

## A HUMAN RIGHT AGAINST SOCIAL DEPRIVATION

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*Human rights debates neglect social rights. This paper defends one fundamentally important, but largely unacknowledged social human right. The right is both a condition for and a constitutive part of a minimally decent human life. Indeed, protection of this right is necessary to secure many less controversial human rights. The right in question is the human right against social deprivation. In this context, 'social deprivation' refers not to poverty, but to genuine, interpersonal, social deprivation as a persisting lack of minimally adequate opportunities for decent human contact and social inclusion. Such deprivation is endured not only in arenas of institutional segregation by prisoners and patients held in long-term solitary confinement and quarantine, but also by persons who suffer less organised forms of persistent social deprivation. The human right against social deprivation can be fleshed out both as a civil and political right and as a socio-economic right. The defence for it faces objections familiar to human rights theory such as undue burdensomeness, unclaimability, and infeasibility, as well as some less familiar objections such as illiberality, intolerability, and ideals of the family. All of these objections can be answered.*

### INTRODUCTION

In an age of near rights-exhaustion, it may seem impolitic to introduce a seemingly new right into the discussion, and to argue that this right is more important than many that have garnered attention in recent debates. But, hopefully any injudiciousness in the aims of this paper will be forgiven by the fact that the right at issue is indeed second in importance only to brute survival rights, though it goes largely unacknowledged in both theoretical debates and international treaties. The right in question is the human right against social deprivation. The term 'social deprivation' does not refer to poverty and its associated social ills, but instead to genuine, interpersonal, *social* deprivation irrespective of economic conditions. *Social deprivation* is a persisting lack of minimally adequate opportunities for decent or supportive human contact including interpersonal interaction, associative inclusion, and interdependent care. Such deprivation is not exclusive to,

nor universal amongst, the economically deprived. It is endured in arenas of institutional segregation, for example, by prisoners held in long-term solitary confinement and patients held in long-term quarantine. It is also endured by persons who suffer less organised forms of persistent, unwanted isolation. And, it is endured by persons who do have social contact but whose principal forms of social contact are persistently hostile, degrading, or cruel.

The human right against social deprivation can be fleshed out both as a social and economic right and as a civil and political right. As I show below, current debates about social and economic human rights emphasise vital, economically driven needs for food, shelter, health care, and basic education while ignoring equally fundamental needs for socialisation, interpersonal caring, and meaningful associations. This gives a distorted picture of social and economic human rights, and allows the provision of economic needs to be promoted without due attention to the social needs that accompany them. Similarly, debates about civil and political human rights have focused on the rights against torture and cruel, inhumane, or degrading treatment while giving little or no attention to the intersection between these things and (coercive) social isolation. More generally, debates about civil and political rights also ignore the extent to which these rights are inextricable from, and dependent on, protection of basic social needs. My defence of the human right against social deprivation highlights the most basic part of the larger need to bring social human rights to the forefront of human rights discussion.

The thrust of my argument for the human right against social deprivation is as follows. We have a human right to those conditions that are necessary for the realisation of a minimally decent human life.<sup>1</sup> Having minimally adequate opportunities for decent or supportive interpersonal contact and social inclusion is both a necessary condition for a minimally decent human life and a constitutive part of such a life. In more detail, first, decent or supportive interpersonal contact and social inclusion are intrinsically valuable goods, and minimally adequate opportunities to engage in such goods are part of a minimally decent life. Secondly, social deprivation undermines both the development and the maintenance of the cognitive, physical, emotional, linguistic, and social abilities that both partly constitute a minimally decent human life and make many other human rights and domains of value meaningfully available. I do not mean to imply that either persons who are unable to develop some of

<sup>1</sup> For my understanding of a 'minimally decent human life', I rely on J. Nickel's analysis in *Making Sense of Human Rights*, 2nd edition (Oxford: Blackwell 2006); and in J. Nickel, 'Poverty and Human Rights', *The Philosophical Quarterly*, 55 (2005), pp. 385–402.

these abilities or persons who lose some of these abilities necessarily lead lives that are not minimally decent. Rather, I mean that a minimally decent life is one in which persons have the opportunities to develop and to maintain these abilities according to their own capacity to do so.

In what follows, I begin with a brief comment on current human rights debates to explore possible explanations for the neglect of this fundamental human right against social deprivation (section I). I then give a full articulation of the core content of the right (section II), as well as the conceptual, empirical, and normative arguments that I advance to support it (section III). I then respond to several objections pertaining to ideals of the family, illiberality, unclaimability, intolerability, and institutional infeasibility (section IV). My responses show that the human right against social deprivation passes six commonly recognised ‘tests’ for human rights. These tests are:

- 1) *substantial and recurrent threats*: Does the right provide a social guarantee against a substantial and recurrent threat?
- 2) *importance*: Does the right protect against a sufficiently egregious threat to human dignity?
- 3) *universality*: Can the right in question be universal to all humans?
- 4) *effectiveness*: Could some norm weaker than a right be as effective or sufficiently effective?
- 5) *reasonable or justifiable burdens*: Does the right impose only normative burdens that are not destructive of life or health, do not deprive people of fundamental freedoms, and do not treat people in ways that are severely cruel or unfair?
- 6) *feasibility*: Is it possible to implement the right successfully in a majority of countries today?<sup>2</sup>

## I. CURRENT DEBATES ABOUT HUMAN RIGHTS

Current philosophical discussions of human rights ignore the importance of social needs. Much recent attention has been placed on economic welfare needs such as the right to be free from poverty. This right is undoubtedly of paramount importance both in itself and as a condition for a minimally decent human life. But, it should not be emphasised while equally important social needs are neglected. For instance, Henry Shue argues, correctly, that cognitive deficiencies caused by malnutrition ‘can effectively prevent the exercise of any right requiring clear thought

<sup>2</sup> For an explication of the six above tests, see Nickel, *Making Sense*, ch. 5.

