Resumé

Dette speciale handler om, hvorvidt socialt udsatte forbrydere bør få mildere straffe end ikke-udsatte forbrydere. I skrivende stund er der ingen jurisdiktioner, som betragter social udsathed som en formildende faktor, når det kommer til at afgøre, hvor hårdt en forbryder skal straffes. Visse retsfilosoffer fastholder dog, at social udsathed bør betragtes som en formildende faktor, fordi at udsatte individer uforskyldt befinder sig i et miljø som fremmer kriminalitet, samt at de, til en langt større grad end ikke-udsatte personer, er ofre for skadelige sociale faktorer, såsom omsorgssvigt og mishandling. Den generelle indstilling hos retsfilosoffer, som er sympatisk stemte over for at betragte udsathed som en formildende faktor, er, at eftersom udsatte individer er ofre for diverse skadelige sociale faktorer, samt at de befinder sig i et miljø der forårsager kriminalitet, så bør domstole tage særlige hensyn, når de determinerer, hvor hårdt socialt udsatte lovovertrædere bør straffes.

Specialet fokuserer på tre forholdsvis nye positioner, der er sympatisk stemte over for at betragte social udsathed som en formildende faktor. Disse er: (1) Andrew von Hirsch og Andrew Ashworths argument, der lægger vægt på, at eftersom udsatte befinder sig i et miljø, hvor det er særligt udfordrende at være lovlydig, så bør stater udvise *sympati* ved at straffe dem mindre end ikke-udsatte individer for ellers identiske forbrydelser; (2) Richard Lippkes argumenter, hvis hovedpointe er, at eftersom udsatte individer bliver udsatte for stærke fristelser til at begå forbrydelser både på en konstant og vedvarende basis, så kan stater ikke på retfærdig vis forlange, at udsatte personer formår at afholde sig fra at begå lovovertrædelser; og (3) Jules Holroyds argument, som lægger vægt på, at udsathed bør betragtes som en formidlende faktor, fordi at udsatte individer overtræder loven for at opfylde grundlæggende behov.

I den første del af specialet gør jeg rede for de ovennævnte positioner. I den næste del analyserer og diskuterer jeg argumenterne. I dette afsnit fremhæver jeg også Peter Chaus kritik af

von Hirsch og Ashworths argument. På baggrund af mine egne analyser af argumenterne og ved at anvende eksisterende indsigter om emnet, konkluderer jeg, at de ovennævnte positioner ikke er overbevisende. Dog påpeger jeg, at min kritik kun omfatter de positioner, som dette speciale fokuserer på. Jeg benægter ikke, at overbevisende argumenter for, hvorfor social udsathed bør betragtes som en formildende faktor allerede eksisterer. Ej hellere benægter jeg, at fremtidige retsfilosoffer sandsynligvis formår at konstruere overbevisende argumenter for straf reduktion.

Contents

Social Deprivation and Mitigation of Punishment

1. Introduction

This thesis is about whether social deprivation ought to be a mitigating factor in determining socially deprived offenders' severity of punishment. No jurisdiction directly acknowledges criminal defenses appealing to social deprivation (see e.g. Delgado 1985: 9; von Hirsch & Ashworth 2005: 66). However, certain legal philosophers put forth that punishing deprived offenders is particularly morally problematic (see e.g. Duff 2000; Duff 2001; von Hirsch & Ashworth 2005: ch. 5; Lippke 2003; Lippke 2011; Delgado 1985; Howard 2013; Holroyd 2010; Tadros 2009). Due to numerous factors, deprived individuals have a higher likelihood of engaging in legal wrongdoing compared to non-deprived individuals (see e.g. Wikström & Treiber 2016). In addition, the deprived lead difficult lives in poverty and are disproportionately victims of dignity-compromising social evils, such as neglect and abuse (Morse 2000: 154). Since deprived offenders already have suffered living and growing up in deteriorated neighborhoods as well as finding themselves in environments fostering criminal behavior, it seems unjust that states punish them without acknowledging the special challenges they face (see e.g. Klein 1990: 82, 84-91, 172-76). Some legal philosophers contend that states ought to take special considerations into account in punishing deprived offenders by regarding social deprivation as a mitigating factor in determining the severity of punishment. In practice, this would entail that if a socially deprived individual and his non-deprived counterpart committed identical crimes, then, because of considerations regarding the predicament of the deprived, the deprived offender ought to get a milder sentence than his non-deprived counterpart (Chau 2010: 775-76).

These scholars raise important questions about the legitimacy of the foundation of states, namely laws. Most people, the public and philosophers alike, agree that the existence of the

state is justified.[1] Although there is great disagreement concerning the degree to which the state is justified in intervening in personal affairs, most people accept that the state rightfully holds the monopoly of the legitimate use of physical force (see e.g. Weber 1946). By accepting the existence of the state, we accept that a state may rightfully use coercive measures against its citizens in cases where citizens fail to obey its laws (Wellman 1996: 211). While there is disagreement about which legal commands a state may justifiably impose upon its citizens, most people consider it morally permissible for the state to use physical force against an individual's will, if her conduct, without the intervention of the state, seriously jeopardizes other people's well-being (see e.g. Mill 2011: ch. 1). This is why authorities may justifiably fine reckless drivers, or take away their driver's licenses; why the state may punish those who are guilty of assault; and, of course, why the state may imprison murderers.

Despite granting the state permission to punish, we nevertheless expect the authorities to have some idea of justice in mind when determining how offenders ought to be punished. For instance, we would find it unacceptable if the state sentenced a driver to death because she exceeded the speeding limit by 5 km/h. Similarly, we would find it unacceptable if the state fined an individual $100 as punishment for committing murder. Furthermore, we want the law to be sensitive to the blameworthiness of offenders. Specific circumstances might affect the degree to which states can *blame* offenders for their wrongdoing: if a driver accidentally kills someone because of some random technical malfunction of her car, she is less blameworthy than a driver who runs over a pedestrian with the intent to kill. We thus have some intuition about the notion that the severity of the punishment of an offender should be proportionate to the seriousness of the crime committed (see e.g. von Hirsch & Ashworth 2005: 1; Holroyd 2010: 13).

[1] Specifically, the existence of legitimate states.

Moreover, as Duff (2001: xi) points out, the question of justifying criminal punishment "is unavoidable for anyone who cares about how states should treat their citizens". For example, imprisonment is one of the most extreme interventions states may legitimately make use of.[2] Being imprisoned is hard and demeaning. Further, convicts might spend months or even years in solitary confinement where they have few opportunities to engage in human interaction, get minuscule exposure to sunlight, and are deprived of sensory stimulation. As one can imagine, living in these conditions is "physically unhealthy, extremely stressful, and psychologically traumatizing" (Cloud et al. 2015: 19; see also e.g. Lovell et al. 2000; Arrigo & Bullock 2007; Smith 2006; Rhodes 2005). Since punishment can be so consequential, it is of great importance to be skeptical of how states justify punishing its citizens.[3]

We have good reasons to be skeptical of many aspects of legal systems. However, this thesis only focuses on issues concerning the punishment of socially deprived individuals. Those who are concerned with social deprivation and punishment can be divided into two main groups. First, some question the *state's standing* to punish the deprived. For instance, Duff (2001: 180) has put forth that states lack the standing to punish the deprived. Since states fail to treat their most vulnerable citizens with respect and express inadequate concern for their well-being, Duff holds that punishing them is *hypocritical*. Tadros (2009) also questions the state's standing to hold the deprived accountable for legal wrongdoing. Tadros contends that since states are permitting the *criminogenic* conditions of deprivation to exist, they are *complicit* in the crimes of the disadvantaged. The state therefore lacks the status to punish the deprived since the state ought to be regarded as a co-defendant when sentencing deprived offenders.

[2] I say "one of the most extreme interventions" because police officers, e.g., may find themselves in situations where they have to kill someone on the spot. Moreover, the death penalty is, of course, also an extreme intervention, but it is not obvious that sentencing offenders to death is *legitimate* use of force.
[3] Of course, one might also be skeptical of what the punishment itself consists of.

The second group argues that social deprivation ought to be regarded as a mitigating factor: the focus of this thesis. Scholars appeal to varying notions in arguing why the punishment of deprived offenders should be reduced. These include appeals to *determinism*, *free will*, *statistical likelihood to offend*, *diminished capacities* (see e.g. Morris 1967), *subculture* (see e.g. Isaacs 1997), "*payment in advance*" (see e.g. Klein 1990: 82, 84-91, 172-76), and more.[4] In this thesis, I limit my discussion to three fairly recent accounts that are sympathetic toward reducing the punishment of the deprived. These are: (1) Andrew von Hirsch and Andrew Ashworth's (2005) *compassion-based* account; (2) Richard Lippke's (2011) claims about *chronic temptations to offend* and *diminished capacities for self-control*; and Jules Holroyd's (2010) *reduced blameworthiness* argument.

The thesis consists of two main parts and proceeds as follows: in the first part, I describe the accounts that are the focus of this thesis. In the second part, I analyze and discuss the arguments. Here, I also include Peter Chau's (2010) critique of von Hirsch and Ashworth's claims. By relying on my own analyses as well as drawing on previous work on the subject, I argue that all the accounts emphasized in this thesis are unconvincing, including Chau's critique.

2. Social Deprivation as a Mitigating Factor

This section starts by outlining von Hirsch and Ashworth's argument in favor of punishment reduction. In their year 2005 book *Proportionate Sentencing*, von Hirsch and Ashworth (2005: ch. 5) devote a chapter to discussing why social deprivation in itself ought to justify mitigating the sentences of socially deprived offenders. In the chapter, von Hirsch and Ashworth argue that social deprivation ought to be viewed as a general compassion-based mitigating factor. Since their compassion-based case for sentence mitigation is relatively recent and has received a fair amount of attention and criticism (see e.g. Chau 2010; Lippke 2011), it is appropriate that their arguments serve as the starting point of this thesis.

[4] See Morse (2000) for a comprehensive discussion of all these arguments.

2.1 Social Deprivation as a Compassion-Based Mitigating Factor

At the outset, it is appropriate to define which group of individuals von Hirsch and Ashworth have in mind when discussing the question of social deprivation and sentence mitigation. They consider deprived individuals as people who "live in substandard accommodation in deteriorated neighborhoods; have limited and irregular incomes, poor or non-existent employment prospects, and often, weak networks of social and personal support. These persons, in other words, find themselves at the bottom of the social scale, and may have little participation in the society's ordinary working and living routines" (von Hirsch & Ashworth 2005: 62). Moreover, von Hirsch and Ashworth's account is restricted to concerns about socially deprived individuals who live in otherwise wealthy societies with high living standards, such as the developed Western countries (Ibid.).

2.1.1 Reduced Culpability

In order to highlight why a notion of compassion should serve as the basis for mitigating the punishment of the socially deprived, von Hirsch and Ashworth first provide reasons why they hold that appeals to reduced culpability are not warranted in contexts of deprivation. As they point out, if an offender cannot be regarded as being fully culpable for violating legal rules, then reduced culpability may serve as a ground for sentence mitigation, and it may even wholly excuse an offender's otherwise wrongful conduct, entailing that he ought not to be subjected to any kind of punishment (Ibid.: 63). For example, if an offender suffers from diminished capacities, meaning that he lacks the capacity to comply with the law, say, because of a mental disability, then the law regards him as less responsible for his actions. Another context-related matter that reduces culpability has to do with whether an offender is acting on reasons that somehow render him less *blameworthy*, although the offender, in this case, should still be considered as being fully responsible for his actions (Ibid.).

von Hirsch and Ashworth do not go into great detail about which matters usually warrant claims relating to culpability reduction. Because of this, I will now quickly outline Holroyd's (2010: 18-21) description of what usually constitutes culpability reduction. In general, legal philosophers recognize roughly four kinds of contextual matters that reduce culpability. These factors inform us about the degree to which states justly may blame offenders, and thereby can have a significant impact on determining the severity of punishment in addition to the harm caused in the crime. First, there are *justifications*. An agent's otherwise criminal action may be entirely justified because of special circumstantial matters. When an otherwise criminal action is justified, the circumstances under which the otherwise wrongful action took place were such that the action was not wrongful at all (Holroyd 2010: 20). Consider cases of self-defense. If individual A kills individual B because individual B attempts to cause serious bodily harm or even death to individual A, then individual A's offence may be justified since individual A, through no fault of his own, suddenly finds himself in a situation where he has good reasons to believe that individual B might violate his right to life.

Second, there are *excuses*. Whereas justificatory defenses emphasize that the circumstances were such that the otherwise wrongful action was not wrongful at all, exculpatory defenses involve recognizing that an agent's criminal action was indeed wrongful, but that circumstances were such that he should be regarded as less, or not at all, blameworthy for the action (Ibid.). According to Holroyd, there are three different kinds of criminal actions that may be excused:

(1) *Irrationality*. An agent's wrongful conduct may be excused based on irrationality. This encompasses both (a) individuals with diminished capacities, and (b) individuals finding themselves in circumstances that render them temporarily irrational. This type of excuse excuses wrongful conduct because the agent was not fully *responsible* while committing the

crime. Here, the agent is less blameworthy because she was not a fully responsible agent while engaging in the wrongful conduct.

(2) *Extreme coercion*. An agent's conduct may be excused because of particularly coercive circumstances. Engaging in criminal wrongdoing because of duress or necessity may warrant a strong exculpatory defense, entailing that the agent is not legally culpable at all, and that he therefore deserves no punishment altogether. Here, we consider the wrongdoer a responsible agent, but we understand that the circumstances are coercive to such an extreme extent that he cannot be blamed for the conduct.

(3) *Full responsibility and partial blameworthiness*. The agent's wrongful conduct may be partially excused because context-related matters are such that she ought to be regarded as less blameworthy, but still somewhat blameworthy, for committing a particular kind of crime than she would have been if she committed the crime in different circumstances (Ibid.).

What is relevant, then, is whether contexts of deprivation are such that exculpatory defenses ought to be warranted. Note that under the principle of proportionality, "an offender's sentence should be reduced if the circumstances render the offence less serious, with seriousness being a matter of the conduct's degree of harmfulness *and of the offender's culpability*" (von Hirsch & Ashworth 2005: 63).[5] Of course, the harm caused in committing the crime cannot be affected by being socially deprived. The question about the degree of seriousness therefore has to do with whether the deprived may be regarded as less culpable (Ibid.). According to von Hirsch and Ashworth, the answer is negative. First, they simply stress that one typically has no reason to regard the socially deprived offenders as having impaired volitional capacities. For this reason, defenses appealing to reduced capacities cannot warrant sentence mitigation for the socially deprived in

[5] Emphasis added.

general (Ibid.). This is the only statement von Hirsch and Ashworth provide with regard to whether diminished capacities claims ought to be warranted in sentencing deprived offenders. In the chapter, they do not argue why this is the case. Presumably, they hold that we have no reason to believe that the prevalence of impaired volitional capacities is higher in the socially deprived communities than in other communities. Alternatively, they might believe that even if the prevalence of diminished capacities is higher in deteriorated neighborhoods, the higher prevalence of diminished capacities does not deviate from the average number of individuals suffering from diminished capacities to such a noteworthy extent that it could become a regular mitigating factor in sentencing socially deprived offenders.

To continue, if diminished capacities defenses are not warranted, then the next question is about whether circumstances of deprivation for other reasons render the deprived less blameworthy for legal wrongdoing. As von Hirsch and Ashworth highlight, the classic example relating to rendering offenders less blameworthy concerns *excusing necessity*: an otherwise illegal action may be either wholly or partially excused if the offender commits an offence in order to prevent a greater harm from happening. In connection with this, von Hirsch and Ashworth point out that socially deprived offenders, as they have defined the group of people, cannot generally make necessity-based claims as defendants. For instance, if a person suffers from malnutrition and steals food in order to survive, then he might be in a position to make a necessity-based claim because he is acting out of urgent need (Ibid.: 64). However, a socially deprived individual who steals a television from his neighbor is in no position to make such a necessity-based claim because committing the offence does not protect his vital interests. In addition, referring to Gardner (1998), von Hirsch and Ashworth (2005: 64-65) contend that in order to make a valid necessity-based claim, the offender must be able to prove that he was in such dire circumstances that any person of *reasonable self-discipline* could not desist from offending. To illustrate what such dire

circumstances consist of, von Hirsch and Ashworth invite to imagine the following scenario: person A seriously injures person B because if person A does not harm person B, then person C will kill person A (Ibid.: 64). According to von Hirsch and Ashworth, any person of reasonable self-discipline would find it hard to desist from harming individual B in such a scenario – in their words "it would require extraordinary fortitude to desist" – which is why person A's action may be (partially) excused (Ibid.). In dealing with a socially deprived offender who steals a television from his neighbor, however, even if he "has increased incentives to steal [it], or fewer reasons to desist from doing so", he is not protecting his vital interests, and desisting from committing the offence does not require extraordinary fortitude (Ibid.: 65). In other words, the deprived individual is typically not in a situation where a person of reasonable self-discipline could not desist from offending.

Since one cannot generally appeal to diminished capacities, or make necessity-based claims when defending socially deprived offenders, then, von Hirsch and Ashworth point out, the notion of culpability-reduction, in general, cannot justify mitigating the punishment of deprived offenders (Ibid.). However, they do point out that the deprived generally have stronger incentives to offend than their non-deprived counterparts, although these incentives are not powerful enough to warrant culpability reduction claims. Since the deprived find themselves in this particularly difficult situation, von Hirsch and Ashworth appeal to notions of sympathy in claiming why sentence mitigation is justified in sentencing the deprived (Ibid.: 66).

