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A Mental Patient's Right to Vote: An Analysis of the *Wild* Case

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An analysis of the *Wild* case

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Since 1948 there has been universal suffrage in the United Kingdom for persons of age, except for certain specific groups such as peers, the Monarchy, and persons in legal custody. In order to vote, the person's name must appear on the register of electors as a resident of a particular locality. Any place where the elector legitimately resides (even a hostel, a general hospital or a university) may be used as an address which qualifies a person for entry onto the register. The one exception is found in section 4(3) of the Representation of the People Act 1949, as amended by the Mental Health Act, 1959, which prevents a patient from using a psychiatric hospital as his place of residence for electoral purposes. Section 4(3) states:—

> *"A person who is a patient in any establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness (or other form of mental disorder), or who is detained in legal custody at any place, shall not, by reason thereof, be treated for the purposes aforesaid as resident there."*

It follows, therefore, that patients in a psychiatric hospital or mental nursing home can only register as voters if they have homes outside the hospital. An informal (voluntary) patient who has no home is disenfranchised because a psychiatric hospital, according to the law, is not a home. Approximately 50,000 informal patients in hospitals for the mentally ill and handicapped have no right to vote for this reason alone. A person suffering from some form of mental disorder is not disqualified from voting on residential grounds alone. It appears from the *Burgess* case[1] that the name of an 'idiot' (now termed a severely subnormal person) should not be allowed to appear on the electoral register. However, a 'lunatic' (now termed a person suffering from mental illness or some minor form of mental disorder) may vote during his lucid intervals. The returning officer is entitled to take the vote of a person who is registered and who is sufficiently *compos mentis* to discriminate between the candidates and answer the statutory question—"Are you the person whose name appears in the Register of Electors?"

Anomalies Caused by the Residential Criterion

The fundamental objection to section 4(3) is that it deprives a citizen of the right to vote, not on the basis of individual fitness, but solely on a residential criterion. An informal patient who has a home address can be registered and can either visit a polling station or be treated as an absentee voter. An equally capable patient from the same hospital will be deprived of the vote simply because he has no alternative address. In effect, the system disenfranchises many people who are homeless and confined to psychiatric hospitals simply because our community services are inadequate. The Government White Paper *"Better Services for the Mentally Handicapped"*[2] estimated that between one-third and one-half of mentally handicapped adults in hospital could be relocated in the community if appropriate accommodation were available.[3] It is more difficult to give a comparable estimate for residents in mental illness hospitals but the recent White Paper *"Better Services for the Mentally Ill"*[4] does identify some of the deficiencies in the provision of services: 31 local authorities provide no residential accommodation; 63 local authorities provide no day care facilities; four and a half thousand community beds are available against the thirty thousand needed. Surveys conducted by MIND[5] suggest that between one and two-thirds of the mental illness hospital population do not require hospital treatment. Given these estimates, the government suggests that there are approximately 50,000 voluntary patients in psychiatric hospitals in England and Wales who could be disenfranchised because of their homelessness.[6] As Mr. John Evans, MP said in a letter to W. H. Lawton, the Electoral Registration Officer for Warrington, Lancs., 8 February 1976:—

> *"These people are domiciled in hospital only because they have no other place to go and our enlightened civilisation has not yet got round to providing enough purpose built small residential units within the community to which they could be discharged and so resume normal lives. If anyone is to be condemned, it is a society which does not care enough."*

Closer scrutiny of section 4(3) reveals further anomalies. Homeless patients in general or geriatric hospitals are entitled to use the hospital as their place of residence for voting purposes. Accordingly, a patient in a psychiatric unit of a district general hospital is entitled to vote whereas a resident in a psychiatric hospital, possibly suffering from the same condition, is not.

