

A HUMAN RIGHTS LENS: RECLAIMING THE NARRATIVE FOR SOCIAL RIGHTS AS LEGAL RIGHTS

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Introduction

This chapter seeks to outline a future research agenda for social rights that (a) reclaims social rights as legal rights and (b) exposes the structural flaws that undermine the recognition of social rights as legal rights. We draw upon recent insights and interdisciplinary methods that have significant potential when applied to social welfare law, policy and practice across the UK. We argue that to build a future research agenda for social welfare law using a human rights lens requires a two-stage approach. First, we contend that research must address the systemic and structural inadequacy of the legal recognition of social rights as legal rights and continue to propose solutions to close this gap. Second, we suggest that adopting a critical interdisciplinary lens helps make visible how underlying systemic and structural issues have led to exclusionary practices in the enjoyment of social rights. By addressing the former, we direct the research agenda towards reclaiming the narrative for social rights as justiciable (enforceable legal) rights in and of themselves. In addressing the latter, we deploy a critical discourse lens that shapes the research agenda in ways that mobilise counter discourses to subvert dominant valuation discourses, which classify certain groups of people as ‘undeserving’ of social rights and dignity.

Discourse analysis complements legal analysis by making visible embedded discourses linked to structures of authority that are executed through a variety of specific tools and mechanisms, which include discourses that undermine social rights protection. Drawing on examples from recent research undertaken under the ‘Access to Justice for Social Rights: Addressing the Accountability Gap’ project, funded by the Nuffield Foundation (Boyle *et al.* 2022), we show that the realisation of social rights is not only about operational and legal processes but also includes practices of valuation and categorisation that sort people into pre-determined categories. These processes are not neutral and, influenced by wider socio-political currents, often (re)produce differences, and embed inequalities.

The Nuffield research project asked why rights holders encounter barriers in accessing justice when violations of social rights occur, how access to justice can be improved and what further research is required to address this gap. The aim of the project was to gain a better understanding of practitioners’ experiences in helping people access justice for violations of social rights. We measured standards of performance against expectations of international law in an attempt to understand what remedies, if any, were available in those areas where domestic law falls short.

To address our research questions, we used an innovative case method approach embedded in legal cases in Scotland, England, Wales and Northern Ireland, which entailed semi-structured interviews with a variety of advocates, legal and non-legal, at each level of the support network (charity/advice sector, lawyers, barristers). We refer to these advocates as practitioners. The case studies engaged with multiple social rights and served as a gateway to understanding the intersectional barriers that rights holders face in their attempts to access an effective remedy for social rights violations. We draw on some examples from the empirical research throughout this chapter to help contextualise our proposed contribution to a future research agenda for social rights.

The empirical approach was informed by principles of adjudication derived from deliberative democracy theory, guiding our research questions and our data collection. Following a thematic analysis of the data, we theorised our findings using a critical discourse lens. We believe that the project's unique interdisciplinary approach offers a valuable contribution to socio-legal research. After setting out in brief the motivations behind the overall project and the limitations of the UK legal frameworks, we address the benefits of an interdisciplinary approach to examining how the social rights frameworks across the various UK jurisdictions are taken up in practice. First, we explain the value of directing attention to discourse in analysis. Second, we present some examples to illustrate how certain mechanisms and (social) processes are made visible through a critical examination of discourse. Our example of interdisciplinary socio-legal research deepens the review of social rights and their connection to social welfare law, policy and practice. It does so by lifting the veil on underlying systemic and structural issues that marginalise and exclude, thereby offering new insights on both procedural and substantive components of social rights justice. While we deploy critical discourse analysis as an example, other forms of interdisciplinary socio-legal analysis can also shed fresh insights and probe new frontiers in the exploration of social rights as legal rights.

The chapter is divided into three parts. Part I explains the consequences of failing to make the structural changes required to address what we deem to be an 'accountability gap' in the UK and identifies what further research is required to address this gap. Part II focusses the research agenda on reclaiming the narrative around social rights as legally enforceable rights, building on critiques of social rights adjudication and principles of deliberative democracy theory. Part III contextualises Parts I and II using critical discourse analysis, demonstrating the potential benefit of an interdisciplinary lens to make visible underlying structural injustice.