[such as civil and political rights]...And, obviously, any fatal deficiencies end all possibility of the enjoyment of rights as an arbitrary execution.<sup>3</sup> But, he says nothing about the fact that cognitive deficiencies caused by social deprivation during critical stages of childhood development, such as a failure to acquire language or to learn to control bodily function, effectively prevent the exercise of rights requiring clear thought. He also says little about the fact that the deficiencies often caused by social deprivation under the extreme conditions of long-term physical isolation or solitary confinement, such as depression, despondency, hallucination, self-mutilation, psychosis, or suicidal ideation and behaviour, can equally effectively prevent the exercise of rights requiring clear thought, social ability, and personal control; and that extreme deficiencies can result in early death.<sup>4</sup>

In a similar fashion, James Nickel is correct to observe that: ‘Human rights are not ideals of the good life for humans; rather they are concerned with ensuring the conditions, negative and positive, of a minimally good life,’ but he is mistaken when he continues by saying,

If we apply this idea [of a minimally good life] to economic and social rights, it suggests that these standards should not be much concerned with promoting the highest possible standards of living or with identifying the best or most just form of economic system. Rather they should attempt to address the worst problems and abuses in the *economic area*. Their focus should be on hunger, malnutrition, preventable disease, ignorance and exclusion from productive opportunities.<sup>5</sup>

Putting the focus on the worst problems and abuses in the *economic area* implies either that our interpersonal social needs are less weighty than our economic needs are or that our social needs are already met when we come to the human rights table, or that those needs are derivative of economic needs and hence, if not already met, readily addressed once economic needs are addressed. But, none of these can be assumed. Regarding the last of these ideas, economic resources do not necessarily translate into minimally adequate opportunities for social inclusion. Indeed, although economic deprivation can correlate with certain forms of social deprivation, improved economic resources can correlate with a reduction in social inclusion (as the solitary life of many elderly people confirms).

<sup>3</sup> H. Shue, *Basic Rights: Subsistence, Affluence, and US Foreign Policy*, 2nd edition (Princeton UP 1996), pp. 24–5.

<sup>4</sup> See S. Shalev, *Sourcebook on Solitary Confinement* (Nuffield Foundation Report, 2008). Retrieved from: [http://www.solitaryconfinement.org/uploads/sourcebook\\_web.pdf](http://www.solitaryconfinement.org/uploads/sourcebook_web.pdf).

<sup>5</sup> Nickel, ‘Poverty’, p. 386. Emphasis added.

Moreover, having adequate economic resources is not valuable in itself. It is valuable only instrumentally as a means for securing and sustaining the provision of food, shelter, safety, health, education, employment, and so on. By contrast, having adequate social contact in the form of supportive interpersonal interactions, acceptance, and associative richness is not only valuable instrumentally for the development and maintenance of basic cognitive abilities, physical abilities, and health, but also valuable in itself. It is part of a minimally decent human life to have minimally adequate opportunities for decent or supportive social contact.

Equally, economic deprivation is not disvaluable in itself. It is disvaluable only instrumentally as a severe constraint on, amongst other things, persons' abilities to secure access to the services and goods necessary for a minimally decent human life. By contrast, social deprivation is disvaluable in itself as well as disvaluable instrumentally. It is disvaluable in itself as the absence or denial of those states of being that contribute to, and partly constitute, a human life worth the name.

The neglect of the right against social deprivation in human rights debates is reflected, unsurprisingly, in international human rights treaties such as *The Universal Declaration of Human Rights*, *The International Covenant on Political and Civil Rights*, and *The International Covenant on Economic, Social, and Cultural Rights*. These agreements make no reference to our fundamental need to be protected from social deprivation.<sup>6</sup> There are a few international

<sup>6</sup> The UDHR comes closest perhaps with Article 22, which outlines a right to social security, and Article 25, which specifies a right to an adequate standard of living for a person and his family, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. These do not capture the right against social deprivation. First, 'social security' in Article 22 refers to social insurance, not basic social need, and second, 'the social, cultural, and economic rights indispensable for dignity' referred to that article would be those enumerated in the UDHR and other UN documents, which make no mention of basic needs for adequate access to social interaction. And, Article 25 makes no mention of the importance of *having opportunities* for social interaction in order to secure a standard of living adequate for health and wellbeing. Other articles in the UDHR touch upon rich social interests, such as the right to nationality (Article 15), the right to take part in the government of our country (Article 21.1); the right of equal access to public service in our country (Article 21.2); and the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits (Article 27). All of these Articles presume social inclusion, and none of them captures it. The ICPCR comes closest with Articles 7, 10, 24.1, and 25.c. But, these Articles speak only to very specific dimensions of social need. Ironically, the ICESCR fares no better than the UDHR does in identifying basic social needs. It presumes the security of those needs and focuses upon the loftier rights to work, to form trade unions, and to marry, as well as the rights to be free from hunger, to have education, and to enjoy the highest attainable standard of physical and mental health. The ICESCR comes closest with the right to take part in cultural life (Article 15.1a), but that right should be interpreted in relation to Articles 15.1b and c, which pertain to rights to enjoy the benefits of scientific progress, and rights to intellectual property.

documents that do gesture toward this fundamental need, but only indirectly and inadequately. One example is Article 30 of the *European Social Charter* (ESC), which states that ‘everyone has the right to protection against poverty and social exclusion’. According to the Explanatory Report for the ESC (revised edition), the term ‘social exclusion’ refers to people who find themselves in extreme poverty due to an accumulation of disadvantages, who suffer from degrading situations or from exclusion, whose rights to benefit may have expired a while ago or for reasons of concurring circumstances.<sup>7</sup> The report continues that, ‘Social exclusion also strikes or risks to strike persons who without being poor are denied access to certain rights or services as a result of long periods of illness, the breakdown of their families, violence, release from prison or marginal behaviour as a result for example of alcoholism or drug addiction.’ This elaboration gestures in the right direction, since it detaches social exclusion from poverty, but it gives an incomplete list of the kinds of experiences that could render someone so excluded, and does not highlight persons’ needs for access to decent human contact in general.

Another example is Principle 7 of the UN *Basic Principles for the Treatment of Prisoners* (1990), which states that ‘efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.’ This principle does not identify a right against such treatment, and such watery language shows how little attention is given in human rights debates to our fundamental interest in not being deprived of minimal opportunities for social contact.

What are possible explanations for the neglect of the right against social deprivation in human rights debates? One possible explanation is that we tend to ignore the basics. For instance, there has been little discussion of a human right to breathable air even though that right is as paramount as it gets. But, the reason the right to breathable air is ignored might not be because it is basic, since many other basic interests do garner considerable attention, but rather because we tend to ignore those interests that are not currently under threat.<sup>8</sup> Since many persons’ social interests are currently under threat, we must look elsewhere for an explanation of their neglect in human rights debates. A second, lamentable, but perhaps likely explanation is that Western culture is highly individualistic, and human rights norms are undeniably Western products. By this, I do not mean that the right against social deprivation is not justified on individualistic grounds. It is. Rather, I mean that there seems to be an enduring

<sup>7</sup> *European Social Charter Explanatory Report* (1996 revised edition). Retrieved from: <http://conventions.coe.int/Treaty/EN/Reports/Html/163.htm>.