2.1.2 Sympathy and Temptations

To illustrate the particular environmental characteristics that make it more difficult for the deprived to comply with the law, von Hirsch and Ashworth compare the predicament of the deprived to relatively privileged individuals. They start by explaining the disincentives to legal wrongdoing that the deprived and persons of relative privilege have in common. In general, when

individuals are exposed to messages about legal prohibitions against theft or violence, they are provided with normative reasons for desisting from committing the crimes (Ibid.: 66). By being aware of the fact that the law expresses severe disapproval of unlawful conduct, the individual has a clear understanding that committing crimes is prudentially and, maybe also, morally wrong. Moreover, she is provided with a further disincentive, a *prudential disincentive*, having the knowledge that certain offenders will be subjected to *hard treatment*, which is the element of punishment concerning intentionally subjecting offenders to painful and burdensome circumstances (Ibid.: 21, 67).

von Hirsch and Ashworth then turn to the morally relevant differences between the deprived and relatively privileged individuals. In this respect, they highlight that those of relative privilege have more powerful social incentives to comply with the law. First, with regard to acquisition and self-expression, the relatively privileged person has good opportunities to earn a decent salary by having a normal job, which she, for instance, can use to buy a nice car in order to enhance her social status (Ibid.: 67). By merely having the opportunity to earn a fair amount of money legally, one already has an increased incentive to comply with the law. Second, persons of relative privilege have more "collateral disincentives against violation" (Ibid.). Here, von Hirsch and Ashworth point out that committing crimes, or merely the suspicion that one might engage in criminal conduct, has an immensely negative impact on the non-deprived individual's reputation and prospects in communities with high degrees of legal compliance (Ibid.:). And lastly, the social standards in highly functioning communities furnish informal norms that are in accordance with the norms of the criminal law regarding honesty and non-violence. All these social factors are prevalent in highly functioning communities, creating serious inducements to comply with the law. As von Hirsch and Ashworth point out, "the ordinary person is given to understand that compliant behavior is considered socially more acceptable, and may offer a better way of achieving his goals" (Ibid.).

In comparison, von Hirsch and Ashworth list a variety of social factors that make law-abidingness less attractive for the deprived individual. They describe the morally relevant differences as follows:

> "First, the social incentives to compliance are reduced: there may no longer be better lawful ways of achieving many aspirations. The young resident of a deteriorated neighbourhood who wishes to have a good car of his own will seldom be in a position to earn the money for it rather than stealing it, because his ability to get well-paying employment is so restricted. Second, the disincentives are weakened: being convicted (and even going to jail) may no longer so clearly interfere with his social standing and prospects because these may well remain substandard anyway, and because being punished may be so commonplace among young men in his community. Finally, the local mores may be less supportive of law-abidingness, at least among his own contemporaries and peers. Compliance may be seen as naïve, and law-breaking the 'cool' option" (Ibid.: 67).

To mention some examples: whereas an individual in a highly functioning community may have many opportunities to earn a legal income that enables him to buy a car, this may be virtually impossible for a deprived individual; whereas a professor's criminal behavior will subject him to severe social pressure from his peers, such as exclusion, condemnation, destruction of reputation, etc., a socially deprived individual's criminal conduct may have no impact on his social status or future job prospects. In fact, illegal conduct may even have a positive effect on the socially deprived individual's social status in his community; whereas an individual in a highly functioning community may find himself surrounded by people who think deeply about the importance of being a moral and law-abiding citizen, a socially deprived individual may find himself surrounded by

individuals who live and have grown up in environments where law-breaking was the norm, and his only role-models may be serious criminals, such as gang members.

As highlighted in the quote, von Hirsch and Ashworth attempt to illustrate the significant differences between a functioning and a socially deprived environment: namely, that in socially deprived environments, the law-abiding individual is not in a better position than the non-compliant individual, while the non-compliant individual in highly functioning environments will experience serious consequences. In von Hirsch and Ashworth's words, "the social environment reduces the social stakes [the deprived individual] has in abiding by the law" (Ibid.: 67). Moreover, the quote also illustrates why von Hirsch and Ashworth put forth that appeals to reduced culpability are not warranted in arguing for sentence mitigation. As we see in the quote, although the deprived individual has fewer reasons to desist from violating legal rules, he nevertheless would not be sacrificing anything of vital importance if he complied with the law (Ibid.). Because of this, von Hirsch and Ashworth argue that if mitigating the sentences of socially deprived offenders is morally correct, then justifying why this is the case must be grounded on notions of sympathy rather than on reduced culpability.

Explaining why sympathy is warranted, von Hirsch and Ashworth first highlight that the relatively privileged individual has "the social supports for law-abidingness", meaning that they, by abiding by the law, not only avoid hard treatment but get many practical benefits as well, such as a decent salary and social status (Ibid.: 68). In contrast, the deprived are denied these social supports, entailing that the deprived offender "is truly in a more troubled situation, one in which the temptations to offend become harder to resist" (Ibid.). According to von Hirsch and Ashworth, this is why we should sympathize with their predicament and mitigate their sentences.

Having stated this, von Hirsch and Ashworth then attempt to consider the most intuitive objection to their claim: i.e., that sentence mitigation ought not to be warranted because

many deprived individuals lead perfectly law-abiding lives. In arguing against this objection, they first admit that it is true that many fully abide by the law. However, they highlight that the self-disciplined deprived individuals are capable of avoiding wrongdoing, but those with lower levels of self-discipline are not capable of doing so. For this reason, von Hirsch and Ashworth state that a modicum of sympathy is due to those who lack self-discipline, making them more susceptible to offending. Since these more susceptible individuals "have been denied the social supports that might help them overcome that susceptibility", von Hirsch and Ashworth argue that their sentences ought to be reduced.

2.1.3 State Responsibility and Societal Failure

von Hirsch and Ashworth briefly touch upon the state's responsibility to its disadvantaged citizens and reflect on which implications a society's failure to provide adequate economic and social opportunities to its citizens ought to have regarding punishment. First, without going into detail, they assume that decent states have a duty to provide citizens with certain opportunities (Ibid.: 69). Because states have this duty, they highlight that the occurrence of severely deteriorated neighborhoods, in which the incentives to comply are weakened, should be viewed as cases of societal failure. What this means is not only that the socially deprived offender finds himself in an environment where temptations are harder to resist; the plight of the deprived is also caused by a society that expresses insufficient concern for its citizens, meaning that *we*, the general population, are to blame for allowing such deteriorated neighborhoods to exist in the first place (Ibid.).

Even if we accept that the existence of social deprivation, at the minimum, partially reflects a societal failure, one still needs to determine how this should affect our judgement regarding the punishment of socially derived offenders (Ibid.). In connection with this, von Hirsch and Ashworth highlight R. A. Duff's arguments regarding societal failure and punishment. Duff

(2001: 179-201) contends that courts cannot legitimately punish those suffering from serious social disadvantage and systematic injustice. Duff points out that these individuals have been excluded (1) politically – i.e. they do not have any real chance of voicing their opinions on policies and laws that are being implemented in their communities; (2) materially – i.e. they have been denied "their fair share in, or a fair opportunity to acquire, the economic and material benefits that others enjoy"; and (3) normatively – i.e. the state and their fellow citizens have not treated them with sufficient concern and respect (Ibid.: 183). In Duff's ideal theory of punishment, citizens are bound by the law only if they are treated as members of the community enforcing the law. According to Duff, being treated as a member of a community requires political, material, and normative inclusion, which victims of serious social disadvantage and systematic injustice lack. Because of this severe exclusion, Duff raises doubts concerning whether states have the standing to punish these socially deprived individuals (Ibid.: 183-84).[6]

In short, Duff puts forth that societal failure, i.e. permitting social deprivation to exist, is relevant in punishing the deprived because it "weakens the state's moral authority to condemn and hence to punish offences" (von Hirsch & Ashworth 2005: 69). However, as von Hirsch and Ashworth highlight, adopting this view has some extraordinary implications because what would matter in sentencing offenders would not be social deprivation in itself, but the degree to which we can hold the state responsible for failing to fulfill its obligations in alleviating social deprivation. In order to do this in practice, one would have to develop a penal theory that depends on identifying the degree to which specific injustices may be attributed to societal failure, which according to von Hirsch and Ashworth is impossible. For this reason, von Hirsch and Ashworth argue that we should not question the state's standing to punish. In connection with the practical challenges of identifying

[6] This does not entail that the offences committed by the socially deprived are not morally wrong or that the deprived do not deserve punishment. Duff's point is merely that states lack the standing to blame these offenders.

specific social injustices, von Hirsch and Ashworth present their idea about considering compassion as a mitigating factor as a practically feasible solution because their proposal creates a direct link between social deprivation and sentence mitigation (Ibid.).

In short, von Hirsch and Ashworth state that what is of moral relevance are the reasons we have for sympathizing with the deprived offender's predicament; not the state's standing. They do, however, grant that the state's failure to alleviate unacceptable social conditions may give us further reasons to sympathize with deprived offenders, and they accept that the state punishes the deprived for offences they would be less likely to commit if they had been born into highly functioning communities (Ibid.: 70). However, as they further state, even if a state uses all of its resources to alleviate social deprivation, some degree of social deprivation would most likely still exist. In such a case, basing the severity of punishment on the state's failure to alleviate deprivation would be problematic since it already does everything in its power to reduce social deprivation. von Hirsch and Ashworth avoid the problems associated with state failure altogether because their account is based on a direct link between social deprivation *per se* and sentence mitigation.

2.2 Chronic Temptations to Offend

In his article *Social Deprivation as Tempting Fate,* Lippke (2011) criticizes von Hirsch and Ashworth's account. Although Lippke is sympathetic toward mitigating the punishment of the deprived, he contends that in order to show why punishment reduction ought to be warranted, one has to provide reasons that go beyond the mere recognition that the circumstances in which the deprived find themselves make offending very tempting (Ibid.: 280). As he points out, most people encounter strong temptations to engage in wrongful behavior. In most cases, however, we do not find it unreasonable to demand that the individual who encounters strong temptations to offend can withstand them since he still has the ability to exercise self-control. We find it reasonable to

demand that individuals exercise self-restraint even in situations where they are sorely tempted to offend simply because many people are able to resist strong temptations to offend (Ibid.). Consequently, Lippke asks the appropriate question: "Why think that the temptations encountered by the socially deprived should be viewed any differently?" (Ibid.). The following is an outline of Lippke's attempt to explain why the temptations encountered by the deprived should be viewed differently.

According to Lippke, one reason why we should think differently about the temptations encountered by the disadvantaged has to do with the fact that they *chronically* face temptations to engage in illegal activities (Ibid.: 284). Relatively privileged individuals, of course, do face temptations themselves, but according to Lippke, these temptations are only encountered occasionally. Lippke states that the deprived find themselves in entirely different circumstances. As he continues, the poor might lead their whole lives in deteriorated neighborhoods where they continually are presented with difficult choices (Ibid.). Few decently paying jobs are in poor communities that can provide individuals with opportunities to advance their incomes and to acquire other benefits. Such stable and legitimate economic opportunities, which relatively privileged individuals benefit from, are rare in poor communities. Moreover, Lippke highlights the importance of employment opportunities to advance social status because social status is a highly desired good in its own right; jobs do not just fulfill the basic needs of workers and families. Life at the bottom of the social and economic hierarchy is not just hard; it is also demeaning (Ibid.). In connection to this, Lippke highlights that the absence of legitimate and stable economic opportunities is particularly troublesome for young socially deprived males who want to attract mates because it incentivizes them to earn an income illegally in order to increase their social status.

Furthermore, the legitimate work opportunities in socially deprived communities tend to be short-term, part-time, and dead-end, meaning that the jobs bring with them little or no chance

of career development and advancement into higher paid positions (Ibid.). Simultaneously, as Lippke states, there are disproportionately many opportunities to earn a decent income and enhance one's social status by illegal means in deprived communities. Indeed, selling drugs, committing robberies, facilitating illegal gambling operations, and prostitution have long been common sources of income for the disadvantaged (Ibid.). While the legal work available and the prevalence of illegal sources of income varies depending on which environment is considered, the fact that legal work in deprived neighborhoods generally is unavailable and not steady entails that deprived individuals will be more tempted to earn an income by engaging in criminal conduct (Ibid.). This is, in fact, what the social scientific literature suggests (Freeman 1996: 30-37). According to Lippke, moreover, many poor people alternate between legal employment and criminal activities or supplement their modest legal income with a crime-related income. However, when gainful employment is available and provided it pays reasonably well, the deprived tend to choose the legal route (Lippke 2011: 284). But reality suggests that these legitimate forms of employment are in short supply in socially deprived communities, "which means that the inhabitants will be presented with a *perverse incentive structure that is persistent and powerful*" (Ibid.).[7]

As von Hirsch and Ashworth also touch upon concerning necessity-based defenses, Lippke grants that the incentive structure providing the deprived with, in some cases, more reasons to offend than to desist from offending is not so powerful that the choices the deprived make constitute *duress*. Acts performed under duress are actions one performs on the basis of being forcibly coerced into doing something against one's will. When duress involves criminal activities, the victim of coercion is regarded as less, or not at all, blameworthy for the illegal acts committed (Ibid.; Morse 2000: 124-25). In continuation, Lippke states that while social deprivation sets people

[7] Emphasis added.

up to offend, it does not entail that these individuals should be regarded as predetermined machines that do not have the capacity to distinguish right from wrong.

What is interesting in this regard are the alternative options that the socially deprived have if one excludes the illegal options. Here, Lippke (2011: 284) puts forth that instead of getting involved in illegal conduct, the poor can "beg, scrounge, go on welfare (if they can get it), seek out charities for help, accept any kind of work available – no matter how little it pays or how dangerous or dirty it is – or live with friends or family members who are willing to help them out". Indeed, as Lippke points out after stating this, the fact that these are the only options the deprived have illustrates how unattractive and dispiriting their predicament is. As is the case with most things, Lippke continues, the unattractiveness of the opportunities available for the deprived varies in degree depending on the degree of deprivation. Still, other than engaging in illegal activities, these may be the only alternative options open for deprived individuals to have some kind of income.

As Lippke further states, because the predicament of the deprived is chronic, they cannot console themselves with the idea that if they just desist from offending for some time, decently paying legal employment opportunities will arrive in the near future (Ibid.). This sheds light on another aspect in which the plight of the poor makes illegal conduct a more attractive option for them, compared to educated individuals in the middle and upper classes (Ibid.). Lippke holds that if an individual in a highly functioning community suddenly loses her job because of a financial crisis, she can always find consolidation in considering that new legal income-earning opportunities are "just around the corner" (Ibid.). While such a crisis might cause her to face some temptations to obtain an income illegally for a given span of time, being exposed to such temptations is only temporary. In other words, she will not be put in a position where she will have to exercise disciplined self-restraint to refrain from offending chronically. In considering a socially deprived individual, on the other hand, she cannot just exercise self-restraint for a period of time

and then be able to earn a legal income; she will have to exercise such self-control *indefinitely* (Ibid.).

According to Lippke, deprived individuals' frequent and indefinite need to exercise self-restraint in order to be law-abiding is morally relevant. Of course, as alluded to above, we rightfully expect individuals to exercise self-control in order to avoid legal wrongdoing even when faced with powerful temptations. However, as Lippke states, demanding that individuals exercise *continual* self-control, which the poor have to do to be law-abiding, is an unrealistic expectation even for individuals with normal degrees of self-control capacities because everyone has a limited supply of these capacities (Ibid.). To substantiate this claim, Lippke refers to social scientific literature about self-control, stating that "One of the leading models of self-control likens [self-control capacity] to a muscle (Muraven & Baumeister 2000; Henden 2008). For example, if we completely deplete our muscles by doing intense strength training, it might take a week to recover fully. During this week of recovery, one is physically weaker than one would normally be.

Similarly, depleting the self-control "muscle" by having to exercise it intensely and repeatedly uses up all the reservoirs of our self-control capacities. According to Lippke (2011: 284), this means that we can only reasonably expect individuals to resist urgent desires for a limited number of times before their willpower "muscle" starts to erode. As with physical exhaustion of muscles, the self-control capacities will recover, provided time is spent resting the self-control "muscle". While this self-control "muscle" is depleted, however, most individuals may do things that they otherwise would not have done. As Lippke points out, looking at self-control through this lens explains why we find it so challenging to stick to a consistent diet and exercise schedule because in order to be successful at it, we must repeatedly resist certain impulses (Ibid.: 285). For instance, we may find it relatively easy to eat healthy foods for a whole week, but as more and more time passes, our self-control capacities get more and more depleted, making it almost impossible to

avoid giving in to temptation. Granted, some individuals might have extraordinary willpower enabling them to resist strong temptations on a continual basis because self-control capacity is distributed unevenly across populations (Ibid.). Still, most people struggle with sticking to new routines.