The conceptual framework of our contribution to this book rests on the premise that substantively securing social rights is a good thing for the UK and its constituent parts, and a good thing for society more generally. This position is based on assumptions drawn from moral and legal philosophical considerations on the role that social rights play in promoting democracy and enabling participation. It is also based on a theoretical framework drawn from international normative standards and binding legal obligations sourced from the international legal position.

Another way of framing the compelling need to reclaim social rights as legal rights is to reflect on the consequences of not doing so. The practical implications of the lack of social rights enforcement manifests in a litany of social rights violations across multiple areas. Those who experience violations of social rights are those who are most likely excluded from hegemonic structures of power. They face intersectional structural discrimination and barriers on the basis of immigration status, disability, gender, age, ethnicity and socio-economic disadvantage among others. They may be at risk of destitution, homelessness, face significant debt, experience in-work poverty, or be fleeing domestic abuse. Clustered injustice recognises that people in such positions often experience multiple synchronous clusters of legal problems for which the traditional 'single issue' lawyering approach is ill-equipped (Clements 2020). Further, their situation is also compounded by the fact that social rights violations are often systemic in nature – i.e., violations impact multiple people at the same time. The legal system is individualised and siloed into distinct 'legal problems', placing a burden on the individual to take on the system despite the wider impact of the violation. Individuals often do not have access to appropriate legal, financial or emotional resources to challenge the social rights violations they encounter. As one informant told us:

there isn't a strong enough structure in place to be able to do that [challenge injustice] easily without breaking them down mentally, physically, emotionally. You know, if you're already marginalised and then you've got to fight the system which is completely stacked against you - you know what? You really don't have a lot of hope for success unless you've got resilience coming out your pores. (Scotland | Carole | Consultant & Activist, NGO for human rights)

Part I. The Human Rights Framework in the UK

Although the UK is required to provide access to an effective remedy as part of its international human rights obligations, currently there is no mechanism through which to review or enforce social rights as legally enforceable. Unless legislation is designed in a way that complies with international human rights law, there remains an accountability gap, meaning people continue to experience rights violations without recourse to an effective remedy (an effective process leading to an effective outcome). This is an under-explored area, requiring more attention to the mechanisms through which access to justice for violations of social rights can be secured. Here we briefly explain how existing grounds for challenge fall significantly short of establishing social rights as legally enforceable rights.

Challenges on ECHR grounds

The European Convention of Human Rights (ECHR) is incorporated into UK law under the Human Rights Act 1998 and devolved statutes. However, it does not protect economic and social rights such as the right to housing, social security, food or health. Practitioners are often left arguing 'a round peg into a square hole' when relying on ECHR grounds:

we litigated ... the benefit cap all the way up to the Supreme Court ... the limitation is that, because we haven't incorporated international covenant and economic, social and cultural rights, we are having to run cases about unfairness in the benefits system ... the main way of challenging them is through Article 14 discrimination claims under the ECHR. So, Article 14, in conjunction with A1P1, and then Article 8 potentially. And, you know, it's putting a round peg into a square hole ... it was a contorted argument having to fit it into an Article 14 claim, as opposed to ... the benefit cap ... is inadequate in terms of level of subsistence benefit ... and that's really frustrating because the benefit cap potentially could just be litigated on its own terms without the discrimination argument. (England | Claire | Solicitor)

Although courts can sometimes interpret civil and political rights in a way that expands the protection of economic and social rights, there are inherent limitations to this approach. As the ECHR framework is not designed to protect social rights, it makes it difficult for any court to justify expanding the limited reach of the treaty other than in very minimal ways (Williams 2013), resulting in a human rights accountability gap across the UK for those rights not covered by the ECHR framework.

Challenges on grounds of irrationality

In the recent *Pantellerisco* case, the applicant challenged the benefit cap, which was applied because she was paid four-weekly instead of monthly. The High Court agreed with Ms

Pantellerisco that this policy was absurd and declared it irrational (unreasonable) and therefore unlawful.¹ However, Ms Pantellerisco subsequently lost her case when the Court of Appeal overturned the judgement.² Relying on a SC case³, the court stated that intensity of review on the grounds of irrationality (unreasonableness) should be restricted in cases concerning economic and social policy. Such cases are not open to challenge on the grounds of irrationality ‘short of the extremes of bad faith, improper motive or manifest absurdity’. This is an extremely high threshold and demonstrates the reluctance of the court to interfere in economic and social policy areas despite violations of social rights, once again presenting as an accountability gap for the state:

there's a very strong feeling of reluctance in the English higher courts to actually decide on social and economic policy, to be honest ... [For example] the two-child rule, which says that for child tax credits ... you can't get benefit for the third and subsequent children born after April 2016. But that feels to me like a pretty draconian rule, given that the benefit is a subsistence benefit, it's a benefit to provide for basic needs. And so, you're just not providing for the basic needs of the third and subsequent children. But the court is terribly reluctant to get into it at all. They just say that sort of judgement is essentially a political judgement. (England | Roland | QC)