<sup>8</sup> I thank an anonymous referee for highlighting this point.

assumption in Western culture that, by nature, persons are broadly self-sufficient, independent, and able to choose to socialise or not as they see fit, at least if they are not members of an identified group that requires special protection. If this seems too strong, then perhaps the neglect of fundamental, interpersonal, social needs is a reflection more of the historical context of the two World Wars in which human rights norms developed than of any general scepticism about basic social needs. In the hope that this is the case, let me flesh out the core features of the human right against social deprivation.

## II. THE CONCEPT OF THE RIGHT

The right against social deprivation has at least two dimensions. The first concerns individual-level social deprivation in the form of persisting inadequacy or perversity in available interpersonal contact, be that the result of others' deliberate actions or incidental events. The second concerns community-level social deprivation in the form of displacement, exile, denial of political, legal, or cultural identity, or denial of community membership. Before defending the right against social deprivation, let me begin with five points of conceptual specification.

First, this right is not a right against isolation as such because isolation is a state that can be reasonably self-chosen by autonomous persons. Examples include astronauts, solo explorers, nuns, and monks. Such isolation is comparable to fasting, which also can be reasonably self-chosen by autonomous persons and hence does not in itself offend the right to be free from hunger. That said, those who reasonably choose social isolation must contend with the risks that accompany it. Atul Gawande reports that many long-distance solo sailors, who commit themselves to months at sea and face all manner of physical terrors including thrashing storms, fifty-foot waves, leaks, and illness, tend to report that the single most overwhelming difficulty is the 'soul-destroying loneliness'. Astronauts, Gawande notes, have to be screened for their ability to tolerate long stretches in tightly confined isolation, and even so they come to depend on radio and video communications for social contact.<sup>9</sup> So, a voluntary choice of self-isolation may require considerable training to be endurable and, hence, reasonable. And, just as fasting can become a human rights issue when it threatens the autonomy of the person, so too

<sup>9</sup> A. Gawande, 'Hellhole: The United States holds tens of thousands of inmates in long-term solitary confinement. Is this torture?', *New Yorker* (30 March 2009).

can self-isolation that causes the person to deteriorate mentally and physically.

Moreover, following Brian Barry, we should view voluntary self-isolation, like voluntary self-denial, with some scepticism since its 'voluntariness' depends on the range and value of the choices available. If a person's principal forms of social interaction are hostile, degrading, or cruel, then she may voluntarily withdrawal from that social environment, but, given the context, her decision will not differ much from a non-voluntary withdrawal.<sup>10</sup> In some cases, her withdrawal will be the result of adaptive preference formation; in others, it will be the result of a sense of duress.

Secondly, related to this, the right against social deprivation is not simply a right against persisting, non-voluntary *isolation*. It is also a right against persisting, perverse social conditions in which a person's principal forms of social interaction are brutal, hostile, degrading, or cruel. Such social conditions are a form of social deprivation because they deprive us of minimal opportunities for the ordinary kinds of social interaction that make for a minimally decent human life free from degradation and cruelty. And just as voluntary acceptance of isolation is to be looked at with scepticism, so too is acceptance of a brutal or hostile social environment. Such acceptance must be considered in relation to the range and value of the available options. If a person's only options are between a brutal social environment and isolation, he may well choose a brutal social environment if he has prior experience of the detrimental effects of long-term isolation.<sup>11</sup> But, that does not mean that having brutal companions satisfies the social needs that ground the right against social deprivation.

Thirdly, the kinds of opportunities for interaction that this right secures are not interactions with friends or loved ones since some persons lack such relations, and since friendship and love cannot be produced on demand. Rather, the right secures minimal opportunities for non-threatening, decent, or supportive social interaction. It protects persons from the threat of persistent inadequacy of access to such interactions. The important qualifier 'persistent', which determines the parameters of the right, is undoubtedly vague, but it is no more vague than the concepts that specify the parameters of other rights, such as 'fair', 'without delay', 'poverty', or 'basic subsistence'. In practice, the parameters of 'persistent

<sup>10</sup> B. Barry, 'Social Exclusion, Social Isolation, and the Distribution of Income' in P. Agulnik and J. Hills (eds), *Understanding Social Exclusion* (Oxford UP, 2002), pp. 13–29.

<sup>11</sup> People who have endured solitary confinement in prison have said that they would rather have the worst companion than no companion at all. See Gawande, 'Hellhole'.

inadequacy' will have to be specified in different ways in different contexts.

Specifying the scope of any human right is no easy matter, and it is possibly not a matter only for philosophers, but instead a matter also for lawyers, NGOs, doctors, economists, and politicians. My own proposal would be to adopt a range principle according to which what counts as 'minimally adequate opportunities for decent or supportive social contact' is sensitive to a certain range of needs. Even though the shape and size of the relevant needs will vary across people, we can distinguish certain ranges of needs that apply to broadly distinct categories of people. Children are one special category. Their needs for social interaction, protection, and care have fundamental developmental implications, which I flesh out in the next section. Severely physically impaired people are a second category. Severely cognitively impaired people are a third category. Elderly people are a possible fourth category that intersects with the second and third categories. Competent adults are a fifth category. We may look to the social needs of each category to flesh out the nature of the rights-based duties that are owed to persons within that category.

The question of scope may seem to have special force in the case of the right against social deprivation given the uniquely social nature of the services needed to honour this right. This is an important point, which I take up in section IV in response to charges of undue burdensomeness.

Fourthly, the right against social deprivation is not simply a right against persistent, *coercive* social deprivation. It is also a right against persistent, incidental or accidental social deprivation. This is one reason that the right cannot be subsumed under rights against torture and cruel, inhuman, or degrading treatment because social deprivation is torturous, cruel, or degrading only in cases where that deprivation is the result of intentional action. It is not these things when it is the unintended result of incidental neglect, which is the experience of many patients held in long-term quarantine. In those cases, the deprivation may be the result of negligence, but not cruelty. The relevant comparison here for the right against social deprivation is the right to be free from poverty. The right to be free from poverty is not restricted to protection against *coercive* deprivation of basic resources. It is a right to be reasonably secure from the risk of falling below a basic level of subsistence. Likewise, the right against social deprivation is a right to be reasonably secure from the risk of persistent deprivation of minimal opportunities for decent or supportive social contact.

