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ARTICLE

Disability, relationships and a right against social deprivation

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Abstract
Disabled people continue to experience social exclusion and denial of meaningful belonging despite legal commitments to independent living and autonomy. This paper brings disability studies, legal scholarship and philosophical debates around a right against social deprivation into conversation. We argue that the concepts of social access needs and social contribution needs provide a valuable framework for identifying harms that existing disability rights and human rights approaches often fail to recognise or adequately address. At the same time, rather than simply applying the right against social deprivation to disability, we contend that disability offers a critical lens through which the right itself must be rethought. Drawing on critical disability studies, we foreground interdependence, care, relationality and vulnerability, while exposing ableist assumptions that may shape theorising in this area. Through engagement with disability law and rights frameworks, we explore the potential of this dialogue to reconfigure understandings of rights, responsibility and justice.

Keywords: disability law; philosophy; social relations; positive obligations; micro-interactions; UNCRPD

1 Introduction

It is well-documented that disabled people face higher levels of loneliness and social exclusion than the general population (HM Government 2025). Despite shifts away from large-scale institutionalisation, and strong statements in rights declarations and legal frameworks around independent living, meaningful inclusion and belonging in communities is still often denied for disabled people. Legal challenges to claims involving independent living or positive rights to access resources often fall foul of legal norms around resource allocation, public interest and the margin of appreciation that states enjoy in directing resources. This paper seeks to approach this issue from a different perspective, by drawing on philosophical literature around a right against social deprivation that has been spearheaded by Kimberley Brownlee (2020). Brownlee's work invites recognition of the importance of being social, and crucially highlights two needs that are encapsulated as part of a right against social deprivation: a right to minimally adequate access to decent social contacts and connections ('social access needs'), and a human right to be supported in our efforts to sustain others ('social contribution needs') (Gordy *et al.* 2022). This framing, we suggest, has productive implications for disability rights theorising and arguments. It enables us to illuminate and draw attention to the particular harms that are occurring in contexts of restriction on social relationships, and also to better understand the ways that legal frameworks can obscure

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and/or perpetuate such harms. Placing these harms in the language of a right against social deprivation also opens up critical tools for legal argumentation, particularly in relation to the intertwining of socio-economic and civil and political rights, as well as positive and negative obligations. Putting disability studies scholarship, legal scholarship and philosophical literature on the right against social deprivation into conversation, we offer a number of critical interventions.

First, we aim to introduce the right against social deprivation literature as a vehicle for galvanising legal scholarship in relation to disability, inclusion, belonging and relations. While the right is a powerful idea, we want to centralise disability in the theorising of the right to ensure that future debates around the operationalisation of the right are critically informed and do not perpetuate ableist norms. Following the critical disability studies imperative to (re)think concepts through, and not solely for disability, we see careful theorising of the right against social deprivation through a disability lens as having important implications for disability law and rights scholarship, but also rights theorising more broadly. The disruption to traditional frameworks of rights, state obligations and norms of legal subjectivity that may flow from recognition of a right against social deprivation is not insignificant.

Second, we take this critical lens of a right against social deprivation to demonstrate how it exposes both harms that legal frameworks cannot yet adequately capture (either by absence or by design) and harms that existing frameworks and state interventions may perpetuate. We highlight this through exploring cases involving the application of European Convention on Human Rights (ECHR) articles in the English legal context, and consider the potential of the UN Convention on the Rights of Persons with Disabilities (UNCRPD) as a vehicle for opening critical space for recognition of a right against social deprivation. In doing so, we do not offer a blueprint or normative argument for what a right against social deprivation ought to look like or how it should be operationalised – such questions require further consideration once the parameters and normative underpinnings of such a right are clarified. We recognise and acknowledge that turning to rights as a response to legally produced or facilitated harms, particularly for marginalised individuals who fall outside of the existing normative (liberal) legal imaginary or who are othered through law, may feel counter-intuitive and may reinforce their hegemonic dominance. At the same time, however, we see the space for a right against social deprivation as part of a broader disability justice approach, underpinned by rethinking concepts and norms in anti-ableist ways and reconfiguring ideas of relationality, responsibility and accountability to produce alternative frameworks and to imagine rights otherwise.

The paper begins with some contextualisation of the ways in which social exclusion, (de/re) institutionalisation and denials of relationships can occur, despite the existence of legal and disability rights frameworks premised on ideas of choice, autonomy and independence. These examples are from a UK context but resonate with stories and cases across other jurisdictions and regions. Following this, we introduce philosophical literature on a right against social deprivation, as spearheaded by Kimberley Brownlee, outlining the key strands and tensions in this space. In the next section, we then put the right against social deprivation into conversation with disability in order to deepen and extend thinking around the right against social deprivation. Here, a critical disability orientation drawing on assemblage thinking and new materialisms is utilised to sharpen concepts of interdependence, care, relationality and vulnerability, and to illuminate and challenge hidden forms of ableism which currently shape theorising in relation to a right against social deprivation. Finally, we move to think through some of the implications for harnessing a right against social deprivation for disability law and justice, recognising the tensions between liberal rights frameworks and disability justice. Navigating this tension, we propose ways in which thinking around a right against social deprivation can disrupt human rights norms in productive and generative ways, and invite future scholarship to explore the potential for advocacy and activism to operationalise this right.

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1.1 The persistence of social deprivation

The histories of social exclusion of disabled people are well-documented, from explicit eugenicist laws and policies to periods of overt institutionalisation. Yet as Spivakovsky *et al.* (2020) suggest, such histories have stubborn and pernicious legacies. While law may not always display overt exclusionary norms, we can trace enduring sources of harm and the residue of discriminatory ideals in current frameworks. In many ways, mental health laws, mental capacity law and social care laws 'emerged in the post-deinstitutionalisation era … to govern the ways people with disabilities can participate in the community', creating new ways through which social exclusion and marginalisation may occur and become normalised (Spivakovsky *et al.* 2020, p. 6). In an era of human rights and strong ostensible support from states around disability rights, inclusion and equality, it can be difficult to pinpoint the legal sources of harm or to capture the ways that law and policy is implicated in perpetuating the exclusion of disabled people. Here, we introduce two contemporary examples which demonstrate the ways in which law restricts access to social relationships for disabled people in stark ways. Looking beyond existing legal and rights arguments in these contexts, we signal harms that current frameworks cannot adequately capture, or which law and legal interventions may perpetuate.

The Mental Capacity Act 2005 case-law around 'consent to sex' or, more recently, 'to engage in sexual relations' is an important example of this. These cases have been centred on sexual decision-making and the correct information that must be included in the assessment of capacity. Much of the focus of the legal and academic debates surrounding these cases has – understandably, given the legal framing – been focused on sexual decision-making and consent. In *JB*, the courts were considering a man with autism who had expressed a wish to develop relationships and have a girlfriend.[1] There was concern, however, as to his capacity in relation to sexual consent, driven by alleged statements made about sexual consent to support workers and concerns as to the potential for JB to engage in sexually abusive behaviours. While most of the earlier case-law on consent and sexual relations involved contestation about the individual's understanding of their *own* consent and ability to withdraw this, this case was centred on whether the capacity test must also include whether the individual understands that the other party must consent and can withdraw that consent. In this case, the Supreme Court held that this *is* a relevant aspect of the capacity assessment when assessing capacity to engage in sexual relations. Much has been written in the wake of this case, but for our purposes here it is important to note that the ruling has significant implications in terms of social engagement and interaction. If an individual is deemed to lack mental capacity in relation to sex, then social workers working with them will need to ensure they are prevented from engaging in sexual relationships. This may involve ensuring they do not spend unsupervised time with others. Given limited social work resources, this is likely to have a major impact on their wider social life, far greater than those whose capacity is not in question would face. This potential for discrimination was raised in this case by the barrister acting for JB's litigation friend (the Official Solicitor), John McKendrick QC. Lord Stephens dismissed such an argument (Para 20).