[1] *Heyw. Co. El. 260*

[2] *Cmnd. 4683*

[3] *see Dr David Owen's written parliamentary answer, 15 January 1976, Hansard p247*

[4] *Cmnd. 6233*

[5] *J Murray and L Knight "Ready to Leave?" Community Care 1976*

[6] *Parliamentary Answer by Mr Ennals MP, Hansard 29 June 1976, p 188*

The second Speaker's Conference on Electoral Reform recognised this anomaly in section 4(3). The Speaker, Selwyn Lloyd, made this recommendation to the Prime Minister on 21 October 1973:—

> *"Section 4(3) of the Representation of the People Act 1949 creates an anomaly in that all patients in general hospitals, including mental cases, can be so registered. This subsection should be amended to place patients in mental hospitals on the same footing as those in general hospitals.*
>
> *An interdepartmental working party should be set up by the DHSS and the Home Departments to consider in conjunction with representatives of the political parties and local authority officials, the arrangements which need to be made in order to implement the above decision and to make recommendations."*

This recommendation was supported by such organisations as MIND, the Royal College of Psychiatrists, and the Scottish Mental Welfare Commission. The interdepartmental working party was duly established. In June 1974, the Home Office Minister, Dr. Summerskill, said that the working party "hopes to report early next year". On 15 May, 1975, she promised that the working party would report later that year. On 24 February 1976, Mr. John Evans, MP, tabled a parliamentary question, again asking when the working party is likely to report. Dr. Owen of the DHSS replied that the "recommendation of the Speaker's Conference raises a number of complex issues which the Conference may not have appreciated . . . (We are) considering whether this issue should be referred to a reconvened Speaker's Conference on Electoral Law".

MIND placed a good deal of pressure on the government as a result of this statement. A paper was prepared which was submitted to the DHSS and Home Office on the issue.[7] The paper made known MIND's intention to pursue the case of *Wild and Others v Electoral Registration Officer for Warrington.*

On 20 May 1976, Mr. John of the Home Office announced in Parliament that the Government had accepted, in principle, the recommendation of the Speaker's Conference to repeal section 4(3). However, this statement of principle was made "subject to the satisfactory resolution of certain practical problems". (The precise nature of these problems were not disclosed.)

On 15 June 1976 the case of *Wild* was heard and decided by Judge Lloyd Jones of the County Court, Warrington.

The Case of Wild and Others v Electoral Registration Officer for Warrington

Winwick Hospital, Warrington, is an "establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness (or other form of mental disorder)". The hospital, after a systematic review of its 1,700 residents, notified the local electoral registration officer of the names of 574 people who in their opinion were fit to vote on the qualifying date (10 October 1975). The electoral officer duly included their names in the provisional register of local voters.

An objection to their inclusion was taken by the Newton Constituency Conservative Association on the grounds that section 4(3) of the Representation of the People Act 1949 appeared to prevent any of them from using Winwick Hospital as a residence for electoral purposes; none of these people had a place of residence other than the hospital. The electoral officer accepted the objection as valid and deleted the names of the 574 people. Five of the 574 availed themselves of the right to be heard by the electoral officer in an attempt to secure a reversal of his decision to delete their names from the register.

The electoral officer, having heard the evidence, held that the five people with which he was concerned were 'patients' within the meaning of section 4(3) of the Representation of the People Act 1949, and were therefore not entitled to use the hospital as a place of residence for voting purposes.

The five people appealed to the County Court, Warrington, under the provisions of section 45 of the 1949 Act and Regulation 66 of the Representation of the People Regulations 1974. Two of the appellants withdrew: one because he was a compulsory patient under sections 60 and 65 of the Mental Health Act 1959 and was therefore barred from voting as a person who was under 'legal custody'; the other because she had been discharged from the hospital and was successfully caring for a 99 year old woman. The case was heard by Judge Lloyd Jones on 15 June 1976.