Fifthly, the right is not simply a negative right against interference with our efforts to establish adequate interpersonal connections with others. It

is also a positive right to be provided, according to our needs, with minimal opportunities for decent or supportive social contact. If someone is able to secure her own basic needs for social contact, then the duties of states and others toward her are largely negative duties not to interfere with her and not to thwart mechanisms that make her efforts possible. By contrast, if someone is unable to secure her own basic needs for social contact, or if she has been thwarted in her efforts to secure those needs (for example, as a result of a period in prison, an extended illness, deaths of her associates, or forced migration), then there is a positive duty to ensure that her basic needs for access to decent or supportive social contact are met.

An example of meeting such needs is a touted success story of the US President's Emergency Plan for AIDS Relief. A hospice in Nairobi, under the leadership of Father Angelo D'Agostino, brought together 750 children who had lost their parents and 250 elders who had lost their children to AIDS, to create the Nyumbani Village, which, according to the Office of the U.S. Global AIDS Coordinator, offers 'what every child needs most – love.' What is not highlighted, but is equally important is that the programme also served the social needs of the elders. Of course, whereas the children had a right to receive care, the elders did not have a specific right to have children to nurture. They did, however, have a right to minimal opportunities for social contact, and the Nyumbani Village provided a means through which that, and more, was achieved.<sup>12</sup>

### III. THE DEFENCE OF THE RIGHT

As noted in the Introduction, my overall argument for the human right against social deprivation has two premises. The first is that we have a human right to those conditions that are necessary for the realisation of a minimally decent human life. The second is that having minimally adequate opportunities for decent or supportive interpersonal contact and social inclusion is both a necessary condition for a minimally decent human life and a constitutive part of such a life. I will not defend the first premise here since others have argued eloquently for it.<sup>13</sup> I will focus instead on the second premise and offer three arguments for it. The first is conceptual. The second is empirical. The third is normative.

<sup>12</sup> This example is described in S.M. Liao, 'The Right of Children to be Loved', *The Journal of Political Philosophy*, 14 (2006), pp. 420–40.

<sup>13</sup> See Nickel, *Making Sense*, Nickel, 'Poverty', and Shue, *Basic Rights*.

*The conceptual argument*

This argument centres on what it means to be a *human being*. In brief, human beings are, by nature, social creatures.

To be a human being is to have certain non-contingent needs. Following Soran Reader and Gillian Brock, non-contingent needs are necessary conditions for non-contingent ends that the needing being could not but have without ceasing to be the kind of being it is. For example, ‘I need water.’ ‘What for?’ ‘I can’t live without it.’ The mark of the unique, moral importance of non-contingent needs, Reader and Brock note, is that the being whose needs are at issue simply cannot go on unless its need is met: ‘the very existence of the needing being as we know it is at stake.’ For this reason, non-contingent needs are uniquely grave and urgent as moral demands for support or assistance lest the needing being cease to exist.<sup>14</sup> Within the category of non-contingent needs, there are both basic and non-basic needs. Reader and Brock flesh out basic needs as those non-contingent needs that are *minimally* necessary for continued existence of a being as the kind of being it is, that is, the non-contingent needs shared by a constituency such as the constituency of children, women, human beings, or sentient creatures. It is uncontroversial, I presume, that humans beings’ non-contingent, basic needs include interpersonal, social needs. There is considerable philosophical support for this idea. Aristotle observes, for instance, that: ‘...deprivation of certain [externals] – e.g. good birth, good children, beauty – mars our blessedness; for we do not altogether have the character of happiness if we look utterly repulsive, or are ill-born, solitary or childless, and have it even less, presumably, if our children or friends are totally bad, or were good but have died.’<sup>15</sup>

In a related vein, Isaiah Berlin paraphrases Johann Gottfried von Herder nicely when he says that ‘among elementary human needs – as basic as those for food, shelter, security, procreation, communication – is the need to belong to a particular group, united by some common links – especially language, collective memories, continuous life upon the same soil,’ and perhaps ‘race, blood, religion, a sense of common mission, and the like.’<sup>16</sup> This is a richer set of goods than I am defending here, but it accords with my conceptual claim that we are, by nature, social creatures.

<sup>14</sup> S. Reader and G. Brock, ‘Needs, Moral Demands, and Moral Theory’, *Utilitas*, 16 (2004), pp. 251–66.

<sup>15</sup> Aristotle, *Nicomachean Ethics*, 1099b.

<sup>16</sup> Cited from J. Waldron, ‘Minority Cultures and the Cosmopolitan Alternative’, *University of Michigan Journal of Law Reform*, 25 (1992), pp. 751–92.

*The empirical argument*

The conceptual claim – that we are essentially social creatures who have non-contingent, basic social needs – is borne out empirically. According to social neuroscientist, John T. Cacioppo, human beings have the longest period of abject dependency from birth of any species and are dependent on conspecifics throughout their lives for survival and prosperity. Studies indicate that, on average, a human being spends about 80% of her waking hours in the company of others and typically prefers that time to the time spent alone.<sup>17</sup>

The empirical case for the right against social deprivation is most easily made for babies, children, and young adults whose cognitive and physical development depends critically on the provision of adequate interpersonal care, modelling, and protection, and without which children experience severe cognitive and physical developmental difficulties, the effects of which cannot be fully remedied in later life.<sup>18</sup> Consequently, a failure to provide adequate interpersonal care to a child not only affects her life in the present, but also in the future. Her right to minimally adequate social contact and care is a ‘right-in-trust’, to use Joel Feinberg’s phrase, to engage later in life in all of the rights-protected activities that are open only to those persons who have the capacities that arise only through adequate socialisation. It is part of her right to an open future.

The kind of rights-protected social contact that I defend here differs from that defended by Matthew Liao who argues that children have a right to be loved, not just a right to be adequately cared for, because if a child is not loved, her psychological, social, and physical development is threatened, if not undermined. Liao observes that,

Studies of children in institutions found, for example, that children who did not receive love but only adequate care became ill more frequently; their learning capacities deteriorated significantly; they became decreasingly interested in their environment; they failed to thrive physically by failing to gain weight or height or both; they suffered insomnia; they were constantly depressed; and they eventually developed severe learning disabilities.<sup>19</sup>

<sup>17</sup> For extensive references, see J.T. Cacioppo, Research summary, Faculty of Psychology, University of Chicago, <http://psychology.uchicago.edu/people/faculty/cacioppo/index.shtml> and J.T. Cacioppo and W. Patrick, *Loneliness: Human Nature and the Need for Social Connection* (New York: W. W. Norton & Company, 2008).

<sup>18</sup> See footnote 10ff in Liao ‘Children’ for references to empirical studies on the effects of social isolation upon children.

