men, or the bounty of nature, and you render justice useless. . . . If men were supplied with every thing in the same abundance, or if every one had the same affection and tender regard for every one as for himself, justice and injustice would be . . . unknown among mankind. . . . 'Tis only from the selfishness and confined generosity of men, along with the scanty provision nature has made for his wants, that justice derives its origin" (1967, 494–495). In *Enquiry,* Hume reiterates these points. "The rules of . . . justice depend entirely on the particular state and condition, in which men are placed. . . . Reverse, in any considerable circumstance, the condition of men: produce extreme abundance or extreme necessity; implant in the human breast perfect moderation and humanity, or perfect rapaciousness and malice: by rendering justice totally useless, you thereby totally destroy its essence, and suspend its obligation upon mankind" (1983, 23–24).

14 The relationship between disability and power is bidirectional. Disability can produce a lack of power—this is the insight of the medical model. Some of the disadvantages of disability are grounded in internal impairments, in a person's physical or mental incapacity—these limitations are natural and essential. But the reverse is also true: a lack of power creates disability—this is the insight of the social model. Many of the disadvantages of disability are rooted in external arrangements, in ableist attitudes and practices of the social environment—these limitations are constructed and contingent. Melinda Hall asserts that "disability is the product of power relations"—these "power relationships . . . affect whole persons through pathologization, stigma and exclusion" (2019). Thus disability "is a question of politics and power(lessness), power over and power to" (Hall 2019). People with disabilities are socially excluded because they lack power—and they lack power because they are socially excluded.

15 There is debate about how to interpret Hume's criterion of equal power and who he means to include and exclude. Indigenous peoples, for example, are only inferior in power to Europeans because they lack sophisticated weapons like rifles (Ridge 2010). Women have exploited their "charms" in order to improve their condition and secure privileges (Harris 2020, 94).

16 This may not be entirely true. Nussbaum (2006, 195–199; 2010, 86–94) suggests that people with ID can achieve equal political power through a guardian or trustee who is empowered to perform the functions of citizenship (like managing money, voting and jury duty) on their behalf.

17 Alasdair MacIntyre argues that, because of our animal natures, the abled are constantly vulnerable to becoming dependent on the care of others. He envisages "a form of political society in which it is taken for granted that disability and dependence on others are something that all of us experience at certain times in our lives and this to unpredictable degrees, and that consequently our interest in how the needs of the disabled are adequately . . .met is not a special interest, the interest of one particular group . . . , but rather the interest of the whole political society" (MacIntyre 1999, 130).

18 It might be thought that Hume's account of justice could—with modifications—accommodate people with ID. I doubt that this is possible. His theory is restricted to property rights, and this does seem to require something like equal power between property owners. The central problem is his narrow account of justice, from which the equal power requirement derives. If justice is broadened into a solidarity theory rather than a capacity theory, the equal power requirement becomes unnecessary. The logic of my argument is as follows: 1). Narrow property-rights justice requires equal power. 2). Equal power excludes people with ID from justice. 3). But people with ID should be included in justice. 4). Thus, the equal power requirement is false. 5). Therefore, understanding justice simply as assigning property rights is problematic.

19 Determining the threshold of rational competence constitutes a sorites problem. ID presents a continuum of cognitive abilities and disabilities. Individuals with mild and moderate ID may possess sufficient rational capacity to be included by Hume in justice, while those with severe and profound ID will not.

20 Nussbaum (2006; 2008) makes a similar argument using the concept of capabilities such as physical and emotional health, social interaction, meaningful work and relaxing play. These essential requirements, which make life go well, ground political entitlements.

21 David's vocational program lacks sufficient workers to take him into the community. His typical day is spent in a segregated work center and involves little worthwhile activity. What he should be doing is integrated recreation and volunteering, as he does once a week when he and I stock shelves at a food pantry. David feels satisfaction in the job and enjoys socializing with other workers. With appropriate support, he could do this kind of activity each day. At his congregate program, David is in a group of twenty-five individuals supervised by two staff. Volunteering in the community would mean small groups with a staff-client ratio of one-to-three. Staff shortages make that impossible.

22 David's residence, a house with four high-need men, requires two support workers, but only ever has one. As a result, basic care is often inadequate. David is unable to brush teeth without supervision, for example, but a single worker cannot assist him with three other clients to monitor. And because David is non-verbal, it takes months for a caregiver to learn how to work with him and to understand his communication patterns—but there is a constant turnover of regular and substitute staff who do not know his unique needs. Having only one DSP also limits community outings: all four men have to want to go for ice cream or to the dollar store—if even one does not, then the group cannot go out since none can be left alone.

23 The 2014 Centers for Medicare and Medicaid Services "Settings Rule" will—by 2023—cut funding for disability-specific residential and workplace settings that isolate individuals from the general public. By restricting funding to small dispersed settings and denying funding for large congregate facilities, it forces states to facilitate community integration and person-centered planning. The Settings Rule, however, is an unfunded mandate. The requirement of integrated and personalized services will significantly increase financial costs to states and service providers, but federal Medicaid rate matching has not been raised to offset the additional costs of implementation. It is unlikely that, without increased funding, the Settings Rule will result in inclusive, individualized services (Friedman 2019).

24 Situationists like John Doris (2002) argue that what governs moral behavior are the situations in which a person finds themselves, rather than their character (stable and reliable virtues). Instead of displaying consistent trait-relevant behavior across a variety of situations, a person's behavior may change significantly because of situational variables. Social psychology studies suggest that "generous" people do not act generously on all occasions that call for generosity; instead, small situational factors make a significant difference to how they behave. The validity of these experiments has been criticized, and whether they support skeptical conclusions about character is contested.

25 Perhaps the "separate but equal" problem collapses into the "unequal moral benefits" problem.

26 Thanks to my friend Timothy Linehan, College of the Sequoias, for this example.

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