In continuation, Lippke stresses that the empirical literature suggests that it is possible to increase one's capacities for self-control (Muraven and Baumeister 2000: 255; Audi 1997: 163). For this reason, it is reasonable that the criminal law demands a high standard of self-control, that it encourages people to control their impulses, and that it provides citizens with incentives that inspire self-control (Lippke 2011: 285). In general, then, there seems to be nothing morally controversial in requiring citizens to resist even strong temptations to offend. The predicament of the socially deprived, however, forces individuals not only to exercise high levels of self-control but also to do so *on a continual basis*. According to Lippke, it is doubtful whether the criminal law can justifiably expect its citizens to exercise high levels of self-control continually. In reality, this is the expectation the law expresses today because "violations of the law by the poor are routinely sanctioned *without in any way acknowledging the difficult lives that they face"* (Ibid.).[8]

Moreover, other factors that have a negative impact on self-control capacities are stress and depression (Muraven & Baumeister 2000: 249-51). Unfortunately, we have good reasons to believe that the plight of the poor renders them overrepresented with regard to experiencing high degrees of stress and depression because they have to struggle to satisfy basic needs on a daily basis (Lippke 2011: 285). Struggling to get enough food, clothing, and worrying about lack of access to health care is stressful and may lead to depression (Ibid.; see e.g. also Belle 1990). Although Lippke does not explicitly mention it, studies suggest that poverty strongly correlates not only with higher occurrences of depression but also with other types of mental disorders (Groh 2007).

[8] Emphasis added.

The reasons mentioned above might convince us that courts should plausibly take social deprivation into account in sentencing individuals. But the reasons mentioned above only paint a part of the picture concerning why Lippke thinks that the punishment of socially deprived individuals is morally problematic. In order to show why this is the case, Lippke (2011: 285) highlights the relative youthfulness of many offenders. Compared to mature individuals, young persons are generally more impulsive and have a harder time resisting peer-pressure. These characteristics make it harder for youths to comply with the law (Zimring 1998: 487-88). Of course, the fact that youths, compared to other populations, more frequently engage in anti-social behavior applies to all social classes; not specifically to those who are socially deprived (Lippke 2011: 285).

Nevertheless, whereas individuals in other social classes face problems in dealing with the impulsivity and susceptibility to peer peer-pressure of their youths, the socially deprived are affected by this *and*, in Lippke's words, a perverse and persistent incentive structure. The combination of these factors makes for a potent concoction. In fact, it does not seem surprising, as studies show, that most criminal careers start among individuals in their late teens or early twenties who are poor, poorly educated, and have few legitimate job opportunities (Ibid.; Blumstein & Cohen 1987: 988-89).

Lippke summarizes the morally significant challenges the socially deprived face as follows:

> "the socially deprived are not like more affluent members of society – individuals who encounter occasional temptations to violate legal rules, ones which they reasonably can be expected to resist. Instead, the socially deprived face chronic temptation born of their significantly diminished opportunities to satisfy some of their most basic needs. Some of them will face these temptations without well-developed self-control skills. Some of those who have the skills predictably will be worn down by their difficult life

> circumstances, ones which require them to exercise restraint repeatedly and without much prospect of relief from having to do so. And some of the poor will not see the point of exercising it, either because the laws in question seem of dubious value or because they have turned against a social order that seems largely indifferent to their interests" (Lippke 2011: 286).

As is clear by now, Lippke emphasizes the social factors that encourage the socially deprived to commit offences. This perverse incentive structure creates the conditions under which engaging in illegal behavior is plausibly so tempting that the law cannot reasonably expect those affected by this incentive structure to desist from offending.

Lippke heavily emphasizes incentive structures because in other contexts where worrisome behavior patterns occur regularly, people are often quick to point out that there is something wrong with the incentives motivating agents to act immorally or unlawfully, rather than solely blaming the individuals' moral compasses or self-control capacities (Ibid.). For instance, some police officers are under severe pressure to ignore corruption by their fellow officers. Being disloyal toward fellow officers by exposing corrupt behavior may result in "social shunning" and even "a lack of adequate back-up in dangerous situations" (Benoît & Dubra 2004: 787-88; see also Kleinig 2001).[9] Clearly, this provides even good cops with a disincentive to expose corruption, which they, according to specific regulations, have a duty to do. Be that as it may, the ones studying police corruption contend that such unfortunate behavior can most effectively be avoided by creating new or modifying the existing perverse incentive structures that put otherwise good officers is such difficult situations (Lippke 2011: 286; Klockars et al. 2004: 267). Likewise, many white-collar crimes come about because employees in certain corporations and industries have such a strong incentive to generate a profit even if it means breaching legal rules and regulations (Lippke

[9] As well as other factors that make exposing corruption a hard choice (see e.g. Benoît & Dubra 2004).

2011: 286; Coleman 1994: 234-54). As in the police context, modifying the perverse incentive structure is typically regarded as an appropriate solution. Lippke's takeaway from this is that just as police officers and white-collar employees are affected by a perverse incentive structure, and we typically find modifying the incentives the appropriation solution for them, we should think the same about social deprivation and offending. In addition, it is worth mentioning that although both police officers and certain white-collar employees are, in the ways mentioned above, incentivized to engage in wrongdoing, Lippke contends that they still have more reasons to desist from doing so than the socially deprived. Lippke highlights that this is, at least in part, due to the fact that even if, for instance, white-collar employees lose their jobs for failing to give in to the organizational pressure toward wrongdoing, they have many other legal opportunities available to them to earn a decent income (Lippke 2011: 286). By comparison, the poor cannot console themselves by thinking that refraining from wrongdoing will reward them in the future since they indefinitely lack the opportunities to earn a decent income legally.

2.3 Diminished Capacities for Self-Control

Above, I highlighted Lippke's account of how social deprivation, for reasons connected to diminished opportunities, tempts individuals to engage in criminal behavior "in ways and to a degree that is unusual and worrisome" (Lippke 2011: 287). However, as he states, even though the temptations the deprived encounter may make punishing them morally problematic in ways that do not apply to punishing affluent individuals, multiple other factors set them up to offend. Specifically, he emphasizes that we have good reasons to believe that some socially deprived individuals may have stunted or deformed capacities for self-control (Ibid.).

First, an unfortunate feature of social deprivation is that it weakens "the abilities of families and neighborhoods to nurture, educate, and oversee adolescents and teens" (Ibid.; Currie 1998: 134-47; Roberts 2004). Self-control is something youths have to be taught, and adults

continually have to reinforce the value of self-control in order to foster adequate self-control ability. In socially deprived environments, however, the adults who are supposed to teach their youth this ability often do not have the time available to do so because they must devote long hours just to satisfy their basic needs (Lippke 2011: 287). As Lippke further points out, poor parents may also lack the energy to devote adequate time to their children since the parents themselves may need to use much of their time to take care of their own stressful lives. Moreover, individuals in deteriorated neighborhoods cannot monitor their youths to the same degree that those in decently organized communities can, meaning that deprived caretakers cannot satisfactorily intervene in the activities of their youths before they start engaging in criminal behavior (Ibid.). Combine this with the fact disorganized neighborhoods provide countless negative role models who have a negative impact on impressionable youths (Ibid.).

Second, social deprivation causes many destructive behaviors that, in subtle ways, make it worrisomely hard to produce law-abiding and morally responsible youths and adults (Ibid.). For example, "socially deprived neighborhoods have high rates of substance abuse, teen pregnancy, untreated or under-treated mental illness, child neglect, and child abuse" (Ibid.; Currie 1998: 136-37). In continuation, Lippke (2011: 287) states that while these pathologies also exist in affluent environments, "the negative impact of them is softened somewhat by the availability of better health care and more reliable or extensive social support systems". Because the rate of a variety of self- and other-destructive behaviors is so high in deteriorated neighborhoods, disproportionately many socially deprived young people are in the care of impulsive, addicted, neglectful, or abusive adults (Ibid.). Because the caretakers fail to provide adequate care for their youth, the result is that the young persons develop stunted or deformed capacities for self-control, entailing that a worrisome amount of them will lack the capacity for responsible conduct (Ibid.). As Lippke states,

"Many will emerge from dysfunctional families ill-equipped to resist the temptations to offend which they persistently encounter".

Concluding Lippke's statements regarding the morally problematic nature of punishing the socially deprived, it is worth mentioning that he is reluctant to endorse sentence mitigation (Ibid.: 290; Lippke 2003). This reluctance is owed to the fact that sentence reduction creates problems of its own. Here are some of the problems Lippke mentions in this respect: (1) in order to justify sentence mitigation based on social deprivation, one has to somehow figure out the extent to which an offenders offence could be owed to social deprivation which may be impossibly impractical; (2) it is difficult to suggest exactly how much sentence mitigation an offender might claim based on her degree of deprivation; (3) sentence mitigation based on social deprivation would plausibly encourage the deprived to commit even more crimes; and (4) mitigating the sentences of deprived offenders seems to demean the dignity of the victims of crime (Ibid.). For these reasons, Lippke emphasizes that we ought to do something to alleviate the conditions that set people up to offend in the first place. In other words, since social deprivation is criminogenic – i.e. it increases the crime rate (see e.g. Tadros 2009: 391) – society ought to do something to alleviate it so that we can avoid the debate about social deprivation and sentence mitigation altogether.

2.4 Reduced Blameworthiness

Lastly, let us turn to Holroyd's (2010) argument in favor of punishment reduction. Her argument relies heavily on a notion of proportional punishment. Although I have referred this concept above, I have not spelled out precisely what it involves. Because of this, it is appropriate to start this section with a quick outline of the concept. After this, I outline how Holroyd applies the principle of proportional punishment to contexts of deprivation in arguing why deprivation ought to warrant punishment reduction.

2.4.1 Proportional Punishment

The idea of proportionality is used to determine the severity of punishment that states can reasonably impose upon offenders (Holroyd 2010: 13). According to Holroyd, the most fundamental feature of proportional punishment is that "The amount of punishment should be assigned systematically, and not be disproportional" (Ibid.). As she furthermore emphasizes, even though most legal philosophers accept this fundamental principle, there is disagreement about exactly *which* characteristics punishment ought to be proportional to. Regarding this, numerous theories of punishment emphasize the importance of the degree to which particular individuals *deserve* punishment (Ibid.: 14). This is also called desert-based punishment. Desert-based theories claim that states can only legitimately make use of punishment if an offender deserves it for being guilty of committing a crime (Ibid.).[10] The general sentiment reflected in desert-based theories is, as Holroyd further states, that we intuitively find it reasonable to consider perpetrators of serious crime as deserving more punishment than offenders committing petty crimes.

Still, even if we accept that deservedness is an important factor in determining the severity of punishment, one still has to provide reasons about which factors should be taken into account in figuring out what constitutes the degree of deservedness. Put differently, one has to provide reasons for what exactly constitutes the seriousness of a crime since seriousness has to with harm caused to the victim as well as with the deservedness of the offender. Honderich (1969) has put forth that the seriousness of a crime is to be determined by the effect the crime has on the grievances of the victim or society at large (Holroyd 2010: 14). Goldman (1979) contends that seriousness should be measured based on the degree of the right-violation a crime results in, meaning that the severity of the punishment for the crime should be in proportion to the extent of

[10] This is indeed uncontroversial. However, consequentialist penal theories based on the deterrent effects of punishment might, perhaps in extreme cases, claim that the positive deterrent effects of punishing innocent individuals can outweigh the values associated with deserved punishment (see e.g. Holroyd 2010: 13).

the rights-violation. However, Holroyd bases her arguments on Duff's claims about what constitutes the seriousness of a crime.

According to Duff (2001: 135-37), the seriousness of a crime is to be determined by considering the harm caused - understood as encompassing not solely material harm but also the harm of the moral wrong in the crime – and the offender's culpability (see also Holroyd 2010: 14). Moreover, Duff further claims that the nature of the punishment appropriate to the seriousness of a crime has to communicate a proportionate amount of censure for crimes of that specific type (Ibid.). As Holroyd states, this entails that "the appropriate punishment, then, communicates the amount of censure deserved by the offender".

In continuation, in order to avoid disproportionality, Holroyd emphasizes that one needs to consider two specifications of the principle of proportionate punishment. Here, she distinguishes between *absolute* proportionality and *relative* proportionality. Holroyd describes two specifications as follows:

> "Absolute: A punishment should not be disproportional to the crime.
>
> Relative: A punishment should not be disproportional to punishments for similar crimes" (Ibid.: 14-15).

As Holroyd states, judgement plays a significant role in considering absolute proportionality, but we all have some idea about when specific punishments fit the crime. For instance, few would consider it just to sentence someone violating a parking law to 20 years of imprisonment. Relative proportionality involves prescribing the same amount of punishment for offenders committing similar/identical crimes. For example, we would find it unjust if someone received a 20000$ fine for driving a car five km/h above the speed limit if most drivers guilty of driving five km/h above the speed limit receive a 100$ fine.

In continuation, relative proportionality is important to adhere to for a number of reasons. As Holroyd emphasizes, legal and penal systems ought to have a transparent relationship with citizens. A commitment to relative proportionality ensures transparency because such a commitment clearly communicates which kinds of punishment individuals might be subjected to in committing particular crimes (Ibid.). As Holroyd further points out, the absence of the principle of relative proportionality creates conditions under which legal and penal systems subject offenders to "discriminatory and biased treatment". In the absence of such a principle, even if we consider two crimes with identical degrees of seriousness, the severity of punishment might differ to a worrisome extent. For example, those responsible for doing the sentencing might consciously or even unconsciously unjustly discriminate against offender A because he adheres to what they consider a bad religion, while they sympathize with offender B because she adheres to their preferred religion. The result might be different amounts of punishment, even though the offenders commit identical crimes.[11] This kind of unjust, biased treatment will not occur if the principle of relative proportionality is an integrated part of the legal system.

2.4.2 Proportionality and Social Deprivation

Having explained what proportional punishment involves, Holroyd presents which implications this principle has in considering the punishment of deprived offenders. She lays her argument out in schematic form as follows:

> "P1: A just legitimate institution of punishment contains, and is able to meet with sufficient regularity, principles of absolute and relative proportionality […].
>
> P2: Meeting these principles (with sufficient regularity) requires sentencing guidelines for different kinds of crime (to ensure relative proportionality), specifying the severity of

[11] Of course, in the absence of the principle of relative proportionality, courts may unjustly discriminate for reasons other than the religion of the offender. Other unjust, biased treatments could be based on the offender's gender, nationality, race, political views, attractiveness, etc.

punishments appropriate to the seriousness of the kinds of crimes committed (to achieve absolute proportionality).

P3: In a context of significant distributive injustice, particular instances of crimes of broadly the same kind will differ significantly in seriousness.

P4: In contexts of significant distributive injustice, the absolutely proportional punishment may differ significantly from the relatively proportional punishments: (P1) and (P2) cannot both be met with sufficient regularity.

C: The justness of legitimacy of a penal system is threatened by conditions of significant distribute injustice" (Ibid.: 16).

Considering that this thesis is about social deprivation and sentence mitigation, premise 3 is the most relevant to elaborate on: Why does Holroyd think that some crimes of the same kind will differ in seriousness in contexts of distributive injustice? In short, Holroyd asserts that the crimes committed by the deprived are often less serious than the crimes committed by their non-deprived counterparts, not because the harm caused is less serious, but because circumstantial matters reduce the deprived offender's blameworthiness.

In the section on reduced culpability above, I highlighted Holroyd's analysis of which context-related features of crimes may reduce blameworthiness. However, I will only highlight the specific type of circumstances she finds relevant to socially deprived offenders. Here, Holroyd appeals to the third kind of excuse: "the agent may be excused due to circumstances of her action, in which case we acknowledge that she was a responsible agent, and indeed blameworthy to some degree, but less blameworthy for so acting than she might have been in different circumstances, for different reasons" (Ibid.: 20-21). After this, she states that in "some" or "perhaps many" cases, the seriousness of a crime is lessened due to social deprivation since the deprived offender's illegal conduct should be excused due to conditions of deprivation (Ibid.: 21).

In order to show why social deprivation, in some measure, excuses illegal conduct, Holroyd provides examples showing how our moral evaluations of crimes may change depending on the condition of the offender. Here, she compares how our intuitions concerning two identical crimes may change based on whether the offender is deprived or relatively privileged. The examples she offers are the following:

Example 1:

(A) "Deprivation: A person without access to income or the resources to provide herself with food or shelter persistently steals food from a supermarket.

(B) Comparison: A person with adequate resources to provide herself with food and shelter persistently steals food from a supermarket" (Ibid.: 22).

Example 2:

(A) "Deprivation: An underemployed single parent of three children defrauds the benefit and taxation system.

(B) Comparison: An adequately employed and generally well-off single parent of three children defrauds the benefit and taxation system" (Ibid.).

In these comparisons, the deprived individual's reasons for stealing are very different from the other "comparison" person. Perhaps the relatively privileged person steals or defrauds the taxation system for fun, while the deprived individual engages in these criminal activities due to concerns about "sustenance, provision, and safety" (Ibid.). We may recognize that the deprived individual's reasons for engaging in wrongdoing, in some measure, excuses the wrongdoing. Alternatively, we can recognize that the deprived offender acts on a more justifiable motivation than the non-deprived counterpart. According to Holroyd, legal systems ought to account for this intuition in considering the blameworthiness of socially deprived offenders when sentencing them (Ibid.).

In addition, Holroyd makes a great effort to make clear that her case for mitigating the sentences of deprived offenders does *not* entail that: (1) the crime committed by a deprived offender is not wrong morally and legally; (2) that the deprived agent is not responsible for the crime he commits; (3) or that the deprived offender should not be punished (Ibid.: 23). She claims only that conditions of deprivation may render the offender less blameworthy, which ought to reduce her punishment.

