

The topology of welfare-migration-asylum: Britain's outsiders inside – Lydia Morris

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Abstract

Starting from the observation that recent immigration controls seem ‘hewn from the same rock’ as the welfare reforms, this paper seeks to identify commonalities of approach, technique and effect across both fields. These can usefully be viewed through the concept of topology, a process of folding and filtering that challenges clear distinctions between inclusion and exclusion. Alongside a stratified system of rights based on conceptions of desert and apparent in both the welfare and migration/asylum systems, we find overlapping features that emerge from a harnessing of rights in the name of controls, and increasingly affect both citizens and non-citizens alike.

Key words: welfare, migration, topology, civic stratification, inclusion/exclusion

Introduction

A coming age of austerity announced by David Cameron in 2009 (Cameron, 2009), was initiated by the 2010 Coalition government and further advanced by its Conservative successor of 2015, embedded in the 2012 Welfare Reform Act and the 2016 Welfare Reform and Work Act. At the same time, the Immigration Acts of 2014 and 2016 heightened controls over the entry and stay of migrants and asylum seekers, and radically reduced their access to services and support. In 2013, Sarah Teather¹ declared ‘the immigration proposals feel as if they are hewn from the same rock as welfare’, raising interesting questions about the nature

and effects of this overlap. The present paper considers the welfare-migration-asylum complex from this perspective. It seeks to identify commonalities of approach, technique, and effect, which can usefully be viewed through the concept of topology (Mezzadra and Neilson, 2012) to reveal much about the way we are governed not just as citizens but as a total population.

Citizens and non-citizens

Citizenship has traditionally been seen as the yardstick of full inclusion, captured by Marshall's (1992 [1950]) model of membership as the full array of civil, political and social rights, the latter securing a right to 'share to the full in the social heritage and to live the life of a civilised being' (p8). The model has been criticised for its neglect of the exclusions entailed, and Arendt (1979 [1948]:299) famously characterised the absence of citizenship as the 'abstract nakedness of being nothing but human'. Agamben (1998) echoes these sentiments in his deployment of the concept of 'bare life' as experienced in 'the camp', an (extra)legal space of abandonment that serves as society's constitutive outside. The camp, he argues, emerges as the 'hidden paradigm' of modernity, but one whose 'metamorphoses and disguises' we must learn to recognise (p 123).

The opposition between citizens and non-citizens was seemingly challenged by conceptions of a post-national society (Soysal, 1994) in which residence supersedes citizenship, albeit in uneasy co-existence with indeterminate locations outside of secure (settled) status. Indeed, subsequent work has increasingly focused on the complex array of stratified distinctions that fall between the extremes of total exclusion and the notionally full membership of citizenship (Author's own, 2002). Thus, Sigona (2015) points to multi-faceted mediations and mobilisations that penetrate even 'camp' life to yield hierarchies or degrees of inclusion, while undocumented status has been seen not as an absolute marker but as a condition that may be overridden by accumulated emblems of desert, and modes of informal participation

that fall short of security. (Chauvin and Garces-Mascareñas, 2012) Conversely, understandings of exclusion now reach beyond notions of the camp as a discrete and separate space to address the proliferation of internal borders throughout the fabric of society (Yuval-Davis et al, 2019).

Scholarly focus has therefore shifted from the image of exclusion as a physical and extra-legal space, to the uses of law to stratify and divide while also allowing the possibility of selection and incorporation. Fassin (2009) has had a particular interest in how bodily frailty can offer a route to security, but he also opens up wider questions about how life is shaped by the political choices implicit in the ‘moral economy’ of contemporary societies. He uses this term to capture the assumptions and requirements underpinning political decisions, construed as a power over who should live what sort of life and for how long - the power ‘to let live and reject into death’ according to the worthiness of individual lives. (Fassin, 2009:52)

The emerging picture shows how a notionally bounded society is riven with practices that make it increasingly porous (Van Houtum and Van Maerssen, 2002), and in which classification plays a crucial role, so the notion of bare life is displaced by a sensibility to the making and breaking of social categories (Huysmans, 2008). Thus, Fassin (2010) looks to the extension of ‘bare life’ into ‘qualified life’ through the hierarchical sorting of individual subjects within a bounded territory. The thrust of related argument has been to complicate dualistic notions of inclusion and exclusion, and to focus on differentiations that can occur within the same legal and political space (Konenen, 2018). Indeed, while Agamben neglects to elaborate on what he terms the ‘metamorphoses and disguises’ of ‘the camp’, we find that bare life is not confined to a discrete physical space of exclusion but infiltrates the fabric of mainstream society through the incorporation of destitution into devices of discipline and control.