The evidence given by a consultant psychiatrist at Winwick Hospital established that at the qualifying date:—

1) The appellants were not suffering or appearing to be suffering from mental disorder.
2) If the appellants were to present themselves to the hospital, they would not have been admitted.
3) There was no medical reason for the appellants to remain in hospital; they did so simply because there was no accommodation available in the community.
4) The appellants were taking medication in the form of tranquilisers for minor depressive conditions or barbiturates for insomnia. The issue was raised whether the receipt of such treatment necessarily implied that it was treatment for a mental disorder. The doctor suggested that he was not, in fact, treating them for that. He was giving them medication, certainly, but it was to patients who had been virtually, if not completely, cured, and who were being medicated in order to prevent any recurrence of any mental disorder or illness. He made it clear that this was the type of medication that was frequently prescribed by general practitioners in the community. The treatment could be regarded as for a nervous condition which did not amount to a mental disorder within the meaning of the 1949 Act, as amended by the Mental Health Act 1959.
5) The appellants were living in the rehabilitation unit of the hospital. They slept in typical hospital wards and spent their leisure hours in day rooms. However, they were allowed to come and go as they pleased and were not subject to most of the rules which applied in the rest of the hospital.

[7] *The paper which was submitted to the Home Office and DHSS has now been published; see L Gostin "The Right to Vote for Mental Patients", Community Care 26 May 1976, p 12*

They were imminently due to be transferred to the 'half-way house' as soon as it was completed.

It is noteworthy that less than one week after the qualifying date the appellants were transferred to the newly built half-way house. The house had once been the home of the doctor in charge. He lived there with his family, and it was during this time that the address was first placed on the electoral register. Judge Lloyd Jones described the house thus:—

> *"The half-way house in Winwick is, or consists rather, of two houses known as Hollins House, to which those one-time patients who are sufficiently recovered to take their places in the community are sent. There is room for twenty people in the two houses, they go there preparatory to being released or discharged from hospital. They are paid money, they come and go as they please. There are virtually no restrictions upon them and they themselves see to any medication which is prescribed for them."*

The evidence of the consultant psychiatrist in the County Court established that the half-way house of the hospital was indistinguishable from an unsupervised hostel in the community. Residents of a community hostel may use it as a place of residence for electoral purposes; the issue here, however, was that the half-way house was within the curtilage of Winwick Hospital.

The Definition of a 'Patient'

The words of section 4(3) raise several questions. First, is Winwick an establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or other form of mental disorder? This issue was not contested in the County Court. Neither was it contested that the appellants were resident in that establishment; they lived at the hospital, and but for section 4(3), they could have used that address as a place of residence for electoral purposes. The crucial question was whether they were "patients" in that establishment.

Before the *Wild* case, there had been no judgment by an English court in respect of section 4(3), but the issue did arise in the Sheriff's Court in Dumfries, Scotland—*A and B Dumfries and Galloway Electoral Registration Officer*[8]. Although in that case the Sheriff found that the terms of section 4(3) prevented two residents of the Crichton Royal Institution from securing the entry of their names upon the electoral register, it was plain from the judgment that their status as 'patients' had not been argued:—

> *"It was not contended that the description 'patient' was inapplicable to Mr. A, although he appeared to be quite well. Neither did Dr. Owens contend that Miss B, whom I did not see, was a patient. In these circumstances, it appears to me that both Mr. A and Miss B satisfy the description in section 4(3)—'a person who is a patient'. They are not on the staff at the Crichton Royal Institution and persons resident at the Crichton Royal Institution must belong to one of two categories—patients or staff."*

The judgment of a Scottish Sheriff's court is not, of course, binding upon any English court in any event. The following constitutional principle must be the starting point in any attempt to construe the word "patient" in section 4(3):[9]

> *"Unless a clear and unambiguous intention so to do appears from a statute it should not be construed so as to invade the liberty of a subject (a) so as to confer (b) or take away (c) rights to vote or similar constitutional rights."*

The 1949 Act did not define the term "patient". The term must therefore be defined in accordance with its ordinary and normal meaning.

The word "patient" stems from the Latin "pati" which means to suffer or be injured. It is defined in the Oxford English Dictionary (p. 555) as follows: (1) "a sufferer; one who suffers patiently"; (2) "one who is under medical treatment for the cure of some disease or wound; one of the sick persons whom a medical man attends; an in-mate of an infirmary or hospital"; (3) "a person subjected to the supervision, care, treatment, or the correction of someone"; (4) "a person or thing that undergoes some action, or to whom or which something is done; that which receives impressions from external agents."