Before heading into the next section, it is worth summing up Holroyd's position. She contends that the conditions of social deprivation ought to reduce punishment in considering crimes such as those she mentions in her comparative examples. Under circumstances that are identical or very similar to the comparative examples she provides, she holds that the deprived individual has far more convincing reasons for breaking the law than the non-deprived counterpart. Although the circumstances under which the deprived individual acts are challenging indeed, they are not challenging to the extent that they could be characterized, in Holroyd's words, as "do or die" situations. If this was the case, then one could reasonably make a strong argument in favor of withholding blaming deprived individuals for committing certain crimes altogether. Although deprived individuals, such as the ones she mentions in her examples, are not in "do or die" situations, their predicament nevertheless gives them strong reasons to commit certain crimes. Since they act on these reasons in securing "sustenance, provision, and safety", Holroyd puts forth that sentence mitigation is warranted. Put differently, because deprived individuals commit crimes of the type mentioned in the examples in order to secure these basic needs, states cannot reasonably blame them to the degree that states may justifiably blame relatively privileged individuals since the latter individuals do not act on convincing reasons in committing such crimes.

3. Discussion

I have now provided descriptions of the three accounts that are the focus of this thesis. In this section, I will analyze and discuss the arguments mentioned above that are sympathetic toward mitigating the punishment of socially deprived offenders as well as deal with Chau's (2010) critique of von Hirsch and Ashworth's account. I argue that the accounts described above are unconvincing. To start with, however, there is a short analysis concerning which group of people von Hirsch and Ashworth, Lippke, and Holroyd have in mind in referring to 'the deprived'. It is important to clarify what characterizes the deprived since the particular characteristics might affect our judgement in considering social deprivation and punishment reduction.

3.1 'The Deprived'

Before analyzing the strengths and weaknesses of the arguments outlined in the first half of this paper, it is appropriate to start this section by considering whether the scholars referred to have the same group of people in mind when thinking about 'the deprived'. As we can deduce by reading the first half of this paper, von Hirsch and Ashworth are the only scholars who clearly define which group of people they have in mind when referring to the deprived. Lippke and Holroyd do not this in the coherent fashion that von Hirsch and Ashworth do, although they, in more subtle ways, point out or hint at which morally relevant characteristics distinguish the deprived from other groups of people.

Being precise about which group of individuals is discussed is of great importance for if the arguments we are discussing are not based on the same group of people, then the claims are not straightforwardly comparable. For example, someone might have in mind homeless individuals with no future job prospects who suffer from severe malnutrition in speaking of the deprived. Others might regard the deprived as adequately nourished individuals who have homes and future job prospects, albeit unattractive ones. Stressing the morally relevant characteristics of the deprived

is paramount because our intuitions about punishing socially deprived offenders may change dramatically based on how severe the degree of their deprivation is.

In continuation, I find it relevant to highlight the importance of this kind of conceptual clarity because there are some features of Lippke's and von Hirsch and Ashworth's analyses that might give us the impression that they do not deal with the same group of people. Note that von Hirsch and Ashworth make a great effort to emphasize that the socially deprived cannot generally make necessity-based defenses because their offences are not committed in order to alleviate vital needs. In von Hirsch and Ashworth's account, it is not as if the socially deprived suffer from malnutrition and only, say, steal in order to get enough food to stay alive. According to von Hirsch and Ashworth, this would enable them to make necessity-based claims as defendants. But since they do not generally find themselves in such urgent situations, necessity-based defenses are not applicable.

Moreover, in listing the legal options that the deprived can make use of in order to fulfill basic needs, one option Lippke mentions is begging. If an individual's only legal option at hand is to beg for money or food, however, then one might claim that she is in such a bad position that if she, for instance, stole food, she could justifiably make a necessity-based claim which would partially excuse her offence. So if we consider a group of people whose only legal opportunity to fulfill basic needs consists of begging, then this group is not straightforwardly comparable to von Hirsch and Ashworth's definition of the socially deprived. However, it is important to note that while Lippke states that begging is *one* legal option the deprived may make use of, the group of individuals he has in mind *also* has other unattractive options available, such as scrounging or accepting dangerous, low-paying kinds of jobs. Because of this, since Lippke has in mind a group that has *some* legal options available, albeit unattractive ones, one *cannot* deduce that the group of

persons he discusses is different to the group that von Hirsch and Ashworth discuss from his listing of legal opportunities available to the socially deprived.

Holroyd vaguely hints at what characterizes the individuals she has in mind in considering social deprivation and punishment. She states that deprived individuals' impoverished conditions cause them to have such compelling reasons for engaging in illegal activities aiming at fulfilling basic needs that they ought to be partially excused for committing crimes that serve this purpose. However, Holroyd also clarifies that the deprived, as she understands the concept, do not generally commit crimes because the conditions of deprivation are so coercive and urgent that they *have* to engage in wrongdoing in order to satisfy the most basic needs. She does not state exactly what this relative lack of coerciveness and urgency is supposed to involve regarding the characteristics of the deprived. Still, by highlighting that the circumstances are not so urgent that offending is the only option available to ensure satisfying basic needs, she seems to imply that although the deprived may have more compelling reasons to engage in certain forms of wrongdoing than others, *they still have legal options available to them that they could make use of in order to obtain sustenance, provision, and safety*.

On the basis of the short analysis above, it is reasonable to claim that these scholars are generally in agreement about which kinds of individuals they regard as deprived. They all seem to agree on the following morally relevant characteristics: (1) the deprived are poor, but not impoverished to such an extreme extent that they cannot fulfill basic needs; and (2) they all have *some* legal opportunities available to them that they could make use of in order to satisfy basic needs. As one can see, I make the vague claim that these scholars agree that there are *some* legal options available to the deprived concerning generating incomes or fulfilling basic needs by other means. This vagueness is owed to the fact that not all the scholars state clearly what these options consist of. Holroyd does not mention the legal options available at all. She only implies that there

must be some legal options available by emphasizing that the deprived do not *have* to engage in wrongdoing in order to satisfy basic needs. von Hirsch and Ashworth state that the deprived have "limited and irregular incomes", and have at least "poor" job opportunities, while Lippke puts forth that they do have employment prospects, albeit not very attractive ones, along with the other legal opportunities Lippke mentions that are not related to employment.

The scholars seem to be in agreement regarding the degree of poverty that there are legal opportunities available. I emphasized these two aspects because not all the scholars referred to devote much attention to these morally relevant details, although their arguments rely heavily on them. Moreover, it is also worth mentioning that these scholars seem to agree on other characteristics, such as that the socially deprived, in von Hirsch and Ashworth's words, have "weak networks of social and personal support", and that they are at the "bottom of the social scale". Concerning this, again, Holroyd does not clearly state that these are characteristics of the group of individuals she bases her argument on. However, it is probably reasonable to assume that she has individuals with these characteristics in mind since these are some of the most obvious characteristics that we associate with the deprived. Further, there is a possibility that these scholars have other morally relevant characteristics in mind that they do not explicitly mention in considering the deprived. For the reasons provided above, one can at least conclude that they agree on many morally relevant characteristics.

3.2 Is von Hirsch and Ashworth's Account Convincing?

Moving on, the only position mentioned in the first half of this paper that, as far as I can tell, has been publicly criticized is by legal philosophers is von Hirsch and Ashworth's account of sentence mitigation. While Lippke (2011) casts some doubt on their account, his article is mostly about his own ideas about deprivation and punishment. Chau (2010), on the other hand, has devoted a whole article to disputing von Hirsch and Ashworth's argument. Chau disputes von Hirsch and

Ashworth's argument not on the basis of the social reasons why the deprived have weaker incentives for legal compliance but based on whether appeals to temptations in general can justify sentence mitigation (see also Lippke 2011: 280). Since Chau already has made a considerable effort to criticize von Hirsch and Ashworth's claims, it is appropriate to examine whether his critique is convincing.

3.2.1 Chau's Objection

Chau summarizes von Hirsch and Ashworth's account of sentence mitigation and social deprivation in schematic form as follows:

> "P1: If an offender A faced stronger temptations to offend when he offended than an offender B, then there is a reason to punish A less than B.
>
> P2: A socially deprived offender generally faces stronger temptations to offend than his non-deprived counterpart.
>
> C: Therefore, there is generally a reason to punish a deprived offender less than his non-deprived counterpart" (Chau 2010: 776).

Chau starts his critique of the temptations-based account with an analysis of what is meant by 'temptations' (Ibid.: 777). First, he states that the concept of temptation has to do with the reasons an agent has both *for* acting and *against* acting in particular ways (Ibid.). Second, he points out that the *strength* of the temptations at play when an agent considers acting in a particular way is determined by accounting for the reasons *for* acting that way and *against* acting that specific way (Ibid.). To illustrate what he means by this, he asks us to imagine that "Helen and Henry equally love sweet food. But Henry, unlike Helen, is a diabetic, and he knows that, so he has strong reasons against eating sweet food". Chau then concludes: "In such a case, I think we can say Helen faces stronger temptations to eat sweet food" (Ibid.).

For the sake of argument, Chau accepts that the socially deprived face stronger temptations to offend than the non-deprived – i.e. he grants the truth of premise 2 (Ibid.: 778). Before showing why he finds premise 1 indefensible, however, he provides reasons why premise 1 has intuitive plausibility. Here, he conducts a thought experiment in which we are supposed to consider two different scenarios. The first scenario is about Derek:

> "Derek was told by a gangster that if Derek did not kill a person the gangster will cut off Derek's toe. Derek would not have killed if his toe was not at stake. However, caring (too much) about his toe, he finally gave in and killed".

The second scenario is about Devil:

> "Devil killed someone. Unlike Derek, Devil did not receive any threats and his toe was not at stake. Derek and Devil were identical in all morally relevant aspects unless otherwise specified" (Ibid.).

Although both these agents act unjustifiably, Chau contends that most would agree that since Devil faced no threat at all, his deed is more evil than Derek's. Moreover, since Derek faced a threat, although he still deserves punishment, his temptation to offend was greater than in Devil's case, which might justify mitigating Derek's punishment (Ibid.). Based on this thought experiment, Chau states that we may reasonably think that Derek, to some extent, deserves our sympathy because he faced stronger temptations to offend. From this recognition, it might then be natural for us to generalize that if an offender faces strong temptations to offend, then courts need to mitigate the severity of the offender's punishment, even though the harm caused to the victim remains the same (Ibid.).

In spite of its initial plausibility, Chau contends that we should reject premise 1, which he calls 'the temptations account of mitigating factors' (Ibid.: 780). To highlight why we should

reject the premise, he draws a distinction between 'the temptations account of mitigating factors' and the 'motivating strength account of mitigating factors' (Ibid.). The latter involves the following:

> "if *A acted on (or was motivated by) stronger temptations than B in offending*, then there is a reason to punish A less than B" (Ibid.: 780-81).

According to this principle, the strength of the temptations motivating an agent to offend is the strength of the temptations "without which the offender would not have offended" (Ibid.: 781). The difference between what Chau deems to be von Hirsch and Ashworth's 'temptations account of mitigating factors', and Chau's 'motivating strength account of mitigating factors' is very subtle. The only difference is that the first account involves the strength of temptations an agent *faces* when offending, while Chau's account involves the strength of temptations an agent *acts on*, or is *motivated by*, in offending (Ibid.). The subtle difference between these two accounts will become more apparent in the following paragraphs.

Chau regards the subtle difference between these two concepts as paramount in determining whether or not punishment reduction ought to be warranted. To make clear why this distinction matters, Chau, again, invites us to consider the thought experiment about Derek and Devil. Here, Derek does not only *face* stronger temptations to kill than Devil; Derek solely kills the person because he wants to save his toe (Ibid.: 782). In other words, the strength of the temptations to offend was at a level "without which the offender would not have offended". Precisely this point, that the temptations need to be at such a level that the offence would not have happened otherwise is what, Chau states, makes us believe that Derek's deed is more excusable than as Devil's offence.

However, Chau argues that although an agent might *face* strong temptations to offend in some contexts, these temptations should not necessarily have any bearing on our judgement of the offence and the punishment of the offender. To illustrate why this is the case, he presents the third scenario:

> "Daisy is the same as Derek in all morally relevant aspects, except that while the gangster threatened Daisy that he would cut off Daisy's toe if Daisy did not kill, *Daisy would have killed anyway even if she did not receive the threat*. Knowing that killing could happen to save her toe, she did what she would have done anyway, i.e. kill the victim" (Ibid.).

In continuation, Chau contends that in such a scenario, our intuitions tell us that Devil and Daisy deserve the same amount of punishment, provided the harm caused is identical. He grounds this claim on the distinction between 'the temptations account of mitigating factors' and 'the motivating strength account of mitigating factors'. According to Chau, if we accept the temptations account of mitigating factors, i.e. what Chau considers being von Hirsch and Ashworth's notion, then we would find Daisy's case less serious than Devil's case because she indeed faces a threat in her criminal conduct while Devil does not (Ibid.). However, if we apply the motivating strength account of mitigating factors to these cases, we would conclude that both Daisy and Devil deserve the same severity of punishment. This is because, although Daisy does face a threat, and is therefore more 'tempted' than Devil, she does not *act on* those temptations. In other words, the strength of the temptations she faced was not at the level without which she would not have offended because she would have offended anyway. According to Chau, therefore, since both Devil and Daisy do not *act on* temptations in offending, sentence mitigation should be out of the question.

Now Chau has established that what matters are which temptations one acts on; not the temptations one faces in committing an offence. For this reason, if socially deprived offenders deserve sentence mitigation, then one would have to prove that they generally act on stronger temptations than others when they offend (Ibid.: 784). Chau states that this is something that has to be proven empirically, but he nevertheless puts forth that we have good reasons to find a negative

answer appropriate because the strength of the temptations one acts on and social deprivation are two completely different concepts. As he contends, the strength of temptations that one acts on is a *motive* concept, while social deprivation is a *socioeconomic* concept. For this reason, one has to show that offenders belonging to a specific socioeconomic class generally have a different motive to offend than other socioeconomic classes in order to prove that the deprived generally act on stronger temptations in offending. Chau continues: "to believe so seems to be inferring virtue or vice from social class, and without good empirical evidence for that we ought to be skeptical of that claim" (Ibid.: 785). While Chau states that we need empirical evidence to prove whether the deprived generally act on stronger temptations in offending than others, he nevertheless puts forth we, by using our common sense, have no reason to believe this to be the case (Ibid.: 785). In connection with this, Chau states that "Our *common-sense belief* seems to be that a substantial portion of deprived offenders would have offended all the same even if they were not deprived at the time offence" (Ibid.).[12] In this regard, he highlights that this must be especially true of crimes committed without any substantial level of deliberation. For example, if a deprived individual rapes someone *impulsively* – i.e. the deprived rapist does not take the consequences and the incentives for and against committing the crime into account before offending – then we would have no reason to believe that he would not have committed such a non-deliberative offence if he were not socially deprived, although the individual would then have stronger incentives to avoid offending. However, Chau's claim does not strictly involve impulsive offences but legal wrongdoing in general. He claims that a significant portion of the deprived offenders generally would have offended even if they were non-deprived, and that we therefore are not justified in believing that deprived offenders act on stronger temptations in offending. He then concludes his article as follows: "Therefore, until

[12] Emphasis added.

[empirical] data is adduced to the contrary I think we are justified in believing that it is *false* that deprived offenders generally act on stronger temptations in offending" (Ibid.).

In response to Chau's objection to von Hirsch and Ashworth's argument, Lippke (2011: 280-83) highlights some issues with Chau's arguments. First, Chau's analysis of the concept of 'temptation' is mistaken. Chau asserts that the strength of temptations to do something depends both on reasons for taking action and on reasons against taking action. However, as Lippke points out, Chau's attempt to illustrate what temptations involve by asking us to imagine Helen and Henry, the diabetic, simply does not capture what we usually associate with the term 'temptations' (Ibid.: 281). Note that Chau states that Helen and Henry have equally strong reasons for eating the food, but since Henry has diabetes, he has a strong reason against eating sweet food, while Helen, who does not have diabetes, does not have a strong reason against eating the sweet food. Therefore, Chau says that Helen faces stronger temptations to eat the sweets. Normally, however, when we think of someone being tempted to do something, she not only desires to do X, which is, say, to eat the sweets, she also has reasons against doing X (Ibid.). When speaking of giving in to temptations and doing X, we most often associate some negative consequences with that activity. I may, for instance, be tempted to drink a lot of alcohol because it would give me immediate pleasure. However, by consuming too much alcohol, my judgement will be compromised, and I might do something stupid as well as be in a painful physical condition once the pleasurable cognitive effects of alcohol have worn off.

As Lippke continues, when we speak of temptations, the tempted individual has to be "torn about what to do" (Ibid.). In Chau's thought experiment, Helen does not appear torn about eating the sweets since doing so has no adverse effects on her well-being. However, Henry the diabetic does have a desire to consume the sweets and to refrain from consuming them. For this reason, Henry experiences the type of internal tension – being torn about what to do – that we

usually associate with a tempted individual (Ibid.). If we thus apply the concept of temptations as it is understood in ordinary language to Chau's thought experiment, then Chau is simply wrong in stating that Helen's temptations are stronger than Henry's.