Yet, what is striking when reading these cases, moving away from the heat of the charged context of sexual consent, is the way that the life of P (the individual whose capacity is in question) is presented in the judgments. Through the judgment in *JB* and cases following it, we get glimpses into the ways that individuals with autism and learning disabilities experience what Vehmas and Mietola (2021) term 'narrowed lives'. For example, in the Court of Appeal judgment in *JB*[2] we learn that:

> 'Since May 2014 he has been living in a supported residential placement, funded by the local authority, which he shares with two others … JB is subject to a comprehensive care plan

[1] *A Local Authority v. JB* [2021] UKSC 52.
[2] *A Local Authority v. JB* [2020] EWCA Civ 735.

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> which imposes significant limitations on his ability to function independently. These include restrictions on his access to the local community, on his contact with third parties and on his access to social media and the internet. Under his care plan, he has 1:1 supervision when out in the community and, in particular, when in the presence of women' (Para 9).

In another case, *PN*,[3] involving a thirty-four-year-old man with autism, we are told in the judgment that:

> 'PN has lived at care home 1 for a number of years. He is interested in computer games which he often plays long into the night. He has a brother with whom he spends time once a week. He requires support in relation to many activities of daily living and has one to one care 24 hours a day' (Para 3).

By using the language of what P 'requires', the restrictions on liberty are presented as inevitable and in place for his benefit. Further, these facts are recounted as though mere incidental background information, rather than the stark and significant restrictions on everyday social interaction that they entail. There is resonance here with the way that Vehmas and Mietola (2021, p. 87) describe their ethnographic work in supported living contexts: 'we were overwhelmed by the fact that our participants' lives were so socially isolated – despite being continuously surrounded by others (housemates and care workers)'.

Turning to a different example, we can further see how social isolation and deprivation plays out in distinct and more overt ways, reinforcing again how law seems remarkably both unable to capture the harm occurring and to be an active facilitator in shaping the circumstances being recounted. In Baroness Hollins's report on long-term segregation of people with learning disabilities and/or autism, we learnt of Nicholas Thornton, a twenty-eight-year-old man who had been in a number of inappropriate care settings over a ten-year period, resulting in him losing the ability to speak and to walk (Hollins 2023). Throughout this period he was subject to instances of segregation and isolation. Yet even in the times where he was placed on wards or in congregate settings, it is striking how much his social interactions were curtailed and controlled by others, contingent upon support workers but also compounded by the (un)suitability of the setting. For example, Nicholas was 'placed' in a dementia care home, with prisoners on mental health wards, and in units for those with substance addictions. As a young autistic man, these settings offered little by way of opportunities to develop relationships, or for unencumbered encounters on his own terms. The material conditions here, including noise and fluorescent lighting, further impeded this. In a media report, Nicholas stated that 'I've not seen a friend for seven years' (Channel 4 2023).

These insights speak to the importance of attentiveness to the opportunities for social interaction and relationships, not just in the paradigmatic instances of overt solitary confinement, but in the (lack of) ongoing opportunities for unencumbered interactions with others of their choosing, and the material barriers to these. Yet, as will be discussed later in more detail, the legal frameworks governing the care and residence of Nicholas Thornton, and hundreds of others in similar circumstances, offer little by way of challenge in relation to this distinct type of harm and violence – termed 'social death' in Baroness Hollins's report – and, moreover, may actively enable it by creating spaces of discretionary power within which such 'care and treatment' occurs unchallenged.[4] This is not to suggest that social deprivation captures the totality of the harm and violence occurring or that alternative legal frameworks ought not also to be brought to bear to facilitate accountability. Instead, it is to demonstrate that there is a distinctive injustice occurring

[3] *Re PN (Capacity: Sexual Relations and Disclosure)* [2023] EWCOP 44.

[4] For more on ways that solitary confinement has been justified and supported in psychiatric contexts, see Quinn (2021) and Tromans *et al.* (2025).

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in these cases, and in others beyond, which is currently difficult to grasp, conceptualise and ultimately address/redress through existing legal paradigms (Jacobs *et al.* 2021). We turn to philosophical literature on a right against social deprivation, as developed by Kimberley Brownlee, to surface the harms and injustice occurring.

2 Philosophical literatures and a 'right against social deprivation'

In this section we will discuss the right against social deprivation in general terms, before exploring the potential that this framing brings to the context of disability more specifically. In doing so, we also seek to strengthen existing theorising of the right against social deprivation by ensuring that disability is central to the development of this. Kimberley Brownlee's book, *Being Sure of Each Other: An Essay on Social Rights and Freedoms*, is already established as a groundbreaking text on the concept of a right against social deprivation. The attention the book has attracted reflects the increasing awareness of loneliness as a major social problem. In the UK, 7 per cent of the population questioned stated they felt lonely often or always; 18 per cent some of the time; and 24 per cent occasionally. Indeed, only a minority of respondents (49 per cent) stated they were never or hardly ever lonely (National Statistics 2025). Perhaps contrary to expectations, the rates of loneliness are most acute among younger people, with 40 per cent of those aged sixteen to twenty-nine reporting feeling lonely 'often or always' or 'some of the time', compared with 17 per cent of those aged over seventy. That said, clearly loneliness is an issue among older people, as half a million older people go at least five or six days without speaking to anyone, and 3.9 million older people state the television is their primary source of company (Age UK 2018).

In understanding Brownlee's (2020) argument, it is important to emphasise that she highlights two relational needs that people have:

- a right to minimally adequate access to decent social contacts and connections ('social access needs');
- a human right to be supported in our efforts to sustain others ('social contribution needs').

> In other words, there is a need to both connect with others and also sustain others. These needs 'generate morally urgent demands' (Brownlee 2020, p. 39) and, as a result, a moral right that these are met.

Brownlee's (2020) book indicates two kinds of reason why it is so important to us that relational needs are met. First, she argues that having these needs met is an intrinsic good. As with many claims relating to intrinsic goods, it is difficult to prove why social connection is good in and of itself. However, the importance of relationships seems widely accepted. Indeed, Anca Gheaus (2024, p. 242) claims: 'Almost everybody agrees that, in order to lead good lives, people need relationships with other people that include some level of emotional connectedness, or intimacy.' Brownlee highlights the facts that childhood neglect is recognised as a human harm and that there is strong evidence from human psychology about the importance of relationships. She notes too the efforts people will go to in order to form or maintain social connections with people. Some people even go so far as to pay money to 'rent a family' or hire a 'companion' (Brownlee 2020, p. 2). It might also be noted that when people are asked about what gives meaning or value to their lives, it is social connections which are commonly raised (Bailey 2025).