The Latin derivative and the interpretation of patient given in the Oxford English Dictionary suggests that the term "patient" refers to a condition and not a status. The definitions suggest that a patient is a person who *suffers* from an illness, and is receiving *medical treatment* in an attempt to alleviate that suffering.

In one sense, any person who is registered with a doctor is a patient. A substantial proportion of the ordinary community receive the same medicine for mild depression or insomnia (not being mental disorders as defined by the Mental Health Act 1959 which amended section 4(3) of the 1949 Act) as the appellants in the *Wild* case. But the term "patient" must be read within the complete context given in section 4(3): "a patient in any establishment . . . for the reception and treatment of persons suffering from mental illness (or other form of mental disorder)". Thus, the person must be a patient who is suffering from a specific condition, i.e. mental disorder. Any treatment which the person receives must be referable to the primary purpose of the institution.

The doctor who once resided in what is now the half-way house at Winwick Hospital may have suffered from a medical illness and may even have received treatment for that illness within the confines of the hospital. He would thus be a "patient" in the general sense, but would not thereby be a "patient" within the meaning of section 4(3). The mere fact that he was residing in the institution, and was receiving treatment for an illness not amounting to a mental disorder, does not identify him as a patient of that institution.

The definition of "patient" given in the Mental Health Act 1959 lends support to the proposition that the term refers to a condition and not a status. Section 147 of the Act defines "patient" (except in Part VIII of the 1959 Act) as "a person suffering or appearing to be suffering from mental disorder". Mental disorder is defined in section 4 of the 1959 Act as mental illness, severe subnormality, subnormality or psychopathic disorder. Subnormality and severe subnormality means a state of arrested or incomplete development of the mind; psychopathic disorder means a persistent disorder or

[8] *1963 S. L. T. Sh. Ct. Reports p 25*

[9] Halsbury's Laws of England *3rd Edition, vol. 36, p 412*

disability of mind which results in abnormally aggressive or seriously irresponsible conduct; mental illness is left undefined.

The general principle that subsequent statutes should not be relied upon as aids in construction of earlier statutes appears to prevent the use of the 1959 Act as an aid in construing the 1949 Act. However, the principle is not an absolute one, and in this case, there are good grounds for suggesting that the later Act could shed useful light upon the meaning of the earlier Act. *Maxwell on Interpretation of Statutes*, 11th edition, p. 34—"Earlier Act Explained by Later" states: "Not only may the later Act be construed by the light of the earlier, but it sometimes furnishes a legislative interpretation of the earlier, if it is in *pari materia* and if (but only if) the provisions of the earlier Act are ambiguous". It is noteworthy that Part II of the Seventh Schedule of the 1959 Act amended section 4(3) of the 1949 Act by removing the words "or mental defectiveness", substituting "or other mental disorders". Thus, the 1959 Act amends subsection 4(3) with words which are used in the definition of patient.

There is an earlier Act which gives a descriptional interpretation of the word "patient". Section 79 of the National Health Service Act 1946 states: "Patient includes an expectant mother and a lying-in woman". These people are not *suffering* from an illness or abnormality, and would not under one view be considered "patients". Section 79 extended the term patient to include these people who are in hospital or being provided with the National Health Service for a perfectly natural phenomenon, namely that of child-birth, as distinct from a pathological condition requiring medical intervention. Thus, Parliament apparently had a narrow concept of the term "patient" (i.e. a sufferer) and had to extend that definition for the purposes of the 1946 Act.

Section 1 of the Poor Removal Act 1846 provided that time during which a person was "a patient in a hospital" should be excluded from the computation of the period which rendered a pauper irremovable from a parish. There were cases under this section in which there was reference to the possibility of a patient being in a hospital not necessarily as a patient:[10]

> *"The word 'patient' seems to me to involve that the primary purpose of the inmate in the alleged hospital should be either medical or surgical treatment . . ." (from the judgment of Greer J. in* Tendering Union v Woolwich Union, 1923 1 *K.B. at p.* 126).