According to Lippke, Chau's faulty understanding of temptations casts doubt on the validity of his entire analysis (Ibid.). To show this why this is a reasonable statement, consider Chau's examples concerning Derek and Devil again. Note that Chau states that since Derek faces stronger temptations to kill because his toe will be cut off if he does not kill, his punishment may be mitigated, while sentence mitigation is out of the question for Devil because he faces no such threat in killing the victim. However, if we apply Chau's own understanding of temptations to these cases, then the conclusion would be that Devil, not Derek, faces stronger temptations to offend (Ibid.: 282). To highlight why this is a reasonable statement, consider Chau's understanding of temptation as he illustrates in the example about Helen and Henry the diabetic. Here, Chau contends that since Henry both has a desire to consume the sweets and reasons to refrain from consuming them, while Helen only has a desire to consume the sweets and no reasons to refrain from consuming them, then Henry faces fewer temptations to eat the sweets than Helen. Similarly, since Devil does not seem concerned about taking a person's life, he has no reasons to avoid killing the victim. Derek, however, is emotionally torn, knowing that killing is wrong and therefore has reasons against killing but kills because he has a strong desire to keep his toe. In other words, Devil just has a desire to kill the victim and no reasons to refrain from doing so, while Derek has reasons to refrain from killing. Because of this, if we apply Chau's understanding of temptations to the examples concerning Derek and Devil, then the conclusion would be that Devil faces stronger temptations to offend than Derek, which is contrary Chau's own conclusion in his thought experiment about Derek and Devil (Ibid.).

Further, let us now consider Daisy's case. As mentioned, Daisy kills someone for her own reasons, and though she is threatened with the loss of her toe, the threat has no impact on her motivation for action; she would have killed the victim even in the absence of such a threat. Chau thus says that Daisy, just like Devil, does not deserve sentence mitigation because although she faced a threat and therefore faced stronger temptations than Devil, she did not act on those temptations. Chau's point in highlighting this is to show that even though an offender, like Daisy, may *face* specific temptations in offending, it does not mean that the agent *acts* because of those temptations since she may already have her own sufficiently strong reasons for offending. However, as Lippke points out, although the prospect of losing a particular body part may make most people tempted to commit an offence, it is strange to suggest that the threat Daisy faces makes her more *tempted* to kill than Devil because the threat has no impact on her judgement at all (Ibid.). According to Lippke, the fact that the threat had no impact on her simply implies that "like Devil, she appears to be a homicidal killer and thus someone for whom moral reasons have little purchase in the economy of her deliberation about how to act" (Ibid.).

In short, Chau's analysis of the concept of temptations is faulty because he states that if an agent has a desire to take action and no reasons to refrain from taking action, then she is more tempted than the individual who both has strong reasons to take action and to refrain from taking action. But as Lippke highlights, in ordinary language, it is the exact opposite: the temped individual usually experiences conflicting desires in determining how to act. Lippke also rightly shows that Chau contradicts his own understanding of temptation in stating that Derek is more tempted than Devil because in his example, Devil only experiences a desire to kill and no reason to refrain from doing so, while Derek seems to experience both, which, using Chau's understanding of temptations, means that Derek is less tempted than Devil.

Moreover, I agree with Lippke that it is strange to suggest that Daisy faces temptation at all because of the threat she receives. I state this because experiencing temptations is a kind of mental event. Threats, like the one that Daisy encounters, may usually have a cognitive effect on the subject receiving the threat, causing her to encounter certain temptations. However, whether the threat results in the subject experiencing temptations depends on the cognitive effect the threat has on the receiver of the threat. If a threat has no impact on the mental state of the receiver of it, then it is nonsensical to suggest that the threat causes the receiver to face temptations at all. Chau is therefore mistaken in stating that the threat results in Daisy facing a temptation to offend since the threat does not cause Daisy to experience temptations.

In continuation, even though Chau's analysis of temptation and his application of it in his thought experiments, for instance the example concerning Daisy, is mistaken, this does not in itself entail that his main point is indefensible: what does the "mitigating work is the strength of temptations *that motivated the offence*, not the strength of temptations *one faced to offend* per se" (Chau 2010: 784), and that the offences committed by socially deprived individuals are not motivated by stronger temptations than the crimes of their non-deprived counterparts. However, his grounds for claiming that socially deprived individuals do not act on stronger temptations in offending are weak because he simply states that "Our common-sense belief seems to be that a substantial portion of deprived offenders would have offended all the same even if they were not deprived". Of course, he does also point out that one cannot say with complete confidence that the deprived do not act on stronger temptations in offending than others until empirical evidence proves it. Until then, however, he says we should believe what he considers "our common-sense belief". This is a doubtful claim for three reasons. First, he relies on empirical evidence without providing any empirical evidence to support his claim.

Second, claiming that his statement is supported by our common-sense belief is a completely unfounded assumption. I have the exact opposite intuition, and I presume many individuals, perhaps especially those who know, spend time with, or work with socially deprived individuals, share my intuition. It is by no means obvious that Chau is right in stating that his claim is commonsensical.

Third, and most importantly, Chau's claim that a substantial amount of deprived offenders would have offended even if they were non-deprived has problematic *essentialist* implications. The relevant literature shows that the vast majority of those who engage in criminal conduct are socially deprived, being poor, poorly educated, as well as having unattractive employment prospects (see e.g. Blumstein & Cohen 1987: 988-89). This is uncontroversial. Despite this, Chau claims that most of these individuals would be criminals even if they were wealthy and highly educated. He thereby implies that there is something in the *nature* of a particular group of individuals that makes offending particularly attractive and that most of these individuals just happen to be deprived. However, this implication is both absurd and insulting. The highest crime rates in the word are in Venezuela, Papua New Guinea, and South Africa (World Population Review 2020). All these countries have high levels of "poverty, inequality, unemployment, and social exclusion" (Ibid.).[13] Chau seems to suggest that the crime rates in these countries would be almost the same even in the absence of all the factors connected to various forms of deprivation because the criminals would have offended even if they were non-deprived. This would entail that there is simply something in the *natures* of Venezuelans, Papa New Guineans, and South Africans that makes them more susceptible to offending compared to, say, Danish and Japanese people. Clearly, this is unfounded. Chau is therefore outright mistaken in stating that a substantial amount of deprived individuals would have offended all the same even if they were not deprived.

[13] As well as high levels of corruption, poor gun control, normalization of violence, etc.

Moreover, in stating that "a *substantial* portion of deprived offenders would have offended all the same",[14] he implies that social deprivation, in fact, causes some deprived individuals to offend and that these individuals would not have offended in the absence of the temptations that social deprivation fosters. In other words, by using the term 'substantial', he not only states that a considerable number of deprived offenders would have offended anyway, *he also implies that a less considerable number of deprived individuals would offend who would otherwise not have offended.* Since Chau states that the strength of the temptations motivating the offence does the mitigating work, and social deprivation causes some individuals, albeit not a very substantial amount, to commit crimes they would not have committed without the temptations motivating the offence, then Chau implies that social deprivation in some cases ought to be a mitigating factor in punishing certain socially deprived offenders. So, if one takes this into account, that is applying Chau's own reasoning to the issue, then his conclusion should not only be that deprived offenders do not usually act on stronger temptations, it should also be that socially deprived offenders sometimes act on stronger temptations in offending. Ultimately, Chau's account would therefore entail that there is some link between social deprivation and punishment mitigation. He is thereby contradicting himself.

Chau may, perhaps rightly, criticize my claim about him contradicting himself. He might point out that his arguments only pertain to von Hirsch and Ashworth's very general defense of social deprivation as a mitigating factor in legal punishment or similarly general temptation-based defenses. In spite of this, in using the term 'substantial', his argument still implies that there is *some* link between social deprivation and punishment mitigation. However, in his article he ignores this aspect of his argument and proceeds as if he did not mention it. This is clearly an important implication of his account because it would entail that the punishment of certain socially

[14] Emphasis added.

deprived criminals ought to me mitigated. To be sure, its significance is substantial because its application would entail that legal systems should, in some cases, regard social deprivation as a legitimate exculpatory defense; legal systems do not recognize any defenses based on social deprivation today. Chau should at least have addressed how contexts of deprivation may cause individuals to commit certain crimes and state clearly that an implication of his argument is that there is, in fact, a link between social deprivation and sentence mitigation, although it by his account would be of a restricted nature.

In addition, Chau's distinction between temptations faced and temptations acted on comes across as bizarre and redundant. To illustrate why this is the case, consider applying Chau's reasoning in other contexts:

> A person is extremely hungry and has no money or food. She therefore faces temptations to steal food. She does steal food but not because of the temptations she faces.

Chau distinguishes between temptations faced and temptations acted on in order to point out that there is a morally relevant difference between the two, and presumably because situations, as the one portrayed in my example above, are possible. However, cases like Chau's example concerning Daisy and the example I provided here seem extraordinary. Put differently, scenarios in which an offender faces strong temptations to commit a particular crime, although he actually commits the specific crime for other reasons are presumably rare. Barring exceptional circumstances, we have good reasons to believe that the starved person steals food because starvation seriously tempts individuals to engage in wrongdoing to satisfy such a basic need. If an individual is starving and is seriously tempted to steal food, it is strange to suggest that he ultimately steals it for other reasons than to alleviate his lack of nutrition. My main point in this regard is this: situations in which the temptations acted on and the temptations one faces in offending are different pertain only to

extraordinary circumstances. We therefore have good reasons assume that, in most cases, the temptations faced and temptations acted on are identical. Still, it is not unreasonable to demand that the law ought to be sensitive to such a distinction since there are some rare circumstances in which it is relevant. However, due to its extraordinariness, the distinction is virtually redundant. In short, this entails that it is doubtful whether the distinction is useful in practice.

I am fairly certain that I have interpreted what Chau attempts to communicate with his distinction correctly: although one faces particular temptations to commit a *specific* crime, it does not entail that one acts on the particular temptations faced in committing that *specific* crime. What is meant by this is that Chau communicates his point in a way that gives us the impression that his claims apply to temptations faced that are directly related to the offence that takes place. For instance, note that the temptation Daisy faces due to being threatened is, in a way, directly related to her offence, although it has no impact on her motivation for offending.

Nevertheless, it is still worth mentioning an alternative interpretation of Chau's argument. An alternative interpretation could involve the following: even though a socially deprived individual may find himself in an environment where he encounters many temptations to offend, this does not entail that the temptations he generally faces have an impact on the particular crime he commits.

To illustrate more clearly what this interpretation involves, imagine the following:

> (1) Cornelius works as a cashier in a retail store. Because he is very poor, he is tempted to steal the money in the cash register; (2) Cornelius has really low social status. He is desperate to increase his social status and is therefore tempted to steal a nice, expensive car; (3) Cornelius is extremely hungry. He does not have enough money to buy food and is consequently tempted to steal food. Due to some temptation that is as often acted

> on in highly functioning communities as in deprived communities, however, Cornelius vandalizes his neighbor's property.

Clearly, Cornelius faces many temptations that are especially characteristic of contexts of deprivation. Nevertheless, he desists from *acting on* the temptations he *faces* as a consequence of being deprived and ultimately acts on a temptation that non-deprived individuals as prevalently act on. If this interpretation is correct, then Chau's claim would entail that the deprived are in situations like Cornelius. Due to conditions of deprivation, they face temptations that tempt them to commit crimes of a particular type. However, they generally only act on the same temptations as the non-deprived act on and may commit kinds of crimes that are not related to the temptations they encounter because of deprivation. It is hard to say whether this interpretation is more defensible than the other is. Intuitively, there must be some correlation between the type of crimes committed and the temptations encountered to engage in wrongdoing in particular contexts. Put differently, the kinds of temptations encountered to engage in wrongdoing seem to be context-related. And if there is a correlation between the temptations encountered and crimes committed, then the prevalence of certain types of crimes depends on context as well. For this reason, the alternative interpretation is doubtful.

Lastly, as Lippke (2011: 283) also points out, we have no reason to believe that what, in Chau's words, does the 'mitigating work' are the temptations that motivate an agent to offend. A person's wrongdoing may be completely unjustified, even if he would not have offended in the absence of the particular temptations that motivate his wrongful action. Consider this:

> Cornelius' employer fires Cornelius because of financial challenges. This enrages Cornelius and causes him to assault his employer physically. Had his boss not fired him, he would not have engaged in wrongdoing. The employer's act of firing Cornelius motivated Cornelius to assault his employer physically.

Provided that what does the mitigating work are the temptations that motivate an agent to offend, and provided that Cornelius' firing motivated him to assault his employer, then, if Chau is correct, Cornelius' punishment ought to be mitigated. Yet, few of us would find punishment mitigation reasonable in this case. We simply expect citizens to control their impulses when they lose their jobs, even though losing one's job is unpleasant. But if we take Chau's claim seriously, then the simple recognition that some temptation motivated Cornelius to offend ought to mitigate his punishment. Chau does not take into account that what motivates an agent to commit a wrong cannot in itself warrant sentence mitigation. What motivates an agent to do something may be unjustifiable. It simply is unjustifiable for Cornelius to assault his employer because his firing does not put him in a situation in which he cannot be expected to resist his violent impulses. What seems to be of importance, then, in considering sentence mitigation is not whether an agent acts on some temptation in offending. Rather, what is relevant in considering punishment mitigation is how coercive or urgent the circumstances are when the offence occurs. As explained earlier, philosophers tend to agree that if the circumstances are so urgent that an agent would require extraordinary fortitude to desist from offending, then the agent's offence might justifiably be (partially) excused. Individuals, however, may act on temptations that do *not* require extraordinary fortitude to desist from acting on. Therefore, Chau is mistaken in stating that the temptations acted on is what matters in considering punishment mitigation.

In summary, Chau's objection to von Hirsch and Ashworth's argument is unconvincing. Chau's analysis of the concept of temptations is flawed; his argument is, in some ways, contradictory; his argument comes across as bizarre; his argument is based on a doubtful assumption about common sense; he states that the temptations acted on by themselves warrant punishment mitigation; and most importantly, his argument has extremely problematic essentialist implications. I do, however, find Chau's general sentiment plausible – i.e. that social deprivation

ought not to be a mitigating factor. I only disagree with the reasoning he applies to reach his conclusion. Although Chau's critique is unconvincing, this does not entail that von Hirsch and Ashworth's case for regarding social deprivation as a mitigating factor is defensible. In the following section, I provide reasons for why von Hirsch and Ashworth's position is doubtful.

3.2.2 Deservedness, Violent Offences, and Susceptibility

Of the positions outlined in the first half of this paper, von Hirsch and Ashworth's is the most controversial one. The main reason why this is the case is this: their arguments involve mitigating punishments for a far greater amount of crimes than the other arguments, such as the ones Holroyd provides. In fact, von Hirsch and Ashworth argue that sentence mitigation ought to be warranted for all socially deprived offenders. They do not consider whether specific types of crimes may warrant sentence mitigation, while other crimes may not. Provided the offender is socially deprived, then, according to von Hirsch and Ashworth, sentence mitigation is warranted in all cases. In their chapter about social deprivation and punishment, they explicitly mention that sentence mitigation ought to be warranted for deprived offenders committing expressive offences, "such as vandalizing another's car, or smashing a neighbour's window" (von Hirsch & Ashworth 2005: 65). However, there is nothing in their chapter suggesting that sentence mitigation should not be warranted for deprived offenders who are guilty of severe *mala in se* crimes – i.e. crimes we all agree are evil - such as non-defensive acts of murder.

von Hirsch and Ashworth thus attempt to provide an *absolutely* general basis for reducing the sentences of socially deprived individuals, warranting sentence reduction for all crimes committed by deprived individuals. As stated earlier, they base this claim on compassion or sympathy[15] because socially deprived individuals have fewer incentives to comply and fewer disincentives to refrain from illegal activity. According to them, contra e.g. Holroyd, one need not

[15] von Hirsch and Ashworth use 'compassion' and 'sympathy' interchangeably.

consider that the deprived offenders need to have convincing reasons for engaging in wrongdoing in order for sentence reduction to be warranted. Indeed, this is why von Hirsch and Ashworth's account is more controversial than the other arguments outlined in this thesis: it warrants sentence mitigation in dealing with completely purposeless crimes such as random acts of vandalism and also severely violent crimes. We might agree that random acts of vandalism, and perhaps even violent crimes, might warrant sentence reduction if the offender suffers from severely diminished capacities. For example, if a person does not have the mental capacity to understand that throwing a stone at a window will cause it to break, and that such an act violates other people's property rights, then the punishment for his act of vandalism might be mitigated. However, it is important to make absolutely clear that von Hirsch and Ashworth do not base their claims on diminished capacity, nor any form of reduced blameworthiness; they solely base their claims about sentence reduction on sympathy.