Some writers have gone further and claimed that our relationships are core to our identity, indeed that our sense of self emerges from these relationships (Gergen 2009; Herring 2016). It is our relationships which in our early days gave us the words we use to describe ourselves and our surroundings, and those relationships and communities which give us a place in the world, a sense of being held by others and holding others (Herring 2021). In this sense we can see the right against social deprivation as a right for everyone to have their humanity respected:

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we are people for whom relationships are key for our identity, flourishing and health (Herring 2019; May 2016). Second, Brownlee (2013, p. 200) claims that many other 'vital interests' are dependent on having social connections:

> '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'.

Of course, loneliness may not be unwanted and is not necessarily detrimental to health. However, it often is and it has been found to increase your risk of early death by 26 per cent (Holt-Lunstad *et al.* 2015). HM Government (2018, p. 6) suggests that loneliness is:

> 'on a par with smoking or obesity. It's also linked to increased risk of coronary heart disease and stroke; depression, cognitive decline and an increased risk of Alzheimer's ... when we feel socially rejected, it triggers a response in our brain similar to one from experiencing physical pain'.

However, to see rights to social relationships as entirely a matter of avoiding ill health is to miss the true nature of the claimed right. It is not simply a right to be saved from such physical or medical harms but is essential to a minimally good human life. Indeed, Brownlee (2020) argues that protection from social deprivation is necessary to exercise many other rights such as health, autonomy and political rights. As she explains:

> 'many other rights and goods are meaningfully available only when our fundamental social rights are protected, including many civil and political rights, subsistence rights, education rights, health care rights, and, in extreme cases, all rights requiring the maintenance of clear thought' (Brownlee 2020, p. 37).

As already indicated, a particularly novel aspect of Brownlee's analysis is the emphasis on the need to contribute to others. She breaks this down into three interests:

> 'First, we have a fundamental need to contribute directly to specific other people's survival and well-being. This need can fall short of loving others, but includes many of the attitudes and behaviours that naturally go with love. For ease of expression, let's call it our *need to sustain* others. Second, we have a human right to be protected in our efforts to sustain others. Third, when we are denied the means to sustain others, we are victims of a grave injustice, which I call *social contribution injustice*' (Brownlee 2020, p. 65).

She goes on to explain that '[w]e have deep needs both to be dependable and to be depended upon by other people. This need is rooted in our self-interest, other-interest, and group-interest' (Brownlee 2020, p. 93).

Brownlee is right to emphasise the importance of these two linked rights. A genuine relationship always involves giving and taking. Otherwise, one is simply the object of another's charity and the mutuality which is essential to a genuine caring relationship is lacking (Wittrock 2022).

When it comes to putting the right against social deprivation into practice, Brownlee highlights three kinds of social resource needed:

1 The need for social abilities. She explains these include 'a complex set of skills, thoughts, attitudes, emotions, and behaviours that allow us to lead socially integrated lives' (Brownlee 2020, p. 20).

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2 The need for social opportunities to interact with others. These are needed to enable us to form and sustain social connections.
3 The social connections themselves. These may be long-term relationships or more incidental micro-interactions with strangers.

Undoubtedly the most controversial aspect of her thesis comes with the argument that social rights can impose moral duties on people to interact or associate with others who they would rather not spend time with. Here she identifies a clash between the freedom to decide with whom to associate and the right against social deprivation. While the balancing of these rights will be highly context specific, she is certainly willing to accept that, in such a clash, the right against social deprivation may win out. The way Brownlee puts this is to suggest that one must have a good reason to rebuff or ignore another person's bid for connection, particularly if their rights against social deprivation are not being met (2020, Chapter 4). She suggests that to ignore such a bid without good reason is to suggest that person does not matter. Brownlee claims that if we simply relied on freedom of association as an absolute right, some people would be left socially deprived and other people socially overwhelmed. While in the abstract these claims may be appealing to subsequent commentators, there are challenges to how this will work in practice, in particular whether this is a moral or legal right (Wittrock 2022). However, this article does not seek to explore how the right could be operationalised (on which see Brown Coverdale (2022), Brownlee (2024), Collins (2022), Couto (2022) and Betzler (2023)), particularly given that such debates are often taking place within an imaginary of current rights paradigms and frameworks. As will be seen, some of the implications of thinking a right against social deprivation *through* and with disability unsettle some of the norms and traditional questions around rights and how moral rights arguments may be translated into legal form.

Another challenge, and one that Brownlee may well be sympathetic towards, is that her discussion pays particular attention to the duties of individuals to meet the social needs of others, but this avoids looking at the societal duties. Barreto *et al.* (2024, p. 158) argue that 'loneliness is heavily determined by social and structural conditions that render it unequally distributed in society, a situation that qualifies loneliness as a social justice issue'. They suggest that loneliness should be seen as 'an unequally distributed burden, heavily caused by an unjust allocation of resources' (p. 158). Tackling the social and structural conditions that generate social isolation may be a better starting point than focusing on duties on individuals to interact with others. Of course, it may well be that the two can be combined together. The social justice angle may be particularly important to address the concern raised by Elizabeth Brake (2023) that the burden of meeting social deprivation needs might particularly fall on women and disadvantaged racialised groups. Brownlee (2023) is certainly alert to this and notes 'sociality has a dark side too. It can foist on us debilitating bads, especially when our relations are tainted by coercion, harassment, manipulation, abuse, degradation, dominance, violence, or neglect' (p. 497). The literature on a right against social deprivation then offers a productive critical intervention to draw out the particular harms and injustices caused by legal interventions and frameworks in the context of disability. To date, however, the literature on the right against social deprivation has not specifically focused on the issue of disability, and that is one of the primary aims of the next section of this article.

3 Putting disability into conversation with a right against social deprivation

The philosophical literature on a right against social deprivation, focusing as it does on the importance of micro-interactions, cumulative and ongoing opportunities for social interaction and building relationships and on ensuring opportunities to contribute to the lives of others, offers important insights in the context of disability and legal frameworks shaping and intersecting with the lives of disabled people. Thinking back to the examples introduced earlier on, in the sexual consent cases and in relation to long-term segregation, we can see that it offers a novel lens which

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can cut through to the particular type of harm experienced. There is no doubt that disabled people experience social deprivation (Shandra 2021). There is compelling evidence of there being extensive levels of loneliness and isolation among those living with a disability (Macdonald *et al.* 2018; Tarvainen 2021). However, there is more to this than simply a statistical linkage. We will argue here that the social deprivation of disabled people marks a particular kind of harm, of a distinct nature from that of others who face isolation. Beyond simply loneliness that is overlooked or under-recognised, we begin to see ways that states and institutions are complicit in enabling and reinforcing social deprivation. Looking at this through the right against social deprivation lens enables attentiveness to harms that are currently inadequately conceptualised in existing literatures, opening up novel ways of thinking about obligations and legal responses. Moreover, we demonstrate that thinking through critical disability insights recursively deepens and extends theorising around a right against social deprivation in important ways. As Shalk puts it, 'we can understand critical disability studies as a method, an approach, a theoretical framework and perspective – not (exclusively) a study of disabled people' (Schalk 2017; also see Minich 2016). In this way, this is not simply an issue for disability legal scholarship, but for broader thinking about a right against social deprivation and law more broadly.