<sup>19</sup> Liao ‘Children’, pp. 420–40.

On the one hand, my claim that there is a right against social deprivation is more modest than Liao's claim that there is a right to be *loved*. On the other hand, though, my claim that there is a right against social deprivation is less modest than Liao's claim that children have a right to be loved because I hold that the rights-grounding need for minimally adequate access to social contact is not unique to children, but is a deeply human need without which persons cannot sustain their full humanity.

The empirical evidence supports this view. According to Cacioppo and others, both social isolation and perceived social isolation are associated with lower levels of subjective wellbeing as well as numerous adverse health outcomes and broad based morbidity and mortality. Studies indicate, first, that loneliness, understood as perceived social isolation, generates the same threat response as pain, thirst, hunger, or fear by setting off a chain of anxiety-inducing physiological reactions known as the 'fight or flight' response. Secondly, loneliness can predict increases of systolic blood pressure over an extended period, and higher levels of loneliness are associated with greater increases in systolic blood pressure.<sup>20</sup> Thirdly, loneliness is associated with increased depressive symptoms and there are reciprocal influences over time between loneliness and depressive symptomatology suggesting that the two can have a synergistic effect to reduce wellbeing in older adults.<sup>21</sup> Fourthly, chronic loneliness is also associated with obesity, the progression of Alzheimer's disease, increased vascular resistance, diminished immunity, reduced independent living, alcoholism, suicidal ideation and behaviour, over-expression of genes bearing pro-inflammatory responses, and mortality in older adults. Based on these and other findings, Cacioppo concludes that social environment and perception of social environment are fundamentally involved in the sculpting, activation, and inhibition of basic structures and processes in the human brain and body.<sup>22</sup>

In extreme cases of social deprivation such as long-term solitary confinement in prison or long-term quarantine, individuals face even greater psychological and physiological risks. In healthcare, patients held in long-term isolation reportedly can have six times the usual rates of hospital-

<sup>20</sup> L.C. Hawkey *et al*, 'Loneliness Predicts Increased Blood Pressure: 5-year Cross-lagged Analyses in Middle-aged and Older Adults', *Psychology and Aging*, 25 (2010), pp. 132–41.

<sup>21</sup> J.T. Cacioppo *et al*, 'Loneliness as a Specific Risk Factor for Depressive Symptoms: Cross-sectional and Longitudinal Analyses', *Psychology and Aging*, 21 (2006), pp. 140–51.

<sup>22</sup> J.T. Cacioppo, *Research Summary* (Faculty of Psychology, University of Chicago) online: [psychology.uchicago.edu/people/faculty/cacioppo/index.shtml](http://psychology.uchicago.edu/people/faculty/cacioppo/index.shtml).

associated complications such as pressure sores and falls.<sup>23</sup> In criminal justice, people who have endured long-term solitary confinement report feeling depressed, lethargic, forgetful, and then mindless, sleeping over twelve hours a day and lacking the energy to read, eat, or move. Some people hallucinate, have panic attacks, mutilate themselves, or become semi-catatonic.<sup>24</sup> And, for many people, their psychological and emotional deterioration continues to affect them long after their release. In people's various recollections of long-term solitary confinement, there is a common statement that they found the experience as agonising as torture.<sup>25</sup>

### *The normative argument*

The normative part of my argument focuses on both our duties to respect persons as persons and the intrinsic value of social inclusion.

First, there is the Kantian duty to treat persons as ends in themselves, which entails respecting persons as reasoning and feeling beings, whose identities and autonomous choices draw much of their content, meaning, and significance from meaningful opportunities for social inclusion.<sup>26</sup> Secondly, there is the intrinsic value of social interaction. As noted in section I, minimally adequate access to social contact in the form of decent or supportive interpersonal interactions, acceptance, and associative richness is not only instrumentally valuable for developing and maintaining basic cognitive abilities, physical abilities, and health, but also intrinsically valuable in itself. This intrinsic value bears on different contexts in different ways. For instance, the intrinsic value of social interaction means that we cannot dismiss as a regrettable side-effect the burdens borne by people who are coercively deprived of social contact for the sake of the common good. In the context of health care, for example, an appreciation of the intrinsic value of social interaction should lead us to take a critical attitude toward medical quarantine, both to question whether it is necessary in all

<sup>23</sup> H.T. Stelfox, D.W. Bates and D.A. Redelmeier, 'Safety of Patients Isolated for Infection Control', *The Journal of the American Medical Association*, 290 (2003), pp. 1899–1905; A. Zuger, 'Isolation, an Ancient and Lonely Practice, Endures', *New York Times* (30 August 2010). <http://www.nytimes.com/2010/08/31/health/31essay.html>

<sup>24</sup> Cited from Gawande, 'Hellhole'. For a discussion of sensory deprivation as torture, see D. Luban and H. Shue, 'Mental Torture: A Critique of Erasures in U.S. Law', *Georgetown Law Review* (forthcoming).

<sup>25</sup> According to Gawande, 'Hellhole', a U.S. military study of a hundred and forty naval aviators imprisoned in Vietnam reported that 'they found social isolation to be as torturous and agonising as any physical abuse they suffered.'

<sup>26</sup> Cf. J. Raz, *The Morality of Freedom* (Oxford UP, 1986) for a rejection of moral individualism.

cases where it is used, and to make concerted efforts to alleviate the physical and psychological harms and loss of value that it causes.

### *Implications*

Together the conceptual, empirical, and normative parts of my argument highlight the extent to which minimal opportunities for supportive social contact are necessary to secure and to maintain many of the rights and fundamental interests that make for a minimally decent human life:

- 1 Social deprivation undermines the ability to develop and sustain basic cognitive and physical function. Thus, protection from social deprivation is necessary for the exercise of rights that require basic health, cognition, understanding, and physical aptitude.<sup>27</sup>
- 2 Social deprivation undermines a person's capacity to understand and to exercise civil and political rights. Thus, protection from social deprivation is necessary for the exercise of first-generation human rights.
- 3 In addition, given its cognitive and physical effects, social deprivation puts at risk a person's brute survival interests in the provision of food, security, and shelter. Thus, protection from social deprivation is necessary to secure the basic rights of subsistence.
- 4 Coercive social deprivation is a severely cruel, inhuman, and degrading form of treatment. And, given its cognitive and physical effects, both coercive and non-coercive social deprivation renders a person vulnerable to other types of cruel, inhuman, degrading, or severely unfair treatment. Thus, protection from social deprivation is necessary to reduce vulnerability to such treatment.<sup>28</sup>

To this list, we may add various things that go beyond a minimally decent human life:

- 5 Social deprivation undermines the conditions for full autonomy.