Part II. Reclaiming the Narrative: Social Rights as Legal Rights

The UK national discourse is aligned with a narrative that assumes social rights are non-justiciable, cannot legitimately be enforced by the court, contravene parliamentary supremacy and are aspirational in nature (Boyle 2020). This position is outdated domestically, comparatively and internationally (Boyle 2018, 2020; Craven 1995; Tinta 2007) and subject to challenge at both the devolved level and the national level. Emerging discourses from the devolved level, civil society and opposition parties provide an opportunity to ensure that evidence-led research informs potential reform to address this accountability gap. Empirical data (Boyle *et al.* 2022) suggests that reclaiming the narrative of social rights as legal rights is a key component in long-term structural and transformative change.

Social rights law is often misunderstood and under-utilised across the UK’s legal jurisdictions (Boyle 2019; Hunt 2017). Whilst public and administrative law, and in particular social welfare law, engage with social rights across areas such as health, social care, education, social security, housing and social services, they do not traditionally embrace broader conceptual frameworks that encompass the full international human rights framework. This presents a significant gap in the literature and practice – one that any future research agenda on social welfare must address using a social rights lens.

When economic and social rights are addressed in the public and administrative law sphere, they tend to feature under the aegis of something else (Boyle and Hughes 2018). Put differently, our discourse around social rights is dominated by existing domestic human rights structures that marginalise social rights as forming administrative entitlements under limited statutory frameworks (with no normative dimension or minimum core threshold), as aspects of civil and

¹ *R (Pantellerisco and others) v SSWP* (2020) EWHC 1944 (Admin)

² *R (Pantellerisco and others) v SSWP* (2021) EWCA Civ 1454

³ *R (SC) v Secretary of State for Work and Pensions* (2021) UKSC 26, (2021) 3 WLR 428

political rights or of formal equality. Our administrative justice and bureaucratic systems are simply not calibrated to uphold normative social rights standards beyond statutory entitlements (O'Brien 2018). Tribunals, ombudsmen and regulators are not required to uphold social rights as part of their remit (Barrett 2019; Doyle and O'Brien 2019) and courts are reluctant to engage on matters of economic and social policy.

Access to justice literature often focusses on how to remove discriminatory barriers in accessing a legal route to remedy without paying attention to the substantive component of what 'justice' means or whether it aligns with normative social rights standards (Boyle *et al.* 2022). Across the UK's jurisdictions the pre-legislative process does not account for systematic review of social rights compliance at either the national or the devolved level (Boyle 2020), nor are governments under a domestic duty to account for social rights as normative standards or justify their approach according to international best practice.

Each of these strands suggests research that is ripe for future work – how can administrative justice move beyond existing models to one which is situated in a human rights-based approach? What role is there for tribunals, ombudsmen and regulators in upholding human rights? What role for enhanced pre-legislative scrutiny of human rights, including social rights? Through what mechanisms can the executive be held to account? And what role is there for the court as an accountability mechanism of last resort?

There have been important contributions to the literature that elaborate how these gaps might be addressed. Hunt (2017) points out that social rights are missing from the domestic framework, arguing that the system is therefore rigged. Adler (2019) notes the failure of the rule of law to protect the right to a social minimum, including through provisions of the ECHR and international law, signalling where the UK falls short in relation to disproportionate benefit sanctions. O'Connell (2015) identifies both the potential and the limitations of equality law in the protection of social rights. Boyle (2018, 2020) identifies the accountability gap in social rights protection at the domestic level and proposes models of incorporation and justiciability to close it. Constitutional theory strongly suggests that the most appropriate, coherent and comprehensive means through which to address the accountability gap requires a multi-institutional response where the legislature, executive and judiciary share responsibility for acting as guarantors of human rights. These models of the constitutionalisation of social rights are now being explored and adopted in Scotland and Wales as part of the incorporation process to close the accountability gap (Boyle 2019; FMAG 2018; Hoffman *et al* 2021; National Taskforce 2021; Senedd Cymru 2022). Recognising the important role discourse plays in social welfare law, policy and practice, it is necessary to address the critiques of social rights as legally justiciable human rights.