3.1 Disability, care and dependency

Theories of care and dependency help to push thinking around subjectivity in more relational ways, offering challenge and inviting nuance to the theorising of a right against social deprivation which runs the risk of being framed through more individualistic ideas of subjectivity. To those more attracted to a relational understanding of the self, Brownlee's concept of freedom of association may ring hollow. As Helen Brown Coverdale (2022, p. 572) argues, '[w]hen we understand ourselves as interdependent, vulnerable selves in connection, supporting each other is a normal part of life, and other's needs as occasional limits to our choices become more readily intelligible'. Such an approach might question the extent to which we can separate out who is receiving care and who is giving it. From our earliest days we are in interdependent caring relationships where the boundaries between the 'carer' and 'cared for' break down. As Stohr (2019, p. 74) writes: 'Practical identities are inhabited with and alongside other people, whose actions and expectations shape how we understand those identities, the norms that structure them, and what possibilities are open to us when it comes to occupying them or discarding them.' This is something that Brownlee's way of expressing the tension does not fully capture. Taking such an approach starts to highlight the limited vision that comes from seeing the issue as a clash between freedom of association and a right against social deprivation. An ethics of care approach would argue that a much more nuanced understanding of individual cases is required, which will very much depend on the relational context: the situatedness and resources of the parties. This kind of analysis that care ethics offers may be more profitable than the more traditional liberal formulation Brownlee uses.

A long-standing debate in disability studies has been around the care and disability binary, yet more recent work has pushed for drawing on insights from care ethics and disability studies to unsettle the problematic ideas of independence and subjectivity that inhere in liberal legal frameworks (Clough 2021; Herring 2026; Lai 2020). As mentioned above, one of the flaws of both the traditional carer/cared-for model and the model of personal attendant is that they are both premised on the norm of an active, autonomous, independent person directing the activity and the passive disabled person receiving the intervention (Kelly 2013). That is a false image of independence that one cannot, and no one should want to, achieve (Herring 2026). The carers' rights model often posits the active autonomous carer seeking to help the 'cared for' to reach as close to autonomy as possible (Larkin and Milne 2014). The reality is, however, that all human life and every human is 'steeped in dependency' (Feder Kittay 2019, p. 18). Insights from disability studies can further extend thinking here. As Rosemarie Garland-Thomson (2002, p. 45) writes:

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> 'The autonomous individual is imagined as having inviolate boundaries that enable unfettered self-determination, creating a myth of wholeness [. . .] Conversely, the disabled body represents the incomplete, unbounded, compromised, and subjected body susceptible to external forces: property badly managed, a fortress inadequately defended, a self helplessly violated.'

We are all vulnerable and in need of the care of/from others (Fineman 2008). This might be used to challenge the notion that a 'disabled person-carer' is that much different from the relationships of care which exist everywhere. Some of the more dichotomised thinking around care/disability is based on a false image of independence that no one can, or should want to, achieve. Indeed, such an approach emphasises interdependence. Social deprivation, on such a model, is not simply a matter of a single person being 'blighted by loneliness', but rather is a failure to manifest our dependence on each other. The isolation of one person is a loss to the whole society or community.

The notion that anyone is in a position to dictate what care they should receive or insist on what care they should receive should be rejected. As Jackie Leach Scully writes:

> '. . . we tend not to acknowledge that even the most avowedly independent adult is completely reliant on known and unknown others to satisfy their needs, whether those needs are for transport, information, companionship or counsel. Meeting someone's needs in ways that support their self-determined lives is also a form of care. This insight allows feminist ethicists to challenge the conventional framing of the need for care as something that is anomalous and pathological' (Leach Scully 2008).

This reality of us all is far from the image of the autonomous free self that is dominant in the law and much philosophical writing. The law reflects its image with its emphasis on rights of autonomy, privacy and self-determination. They are unsuited for the reality of our existence in which autonomies are mixed; meaning is found in sharing experiences; and flourishing is discovered in the mingling of our lives.

Disability studies, particularly more relationally orientated disability studies, can thus extend thinking around subjectivity and dependency in important ways for the right against social deprivation. This involves recognising dependency and vulnerability as basic features of all human life (Davy 2019; Stoljar and Mackenzie 2023). Part of our vulnerability leads from our embodiment. We like to present our bodies as self-contained and secure structures. In fact, our bodies are leaky and in a constant state of flux (Herring and Chau 2007). Our bodies are insecure and vulnerable. It is true that the nature of this can vary depending on the particular body and social context. But the norm is our common vulnerability. This can lead us to a better understanding of what it is to be human and what values the law should promote (Herring 2022). As Rosemarie Garland-Thomson (2002, p. 46) argues:

> '[D]isability is perhaps the essential characteristic of being human. The body is dynamic, constantly interactive with history and environment. We evolve into disability. Our bodies need care; we all need assistance to live.'

In such a light, vulnerability and dependence are not only inevitable parts of humanity; they are to be greatly welcomed. They are virtues, not vices. Self-reliance as a goal needs to be rejected for all. Vulnerability is essential to relationships. Entering a relationship with others creates an understanding of trust, the assumptions of responsibility and obligations of care.

Thinking through vulnerability and dependency alongside disability literatures is also powerful in moving away from a dyadic model of care and relationships, and bringing to light the more ecological vision of an assemblage, highlighting the multiple relations which shape our social interactions and potential to form and maintain social relationships. Assemblage thinking

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unsettles ideas of subjectivity which are premised on bounded, discrete individuals, instead positioning agency as emerging through and contingent upon a number of interacting elements, including bodies, institutions, resources, technologies, space, materiality and so on. This is important for the right against social deprivation literatures, to deepen the approach to relationships and social being, and the multiple ways through which they can be enabled and formed. Disability scholars writing from a relational geographies perspective demonstrate how experiences are constantly shaped by various material and social interactions (Feeley 2016; Hall and Wilton 2016). They highlight how our experiences and identities are not fixed, but are always changing and evolving as we move through different 'assemblages' – complex webs of material, technological, social and economic forces. As Feeley puts it:

> 'an assemblage account of why a particular service user, diagnosed as having cerebral palsy, cannot currently speak might consider:
> - the biology of the particular body and its actual physical capacities (the things it can and cannot do in its current material context);
> - existent communication technologies and current research into communication technologies;
> - what funding is, or is not, available for this;
> - how the relevant legislation and policies enables and constrains access to speech technologies; and
> - how societal discourses construct speechless subjects and the provision of expensive technologies to them.
>
> The assemblage analyst would seek to map how the complex interaction of all of these elements produces the problem of a body that cannot currently speak' (2016, p. 284).

Unlike approaches that see identity (such as disabled or carer) as static or always progressing linearly, this perspective suggests we can have multiple identities at the same time, depending on the specific circumstances and interactions we are in. This offers an important perspective for the right against social deprivation literature to acknowledge, to avoid reinforcing these static identity visions when looking to articulate a way to operationalise a right, or carve boundaries around individual obligations and where duties might fall. As a corollary of this, recognising such relations, processes and the multiple actors involved surfaces different ways of approaching obligations and responsibilities, which (as will be discussed in the later section) is crucial to more fully thinking through the transformative potential of a right against social deprivation.