<sup>27</sup> As noted in the introduction, compare with Shue, *Basic Rights*, pp. 24–5, on physical security and basic subsistence: 'No one can fully ... enjoy any right that is supposedly protected by society if he or she lacks the essentials for a reasonably healthy and active life.... Any form of malnutrition, or fever due to exposure, that causes severe and irreversible brain damage, for example, can effectively prevent the exercise of any right requiring clear thought.'

<sup>28</sup> James Nickel articulates four abstract, secure moral claims that persons have upon others. These are: a) a secure claim to have a life; b) a secure claim to lead a life; c) a secure claim against severely cruel or degrading treatment; and d) a secure claim against severely unfair treatment. Nickel argues that these four abstract rights are 'secure' in the sense that they do not have to be earned through membership or good behaviour and their availability does not depend on that person's ability to generate utility or other good consequences. Cf. Nickel, *Making Sense*, ch. 9; and Nickel, 'Poverty'.

- 6 Social deprivation conflicts with equality of opportunity to the extent that such equality depends on any or all of the elements outlined in points 1 to 4 above.
- 7 Social deprivation undermines a person's opportunities to engage with important domains of value such as meaningful employment, higher education, a sense of identity, self-respect, love, creativity, and achievement.

Given the importance of protection from social deprivation for many other rights, it is tempting to say that the right against social deprivation is a *basic right* in Shue's sense, that is, a right whose fulfilment is needed for the fulfilment of all other rights, including other basic rights to physical security and basic subsistence. However, first, the notion of a *basic right* has been subjected to sustained criticism that I have not the space to explore critically, and second, there are undeniably many human rights that are not dependent on the right against social deprivation, such as the right to breathable air, and therefore the right against social deprivation could not be basic in any unqualified sense.<sup>29</sup>

That said, if, as I argue, *many* other human rights are meaningfully available only when the right against social deprivation is protected, then this right cannot be conditional on good behaviour except in cases where a person's conduct is so egregious that she forfeits not only the right against social deprivation, but also all of the rights that depend on the protection of it. And, since the psychological and physical effects of long-term coercive social deprivation can be irreversible, the person's conduct would have to be sufficiently egregious for her to forfeit *permanently* rather than temporarily all of the rights that depend on protection of the right against social deprivation.

Together the conceptual, empirical, and normative arguments show that the right against social deprivation passes at least some of the standard tests for human rights. So far, I have explicitly discussed issues relating to 1) substantial and recurrent threats, 2) importance, and 3) universality. I have also obliquely discussed the test that 4) no norm weaker than a right will provide effective protection, by noting the extent to which social deprivation has been ignored as an important concern. In the next section, I demonstrate, in response to objections, that the right against social deprivation also passes test 5) reasonable burdens, and test 6) feasibility.

<sup>29</sup> For critical discussions of Henry Shue's notion of 'basic rights', see T. Pogge, 'Shue on Rights and Duties' in C. Beitz and R. Goodin (eds), *Global Basic Rights* (Oxford UP, 2009), ch. 6; J. Nickel, 'Rethinking Indivisibility' in *Human Rights Quarterly*, 30 (2008), pp. 984–1001; and Nickel, *Making Sense*, pp. 88–9.

## IV. OBJECTIONS

The first and second objections that I address here focus on undue burdens, and the third objection focuses on unfeasible burdens. The relation between undue burdens and unfeasible burdens is complex and somewhat unclear. I take it that undue burdens are unreasonable, but can be easy to secure. Requiring you to devote all of your days off to some cause of mine would be unreasonable, but feasible if you don't have other commitments. Unfeasible burdens are difficult or presently impossible to secure, but, in principle, reasonable. Asking you to get me to the hospital when I am gravely ill and this would be at little cost to yourself is reasonable, but unfeasible if you do not drive and are otherwise unable to assist me. These two types of burdens intersect presumably at the point where the resource-costs of an otherwise reasonable burden place excessive pressure on either would-be duty-bearers or other people.

Concerning undue burdens, I explore, first, certain ideals of the family and the supposed unreasonableness of appealing to human rights to secure minimal access to social inclusion. I consider next more general concerns of illiberality, unclaimability, and intolerability. Concerning unfeasible burdens, I focus on both institutional pressures on welfare structures and institutional constraints on criminal justice as well as more general concerns of infeasibility.

*Ideals of the family*

A critic might argue that, while some version of the right against social deprivation may have a degree of the importance that I attribute to it, it is objectionable as a putative human right because it offends the ideal of the family either by threatening to take primary responsibility for social inclusion away from the family or by introducing the formal, self-serving language of *rights* into intimate relations. My critic might argue that asserting rights-claims not only is unnecessary within families given the nature of the bonds, relations, and feelings amongst family members, but also is threatening to those bonds and feelings that distinguish this inestimably valuable form of association from all others. For instance, Michael Sandel has argued that the only value that rights might have for intimate relations is in providing a remedy for corruption within those relations.<sup>30</sup>

<sup>30</sup> Cf. M. Sandel, *Liberalism and the Limits of Justice* (Cambridge UP, 1982), pp. 15–56. Cited from J. Tomasi, 'Individual Rights and Community Virtues', *Ethics*, 101 (1991), pp. 521–36.

In response, although it may be argued that ‘asserting’ and ‘demanding’ our rights would be perverse in (some) well-functioning family arrangements, and that state-level intrusions into such family arrangements are undesirable, nevertheless it is important not to romanticise any particular conception of the family. And, it is important to appreciate the contribution that rights, and the voluntary non-assertion of our rights, make to many concepts that are central to intimate relations such as *supererogation*, *generosity*, and *forgiveness*. John Tomasi argues compellingly that the language of rights is important for the exercise of loving virtue in intimate communities: ‘You cannot most properly be generous with what you do not know is yours; you cannot truly forgive without first recognising a debt.’<sup>31</sup>

Moreover, although people tend to thrive when they form small units of mutual dependency whose primary providers are willing, committed, and loving participants, these are not the only social arrangements in which persons may cultivate the conditions for minimally decent lives. Nor are these the arrangements in which many people find themselves. It is for those people that the right against social deprivation must be invoked.