Critiques of social rights as legal rights

Critiques of social rights as legal rights are not unique to the UK jurisdiction and, in many respects, such critiques appear throughout the literature in jurisdictions that grapple with whether or not to constitutionalise or legalise social rights as legal rights. In brief, the critiques of social rights adjudication can be understood as constituting four waves (Boyle 2020): (i) the anti-democratic critique (that social rights are polycentric and the courts are not the appropriate democratic forum for their resolution), (ii) the indeterminacy critique (that social rights are indeterminate and their vagueness hinders effective enforcement), (iii) the incapacity critique (that courts are ill-equipped to deal with complex matters of economic and social policy and lack the expertise for resolving such disputes) and (iv) the pro-hegemonic critique (that social

rights adjudication in practice results in the court acting as a pro-hegemonic exercise of power, further exacerbating existing inequalities in the distribution of resources).

While addressing these critiques requires careful consideration, they do not present insurmountable barriers to effective social rights adjudication. A response to the anti-democratic critique proposes that, while courts should remain a means of last resort, they nevertheless perform a democratic function in holding other branches to account when violations of rights occur, and democratic legitimacy is struck by balancing appropriate weak vs strong forms of review/remedy depending on the circumstances (Tushnet 2008). In other words, sometimes courts should adopt deferential roles in the adjudication of social rights, requiring states to justify their approach. This may include adopting weak review mechanisms such as limited tests of irrationality, and ordering declarators that are deferential in nature. In other circumstances, particularly when there is a violation of a fundamental norm or where the applicant's dignity or a social minimum is breached, courts can perform more enhanced forms of scrutiny and can issue outcome-orientated orders. A moderate typology suggests striking a balance and using an aggregate of appropriate remedies as a means of responding to social rights violations (Rodríguez-Garavito and Rodríguez-Franco 2015).

Responses to the indeterminacy critique propose that courts, along with other actors in a multi-institutional framework, should perform a role in giving meaning and content to rights. Young (2012) tells us that social rights adjudication is nothing more than finding consensus between epistemic communities – including the legislature, the executive and the judiciary - around the meaning of rights. It is in the dialogue between epistemic communities that social rights adjudication can help give meaning to rights, a role that courts should not abdicate (Michelman 2008). Courts must have clear instructions on their role, whether in the constitution or in enabling statutory frameworks. Courts must also have regard to appropriate sources in interpreting social rights, including international human rights law and comparative law, both of which can offer normative frames of reference when interpreting domestic law.

Responses to the incapacity critique follow a similar course; courts must equip themselves with the relevant expertise and evidence to assess compliance with social rights, including the deployment of *amicus curiae*, as well as drawing on a broad range of sources. In addition, court procedures must adapt to better facilitate collective responses to systemic problems. Ideally courts and other accountability mechanisms should be prepared to respond to systemic violations through innovative approaches to collective justice:

it's the power of the collective which can be really helpful in engaging [social rights violations] and in realising that they're not alone because that solidarity and the power of the collective is actually really, really strong. (Scotland | Carole | Consultant and Activist, NGO for human rights)

Responses to the pro-hegemonic critique therefore argue that courts can act as an important mechanism and 'institutional voice' for those who are politically disenfranchised (Boyle 2020; King 2011; Mantouvalou 2011; Michelman 2015; Nolan et al. 2007; O'Conneide 2015).

Research suggests that principles of adjudication can offer responses to the critiques of social rights. For example, the principles of accessibility, participation, deliberation and fairness can counter-act the anti-democratic, incapacity and indeterminacy critiques (Boyle 2020). The principle of counter-majoritarianism can guide responses to the pro-hegemonic critique through enhanced responses to systemic violations. And the principle of effective and

appropriate remedial relief can countenance critiques around democratic legitimacy and pro-hegemonic critiques. These principles present as a useful device for future research to explore and expand on social rights as legally enforceable rights.

Next, we illustrate how adopting a combined legal and discourse analytic approach can facilitate a better understanding of conceptions of justice and address gaps in the current legal framework.