In this way, disability studies offers important insights for a right against social deprivation through pushing for a more deeply relational understanding of subjectivity, care and dependency, and ensuring relations are seen in an ecological and multiple way. This is powerful for a right against social deprivation as it begins to open up different relations for analysis, and shifts away from an individualised focus on dyadic care relations and potential 'clashes of rights', instead recognising responsibilities of multiple actors as part of multiple processes to enable social inclusion. We here would echo Davy's (2019) argument for 'philosophical inclusive design' which takes universal relationality and interdependence as the central ethical starting point, rather than (as often happens) trying to shoehorn disability into existing political and philosophical approaches almost as an afterthought, thus reinforcing the 'otherness' and exceptionality of disability. This is echoed and extended in disability justice literature, such as in the work of Mingus, who offers interdependence as a rejection of ableist ideals of independence and centres collective care and solidarity (Mingus 2011; also see Nishida 2022). As will be discussed further in the final section of this paper, this invites reflection on the extent to which such shifts are workable within existing rights paradigms, or whether new paradigms can be developed with fundamentally different onto-epistemological starting points.

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3.2 Contribution

The rethinking of subjectivity and orientation towards assemblage thinking (as opposed to linear or dyadic relationships) also offers important challenges to the ideas of contribution that are prominent in the right against social deprivation literature. As seen earlier, one of the novel aspects of a right against social deprivation is the foregrounding of our contribution to others. As Brownlee (2020, p. 22) puts it:

> 'For ease of expression, let's call it our *need to sustain* others. Second, we have a human right to be protected in our efforts to sustain others. Third, when we are denied the means to sustain others, we are victims of a grave injustice, which I call *social contribution injustice*.'

This is a powerful framing in the context of disability, particularly in relation to the cases outlined at the beginning of this article. It is striking that the individuals at the centre of the Court of Protection cases live 'narrowed lives', to quote Vehmas and Mietola's (2021) evocative phrase, not just in terms of their seemingly limited interactions with others, but in the ways in which their contributions to the lives of others are so curtailed by others. In many ways, they are positioned outside of the margins of society, as passive rather than active agents. Similarly, in Nicholas Thornton's case, Nicholas is 'placed' in a range of settings, in a passive way, rather than with his own contributions to society being enabled or cultivated. His social and material world shrinks in these unsuitable placements, through the wholly unsuitable and harmful material context of the settings, and the limitations on meaningful relational contact that they create. In this sense, the emphasis on contribution here is potentially incredibly powerful, further shifting the emphasis on to the ways that disabled people can be recognised as active participants in society and, crucially, the support needed to enable this.

Yet, there is a risk that contribution to others in this context may be interpreted and reinforced in ableist ways. First, it is important to guard against narrow understandings of what social interaction and contribution look like. As discussed above, Brownlee (2020, p. 20) suggests that social abilities are 'a complex set of skills, thoughts, attitudes, emotions, and behaviours that allow us to lead socially integrated lives'. While this is situated within an argument that the resources to enable these abilities ought to be provided as part of a right against social deprivation, this more rationalist interpersonal idea of social abilities could ground arguments for excluding disabled people, reinforcing existing patterns of social exclusion and marginalisation. Additionally, and aligned to this, there is a need to emphasise the multiple ways that contributions are made to society which do not conform to the model of direct, dyadic, interpersonal interaction that is held up as the paradigm in existing literature on a right against social deprivation (Vaittinen 2015). Drawing on critical disability studies literatures and, in particular, the assemblage focus introduced in the previous section invites more nuanced thinking about contributions and interactions underpinned by posthuman and new materialist thinking. They also require us to move away from reducing societal contributions to a narrowly conceived economic contribution. Indeed, engaging with those with disabilities can open up new ways of engaging the world, interacting with others and valuing human experience. The ableist mentality, with its narrow focus on what is productive or valuable, can be expanded through engagement with disabled people (Reinders 2008).

Such literatures have decentred ideas of human agency (and the emphasis on rationality and individual autonomy that dominated these theories) and instead foregrounded relational inter-action or intra-action, and relational agency which encompasses non-human actors and techno-scientific, cultural, material, environmental and institutional forces. Unseating the norm of the autonomous, rational, individual legal subject and rethinking subjectivity through and with impairment, interdependence, difference and relationality enables us to then see the 'sheer diversity of embodied experiences that overwhelm any binary opposition between a normative "able-body" and its disabled other' (Hall and Wilton 2016, p. 741). As Bozalek (2016, p. 80)

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contends in relation to new materialist and posthuman analyses, 'neither makes the assumptions of enlightenment humanist ethics by regarding the independent rational human actor as the centre of morality, or seeing the human being as the centre of moral thought'. Through this, then, we can push for more careful thinking about ideas of contribution, recognising the importance of thinking beyond interpersonal interaction through a humanist lens, and looking towards ideas of agency and obligations as distributed, relational and more-than-human (Young 1997, pp. 340–63; Van Marle 2003). These relations and obligations may not be contemporaneous, or bounded, but will be multiple, with ongoing impacts.

There is a further aspect here to be addressed. In his work on African disability rights and philosophy, Onazi (2025) has drawn attention to the African Disability Rights Protocol and the emphasis it brings on community and the importance of individual duties, including for disabled people (Art. 31). While in many ways this is seen by Onazi (2025) as a positive aspect of the regional rights framework, signalling equal humanity and belonging of disabled people, it is potentially problematic in that:

> 'duties often manifest as mutually reciprocal social roles or civic responsibilities necessary for community belonging and personhood. Duties are predicated on a rigid model of mutual reciprocity, which may pose challenges for certain people with disabilities, especially those with extreme physical and cognitive disabilities' (p. 3).

These concerns echo the points raised above about contribution, and the importance of interrogating framings of reciprocity. In translating this into an operational rights framework, there is a danger of placing too much onus on individuals who may lack, for structural or institutional reasons, the abilities to reciprocate in a way that is recognised through the overarching lens of contribution and value. Onazi (2025) goes on to suggest the need to look at:

> 'how "other people" contribute to or support the "person", rather than how the "person" supports "other people". Without the contribution and support of "other people", the "person" cannot, in turn, support others or live a dignified life' (p. 4).

Through this, the suggestion by Onazi is that we ought to see duties in this framework as 'fundamentally altruistic or compassionate', placing a focus on 'capable community members to assist the most vulnerable, especially those unable to reciprocate or reciprocate equally' (p. 4). In many ways this resonates with Brownlee's thinking on social contribution injustice:

> 'Denying us the social resources we need to be able to sustain other people threatens our self-interest in many ways, by denying us the protection we should have to meet our moral responsibilities to dependants and associates, to learn from others how to be inclusion-worthy, and to improve our skills as a social contributor. Wronging us as social contributors also wrongs our loved ones, since we are mutually invested. Denying us the means to sustain them robs both us and them of meaningful love-labour; it alienates us from our caring efforts and from the people we seek to sustain' (2020, p. 93).

Alongside Onazi's work, this foregrounds the need to ensure social resources are provided to enable us to engage in and contribute to society through our relationships. At the same time, however, we need to guard against a narrow view of contribution, and to recognise and value temporal unevenness and dispersed contributions, beyond the dyad. Moreover, going beyond Onazi's and Brownlee's thinking here, it is beneficial to also think about responsibilities and the source of these obligations to provide resources, again going beyond individuals or dyadic relations (as may be the case in Onazi's approach) and emphasising multiple interacting processes and sources of support.