*Illiberality, intolerability, and unclaimability*

A critic might make a multi-pronged objection on the basis of more general concerns about undue burdensomeness. The first prong is that this right is illiberal, as it imposes overly weighty duties of association and inclusiveness that go against standard liberal views about the human right to freedom of association. A second prong is that the right is unduly intrusive not only for providers, but also for receivers. That is, it disregards not only the associative freedoms of those tasked with being more inclusive, but also the associative freedoms of those forced into greater socialisation. A third prong is the more specific objection that some people are genuinely intolerable, such as people who carry deadly diseases and people who are psychopathic or extremely violent. Finally, a fourth prong draws on an objection from Onora O’Neill who argues that ‘welfare’ human rights are unclaimable. For our social needs that means that unless and until the duties that these needs generate are institutionally allocated, those duties cannot be claimed and, therefore, they have no correlative human right against social deprivation.<sup>32</sup> In more detail, unless

<sup>31</sup> Tomasi, ‘Individual Rights’, pp. 521–36.

<sup>32</sup> For her discussion of claimability, see O’Neill, ‘The Dark Side of Human Rights’, *International Affairs*, 81 (2005), pp. 427–39.

there is an appropriate institutional scheme that specifies who bears the duty to provide minimally adequate opportunities for decent social contact to a given right-holder and against whom that right-holder can lodge claims, we cannot know who, if anyone, bears such a duty. Non-institutional duties to be inclusive may well exist, but they do not correlate with rights. Talk of rights in this case is largely rhetoric, so the objection goes. Let me address each prong in turn.

In reply to the first two interrelated prongs about illiberality and intrusiveness, a right against social deprivation, like a right to basic subsistence, implies both a context-sensitive approach and a division of labour. It does not imply a general duty to associate either with every person or with any given socially deprived person. It does, however, imply a general duty to be concerned that those parties who are responsible for providing adequate opportunities for social contact to persons unable to secure them for themselves honour that responsibility. All moral agents have reason to attend to the conformity of action with reason.<sup>33</sup> Consequently, the reason to ensure, say, that a child is cared for applies to everyone even though the reason to care for the child applies only to the small set of people to whom that responsibility is formally or informally assigned. Likewise with general social inclusiveness, the reason to ensure that all persons have at least minimal opportunities for social inclusion applies to everyone, but the reason to act so as to include any one person applies only to particular persons or groups to whom that responsibility is formally or informally assigned. When those to whom the reasons apply fail to conform with those reasons, the application of the reasons extends beyond that immediate circle to persons well placed to bring about conformity with reason.

The specific worry about intruding into the life of a socially disengaged person is comparable to the worry about intruding in the life of a person who chooses to fast. As noted in section II, both the decision to fast and the decision to be isolated can be reasonably self-chosen. However, the long-term effects of such decisions can be such that, ultimately, it is necessary to intervene to force-feed someone who is fasting to the death or to engage someone whose faculties are diminishing due to extreme isolation.

Turning to the third prong about intolerable people, there are at least three replies to make here, which also bolster my replies to the first two prongs.<sup>34</sup> The first reply is that governments are primary duty-bearers of

<sup>33</sup> Cf. J. Raz, *Practical Reason and Norms* (Oxford: Clarendon Press, 1999).

<sup>34</sup> I consider the intolerability problem in relation to violent offenders, and offer somewhat different replies from those discussed here, in K. Brownlee, 'Social Deprivation and Criminal Justice' in F. Tanguay-Renaud and J. Stribopoulos (eds), *Rethinking Criminal Law Theory: Canadian Perspectives on the Philosophy of Criminal Law* (Oxford: Hart, 2012), pp. 217–30.

human rights in general and of the right against social deprivation in particular. Therefore, no individual person would be subject to a rights-based duty to engage with a genuinely intolerable person. Instead, governments are charged with providing professional or voluntary opportunities for socialisation through regulated forums that ensure the rights-protection of any would be providers and receivers.

The second reply is that, in extreme cases of genuine intolerability, it may be necessary to resort to mediated, virtual, or non-human forms of interaction that might provide a partial substitute for direct, interpersonal contact. The degree to which these forms of interaction are viable and morally acceptable ways to meet basic social needs is a matter for debate. Certainly, needs vary across categories of persons. The needs of the child, the severely cognitively impaired person, and the elderly person may be such that only rich, immediate interpersonal interactions will suffice. Just as children won't grow and possibly won't survive childhood unless they are fed a broadly healthy diet, so too they won't develop cognitively, physically, or emotionally unless they receive rich and highly supportive social interactions.

One difficulty with mediated or virtual forms of interaction even for healthy adults is that, although such interactions might alleviate some of the psychological and physical effects of acute loneliness, they do not fully honour our human capacity for *social* interactions. To the extent, first, that the right against social deprivation is grounded in a Kantian notion of respect for persons as ends in themselves, and second, that that respect requires *human* interaction, the right cannot be honoured through virtual or non-human interaction even if that interaction satisfied persons' basic psychological needs. Moreover, any *virtual* interaction that relieves psychological distress because it is presented to persons falsely as genuine interaction will fail to respect them as social beings with human dignity.

The third reply to the intolerable person objection bites the bullet and acknowledges that it may not be possible to realise fully all rights of this kind. There may be inescapable rights infringement in a small number of cases where the nature of the person's intolerability makes securing minimally adequate opportunities for genuine social interaction for her unduly burdensome for the parties charged with securing those opportunities.

Finally, turning to the fourth prong of unclaimability, useful replies have been given to O'Neill's claimability objection by John Tasioulas, which I will reframe here in relation to the right against social deprivation.<sup>35</sup> First, the difference between what we can know about the primary

<sup>35</sup> J. Tasioulas, 'The Moral Reality of Human Rights' in T. Pogge (ed.), *Freedom from Poverty as a Human Right: Who Owes What to the Very Poor?* (Oxford UP, 2007), ch. 3.

duties associated with so-called ‘liberty rights’ and those associated with so called ‘welfare rights’, granting that the right against social deprivation is a welfare right,<sup>36</sup> is a difference in degree, not a difference in kind as O’Neill implies, and, Tasioulas notes, O’Neill tends to minimise unduly what we can know about the duties associated with the latter prior to any institutional allocation of duties. For the right against social deprivation, we can know that we all have duties not to obstruct the establishment of an institutional scheme to protect people from social deprivation and a duty to assist in setting up such a scheme if we can do so at little cost to ourselves as well as a duty not to deprive others of opportunities for social contact. Also, following on from what I said above, we may have a duty and not just a reason, given the importance of social contact, to attend to whether those people who are charged with the responsibility of guaranteeing for persons minimal opportunities for social inclusion honour that responsibility. In addition, we can observe, following Tasioulas, first, that specifying the primary positive duties correlative with a right like this may be no more or less difficult than it is with any other right, and second, that, on an interest-based account of rights, the indeterminacy of the duties does not undermine the existence of the right. We can establish the existence of a right without specifying or allocating the duties that it generates because a right exists when a person has a sufficiently strong interest to ground duties in others. The specification of the precise duties and the identity of their duty bearers is a further step. If these replies of Tasioulas’s applied to the right against social deprivation are compelling, then we may conclude that there is no general issue of claimability for this human right.