On the basis of the analysis above, two claims can be made concerning why von Hirsch and Ashworth's case for sentence mitigation is unconvincing. First, by emphasizing that appeals to reduced culpability do *not* warrant sentence mitigation in contexts of social deprivation and offending, they imply that the deprived *should be regarded* as being equally responsible and equally blameworthy for committing crimes as persons of relative privilege. To quote them again, they state that "The culpability reduction thesis […] does not seem to provide a general basis for reducing the punishments of the deprived offenders" (von Hirsch & Ashworth: 65). However, in order to determine how much punishment an offender *deserves*, one takes into account the harm caused in the crime – both physical and moral – and the offender's culpability. von Hirsch and Ashworth straightforwardly state that there are no differences between the harm caused in the crimes of the deprived and non-deprived and that there are no differences concerning the culpability of the deprived and non-deprived. This ordinarily would entail that no special considerations ought

to be taken into account in sentencing deprived individuals since there is nothing that causes deprived offenders to be less deserving of punishment than relatively privileged offenders. Still, von Hirsch and Ashworth state that even though the deprived, because appeals to reduced culpability cannot be claimed, deserve the same amount of punishment as most other individuals, their punishment should nevertheless be mitigated due to considerations about sympathy. In other words, this means that even though a deprived agent deserves the same amount of punishment as his non-deprived counterpart, the deprived offender's sentence ought to be less severe than the non-deprived offender's sentence. This is unconvincing because we want individuals to be punished based on how much they deserve to be punished. Further, it is simply absurd to suggest that sentence mitigation ought to be warranted while also making a great effort to emphasize that deprived offenders deserve the same amount of punishment as non-deprived offenders.

Second, von Hirsch and Ashworth do not consider whether which special considerations should be addressed in dealing with social deprivation and violent offences. Some legal philosophers might consider social deprivation as a mitigating factor concerning crimes where the deprived individual commits a non-violent offence in order to eke out a living, as illustrated in Holroyd's comparative examples mentioned above. However, it is significantly more controversial to suggest that social deprivation ought to mitigate the punishment for violent offences, such as non-defensive acts of murder, serious assault, and rape (Lippke 2011: 288; Morse 1998: 401; Green 2011: 368-69).

For instance, Green (2011: 68) contends that social deprivation cannot reduce culpability in dealing with such serious offences mentioned above, provided the deprived individual's "impoverishment and disenfranchisement have not caused his criminal act to be excused or justified by means of insanity, mistake, duress, or necessity". The wrongness of such crimes cannot in any way, according to Green, depend on considerations about social justice (Ibid.).

For clarity, Green puts forth that one might make a plausible case for why legal punishment may be morally problematic in cases where a deprived offender violates his political obligations, which are duties citizens have by virtue of being a part of a state (see e.g. Rawls 1972: 114-15). Since, as some philosophers hold, states are, at least in some measure, responsible for permitting conditions of social injustice to exist, then victims of such injustice may be excused for violating certain political obligations. Committing taxation fraud would, for instance, be a violation of a political obligation. In contrast, violent offences, or offences *against the person*, do not violate our political obligations but, in Rawlsian terminology, our *natural duties*. Establishing a political obligation in connection with a society's institutions or social practices involves constructing "a moral requirement where none already existed" (Ibid.: 115). However, our natural duties exist independently of what a state considers right or wrong. For instance, committing murder is not wrong because such an action violates the laws of a state; committing murder is naturally wrong. (Ibid.). Since offences against the person constitute violations of our natural duties, then appeals to unjust social conditions should not affect our judgement of the seriousness of such violent crimes (Green 2011: 368). In Green's words, the obligations individuals violate in committing violent offences "are obligations owed to his fellow human beings, as individuals, rather than to the government or to society generally" (Ibid.: 369).

Moreover, as Morse (1998: 401) puts forth, mitigating the punishment of violent offenders is morally problematic, even if these individuals suffer from diminished capacities. Violent crimes are some of the most serious offences. Violent offenders are dangerous, and the culpability for committing extraordinarily serious crimes is greater than in other contexts because the reasons to desist from offending are particularly strong (Morse 1998: 401). For this reason, Morse suggests that the more serious the crime, the fewer reasons we have for mitigating punishment (Ibid.). Note that Morse is not dealing with individuals who suffer from social

deprivation here; he is considering only individuals who demonstrably suffer from diminished capacities. Elsewhere, he has suggested that socially deprived individuals cannot generally appeal to diminished capacities as defendants (see Morse 2000: 143-45).

Above I mentioned some particular reasons concerning why sentence reduction in contexts of violent offences is particularly morally problematic. However, we do not have to agree that the premises on which Green and Morse rely in arguing *why* violent offences are particularly problematic in connection with sentence reduction are true. We need only recognize that reducing the sentences of severely violent offenders is particularly controversial. Because of this, any general argument in favor of regarding social deprivation as a mitigating factor ought to pay some special attention to why deprivation ought to be a mitigating factor concerning violent offences as well as other kinds of offences. Yet, even though an implication of von Hirsch and Ashworth's account is that social deprivation warrants punishment reduction in determining the sentences of violent offenders, they do not devote any attention to this implication whatsoever. In fact, they ignore this implication completely, which is one of the most controversial components of their argument. Any compelling argument focuses heavily on its most controversial implications in order to illustrate why we should accept it despite its controversiality. But von Hirsch and Ashworth make no effort at all to show why social deprivation ought to partially excuse violent offences, nor do they, alternatively, provide reasons why their argument ought not to apply to violent offences. As said, any compelling argument addresses its most controversial implications. von Hirsch and Ashworth do not address the most controversial feature of their arguments. Therefore, they have not sufficiently analyzed the implications concerning violent offences and punishment mitigation. This, too, makes their account unconvincing.

Moreover, reflecting on that the fact that most socially deprived individuals are law-abiding, von Hirsch and Ashworth nevertheless state that the law ought to express sympathy to the

deprived who are, in their words, more "susceptible" to offending. These more susceptible deprived individuals have been denied the social supports that could have helped them overcome that susceptibility. According to von Hirsch and Ashworth, the state should therefore express sympathy by punishing deprived offenders less than their non-deprived counterparts. However, there must surely also exist certain causal factors that make certain non-deprived individuals more susceptible to offending.[16] In spite of this, von Hirsch and Ashworth contend that states should only be sympathetic toward deprived offenders who are more susceptible to offending. Yet, both non-deprived and deprived individuals can be exposed to causal influences that make them more susceptible to offending. Because this is the case, then only mitigating the punishment of susceptible deprived offenders is unfair. Doing so involves giving a certain group of individuals preferential treatment solely based on their socio-economic status. Treating people differently based on socio-economic status is, however, typically regarded as unjustified discrimination if not outright reprehensible. The unreasonable discriminatory implications of von Hirsch and Ashworth's argument thus also make their account doubtful.

Lastly, as I explained earlier, a general weakness of von Hirsch and Ashworth's account is that it attempts to provide an absolutely general connection between social deprivation and punishment reduction. They not only contend that social deprivation automatically warrants sentence mitigation, they also regard the direct link between social deprivation and punishment mitigation as the main strength of their argument. To reiterate, they regard the direct link between deprivation and punishment reduction as a strong aspect of their argument because it entails that authorities will not have to investigate whether claims relating to reduced culpability should be warranted, nor will authorities have to investigate the degree to which, say, matters of social

[16] Morse (2000) criticizes general arguments in favor of regarding social deprivation as a mitigating factor by pointing out that all the influences that compromise the rationality of the deprived are not limited to the deprived; the influences may also compromise the rationality of non-deprived individuals.

injustice make deprived individuals more susceptible to offending in considering mitigating factors. Put differently, the strength of their argument is its simplicity: a deprived offender's punishment ought to be mitigated because of considerations about compassion. However, we might also regard such a simple solution to the problem of punishing deprived offenders as *too simple*.

Human behavior is complex, and maintaining a just society is complex. Criminals engage in wrongdoing for many reasons. Some offend in order to eke out a living; others commit acts of vandalism to express some political message; psychopathic individuals murder to experience a rush; etc. Offences may be expressive where violence itself is the aim of the offence; other crimes are instrumental, in which the offence is committed to acquire something tangible, or to achieve something – i.e. violence itself is not the aim of the crime (see e.g. Cohn & Rotton 2003: 352). Some expressive crimes can cause a relatively small amount of suffering; other expressive crimes are extraordinarily violent. Instrumental crimes can both be violent and non-violent. Instrumental crimes may cause severe suffering to victims, and they might not have any direct victims at all. In short, offenders' motives and types of crime vary greatly. As highlighted here, there can be many subtle differences between types of crime and motives for offending. The nuanced differences can affect our moral evaluations of the crimes as well as give us some indications about how offenders may act in the future.

If we are dealing with a psychopath who kills in order to experience a rush, and he does not feel any remorse for violating an individual's right to life, then we have good reasons to believe that he will kill more victims in the future, provided the state does not intervene. Consider now a drug dealer who sells illegal substances in order to eke out a living. First, this individual does not violate individuals' rights in any direct sense because consumers voluntarily buy the substances. Second, provided this individual only sells illegal substances to fulfill basic needs, then chances are that she would favor doing so legally once the opportunity arises. These examples are highlighted to

show that our moral evaluations of wrongdoing can depend on the offender's intention: the psychopath kills for a rush, while the drug dealer sells to fulfill basic needs and does not directly violate anyone's rights. From a crime prevention perspective, these examples are also relevant because they indicate how these individuals might act in the future. Also, highlighting these examples shows how different crimes can be, both when considering the type of crime itself and the intention of the offender. However, this is just one comparison.

As explained above, there are numerous types of crimes and motives offenders act on. The differences can be subtle and complex. Due to this complexity, it is not clear why we should accept von Hirsch and Ashworth's simple suggestion that sentence mitigation ought to be warranted for socially deprived offenders in general. We may grant that punishment mitigation could be warranted in particular contexts of deprivation, say, where an offender commits a non-violent crime to fulfill a basic need. But it is doubtful why social deprivation ever should be a mitigating factor in determining the punishment of a psychopathic murderer who finds pleasure in killing innocent individuals and, without state intervention, would be likely to kill more innocent individuals in the future. von Hirsch and Ashworth's account does not take into consideration the fact that claims relating to social deprivation and punishment mitigation might reasonably be sensitive to differences between types of crimes and motives of the offenders. Granted, the example I provided is black and white, but even subtle details about offenders' motives and types of offences might give us relevant indications about blameworthiness and prospective wrongdoing. These are details that courts might reasonably take into consideration in determining whether mitigating factors should be warranted. von Hirsch and Ashworth's failure to consider that there might be details about offenders and types of offences relevant to whether sentence mitigation should be warranted is therefore another aspect rendering their account doubtful. It is too simple to state that social

deprivation warrants punishment mitigation by appealing to sympathy while completely ignoring morally relevant characteristics about the motives of the offender and the type of offence.

In summary, von Hirsch and Ashworth's account is unconvincing for the following reasons: First, and most importantly, they make a great effort to emphasize that the deprived deserve the same amount of punishment as the non-deprived while also claiming that the deprived ought to be punished less than the non-deprived; they do not discuss the most controversial implications of their argument – i.e. that their account warrants punishment mitigation even when it comes to severely violent, non-defensive offences; their claim about some deprived individuals being particularly susceptible to offending is equally applicable to certain non-deprived individuals; and, in general, they do not account for morally relevant differences concerning offenders' motives and types of offences.

3.3 Is Holroyd's Account Convincing?

Let us now consider if Holroyd's argument is convincing. I choose to discuss Holroyd's arguments before Lippke's because I find that Holroyd does not properly explain why deprived offenders' reasons for offending are so compelling that partial excuses ought to be warranted. Lippke attempts to provide a detailed explanation for why this could be the case. Discussing Holroyd argument first therefore leads nicely into the section about Lippke's claims.

Two aspects of Holroyd's argument make her case for sentence mitigation initially plausible. First, one of the strengths of Holroyd's case for sentence mitigation is that it is not based on appeals to diminished capacities. Rather, her account is strictly concerned with that the circumstances of deprivation might be such that certain offences committed by individuals with normal cognitive capacities ought to be partially excused. In other words, the circumstances in which the deprived offenders find themselves are such that states cannot justifiably *blame* them as harshly as they could if the individuals found themselves in functioning communities. By solely

emphasizing that social deprivation may reduce blameworthiness and therefore may warrant mitigation of punishment, there is nothing in her account that could imply that the deprived are not fully responsible, normatively competent agents. According to her, then, even though sentence mitigation might be warranted in "some or many cases", deprived offenders nevertheless ought to be regarded as full moral agents and in this sense equal to most adult individuals. By doing this, Holroyd avoids all the objections stating that social deprivation cannot serve as a diminished capacities-based mitigating factor in punishing deprived offenders because such an exculpatory defense would entail that we, in Morse's (2000: 154) words, "pejoratively […] label large numbers of citizens as less than full moral agents".

Second, Holroyd makes an effort to show that in order for sentence mitigation to be warranted, the motivation behind the deprived offender's illegal conduct must be compelling. Good reasons for engaging in wrongful action seem, according to Holroyd, to have to do with concerns about sustenance, provision, and safety. In other words, compelling reasons for engaging in wrongful conduct are reasons that have to do with satisfying basic needs. This is more or less in line with our intuitions about moral evaluations of specific actions. In a situation where an offender commits a crime to satisfy some basic need, even if we find the conduct morally unacceptable, and we might even think that the offender does not deserve any sentence mitigation, we nevertheless understand *why* the agent broke the law, and we might sympathize with them. Contrast this with von Hirsch and Ashworth's accounts of social deprivation and sentence mitigation. According to them, a deprived offender's sentence ought to be mitigated, even if the offender commits an expressive crime where she, for instance, breaks a neighbor's window with the purpose of causing his neighbor to experience terror. In contexts of such expressive crimes, we intuitively recognize that the reasons for action are not as understandable, if at all, since expressive wrongdoing is motivated by "the violent outcome itself" (see e.g. Cohn & Rotton 2003: 352). Contrary to von

Hirsch and Ashworth's account, Holroyd's argument for sentence mitigation relies on the recognition that the reasons acted on in offending have to be compelling in order to warrant an excuse. This is why her argument is less controversial and more defensible than von Hirsch and Ashworth's account.

Highlighted above are the convincing aspects of Holroyd's account of deprivation and sentence mitigation. However, her argument does have some morally problematic implications that she does not account for in her article. To illustrate why this is the case, note again that Holroyd states that deprivation sometimes warrants sentence because, in her own words, "reasons for which the [deprived] individual so acted (survival, meeting of basic needs, say), are such that it is inappropriate to blame the agent to the same extent as an individual who acted for less urgent reasons" (Holroyd 2010: 27). Note also, once more, that she illustrates why the deprived agent cannot be blamed to the same extent as a person of relative privilege by highlighting the two comparative examples mentioned earlier.

However, the crimes she mentions in her examples are about stealing from the supermarket and defrauding the taxation system. These crimes can be characterized as being relatively trivial. Put differently, these crimes do not have a high degree of seriousness. Still, to continue, while she places emphasis on the fact that deprived offenders often commit crimes for urgent reasons which may serve as a mitigating factor, she does not take into account the sheer diversity of crimes that may be committed for urgent reasons. Granted, she only points to relatively innocent crimes in arguing for cases where sentence mitigation is appropriate. However, *she does not account for the implications her argument would have in sentencing certain extremely violent deprived offenders.* In other words, in suggesting that what is of moral relevance is only that the deprived individual acts in order to fulfill basic needs, she seems to imply that the only condition that must be met in order for sentence mitigation to be warranted is that the reasons acted on are

urgent enough. This entails that, provided this condition is met, sentence mitigation should be warranted no matter which kind of offence is dealt with. For example, if a socially deprived individual killed an innocent individual in order to secure some basic needs, then, by Holroyd's account, the deprived offender's punishment ought to be mitigated for the same reason his punishment ought to be mitigated had he defrauded the taxation system.

As highlighted earlier in the discussion section, however, our obligations to refrain from committing violent offences against humans are particularly strong. Any arguments in favor of regarding social deprivation as a mitigation factor implying that mitigation ought to be warranted in contexts of violent offences against humans are therefore extraordinarily controversial. Of course, killing may be excused or justified, provided the circumstances concern extremely coercive do or die situations. But it is important to note that Holroyd contends that the cases of deprivation relevant to the discussion about sentence mitigation are "cases of disadvantage that, albeit pretty dreadful, are not "do or die" situations" (Ibid.: 23). Again, although Holroyd does not state it explicitly, there is nothing in her article suggesting that sentence mitigation should not apply to violent offences aiming at securing basic needs, even though violent offences are particularly morally problematic. The problems with these implications are significant, especially when considering that the deprived, as Holroyd understands them, can fulfill basic needs by legal means. If one has the opportunity to fulfill basic needs by legal means, then it becomes unreasonable to argue that circumstances are so urgent that committing a non-defensive act of murder may be partially excused. Despite this, there is no denying that this is an implication of her argument. Holroyd thereby runs into the same problem that von Hirsch and Ashworth do: an implication of her account is that particularly violent offenders, such as those who commit non-defensive acts of murder, may have their sentences mitigated because the murder was committed in order to secure basic needs.

Further, as stated in the discussion about von Hirsch and Ashworth's argument, if one is to construct a convincing argument, it must deal with its most controversial implications. But as with von Hirsch and Ashworth's account, Holroyd simply ignores the most controversial implications of her argument and only illustrates her point by using comparatively uncontroversial thought experiments. Holroyd's refusal to discuss the most morally problematic implications of her argument makes her account unconvincing.