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We would add to this that, in line with disability studies and the new materialist or assemblage thinking emphasised by relational geographers in this field, such duties can productively be seen not just as asymmetric, but as multiple and multiply enabled. Moving away from a dyadic and linear understanding of rights, duties and obligations which could be foregrounded in theorising a right against social deprivation, instead it is important to broaden the understanding of the ways that duties and contributions can be institutionally and structurally enabled (or obstructed) and how they can have multiple, diffuse and temporally uneven impacts. This resonates with insights from disability justice scholars such as Nishida (2022), who foreground 'messy dependency' and the uneven entanglements, non-linear relationships and power differentials involved in care. In essence, there is a need to ensure that duties around contribution do not become seen as individualised, and the right against social deprivation literature can be used to buttress a more relational understanding of the diffuse collective obligations and responsibilities that interact to enable individuals to contribute to society. This sits at odds with some of the existing literature on a right against social deprivation with the preoccupation with identifying individual duty holders and dyadic relations, and invites further critical interrogation of our rights paradigms.

3.3 Micro-interactions, inclusion and encounter

One of the particularly powerful aspects of the rights against social deprivation literature in the context of disability is the focus on the importance of micro-interactions. Thinking back to the sexual consent case-law, it is striking how much the lives of the individuals at the centre of the cases are already heavily controlled by others – and, as noted previously, this is just positioned as unremarkable background detail in judgments, as opposed to being the core legal concern. For disabled people who rely on professional caregivers, there is a further challenge to finding meaningful relationships. As Cerys Banks (2021, p. 1) notes, 'the professional boundaries put in place in support settings, to safeguard from harm both people with learning disabilities and their staff, can also have the unintended consequence of depriving people receiving support from meaningful social connections with others around them'. She accepts that these boundaries are put in place to avoid situations where 'inappropriate relationships' can develop between staff and people receiving support. However, that means that 'care can be delivered in only transactional ways, meaning that people receiving support can be denied the feeling of being socially connected to others, a vital aspect of the human experience' (Banks 2021, p. 2). The issue Banks raises is a difficult one, but it highlights how social isolation can be particularly difficult in a context where professional regulations inhibit close relationships with the people who spend most time with the disabled person (Cook and Trundle 2020).

In this way, disability offers important additional contexts and modes of social deprivation to the philosophical literature. It necessitates attention to the contexts which may be seen as legally unproblematic, and perhaps even legally enabled, such as through Care Act 2014 assessments and care planning, or through best interests decision-making under the Mental Capacity Act 2005. These may look very different to the more paradigmatic instances of imprisonment or solitary confinement as discussed in the right against social deprivation literature. The importance of thinking about this *through* disability insights is evidenced in the discussion of care homes as institutions by Nickel and Brownlee (2022). Here, they respond to the call from the Special Rapporteur on the Rights of Persons with Disabilities, Gerard Quinn (2021, p. 291), to dein-stitutionalise older people and disabled people. In response, they suggest that:

> '[t]he word "deinstitutionalization" is perhaps poorly chosen since providing homes and services for people who are lonely, anti-social, memory-challenged, or frail frequently requires institutions – including residential institutions. Many residential communities for older people and memory-challenged people are good and can play a vital role for people who do not have families or relatives to care for them. Moreover, a policy of caring for all

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> older adults at home would pose enormous challenges for families – particularly for women – who get squeezed between not only full-time work and the "second shift" of caring for children and household, but also a "third shift" of caring for older family members at home'. Significant governmental investment would be required to make such arrangements workable for most families' (p 242).

This quote helps to reveal two important interventions that disability perspectives add to the rights against social deprivation literature. First, thinking through disability here challenges the static distinction or binary between care homes and family, or institutions and community. Caring spaces can be created in ways that do not institutionalise individuals, and likewise the family home can become an institution without the right support. It is perhaps unhelpful to position the debate in this way, and better to engage with the disability literature which exposes the various sources of institutionalisation, deinstitutionalisation and reinstitutionalistion, beyond an institution/community paradigm. As Morrison-Dayan (2023) puts it, '[d]einstitutionalization requires a transformation of more than architecture and location and extends to the "meanings, practices, and power structures within places of care"'. As the *JB* case and others show, what might look like a community 'supported living' setting can in reality become a micro-institution, with ongoing control by others over all aspects of everyday life. Second, as Vehmas and Mietola (2021) note, 'the everyday lives of people with PIMD take place almost exclusively within intellectual disability services'. Disability perspectives here bring an important lens through which to become more attentive to spatial contexts where social deprivation may not be stark, but may instead be structural, cumulative and occurring in everyday practices. Moreover, the quote above demonstrates the carer/disabled person binary in action, with a framing which shifts responsibility for care and social inclusion from the state (provision of a care home) to the family. This perpetuates an individualising logic, which sees responsibilities in a linear and dyadic way. Reflecting on the assemblage thinking offered through disability studies pushes for more nuanced tracing and engagement with the multiple legal and policy processes shaping social deprivation and inclusion.

Drawing further on these insights from geographic and disability studies literature on the dynamic between institutions and communities, the concept of 'encounter' has been advanced as offering a productive lens through which to address the shortcomings of existing visions of belonging and inclusion (Bigby and Wiesel 2011). The concept of 'encounter' moves beyond simply presence in communities, and instead focuses on interactions or exchanges, and being attentive to the quality of and meaningful opportunities for these. In many ways, the conceptualising of inclusion through encounter resonates with the focus in the right against social deprivation literature on micro-interactions, including the emphasis on the cumulative nature of these. As Bigby and Wiesel (2011, p. 264) suggest, thinking through *convivial* encounters:

> 'A convivial encounter provides people an opportunity to step outside a fixed identity; for example, to shift from a person with intellectual disability to a more transient identification as a library user or a gardener. In such encounters, people construct temporary shared identifications (e.g., as gardeners in a community garden), but which do not repress the differences between them. Such an encounter between strangers may lead to friendship and a long-term relationship, and in this sense can be understood as a bridge between community presence and community participation. A convivial encounter is, however, a valued social interaction in itself and is an essential, but previously neglected, element of social inclusion, even when it does not lead to a long-term relationship.'

The insights here around self and identity are particularly striking. It has been suggested that people with learning or intellectual disability 'face greater barriers to conceptualising and verbalising their inner worlds' (Banks 2021, p. 1). As discussed earlier, one of the key features of relationships is tied to a sense of identity and an understanding of ourselves. Indeed, some argue

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that the self emerges out of our relationships (Herring 2016). For those whose disabilities make it particularly difficult to conceptualise or verbalise their understanding of themselves, relationships may be key and a primary source of this self-actualisation. A deprivation of social interaction may therefore be, for them, a particularly deep challenge to identity. The concept of encounter in the context of disability extends and sharpens this thinking further, resonating with the shifting subjectivities and relations foregrounded in the assemblage literature in disability studies introduced above. These convivial encounters are crucial for shaping identity and self for a multiplicity of social actors, and for the ongoing shifts and shared constructions of identity. They open too arguments that interactions and relationships involving disabled people not only protect the rights and interests of disabled people, but are essential for 'non-disabled' people to develop a fuller sense of self and deeper understanding of identity. This may, therefore, provide a route to avoid the challenge mentioned earlier that Brownlee's arguments create tensions between the rights of those deprived of social interaction and those who are not. That is because the failure to provide social interaction for disabled people denies non-disabled people the right to socially engage with others. In essence, the constraints placed on the lives of disabled people in their micro-interactions and opportunities for convivial encounters with strangers are not simply a concern for disability rights, but also actively curtail opportunities for becoming for all in society. As assemblage thinking invites us to consider, identities are not fixed but constantly emerging through and between relational connections. Through this strong resonance, there is the potential for the right against social deprivation literature to be a useful vehicle for translating this concept of the encounter and its broader implications – and with it, some novel theorising around disability, inclusion and freedom – into the language of law, rights and obligations.