Part III. Applying a Critical Discourse Lens

The literature has long dispelled common and pervasive misconceptions that economic, social and cultural rights are of lesser status than civil and political rights (Alston and Quinn 1987; Boyle 2020). In fact, the operation of economic, social and cultural rights as enforceable legal rights has been realised in practice in different constitutional and regional settings throughout the globe (Boyle 2018). Nonetheless, the fact that social rights are frequently not made explicit in laws and policies often makes them invisible and manifests itself in challenges in securing social rights justice. This not only creates problems for practitioners in adjudicating social rights violations, but also robs rights holders of their own power (Hunt 2017) and, by extension, a legitimate voice. It is important therefore to examine which discourses within the broader social and legal context give power to mechanisms of ‘invisibilisation’ and which counter discourses could be generated to give social rights protection its proper place within a human rights framework. It follows that language and discourse constitute both the problem *and* a potential solution regarding increasing accountability for social rights in the UK and its devolved areas.

The value of directing attention to discourse

Our approach to analysing data is underpinned by our understanding that all meaning is created through discourse and, furthermore, that discourse and thought are mediated by power relations that are socially and historically situated (Blommaert 2005; Kincheloe and McLaren 2000). These tenets help to evaluate and better understand how certain groups in society are privileged over others, how the mechanisms that hinder access to justice and effective remedies could be addressed, and how individuals could be empowered to disrupt unjust practices. This approach builds upon conceptions of rights as constructs of deliberative democracy (cf. Benhabib 2013) and deliberative dialogue theory.

A critical discourse lens was used to illuminate how barriers to social justice are socially and discursively produced and, more importantly, how understanding these dynamics can inform practice and help to chart ways forward to create legitimacy for social rights in the UK. We direct attention to discourses not only because they reflect representations, but also because discourses can be seen as ‘practices that systematically form the objects of which they speak’ (Foucault 1972: 49). This Foucauldian perspective recognises the ways in which knowledge circulates and functions, and that it is through discourse that claims to knowledge and truth are produced. Our interdisciplinary approach, which is embedded in the intricate links between discourse and ideology, helps to examine both the overall substantive inadequacy of social rights provision as well as processes of exclusion that continue to marginalise those ‘undeserving’ of social rights.

A critical approach to discourse analysis

Discursive approaches are valuable for analysing how laws and policy governing social rights protections in the UK impact on rights holders, because they draw attention to the intertextual and interdiscursive links between discourses, as expressed in legal doctrine and articulated by practitioners in the field. Thus, ‘in order to account for and analyse the multiple layers of ... policy and its concomitant impact, we need to theoretically, methodologically, and empirically engage with policy in terms of both structure and agency, and this is made possible by applying various forms of critical and discursive analysis to ... policy situations.’ (Barakos and Unger 2016: 2).

Social welfare law, policy and practice are situated at the intersection of different sectors and scales of social structure. It is a fragmented system that interlinks governments, institutions, legal frameworks and the third sector. This complexity of the system and its management are reflected in numerous policies and procedures, difficult and lengthy application processes, frequent changes in rules and regulations, obscurity, poor visibility of available services and programmes, complicated and lengthy complaints and appeal procedures and poor understanding of the interrelationship of social rights and people’s needs. In the UK, there is an even greater level of fragmentation due to different constitutional arrangements and legal frameworks as a result of devolution. It follows that an interdisciplinary approach is most effective for examining the multi-faceted nature of frameworks for protecting social rights across UK jurisdictions. Our research indicated that increased decentralisation, automation, privatisation, and the outsourcing of government functions and decision-making, all of which are the subject of different chapters in this book, all contribute to significant gaps in oversight and accountability arrangements and contribute to the accountability gap (Boyle *et al.* 2022). As one of our informants said:

it definitely creates uncertainty and confusion, which is not good ... It could potentially create a two-tier human rights system whereby, if whatever you need is provided directly by the state, then there’s no question that they have to comply with human rights obligations. But then if you happen to be in a different postcode or something, or in some other situation whereby, through no fault of your own, the service that you need that the state is obliged to provide for you, is provided by a private company, then there’s less clarity over that ... if you’re a body that isn’t sure as to whether you’re caught by the Human Rights Act or not, then that surely has an impact on how you actually provide those services and functions ... it’s not just about redress to the courts. Human rights should come in way upstream and actually influence what you do and influence how you deliver those services.
(Scotland | Erica | Solicitor)

The processing and sorting of information and people through various strategies of valuation creates hierarchies that are organised according to the perceived worthiness of individuals, further marginalising those who already struggle to access and participate in the ‘system’. Our data show that one group of rights holders that is significantly impacted by political framings and circulating discourses is those seeking asylum in the UK.