### *Institutional feasibility*

The final line of objection I shall consider concerns institutional infeasibility. This objection has three elements. The first says that, given the distinctive social nature of this right, in any society, this right would impose unfeasible burdens on creditable social institutions such as welfare structures, which inevitably have limited resources. The second says that, in most societies, the right would impose unfeasible restrictions on criminal justice processes, which in nearly all jurisdictions use some form of social deprivation as a mode of punishment. The third says that, in current

<sup>36</sup> Coercive social deprivation can be fleshed out as a civil and political right or ‘liberty right’, as well as a socio-economic right or ‘welfare’ right, since it constitutes cruel, degrading, and inhuman treatment. For elaboration of this point, see Brownlee, ‘Criminal Justice’.

economic conditions, this right cannot be secured in the majority of countries today, and therefore, even if it were feasible in many countries (which the first two points say it is not), it is unfeasible as a *human* right that can be claimed universally.

In reply to the first point, it is undeniable that there will be substantial costs to securing this human right. But, there are substantial costs to securing any given human right and, more importantly, there are substantial costs to not securing a human right. The likely costs of not securing the right against social deprivation are impressive given the kinds of psychological and physiological risks that go with the experience of social deprivation. It is reasonable to suppose that the costs of not securing this right are at least comparable to, if not greater than, the costs of securing it, especially since so many other human rights and domains of value are dependent on protection of this right.

In reply to the second point on punishment, it is true that most theorists hold that it is legitimate to respond to culpable wrongdoing by suspending normal relations with the offender.<sup>37</sup> Typically, this means withdrawing, to a proportionate degree and for a proportionate period, the respect and recognition that it would otherwise be appropriate to show to her so that she may assume the restorative responsibilities that are hers in light of that wrongdoing. In a serious case, theorists tend to think it is acceptable, if not obligatory, to ostracise, physically isolate, exile, or solitarily confine someone who culpably engages in serious wrongdoing.

However, as my position implies, suspending ordinary relations with an offender need not and should not include denying her minimally adequate opportunities for decent social contact by subjecting her to long-term solitary confinement or brutal prison conditions. Ordinary relations can be legitimately suspended when those relations are reoriented to focus on the offender's restorative responsibilities. This reorientation keeps a tight connection between the wrong done and the censure communicated through punishment. It makes clear to the offender what conduct of hers

<sup>37</sup> For example, see C. Bennett, *The Apology Ritual* (Cambridge UP, 2008). It is worth nothing that this idea of suspending ordinary relations with an offender until she assumes her restorative responsibilities is not exclusive to retributivist accounts like Bennett's. See, for instance, V. Tadros, *The Ends of Harm* (Oxford UP, 2011). Tadros defends an instrumental argument for punishment from within a non-consequentialist moral framework. He calls this the 'Duty View' of punishment. It says that an offender has certain restorative and reparative duties (other than compensation) that flow from his wrongdoing, and in light of this, when an offender is unwilling to honour those duties, it is permissible to suspend ordinary relations and impose burdens on him in the name of those duties. I examine the issue of punishment in Brownlee 'Criminal Justice'.

has been condemned and why, as well as what is expected of her by way of reparation.

Undoubtedly, practical problems confront such a model for punishment since the wrongdoer may not accept that the responsibilities are hers. Prompting her to make use of forums and opportunities to restore relations will then be unsuccessful in an important sense. Moreover, sometimes victims may have no wish to be in contact with the wrongdoer, in which case the responsibilities may be honoured only indirectly or metaphorically. These contingent practical issues do not undermine the fact that responsibility-focused punitive responses communicate blame and censure more appropriately than do socially privative responses. They are more respectful of the wrongdoer as a person responsive to reasons and are far less likely to cause the physical and psychological harm that haunt socially privative punishments.

In reply to the third point, one problem with making ‘what is feasible in the majority of countries’ the standard for feasibility and hence for human right status, is that it leaves open the loophole of wilful disablement. If securing a basic need is not feasible in a given country because that country’s government has wilfully disabled itself by, say, spending its resources on statues or bad investments, that basic need should not lose its human rights status. The government has breached its citizens’ human rights by misallocating resources. An alternative, less state-centred standard of feasibility would highlight the role that international governmental bodies and institutions now play in human rights protection, and would recommend a calculation of feasibility based on coordinating or pooling more of our global resources. In relation to our social needs, in particular, we may look beyond states’ resources to international bodies, NGOs, and human rights champions like Amnesty International and the Red Cross when considering what is feasible. This feeds into a second reply, which is that ‘feasibility’ should not be understood strictly in terms of *legal* implementation since there are numerous official and unofficial ways to implement and honour human rights other than through legal entrenchment. As Amartya Sen notes, these ways include non-binding Declarations such as the UDHR, grassroots activism and publicity, and governments checking themselves in policy and general practice.<sup>38</sup> As Tasioulas observes, it is not a necessary condition for a right to be a human right that there be always a *pro tanto* reason to enact it as a legally

<sup>38</sup> A. Sen, ‘Elements of a Theory of Human Rights’, *Philosophy and Public Affairs*, 32 (2004), pp. 315–56. Cited from J. Tasioulas, ‘The Nature of Human Rights’ in G. Ernst and J.-C. Heilinger (eds), *The Philosophy of Human Rights: Contemporary Controversies* (Berlin: de Gruyter, 2011), pp. 17–59.

enforceable right. This ‘legal right presumption’ creates artificial distinctions, such as between public and private duties, deeming the former to be correlative with human rights and the latter not. Moreover, it is unduly restrictive in, for instance, ruling out the possibility that an anarchist could speak of human rights at all, and ruling out from the class of human rights things that commonsensically are human rights though there is probably no reason to entrench them in law, such as the right to resist a tyrannical government.<sup>39</sup>

In conclusion, this discussion has shown not only that the right against social deprivation satisfies six standard ‘tests’ for human rights, but also that this right is a fundamentally important human right, on which many other human rights depend. Therefore, it is paramount that we bring it, and social rights in general, to the forefront of human rights discussions.<sup>40</sup>

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<sup>39</sup> Tasioulas, ‘Nature of Human Rights’, 42.

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