4 Implications for disability law and justice: mobilising a right against social deprivation

In Brownlee, Jenkins and Neal's collection *Being Social,* Nickel and Brownlee (2022) begin to question in the epilogue what the implications of the conceptualising of a right against social deprivation are: 'what do such claims give us good moral and legal duties to do?' As legal scholars, it is important to situate this question within current debates and critical literatures around rights and their limits, and to think through the implications for disability legal scholarship. Here we do not offer a framework for how a right against social deprivation ought to be operationalised. To do so would overlook the contested terrain that human rights arguments sit in, and their existence 'beyond a monolithic positivist legal structure' (Saeed 2021). Our reflections here are more tentative, and are intended to invite legal and disability scholars and activists to consider the multiple ways through which a disability-centred right against social deprivation might be deployed in advocacy and critical scholarship. Moreover, and as noted at the outset, to take seriously the implications of rethinking concepts through disability in the ways suggested will undoubtedly require fundamental disruption to existing liberal legal frameworks and rights norms. As will be discussed, while the UNCRPD does challenge and unsettle liberal rights norms (Clough 2022), the transformative potential is often obscured in existing scholarship and advocacy. As such, and following disability justice insights, we want to keep in view the limitations of existing rights paradigms, and recognise that we cannot simply transpose a right against social deprivation into these as part of transformative efforts. At the same time, however, there may be multiple ways to harness and deploy the insights from this reconfigured right against social deprivation outlined above, to make legal and political claims within existing legal processes, to invite alternative legal responses and to begin to build resistance and transformation from within.

There is a significant body of literature which critiques the hegemonic dominance of rights discourses and the limitations (or harmful consequences) of calling for human rights as a response to structural harms or violence. Rights may be seen as reinforcing neoliberal, ableist, racist, gendered norms, as individualising societal or systemic problems and entrenching harmful

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sociopolitical norms. Yet scholars such as McNeilly (2018) have pushed back against the turn away from rights, instead suggesting ways in which rights can be utilised as a critical tool, particularly when positioned outside of the liberal legal imaginary. As Beckett puts it, '[o]ur current legal frameworks do not represent the only possible articulations of law. The most significant legal advances have often emerged when scholars and activists dared to imagine beyond current paradigms and legal architectures' (2025, p. 7). Moreover, Davies (2017, p. 5) suggests that 'a rejection of rights discourse can only be promoted by relatively privileged people who take their rights for granted'. It is important to be mindful of these debates and limitations of rights-based arguments, particularly when they are seen through a liberal lens and vision of the role of the state and individual subjectivity. Situating disability as central to this theorising around the implications of the right against social deprivation literatures is crucial, then, in guarding against this, through a more relational understanding of the various overlapping legal and policy processes, and the various different actors involved in making a right against social deprivation meaningful. With this in mind, this section seeks to open up space for thinking through how a right against social deprivation exposes the gaps in existing legal rights frameworks and legal processes in the context of disability, illuminating not just the gaps in the scope of existing rights frameworks, but also the ways in which law claims to be absent yet is actively producing the harms that the right against social deprivation conceptualises. Thinking about this alongside the disability insights and reconfiguration introduced above helps to indicate the various sites within the legal landscape where thinking about social deprivation might offer a critical and productive intervention.

One of the potent aspects of the right against social deprivation is the explicit recognition in the existing literature of how it necessarily merges positive and negative obligations. As Nickel and Brownlee (2022, p. 288) point out, negatively it captures 'a right against social exclusion, neglect, forced isolation and marginalisation'. At the same time, it entails a right to have 'genuinely *social* access' and 'requires governments to assume key duties to protect and secure persons' most basic social interests and requires individuals, societies and polities to recognise their responsibilities to act in ways that eliminate or at least substantially reduce marginalising, isolating and segregating practices and social-connection problems they create' (Brownlee and Nickel 2022, p. 288). The Right Against Social Deprivation is powerful in this way – demonstrating how enablement or achievement of this right requires both positive support and supportive social and structural contexts, *and* negative avoidance of active interference with relationships. This, then, is not just a call for the state now to step in and address or provide some form of redress, but to also recognise that states have actively shaped these current contexts and harms produced by social deprivation, enabled through laws, institutions and sociopolitical and economic processes.

In human rights scholarship, there has been a long-standing debate as to the legal status of positive and negative obligations, alongside the divide between civil and political rights, and social and economic rights. At the heart of these are ideas about the role and limits of the state and the individual, and about responsibility. The UN Convention on the Rights of Persons with Disabilities has been seen as particularly progressive and potentially transformative in melding civil and political rights alongside socio-economic rights in many of the key articles. This challenges the idea of the state and the separation of positive and negative obligations, and, as one of us argued elsewhere, 'invites us to consider not just a shift in disability rights discourse, but a theory of justice at a broader level' (Clough, 2022, p. 31). When aligned with critical scholarship in disability, the right against social deprivation may provide an important tool and vehicle for legal challenge and activism, shifting away from liberal individualistic rights framings, without necessitating a reinforcement of problematic norms around the role of the state and individual freedoms.

One point to reflect on here is whether the right against social deprivation is essentially a 'new right' to be developed and inserted in legal frameworks at different scales, or whether it is something that might be an interpretive aid in a variety of legal and policy locations. This, we

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hope, is something that others will engage with as part of developing scholarship in this area. Nickel and Brownlee (2022, p. 289) suggest that 'the normative space in which the human right to adequate social access must operate is not unpopulated. This right works together with, but is also sometimes limited by, neighbouring rights.' This is certainly true and will be explored further in a moment. At the same time, however, it is also important to think about how the right – as well as sitting alongside or in tension with existing rights – can also productively expose gaps in existing frameworks and legal thinking at a number of different points.

An area in the disability legal context in which the right against social deprivation might expose the gaps in existing frameworks is in relation to approaches to Art. 5 and Art. 8 of the ECHR. Luke Clements (2011), looking at cases like *McDonald*[5], suggests there is an attitude:

> 'that in return for non-incarceration, disabled people must accept fewer rights (for example, fewer protections from indignity). In exchange for community living, other human rights (such as subjective "dignity") must be waived – or if not waived, that these rights (which in the context of detention are deemed to have a strong civil and political rights component) transmogrify into aspirational socio-economic rights' (p. 676).

This perception can be seen in the way that the norm of liberty is seen as living alone and free from interference. However, the deeply relational understanding of the self protected by the right against social deprivation would see enforced isolation as being a form of harm. It is not surprising that solitary confinement is one of the worst forms of torture that one can inflict. Clements talks about the 'cliff-edge' of Art. 5, in which he sees judges as scared to peer over this cliff-edge, given that to do so would begin to expose the societal conditions impacting on individuals' meaningful freedom. Building on this, Parker and Clements (2008) reflect on the dynamic between institutionalisation, independent living and ECHR rights:

> 'Whilst coercive institutionalisation may not always constitute a deprivation of liberty for the purposes of Article 5, Article 8 jurisprudence will be relevant to all restrictions placed on individual liberty: particularly to restrictions on social interaction, the ability to establish and develop relationships, educational and other personal opportunities as well as those that impair an individual's "physical or psychological wellbeing"' (p. 516).