> *"Then it was said that taking the facts of this case, the proper conclusion was that Coxon was not in this institution as a patient to be treated for the disease of epilepsy, but that being an epileptic person, he found this institution a convenient place of residence. I think that on the facts of this special case, it is impossible to come to that conclusion; it appears that he remained there as a patient continuously* receiving care and treatment *from the date of his admission until January* 1902". (Ormskirk Union v Chorlton Union 1903 2 *K.B. per Vaughan Williams L.J. at (p.* 502)).

> *"No one in ordinary language would talk of a patient in a hospital as residing at the hospital. No one would describe that as his residence. The ordinary patient in a hospital may go there with the intention and hope of coming out as soon as he he is cured. This pauper, in my opinion, was residing at this home. She was not there merely for the purpose temporarily of being cured of any ailment, but went there intending to stay, assuming the facts are correct, that she was sixteen years of age or upwards, and that she went till she should be trained and find a situation. That is the main and principal purpose for which this institution exists. That being its main purpose, I do not think it can properly be described as a 'hospital' and I do not think this pauper could properly be described as a patient residing there. For these reasons I agree the answer should be that she was irremovable".* (Ormskirk Union v Lancaster Union 107 *L.T. at (p.* 623*) per Avory J.).*

The Decision of the County Court

Judge Lloyd Jones found that the three appellants were not at the material time suffering from a mental disorder and were not therefore "patients" within the meaning of section 4(3). Accordingly, he ordered that the three names be restored to the electoral register.

He rested his decision on the definition contained in section 147 of the Mental Health Act 1959, which he found could be properly used, even though it was a subsequent statute.

The narrow construction of section 4(3) was in part based upon the principle that the "right to vote at an election is an important right which is the important constitutional right of all persons of full age and understanding who are not in any way disqualified . . ." In *dicta* Judge Lloyd Jones recognised that there is a substantial proportion (estimated by the government as one-third) of the patients in psychiatric hospitals who are continuing to reside there long after there exists a medical reason for doing so. These people have been subject to deprivation of certain rights of citizenship (for example—unimpeded access to the courts and freedom of expression) although they are capable of exercising those rights. In respect of the right to vote, the learned judge said:—

> *"The evidence in this case shows yet again the tragic situation which is arising and has arisen for some years with our mental hospitals and those who work so assiduously in them have succeeded in bringing about cures in sometimes difficult anxious cases and where they have declared the persons concerned to be free of any hospital regime and fit to take their place in society, it illustrates again the tragedy of people in that situation who have just nowhere to go from hospital. That is a problem which has been with us for very many years and it would seem to me that if the decision of the Electoral Registration Officer is right, it would seem that people who have gone into hospital with a mental disorder or illness who are cured and still remain cured for a number of years and are unfortunate enough not to find anywhere to live outside the hospital,*

[10] *Quotations taken from advice by Oliver Thorold concerning the case of* Wild and Others v Electoral Registration Officer for Warrington *(15 June 1976). The author wishes to express his gratitude to Mr Thorold.*

will never be able to exercise their right to vote at an election."

Following the Warrington decision, the Home Office and DHSS confirmed that there were in the order of 50,000 people in psychiatric hospitals who have the legal capacity to vote but who have been disenfranchised by the operation of section 4(3). The working party set up to make recommendations concerning the repeal of section 4(3) are now taking the views of political parties and other interested bodies on the practical difficulties in implementing the recommendation of the second Speaker's Conference on Electoral Reform. Mr. Ennals of the DHSS concluded by saying: "I hope that this will not take too long and that the working party will be able to complete its report later in the year."[11]

[11] *Parliamentary Answer by Mr Ennals MP, Hansard 29 June 1976, p. 188; Parliamentary Answer by Mr John MP, Hansard 24 June 1976, pp 587–589*