An illustrative example comes from the first line of the judgement in *Ali v Serco*⁴, in which the Scottish Court of Session judge Lady Dorrian begins her judgement with ‘*The appellant is a failed asylum seeker*’. This statement, made as a matter of fact, invokes broader discourses of (illegal) immigration that make visible the ideological workings that often run below the

⁴ (2019) CSIH 54

surface. Circulating discourses thus intersect in the realisation of social rights, at times mobilising ideological conceptions of human rights, and at other times foregrounding notions of valuation and categorisation, as evident in the dominant UK Home Office's 'hostile environment' policy. Lady Dorrian's opening line can be understood as a manifestation of an exclusionary discourse that marginalises human beings by deeming them 'unworthy', denying them access to basic rights on account of their immigration status. Those categorised as 'failed asylum seekers' are essentially stripped of any legitimate voice to challenge social rights violations (Boyle *et al.* 2022), illustrating the power of language. Indeed, language, or discourse, plays a key role in processes of social differentiation and the construction of inequality (Gal 1989).

Research demonstrates that asylum seeking processes themselves are difficult and highly contested procedures (cf. Eades 2009) and the allocation of 'failed' status is neither an objective nor a permanent category. Designations such as refugee, migrant and (failed) asylum seeker are determinations of status granted by authorities that allow or restrict access to particular resources. These labels are generally not used in uniform ways, often conflating terms and confusing meanings. Moreover, challenges around legal status, labelling and framings are not unique to the UK context (cf. Feuerherm and Ramanathan 2016). The *Ali v Serco* legal case demonstrates how dominant discourse intersects with the legal framework and how the politics of framing (Fraser 2009) is instrumental in the creation of boundaries, delimiting certain actions and interpretations relating to matters of social belonging and justice (cf. Camps 2016).

Another example of how certain discursive spaces are constrained, and limit interpretations concerns current practices governing medical assessments for social security benefits, such as Personal Independence Payment (PIP). These practices prevent rights holders from challenging the content of medical assessment reports, even when significant errors have been made. As the assessments are not audio or video recorded, rights holders cannot provide any legitimate evidence to challenge the 'truths' (Foucault 1980) presented in a report. Those suffering from mental health challenges are especially disadvantaged in these processes.

Medical assessments function as a technological tool used in the categorisation and hierarchisation of claimants and are part and parcel of overall valuation processes (Boyle *et al.* 2022). Ideological conceptions and stigma around mental health result in systemic discrimination and difficulty in accessing benefits for certain rights holders. For instance, Rose, a welfare rights adviser in Wales for more than 25 years, reflected on the appeals she undertakes with clients and reported that approximately 80 per cent of people she represents at tribunal hearings have mental health problems. The majority of those appeals concern benefit decisions challenging the assessment of mental health:

for me, there is some inherent discrimination against people with mental health problems within those tests ... it is often more straightforward if somebody has a physical disability to apply those rules to them. Now you know, the government would say, 'oh no, no, no, we're not discriminating against people with mental health [issues]' but, over the years I've done my job, I have seen that the way that they assess them ... if somebody has got arthritis, often they'll want to see x-rays ... and with diabetes, there might be records of what somebody's blood sugars are. So, there'll be easier ways if you like to confirm a level of someone's functioning or disability. With mental health it is more difficult to sort of decide whether that mental health really disrupts somebody's functioning and ability to do certain activities, but I do find that they're very loathe to accept people's own evidence,

which is what you need to do with mental health. (Wales| Rose | Welfare Rights Adviser, Local County)

Furthermore, medical assessments are contracted out to private providers, further fragmenting and obscuring the processes involved. This contributes to an accountability deficit where it can become difficult to trace when and how poor decision-making has resulted in a violation. At times the research indicated absurd decision-making practices foregrounded in a culture and ideological framing of disbelief (of the ‘undeserving’) and a “culture of denial” (Cowan and Halliday (this volume); Halliday 2021).

she has a certificate of severe sight impairment ... and that was caused through a brain tumour ... the operation on the tumour caused permanent damage to her optic nerves, which have affected her eyes. She went to the [PIP] reassessment ... and she got turned down. They removed her PIP ... I asked for a copy of the healthcare report before I did mandatory reconsideration ... it came back and they had said because she was wearing lipstick, there was no evidence of sight impairment. (England | Andrea | Welfare Benefits Adviser)

The data show that arbitrary and subjective decision-making is evident in many cases. This is reflected in the number of PIP decisions (more than 75 per cent) that are overturned on appeal (Ministry of Justice 2021), raising further concerns about the adequacy of accountability structures and influences of ideological conceptions. For further insights to competing tensions in outsourcing practices, see Thomas 2022 (this volume).