They foreground the limited vision that the rights framework here has for addressing the realities and actualisation of independent living. The importance of encounter, micro-encounters, ongoing relationships, opportunities to create these, seems not to feature in the scope of Art. 5 and 8 jurisprudence. The right against social deprivation literature offers powerful language to bring the importance of this to the fore, and, alongside the work on *encounter* highlighted above, has the potential to draw attention to the particular ways through which encounters are enabled or prevented. Clifford Simplican (2021) extends the thinking on encounter in relation to learning disabilities through the lens of freedom and unfreedom: 'to encounter others is not only a fact of existence; it is the only way to produce and experience freedom' (see also Marso 2017, p. 2). Thinking back to the case studies at the start of this article, this is an element which draws together both examples. While the individuals at the centre of these are living in different spatial settings – one being more closely aligned to the 'community' and another in the more classic understanding of 'institutions' – one of the predominant features in the lives of the individuals involved is the opportunities for social interaction and encounter. As Clifford Simplican (2021) notes:

[5]*R (on the application of McDonald)* v. *Royal Borough of Kensington and Chelsea* [2011] UKSC 33.

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> 'I worry that accounts of freedom in the field of intellectual disability tend to focus narrowly on elements like choice, control, and self-determination, and therefore overlook the action-oriented account at the heart of Marso's theory' (p. 27).

Turning to think about the UNCRPD, as potentially offering an important corrective to the limitations of the legal imaginary and vision of the ECHR and disability jurisprudence, Art. 19 and the emphasis on 'Living Independently and Being Included in the Community' might offer a more effective vehicle for mobilising some of these concerns. As the Council of Europe Commissioner for Human Rights (2012) put it, Art. 19 'is about neutralizing the devastating isolation and loss of control over one's life, wrought on people with disabilities because of their need for support against the background of an inaccessible society'. This is a powerful framing, and offers a space for which some of the transformative thinking around a right against social deprivation might begin to be situated. Crucially, however, the right against social deprivation and insights it might generate need to be considered as part of the UNCRPD as a whole, drawing on the other Articles of the Convention to fully appreciate the many facets of a right against social deprivation and the various legal and policy processes through which it can be enabled. The obligations framing is particularly helpful here, emphasising the multiple, cumulative processes involved rather than distinct legal events or moments. Foregrounding the interweaving of the positive and negative obligations that are central to a meaningful right against social deprivation is vital.

This inevitably involves closely guarding against an interpretation of Art. 19 and independent living which plays into the liberal individualistic framing of the individual vis-à-vis the state. Such an interpretation has been evident in English case-law surrounding the Care Act and independent living, most notably in the case of *Davey v. Oxfordshire County Council* [2017 EWCA Civ 2121]. The case involved questions as to the local authority's Care Act obligations in respect of Luke Davey's support plan. Luke Davey is a disabled adult who had been supported by a team of personal assistants almost twenty-four hours per day. This support was vital to his independence. However, following the closure of the Independent Living Fund, the local authority assessed his needs and felt that his eligible needs could be met for less, essentially resulting in a significant cut to his personal budget and, in turn, to the amount of support he would be able to access. It is striking that as part of this process, the local authority assessed his eligible needs as[6] 'to enhance his independence by spending more time alone'. The assessment that Luke's independence would be enabled by a *reduction* in his support, with more time spent alone, echoes the idea of the state as not interfering, and of independence and freedom as inhering in the individual.

Moreover, the interpretation of Art. 19 within this framework is troubling. Article 19 and independent living were not *specifically* included in the Care Act 2014, despite significant pressure from disabled people's organisations and others to include it. However, it *does* make an appearance in the Statutory Guidance in relation to the 'wellbeing principle', which instead is the central organising feature of the Care Act, with the Guidance saying that the wellbeing principle is intended to cover the key components of Art. 19 and the UNCRPD more broadly (HM Government 2018, Para 1.18 and 1.19). In *Davey*,[7] Morris J in the High Court suggested that Art. 19 would be an aid to interpretation in the event of ambiguity, however adding that this does not give service users the final say as to services they want – the final decision resting with the local authority. It is striking, however, that there was not seen to be any such ambiguity here as to the meaning of independence as part of the needs assessment and the suggestion that independence here amounted to spending more time alone, rather than hinging upon support as envisaged by Art. 19.

The case also serves as a reminder about the need to attend to the various processes in and through which a right against social deprivation can be enabled or obstructed, not through

[6] *Davey v Oxfordshire County Council* [2017] EWCA Civ 2121, para 24.

[7] *R (on the application of Davey) v. Oxfordshire County Council & Ors* [2017] EWCA Civ 1308.

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abstract legal rights statements, but through the interpretation and actualisation of a number of legal and policy processes. Here, the Care Act assessment process was the vehicle through which norms around independence were solidified, and where considerations of social interactions were starkly absent. Drawing on a right against social deprivation as part of these processes may offer a way to productively disrupt norms of independence, to centralise interdependence and the collective, multi-faceted ways that social relations can be enabled. Similarly, thinking back to the Mental Capacity Act 2005, Care Act and other legal and institutional processes overlapping in the lives of individuals such as JB in the example that this article started with, there are productive absences in these processes in which recognition of a right against social deprivation, thought *through* a disability lens, might have important implications. Moreover, engaging with novel rights frameworks and underpinning norms, such as we see in the UNCRPD, can sharpen nascent theorising of the right against social deprivation and rights theory, building on existing work rethinking rights through disability (Clough 2025).

4.1 Conclusion

In a context in which the social exclusion and marginalisation of disabled people endures, despite claims of independent living or post-institutionalisation, new vocabulary or critical frameworks are urgently needed to better understand the harms and processes at play, and to underpin arguments for legal and policy change. As we have begun to outline in the article, such harms are currently not being adequately captured by current legal frameworks and debates, and in some cases are actively perpetuated through current paradigms. Philosophical literature on a right against social deprivation has been offered as a conceptual framing which can capture the harms occurring both outside of and through legal processes, the social needs being neglected in current analyses and the corollary obligations which flow from this reframing. In putting disability into conversation with existing literature, we also seek to ensure that developing literature on a right against social deprivation engages carefully and critically with disability and the social and legal processes here, to avoid reinforcing ableist norms and presuppositions. Disability brings an important dynamic to broader literatures on a right against social deprivation, in line with the critical disability studies invocation to think concepts *through* disability, rather than just for disability.

This is not, however, merely a call for a discursive reframing of a problem, but has significant implications for legal norms around the role of the state, obligations and rights. In this sense, a right against social deprivation has been seen to agitate ideas of positive and negative rights, and socio-economic and civil and political rights. They are inextricably intertwined in this right, entailing both a right to resources to facilitate social interaction *and* a right against intervention. The CRPD offers an important case study for thinking through the implications of this within a rights framework, and offers much to scholars working through a right against social deprivation in terms of an innovative treaty which melds civil and political rights and social and economic rights in novel ways. For our purposes here, however, we have begun to demonstrate the potential for a right against social deprivation to be utilised to highlight instances of active state creation or perpetuation of the conditions of social deprivation, and to be utilised in future rights argumentation in this field. For us, it captures something beyond the current frameworks surrounding independent living, liberty and rights to private and family life. Engaging with the right against social deprivation offers a productive intervention here, and we hope that it will catalyse further research exploring the potential to understand and to structure legal processes and obligations differently to adequately respond to the ongoing social deprivation of disabled people and the persistent residue of institutionalising norms.

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