Another doubtful aspect of Holroyd's account is this: she does not clearly state *why* dreadful conditions of deprivation warrant exculpatory defenses and hence sentence mitigation. Holroyd stresses that sentence mitigation is warranted because the socially deprived offender's motivation for offending is very different from the motivation a non-deprived offender might act on in offending. After all, the offence is motivated by concerns about securing basic needs.[17] To a great extent, she seems to rely on the effects that her comparative examples have on our intuitions about this issue. To be sure, highlighting these examples is fruitful because in order to scrutinize this issue properly, it is important to take into account how some reasons for offending may be more excusable than others. Still, one might reasonably object that an argument in favor of regarding social deprivation as a mitigating factor not only has to show why the deprived individual's reasons for offending may be more excusable, but it also has to rely on further premises to make absolutely clear *why* these actions are more excusable. Normally, when legal philosophers discuss why some legal wrongdoings may be more excusable than others, they refer to notions about which levels of self-control we can reasonably expect citizens to exercise. As stated earlier, what generally warrants

[17] When Holroyd states that the deprived offender's motivation for offending is different from the non-deprived offender's motivation for offending, she is strictly concerned with a narrow group of deprived individuals whose offences are motivated by concerns about fulfilling basic needs. She does not seem to deny that there are many cases where the motivation a deprived individuals acts on and the motivation a non-deprived individual acts on is identical. This could, for instance, involve cases where crimes are committed to advance social status: a deprived wants to acquire higher status in his specific community, and a non-deprived wants to advance his status in his community.

exculpatory defenses has to do with whether the conditions an agent finds himself in are so coercive or urgent that refraining from offending cannot reasonably be expected from individuals with reasonable levels of self-discipline. Granted, Holroyd touches on these standard concepts. But she does not attempt to show clearly *why* conditions of deprivation are so urgent that legal compliance cannot reasonably be expected from deprived individuals. Holroyd's argument would have been more easily defensible if she showed why this is the case in contexts of deprivation because by doing so she would have relied on a fairly uncontroversial notion to substantiate her claim.

In connection with the aforementioned, it is reasonable to object to her by stating that even though the deprived individuals in Holroyd's comparative examples suffer from diminished opportunities, the pressure to offend experienced as a consequence of this is not so immense that it warrants culpability reduction claims since the deprived, according to Holroyd, are not in "do or die" situations. As Lippke also highlights: while social deprivation causes individuals to be more likely to offend, the deprived nevertheless have other income-earning legal options available to them, albeit dispiriting options. For this reason, it is sensible to object to her case for sentence mitigation by highlighting that since the deprived have legal income-earning opportunities available to them, the law can reasonably expect the deprived to choose the legal options instead of the illegal ones. Even if we ignore the problematic implications Holroyd's account has on punishing violent deprived offenders, her case for sentence mitigation is also problematic regarding relatively trivial offences. She fails to argue why the pressure to offend, as a result of deprivation, is so overwhelming that we cannot reasonably expect some of the deprived to refrain from offending.

To sum up, Holroyd's account is stronger than von Hirsch and Ashworth's because she emphasizes that reasons for offending must be compelling in order for partial excuses to be warranted. Her argument therefore has a narrower scope than von Hirsch and Ashworth's because it only encompasses the subgroup of deprived individuals who only offend in order to fulfill basic

needs. However, her case, in general, is unconvincing and in need of further analysis for the following reasons: her argument has particularly problematic implications concerning punishing violent deprived offenders; she does not discuss the most controversial implications of her argument; and she does make clear why contexts of deprivation are so coercive or put such urgent pressures on certain individuals that partial excuses ought to be warranted, even in considering comparatively trivial offences.

3.4 Is Lippke's Account Convincing?

I will now turn to Lippke's claims. However, before starting the discussion about his arguments, it is of importance to reiterate that he is reluctant to endorse sentence mitigation. Lippke is reluctant to advocate sentence reduction because (1) adopting a social deprivation exculpatory defense would be impractical; (2) it might encourage deprived individuals to commit more crimes, thereby compromising the crime preventive purposes of legal systems; and (3) mitigating the sentences of deprived individuals demeans the dignity of victims of crime. Nevertheless, Lippke presents his ideas about the continual and indefinite encountering of temptations to offend and diminished capacities for self-control as legitimate reasons in favor of sentence mitigation. Because of this, discussing the arguments he raises in favor of punishment reduction can still be a valuable contribution to the debate. In the following, I will attempt to show why his arguments are doubtful.

3.4.1 Chronic Temptations to Offend

Previously, I argued that one weakness of Holroyd's argument is that she does not argue in detail about why circumstances of deprivation put such pressure on deprived individuals to offend that sentence mitigation ought to be warranted. However, this is exactly what Lippke attempts to do. As Lippke contends, even if states may rightfully demand that citizens resist even strong temptations to offend, it is not clear that the authorities justifiably can expect citizens to resist acting on strong temptations, *provided these temptations are encountered on a frequent and*

indefinite basis. To repeat Lippke's claims mentioned earlier, he states that encountering strong temptations to offend regularly and indefinitely is characteristic of life in severely deteriorated neighborhoods, whereas this is not the case in relatively well-functioning neighborhoods. This is what Lippke considers being the most morally relevant difference between socially deprived offenders and relatively privileged offenders in determining the severity of punishment. To continue, because we all have a limited amount of self-control capacities, those who find themselves in circumstances that cause the reservoirs of the capacities to be depleted continually cannot be expected to resist acting on strong temptations. For this reason, Lippke holds that we can expect persons of relative privilege to resist acting on strong temptations to offend since the circumstances in which they generally find themselves in are *not* conducive to eroding self-control capacities. Conversely, according to Lippke, we *cannot* generally expect deprived individuals to resist acting on strong temptations because the continual and indefinite encountering of temptations erodes self-control capacities, making it particularly difficult to avoid giving in to temptations.

This is plausibly what makes Lippke's claim attractive initially: by highlighting that individuals cannot avoid giving in to temptations when countering them on a frequent and indefinite basis, he claims that persons would, in fact, require extraordinary fortitude to desist from acting on them. He thereby attempts to base his claim in favor of sentence mitigation on an uncontroversial notion of which levels of self-control states reasonably may expect of its citizens.

Moreover, with his emphasis on the idea that we all have limited reservoirs of self-control capacities, his argument does not entail that circumstances may be so conducive to eroding self-control capacities that a *minority of individuals* would give in to temptation as a direct consequence of the circumstances; what it entails is rather that circumstances may be so conducive to eroding self-control capacities that the *majority of individuals* would do something they otherwise would not so as a direct consequence of the circumstances. The significance of this is

substantial because it would entail that the persistent encountering of temptations results in individuals making bad choices, even if these individuals have normally functioning cognitive capacities. Consequently, claims appealing to the limited reservoirs of self-control capacities do have any unfortunate implications concerning diminished capacities, responsibility, or normatively competent agency.

Still, arguments relying on persons' limited amount of self-control capacities in claiming that social deprivation warrants sentence mitigation are based on social scientific research on the subject. The soundness of these arguments thus ultimately depends on whether the empirical studies are true. With regard to the research upon which Lippke's argument about the moral relevance of the continual and indefinite encountering of temptations is based, he makes the weak claim that only *one* of the leading models of self-control capacity compares it to a muscle. The problem with this has to do with what is meant 'one' leading model. Perhaps it means that 10 percent of those studying how to conceptualize self-control capacity find that likening it to a muscle is accurate; or perhaps 50 or 90 percent. The uncertainty about what 'one' leading model involves makes Lippke's argument vague and thereby doubtful.

In connection with this, it is worth mentioning that it is reasonable to base normative claims on empirical research. And as individuals studying how societies ought to be, we may rely on the authority of those doing empirical work in the social sciences to some extent. However, in doing so, we better be certain that the specialists in the empiricism on which we base our normative claims on are in general agreement about the research. In referring to 'one' leading model, Lippke implies that there is no general consensus among the specialists. This, again, casts doubt on whether it is reasonable for Lippke to base his claims on the model of self-control capacity that likens it to a muscle. According to the Open Science Collaboration (2015), moreover, it seems to be particularly difficult to establish universal, sound claims about human psychology. If one then combines the

vagueness surrounding Lippke's reference to 'one' leading model and the epistemological problems with psychological science, then one is left with strong reasons to be skeptical of normative claims based on the research Lippke relies on.

What is more, being particularly cautious when modifying legal systems is plausibly a reasonable heuristic to follow since legal systems make up the foundations of societies. This entails that proposals to changing legal systems ought to be extraordinarily well-founded – more so than in most other contexts. As stated above, however, we have reasons to believe that Lippke's reliance on the self-control capacity model is not particularly well-founded. Of course, the model may be proven to be correct in the future, but it is only 'one' leading model right now. Because there does not seem to be general consensus among the specialists regarding which model is correct, we have good reasons to assume that claims based on a particular model are not defensible enough to warrant changing legal systems since proposals to changing legal systems require particularly well-founded arguments.

In addition, Lippke's main point is that non-deprived individuals can reasonably be expected to resist acting on temptations to offend because non-deprived persons only encounter *occasional* temptations to engage in wrongdoing; the socially deprived, in contrast, cannot be expected to resist temptations to violate legal rules because they *chronically* face temptations to offend. However, there is reason to believe that this view fails to consider the nuances of reality.

Many non-deprived individuals also encounter temptations to offend on both a frequent and continual basis. Consider a non-deprived banker. A banker may have access to the bank accounts of many millionaires. People, including bankers, like money. Because of this, bankers may be tempted to steal money from other people's bank accounts. Moreover, bankers are not only presented with the opportunity to take money from other people's bank accounts *occasionally*; they have the opportunity to steal almost every day for as long as they are bankers,

which is a job some individuals have for decades before working elsewhere or retiring. For these reasons, bankers may face strong temptations to engage in wrongdoing on a frequent basis for very long periods of time. Of course, there are more examples of non-deprived individuals who are encounter temptations to violate legal rules frequently and indefinitely. To mention some, these include casino workers and people working for insurance companies who are in close proximity to immense amounts of money regularly; and nurses, doctors, and pharmacists who all have access to the best drugs on the market and often work in high-stress environments, plausibly causing them to experience regular temptations to take certain substances. Furthermore, medical professionals might also regularly and indefinitely be tempted to prescribe medicine to drug addicts for monetary gain. Based on this, we can deduce that *many non-deprived individuals not only face temptations to offend regularly, they also face them continually for long periods of time*. Therefore, Lippke is clearly mistaken in stating that non-deprived individuals "encounter *occasional* temptations to violate legal rules".

It is worth emphasizing that Lippke presents his idea about deprived individuals chronically encountering temptations to offend, while non-deprived individuals only occasionally encounter temptations to offend as the greatest strength of his account. Since it obviously is untrue that non-deprived individuals only encounter occasional temptations to offend, however, his reliance on this false premise makes his whole account unconvincing.

Moreover, highly successful individuals may find themselves in workplace environments where colleagues constantly and persistently attempt to outcompete each other. Such an environment seriously tempts individuals to do anything they can in order to get an edge over their coworkers. In a context like this, engaging in wrongdoing in order to get some kind of advantage becomes seriously tempting. In addition, since this competitive environment is persistent, then it would be untrue to state that the individuals in these environments only have to exercise high

degrees of self-control occasionally; they have to do so frequently and continually. On the basis of this, it is reasonable to state that not only is it untrue that chronically encountering temptations to offend is exclusively something the deprived experience, certain non-deprived environments also create special circumstances where violating legal rules becomes especially attractive in their own right. Some highly successful organizations, further, may have developed some kind of culture where cheating and violating legal rules to some extent is normalized (see e.g. Palazzo et al. 2012), similar to how the attitudes toward the law may be in some deteriorated neighborhoods. Many non-deprived individuals thus face many of the same challenges to be law-abiding as the deprived.

In connection with my statements about the fact that non-deprived individuals also encounter temptations to violate legal rules on both a frequent and continual basis, one might remark that while deprived and non-deprived individuals indeed both can encounter temptations to offend persistently, the motivation behind the wrongdoing they are tempted to engage in is very different. For instance, a banker might be tempted to steal money to supplement his already impressive income, whereas a deprived individual encounters temptations to steal in order to satisfy basic needs. A critic might then say that the deprived individual is tempted to steal based on more justifiable reasons than his non-deprived counterpart because the non-deprived person has no concerns about basic needs. Perhaps the law ought to be sensitive to such a distinction. Nevertheless, Lippke's argument is strictly concerned with which levels of self-control states may reasonably demand from its citizens. And with regard to this, Lippke solely points out that it is doubtful whether states justifiably can demand individuals to exercise self-control on a frequent and continual basis because normally functioning individuals have a limited supply of self-control capacities. His argumentative force does not rely on precisely *what* individuals are tempted to do, and he does not clearly state whether *what* the individual is tempted to do ought to affect our judgement of sentence reduction at all. Put differently, the scope of his argument only encompasses

the frequent and chronic encountering of temptations to engage in *some* illegal activity. Lippke does not make use of a further premise stating that sentence reduction ought only be possible if the individual encounters chronic temptations to engage in wrongdoing *in order to fulfill basic needs*.

In addition, at one point Lippke mentions that another morally relevant difference between the deprived and non-deprived is this: unemployment does not tempt non-deprived individuals to engage in wrongdoing to the same degree that it tempts deprived persons because the non-deprived know that legal income-earning opportunities will be presented to them after a short duration of time. Again, this may be true if one deals with generalities.[18] Deprived individuals probably do have to stay unemployed for longer periods than their counterparts, even if they do everything they can to get some form of legal employment. However, it is different at an individual level. Some deprived individuals might be lucky and get a new job immediately after being fired from somewhere. Others, maybe most of them, might have to stay unemployed for longer. Similarly, it may, on average, be true that non-deprived individuals have an easier time finding employment. Yet, some non-deprived individuals, after losing their jobs somewhere, will be unemployed for long durations.[19] This is especially evident in times of financial crises in which unemployment rates are high. At the individual level, therefore, it is not true that new legal income-earning opportunities are always "just around the corner" for the non-deprived individual. Based on this, Lippke's account seems to paint an overly simplistic picture of the differences between the deprived and their counterparts.

Concerning Lippke's claims regarding both chronic temptations and unemployment prospects, clearly the law cannot be based on such a black and white view of the differences between the deprived and the non-deprived. We want the law to take into account all the different

[18] See Morse (2000: 144-45) for a convincing discussion of why statistical disproportion cannot in itself provide indications about the culpability of offenders.
[19] See e.g. Uddannelses- og Forskningsministeriet (2018) for an overview of the employments rates of Danish graduates.

nuances that might explain why an *individual* acted as he acted. It is unreasonable to assume that an individual belonging to a specific social class acts as he acts simply because he belongs to a specific social class. This does, of course, not mean that the socially deprived do not face challenges that make it hard for them to comply with the law. However, many non-deprived individuals also face identical or similar challenges. Since there is a great deal of overlap regarding the morally relevant factors Lippke relies on, it would be unreasonable for the law only to regard chronic temptations as a mitigating factor when punishing deprived individuals.[20]

Summarizing, Lippke's claims in favor of reducing the sentences of deprived offenders based on the frequent and indefinite encountering of temptations to offend are unconvincing for the following reasons: first, and most critically, it is outright false that non-deprived individuals only encounter occasional temptations to offend; generally Lippke's account portrays the differences between deprived and non-deprived individuals without accounting for individual nuances, as I emphasized by showing how his dealing with employment prospect differences is problematic; and lastly, Lippke's argument is based on a doubtful model of self-control capacities.

3.4.2 Diminished Capacities for Self-Control

Of the different arguments sketched out in the first half of this paper, Lippke is the only one who provides reasons about why social deprivation may have a significant effect on capacities for proper moral agency. To reiterate Lippke's claims, large portions of youths are in the care of "impulsive, addicted, neglectful, or abusive adults" in severely disorganized neighborhoods (Lippke 2011: 287). The failure of the caretakers to have healthy, loving relationships with their dependent youths, and the failure to provide these youths with an acceptable moral education where the value of self-control is enforced does seem to have a negative effect on law-abidingness. It

[20] Morse (2000) makes a similar claim.

causes the deprived to be "ill-equipped to resist the temptations to offend which they persistently encounter" (Ibid.). Lippke does point out that these environmental pathologies also exist in more affluent families. However, Lippke states that what distinguishes the non-deprived from the deprived in this regard is that the negative impact on self-control capacities is softened by having access to better health care and social support systems. According to Lippke, this seems to be the morally relevant difference between the deprived and the non-deprived. Since the deprived do not have access to proper health care and social support systems, their predicament ought to make us sympathetic toward warranting sentence mitigation.

Yet, as Morse (2000: 144) has pointed out with regard to arguments appealing to diminished capacity, even if diminished capacities are "more common among deprived people, [it] is not limited only to this group […] there is nothing special about deprivation as a cause [for diminished capacity], except that such rationality-compromising states may be statistically more frequent among deprived people". Morse's point is that the recognition that an offender is deprived cannot in itself inform us about the offender's culpability, even if far more deprived individuals offend compared to non-deprived individuals. In this respect, deprivation is comparable to genetic sex. As Morse states, "One's genetic sex and gender are non-culpable characteristics that are statistically related to the likelihood of engaging in criminal conduct. Genetic males […] are far more likely to offend than females, yet sexual and gender maleness is hardly an excusing condition" (Ibid.: 144-45). Even though diminished capacities for self-control might be more common among deprived individuals, most deprived persons have normal cognitive capacities. This entails that even though they are, in Morse's words, "often unintentional social victims", many of them are also "intentional, responsible perpetrators of harms to fellow citizens" (Ibid.: 154). Similarly, there are non-deprived individuals who are victims of environmental factors that deform capacities for self-

control as well. The law could therefore not justifiably equate social deprivation to diminished capacities for self-control.