Insights gained from practitioner perspectives demonstrate how the principles of adjudication, constituted in values such as access, fairness and participation, are realised in practice. Our dynamic research approach facilitated examining the protections in place as they relate to social rights in order to evaluate not only what was explicitly stated in legal documents, but also to consider how the mandate to protect social rights was taken up and negotiated by different social actors. This widened the focus from one of compliance or non-compliance and questions of accountability, which highlight the identified gaps, to a broader understanding of how those gaps are constituted in practice and what will be required to close them.

Conclusion

In line with Miller (2008), we argue that social and discursive factors should not be treated as separate from enquiries into social welfare law, policy and practice. Rather, we should recognise their close entanglement with how laws and policy provide the contours of the social rights protection frameworks across the UK and the access to justice journey. Simply put, these discursive dynamics are enmeshed with how social rights are provided (the goals/ procedures of the UK welfare system) based in law and policy (Miller 2008). Concerted efforts must be directed to reclaiming the narrative for social rights: first as justiciable rights in and of themselves and second in ways that mobilise counter discourses that disrupt the dominant valuation discourse along the axis of deserving and undeserving. The only way to subvert negative valuation discourses centred on notions of (un)worthiness is to base social rights entitlements in a discourse of human rights rather than one that reflects contrasting categories of worth.

It is essential, however, that rights claiming goes hand in hand with addressing the complex structures and processes that produce suffering and entrench existing power relations.

Advocacy and raising legal consciousness are meaningless without tackling the structural inequalities that give rise to silencing certain voices. Our analysis illustrates how disempowering discourses are also closely linked to mechanisms that perpetuate discriminating practices (Boyle *et al.* 2022). In turn, accountability for those practices depends, in part, on the legal framework. Adequate legal mechanisms should be aligned to create and ensure accountability for social rights compliance, creating a space for future research to comprehensively address each of these gaps.

A future research agenda

Qualitative interviews were a helpful tool for gathering practitioners' insights and experiences, drawing our attention to different challenges encountered in the access to justice journey for social rights. Although the empirical data brought to the fore specific challenges with the justice system, it did not give equal weighting to the various avenues to justice available to rights holders – with some avenues discussed in greater depth than others.

In many respects, the project provided flashes of insight into an emerging area of research that requires additional ongoing analysis. Certain avenues may be absent from our discussions, such as access to justice through ombuds procedures or more immediate complaints mechanisms. Although some practitioners raised concerns about the efficacy of these processes, the cases that are resolved early on - where there may be good practice - may be overlooked because of their success. What may also be obscured is who is missing from the conversation. Whose voices have been ignored to such an extent that they do not have any access to the adjudication journey. Future research would benefit from examining what or who is missing.

Practitioners also raised the importance of collective complaints processes to the decision-making body. There is significant scope for further research, drawing on the outputs of our research (Boyle *et al.* 2022) in relation to both the barriers along the access to justice journey, as well as to the normative and substantive framework regarding improved outcomes for rights holders.

Clearly, a future research agenda for social rights violations must permeate across administrative, legislative, executive and judicial branches of government quarrying deeper into the potential reach of reclaiming social rights as legal rights to enable transformative change on the ground.

In closing, we wish to emphasise that merging diverse approaches in analysis offers a unique viewpoint on societal challenges that bridge different fields and therefore require multi-disciplinary perspectives to develop new and innovative solutions. As such, we combine a critical legal and discourse lens on social rights law, policy and practice. Directing our attention to specific moments where competing tensions were evident, helped us dig deeper to better understand the processes that lie underneath the surface. Given the wide scope of work, future studies can further develop the research agenda by narrowing the scope and delving deeper or, alternatively, deploying different interdisciplinary perspectives that offer new critiques and insights.

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