To be sure, Lippke probably agrees that it is not reasonable to equate social deprivation to diminished capacities for self-control. As he himself says, the pathologies he refers to also exist in affluent families, but the negative impact is softened by better health care and social support systems. His argument therefore relies on the morally relevant difference between having access to these services and not having access to these services. Moreover, he states that affluent families have access to these services while deprived families do not, which should cause states to take some special considerations into account in punishing deprived individuals. But here Lippke seems to imply that non-deprived individuals who are victims of neglect and abuse etc. *always* have access to these services and that deprived individuals *never* have access to these services. While Lippke avoids unjustifiably equating social deprivation with diminished capacities for self-control, he nevertheless implies that there is some exclusive connection between social deprivation and not having access to the services softening the harmful impacts of the environmental factors. Again, however, surely there also exist individuals in wealthy families who are victims of toxic upbringings, and, for one reason or the other, do not get the necessary help to soften its negative impact on law-abidingness. Morse's statement regarding diminished capacities can therefore also be applied to the issue of having access to health care and social support systems: having access to these services is not exclusively something the deprived lack since certain wealthy individuals, albeit probably a comparatively smaller number, are also denied these services.

Another doubtful aspect of Lippke's account has to do with this: although he consistently contrasts the deprived with persons of relative privilege, some of his statements could also be applicable to cases where one compares the middle class with the upper class. At one point, for example, Lippke highlights that poor parents and caretakers in socially deprived communities

cannot monitor their youths to the same extent as parents and caretakers in the middle class. The lack of monitoring makes it harder to teach proper impulse-control and deforms individuals' self-control capacities. According to Lippke, the lack of monitoring might therefore warrant sentence mitigation since these individuals, through no fault of their own, have not been taught how to control their impulses. However, there are probably also differences between to extent to which parents in the middle class are capable of monitoring their youth compared to parents in the upper class. Individuals in the upper class can possibly monitor their youth more than middle class people and are thereby capable of teaching their youth self-control to a greater degree than middle class individuals. Applying Lippke's reasoning to middle and upper class individuals – i.e. pointing out that one group of individuals is relatively deprived compared to another group of individuals – the conclusion would be that the middle class people can claim punishment reduction. Lippke simply does not make clear how socioeconomic status could affect the degree to which parents and caretakers are capable of teaching self-control and how it ought to relate to punishment mitigation. The problem in this regard is this: Lippke does not specify whether there ought to be a *scalar* relationship or a *threshold* relationship between punishment mitigation and the degree of deprivation.

A scalar relation is described as follows: "X has a scalar relation to Y if an increase in Y must result in an increase in X"; a threshold relationship is characterized as follows: "X has a threshold relation to Y if (1) whether X obtains depends on whether there is a threshold (or sufficient) level of Y but (2) one a *sufficient* level of Y is present, any further increase in Y does not increase X" (Chau 2018: 111). If punishment mitigation, say, has a scalar relationship to the degree of social deprivation, then the wealthiest and the least emotionally deprived offenders would get no punishment reduction; offenders with average degrees of wealth and emotional deprivation or lack thereof would get some amount of punishment mitigation; and severely poor and deprived offenders

would get the most amount of punishment reduction. If punishment mitigation has a threshold relation to the degree of deprivation, then one might hold that once an individual can be characterized as non-deprived, she is at the level at which punishment mitigation ought not to be warranted, and it does not matter how significant the degree of non-deprivation is. In other words, if we accept this threshold relation, then only the punishment of socially deprived offenders ought to be mitigated, provided all other things being equal.

Presumably, Lippke has in mind some kind of threshold relation because he compares the predicament of the deprived to individuals in relatively affluent families, implying that punishment reduction should only be warranted in cases of social deprivation. Nevertheless, there is nothing in his discussion of deformed capacities for self-control excluding sentencing distinctions between middle and upper class individuals, which would entail some kind of scalar relation. To illustrate, Lippke points out that it is harder for a deprived person to resist temptations because she has gotten less self-control teaching exposure than a middle class individual. However, perhaps a middle class individual has gotten less self-control teaching exposure than an upper class individual. If sentence mitigation should be warranted for the deprived individual because, through no fault of his own, he gets less self-control teaching exposure than the middle class individual, then the middle class individual might complain that he, too, ought to be in a position warranting sentence mitigation since he has gotten less self-control teaching exposure than an upper class individual. In fact, if we are dealing if a scalar relationship, this would be a reasonable complaint. In continuation, Lippke's analysis of deformed capacities for self-control and punishment lacks vital details because he does not deal with whether there is a scalar or threshold relation between the degree of deprivation and punishment mitigation. As alluded to earlier, this is why his account does not exclude sentencing distinctions between middle class offenders and upper class offenders. He would have had a more convincing case had he clearly showed why punishment mitigation ought to

be warranted only for the deprived offender by basing his claim on some threshold relation as well as going into detail about why a threshold relation in this context is desirable.

The scalar/threshold distinction might initially seem trivial. However, note that Lippke's claims concerning why we should be sympathetic toward sentence mitigation rely on comparing the level of deprivation of one group to the degree of deprivation, or lack thereof, of another group. To illustrate why this reasoning is bizarre in this context, consider this: a millionaire is relatively deprived compared to a billionaire. In spite of this, obviously we have no reasons to express sympathy to a millionaire because she is more deprived than a billionaire. By relying on comparing levels of deprivation of one group to another, the logical conclusion of Lippke's reasoning would be that we ought to sympathize with the millionaire due to his relative deprivation. Lippke could have avoided such absurd logical conclusions by basing his argument on some *absolute* notion of deprivation. As explained above, this could be done by relying on a threshold relationship, where, say, it is clearly stated which conditions constitute deprivation in some absolute sense, and by stressing that claims relating to sentence mitigation should only apply to individuals who a deprived in this absolute sense.

Moving on, another objection typically raised in connection with arguments appealing to diminished capacities concerns undermining the status of deprived individuals. For instance, Morse has put forth that excuses relating to deprivation and diminished capacities:

> "would cast doubt on ordinary notions of responsibility that are part of our self-conception and contribute a great deal to our sense of dignity and self-worth. The excuse would tend pejoratively to label large numbers of citizens as less than full moral agents, contributing to the continued degradation and exclusion of the worst off […] Social justice for the poor and for those who are emotionally deprived not be will not be

> furthered by treating deprived people as if they were not morally accountable agents" (Morse 2000: 154).

Similarly, von Hirsch and Ashworth (2005: 63) contend that a deprivation excuse appealing to diminished capacities is not desirable "since those who are treated as volitionally impaired may become subject to more onerous 'civil' restraints on liberty". Holroyd (2010: 8) states that "there is something troubling and insulting to suppose that, generally speaking, the responsibility and capacities of individuals in poverty are diminished". In addition, Tadros (2009: 392) argues that we in almost all cases should "err on the side of treating others as status responsible" since failing to do so may violate certain fundamental human values, including "the full range of rights and obligations that go with reciprocal moral and political relations".

Lippke's claims about diminished capacities for self-control thus have extremely controversial implications concerning the statuses of deprived individuals. In stating that "many" of them lack the capacities for responsible conduct, he suggests that we ought to regard them as less than full moral agents. However, this is not only insulting; it is also unfounded. Many deprived individuals lead law-abiding lives, and, as explained, many of those who offend have normal cognitive capacities, meaning that they are full moral agents. Regarding a whole socioeconomic group of individuals as lacking the capacity for responsible conduct would therefore not only have disrespectful implications on our attitude and relations to the worst off, it would also entail that we deprive many individuals with perfectly normal capacities of their rights to liberty. This would, of course, be unjustified because in order to justify subjecting individuals to civil restraints on their liberty, one has to show that these individuals demonstrably suffer from diminished capacities.

In sum, Lippke's claims about social deprivation, diminished capacities for self-control, and punishment mitigation are unconvincing for the following reasons: first, and most importantly, because legitimate claims relating to diminished capacities are not limited to the

deprived; a logical implication of Lippke's account is that there ought to be sentencing distinctions between middle and upper class individuals which is absurd; and his account would label a whole socioeconomic group of individuals as less than full moral agents.

4. Conclusion

This thesis has consisted of two main parts. In the first part, I outlined three fairly recent accounts in favor of regarding social deprivation as a mitigating factor in determining deprived offenders' severity of punishment. These included von Hirsch and Ashworth's compassion-based argument, Lippke's appeals to chronically facing temptations and diminished capacities for self-control, and Holroyd's argument relying on having convincing reasons to offend.

In the second part, I analyzed and discussed the arguments. This section started with clarifying which characteristics the scholars find relevant in considering 'the deprived'. Then I outlined Chau's critique of von Hirsch and Ashworth's account, where I provided reasons why his critique is unconvincing, although Chau plausibly is right in stating that social deprivation ought not to be a mitigating factor in considering severity of punishment. Afterward, I discussed all the arguments described in the first part of the thesis. By relying on my own analyses as well as previous work on the subject, I showed why all the accounts emphasized in this thesis are unconvincing. My critique is therefore only restricted to the arguments sympathetic toward reducing the punishment of the deprived that are described in this thesis. I do not deny that convincing cases concerning reducing the sentences of deprived offenders possibly already exist, nor do I deny that compelling arguments in favor of sentence mitigation will be constructed in the future.

Lastly, even if it proves impossible to construct a convincing case in favor of regarding social deprivation as a mitigating factor in punishment, permitting conditions of deprivation to exist is certainly problematic. Deprived individuals are disproportionately victims of

some of the most heart-breaking forms of betrayal and social injustice. Factors beyond deprived individuals' control have a severely negative impact on both their dignity and life chances (Morse 200: 154). What is more, the existence of social deprivation brings with it higher crime rates (see e.g. Wikström & Treiber 2016; Tadros 2009). Its existence not only hinders societal stability in a general sense but, and more importantly, is cause for tremendous amounts of suffering for victims of crime and their families and friends. Alleviating these damaging social conditions, provided it is possible, would decrease the number of serious violations of the rights of individuals, including rapes and murders.

5. References

Arrigo, B. A., & Bullock, J. L. (2008). The Psychological Effects of Solitary Confinement on Prisoners in Supermax Units: Reviewing What We Know and Recommending What Should Change. *International Journal of Offender Therapy and Comparative Criminology*, *52*(6), 622–640.

Audi, R. (1997). *Moral Knowledge and Ethical Character*. New York: Oxford University Press.

Belle, D. (1990). Poverty and Women's Mental Health. *American Psychologist*, 45(3): 385-389.

Benoît, J., & Dubra, J. (2004). Why Do Good Cops Defend Bad Cops? *International Economic Review*, *45*(3), 787-809.

Blumstein, A., & Cohen, J. (1987). Characterizing Criminal Careers. *Science*, *237*(4818), 985-991.

Chau, P. (2010). Temptations, Social Deprivation and Punishment. *Oxford Journal of Legal Studies*, *30*(4), 775-785.

Chau, P. (2018). Punishment and Bad Upbringing. *Criminal Justice Ethics*, 37(2), 103-121.

Cloud, D. H., Drucker, E., Browne, A., & Parsons, J. (2015). Public Health and Solitary Confinement in the United States. *American Journal of Public Health*, *105*(1), 18–26.

Cohn, E.G., & Rotton, J. (2003). Even Criminals Take a Holiday: Instrumental and expressive crimes on major and minor holidays. *Journal of Criminal Justice*, 31(4), 351-360.

Coleman, J. W. (1994). *The Criminal Elite* (3rd ed.). New York: St. Martin's Press.

Currie, E. (1998). *Crime and Punishment in America*. New York: Henry Holt.

Delgado, R. (1985). "Rotten Social Background": Should the Criminal Law Recognize a Defense of Severe Environmental Deprivation?. *Law & Inequality*, *3*(1), 9-90.

Duff, R. A. (2000). Whose Law is it anyway? Inclusion, exclusion and the criminal law. *Scottish Affairs*, 30, 2–15.

Duff, R. A. (2001). *Punishment, Communication, and Community*. Oxford: Oxford University Press.

Freeman, R. B. (1996). Why Do So Many Young American Men Commit Crimes and What Might We Do About It?. *Journal of Economic Perspectives, 10*(1), 25-42.

Gardner, J. (1998). The Gist of Excuses. *Buffalo Criminal Law Review*, *1*(2), 575-598.

Goldman, A. H. (1979). The Paradox of Punishment. *Philosophy & Public Affairs*, *9*(1), 42-58.

Green, S. P. (2011). Just Deserts in Unjust Societies: A Case-Specific Approach. In R. A. Duff and S. P. Green (eds.), *Philosophical Foundations of Criminal Law* (pp. 352-376). Oxford: Oxford University Press.

Groh, C. J. (2007). Poverty, Mental Health, and Women: Implications for Psychiatric Nurses in Primary Care Settings. *Journal of the American Psychiatric Nurses Association*, *13*(5), 267–274.

Henden, E. (2008). What is Self-Control? *Philosophical Psychology*, 21(1), 69-90.

Holroyd, J. (2010). Punishment and Justice. *Social Theory & Practice*, *36*(1), 78-111.

Honderich, T. (1969). *Punishment: The Supposed Justifications*. London: Hutchinson.

Howard, J. (2013). Punishment, Socially Deprived Offenders, and Democratic Community. *Criminal Law and Philosophy*, *7*(1), 121-136.

Isaacs, T. (1997). Cultural Context and Moral Responsibility. *Ethics*, *107*(4), 670–684.

Klein, M. (1990). *Determinism, Blameworthiness, and Deprivation*. Oxford: Clarendon Press.

Kleinig, J. (2001). The Blue Wall of Silence: An Ethical Analysis. *The International Journal of Applied Philosophy*, 15(1), 1–23.

Klockars, C. B., Ivkovic´, S. K., & Haberfeld, M. R. (2004). *The Contours of Police Integrity*. California: Sage Publications.

Lippke, R. L. (2003). Diminished Opportunities, Diminished Capacities. *Social Theory & Practice, 29*(3), 459-485.

Lippke, R. L. (2011). Social Deprivation as Tempting Fate. *Criminal Law and Philosophy, 5*(3), 277-291.

Lovell, D.; Cloyes, K.; Allen, D.; Rhodes, L. (2000). Who Lives in Super-Maximum Custody: a Washington State Study. *Federal Probation, 64(2),* 33-38.

Mill, J. S. (2011). On Liberty. In L. P. Pojman and L. Vaughn (eds.), *Classics of Philosophy* (pp. 987-1025). New York: Oxford University Press.

Morris, N. (1967). Psychiatry and the Dangerous Criminal. *Southern California Law Review, 41(506),* 516-547.

Morse, S. J. (1998). Excusing and the New Excuse Defenses: Legal and Conceptual Review. *Crime and Justice: Review of Research, 23,* 329-406.

Morse, S. J. (2000). Deprivation and Desert. In W. C. Heffernan and J. Kleinig (eds.), *From Social Justice to Criminal Justice: Poverty and the Administration of Criminal law* (pp. 114-160). New York: Oxford University Press.

Muraven, M., & Baumeister, R. F. (2000). Self-Regulation and Depletion of Limited Resources: Does Self-Control Resemble a Muscle? *Psychological Bulletin, 126*(2), 247-259.

Open Science Collaboration. (2015). Estimating the Reproducibility of Psychological Science. *Science*, 349(6251), aac4716, 943-952.

Palazzo, G., Krings, F. & Hoffrage, U. (2012). Ethical Blindness. *Journal of Business Ethics*, 109(3), 323–338.

Rawls, J. (1972). *A Theory of Justice*. Cambridge: Cambridge University Press.

Rhodes, L. A. (2005). Pathological Effects of the Supermaximum Prison. *American Journal of Public Health*, *95*(10), 1692–1695.

Roberts, D. E. (2004). The Social and Moral Costs of Mass Incarceration in African–American Communities. *Stanford Law Review*, 56, 1271–1305.

Smith, P. S. (2006). The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature. *Crime and Justice*, 34(1), 441-528.

Tadros, V. (2009). Poverty and Criminal Responsibility. *The Journal of Value Inquiry*, *43*(3), 391-413.

Uddannelses- og Forskningsministeriet. (2018). *Aktuel ledighed: Bruttoledigheden for nyuddannede på de videregående uddannelser fra 2012 til og med 2016*. 28.05.20 <https://ufm.dk/uddannelse/statistik-og-analyser/faerdiguddannede/aktuel-ledighed/aktuel-ledighed-2016.pdf>

von Hirsch, A., & Ashworth, A. (2005). *Proportionate Sentencing: Exploring the Principles*. Oxford: Oxford University Press.

Weber, M. (1946). Politics as a vocation. In H. Gerth and C. Mills (eds.), *From Max Weber* (pp. 77-128). New York: Oxford University Press.

Wellman, C. H. (1996). Liberalism, Samaritanism, and Political Legitimacy. *Philosophy & Public Affairs*, *25*(3), 211-237.

Wikström, PH., & Treiber, K. (2016). Social Disadvantage and Crime: A Criminological Puzzle. *The American Behavioral Scientist*, 60(10), 1232-1259.

World Population Review. (2020). *Crime Rate by Country*. 28.05.20 <https://worldpopulationreview.com/countries/crime-rate-by-country/>

Zimring, F. (1998). Toward a Jurisprudence of Youth Violence. *Crime and Justice, 24*, 477-501.