But just as the legal/illegal binary is rendered more complex in this process, so too is the insider/outsider divide. Indeed, many of the insights above concerning selectivity, conditionality, and their related effects also apply to citizenship, not only through selection for inclusion but conversely, through an erosion of the guarantees that accompany membership. Questions of desert have long been a feature of welfare systems, yielding hierarchical divisions within citizenship as captured by Lockwood's (1996) concept of civic stratification. These distinctions have received less detailed attention than migrant hierarchies, but there is growing recognition of a congruence, and hence an orientation that combines citizens and migrants within the same intellectual field. The outcome amounts to a mode of 'governmentality' (Foucault, 1991) whereby the granting and denial of rights becomes implicated in a system of control. Its overlapping techniques and effects are documented below and include the creation of a hostile environment for both migrants and welfare claimants, administrative error and failures of justice, stratified entitlement and its discriminatory impacts, the treatment of children to influence parental behaviour, and the creation of destitution as a disciplinary measure whereby bare life infiltrates the administrative architecture of society.

Tracing commonalities

Duevell and Jordan (2002) note that official recognition of a need for skilled workers can coincide with high unemployment, to yield selective recruitment of migrant labour alongside intensified 'activation' of citizens via the welfare system. Anderson (2013) goes further, and argues that while citizens and migrants have been mutually defining, their inter-relation is not adequately addressed as a binary opposition. Rather, a 'community of value' is defined from the outside by the non-citizen and from the inside by the failed citizen, while the 'illegal' migrant and the 'benefit scrounger' are intimately connected.

This idea was graphically captured in Bauman's (2004) treatment of 'wasted lives', which sees society to operate through a series of filters whereby the state generates vulnerability while absolving itself of responsibility. Redundant citizens are thus excluded from within, while migrants and asylum seekers are subject to partial or selective inclusion from without, and hence Landolt and Goldring (2015) look for variation within the categories of both citizen and non-citizen. Differential inclusion with respect to conduct and desert then serves as a key mechanism in elaborating boundaries that are never fixed or impermeable but rather constitute a system of 'shutes and ladders' for citizens and non-citizens alike.

Notions of hierarchy, selection and filtering thus abound, but Mezzadra and Neilson (2012) introduce a further elaboration through the notion of 'topology'. In its original (geometrical) sense, topology is concerned with properties of space that are preserved without rupture under continuous deformations such as stretching, twisting, and bending. Mezzadra and Neilson apply this idea to the 'different kinds of folding and filtering that challenge the rigidity of the distinction between inclusion and exclusion'. (p60) Though principally concerned with the experience of migrants, they recognise at various points that insights derived from a topological approach have huge implications for citizenship. In fact, this approach brings a valuable additional dimension to exploring the increasingly complex relations within and between citizen and non-citizen status, and the proliferation of subject positions occupied by those who are neither fully insiders nor fully outsiders.

For Mezzadra and Neilson, a topological approach serves to accommodate fluidity and differential inclusion alongside new regimes of control, and in noting the implications for citizenship the authors have in mind the breaching of external borders and expanding forms of access to membership. However, they could go further, to address the processes at work in a simultaneous loss of standing for some citizens. Without relinquishing recognition of hierarchy, and with its forms of privilege that still attach to citizenship status, the idea of

folding and filtering encourages attention to the recurrent rationales and techniques that apply to both migrants and citizens alike, and the similarities of experience they engender.

Running through the stratified system of rights we find vulnerable groups exposed to similar problems and constraints as the rhetorical and administrative devices driving an increasingly disciplinary system translate into concrete experiences. These experiences point not just to ever more refined classifications and boundary distinctions, but reveal more far-reaching aspects of the way we are governed as a total population, both in relation to cross-cutting devices of control and their more extreme effects.

The system, its rhetoric and its rationale

In Britain, a composite discourse has shaped policy in the fields of welfare, migration and asylum. A series of political speeches launched the programme of welfare reform from 2010 onwards as a ‘moral mission’ (Cameron, 2012), promoting a conception of ‘fairness’ aimed not just at who gets help but ‘who gives that help through their taxes’ (Cameron, 2010). Immigration controls were built into the picture through plans to limit the entry of migrant workers who ‘do the jobs that those on welfare were being paid not to do.’ (Cameron, 2011), prevent migrant ‘exploitation of services and benefits’,² and address ‘abuse’ of the asylum system (May 2015).

An array of devices with significant overlaps across all fields has been harnessed to these ends, and while hierarchical distinctions remain at work in terms of citizenship and immigration status, the minimum guarantees that are the hallmark of Marshall’s citizenship have been eroded if not abandoned. Across the fields of welfare, migration and asylum we find an appropriation of access to rights as a mode of control that operates through cuts and conditionality aimed at behavioural change. In a ‘moral crusade’³ based on incentivising work, the domestic welfare system has worn away working age benefits through reductions

and freezes (McInnes, 2019); financial sanctions for failure to meet heightened conditions; a (shrinking) cap on the total amount of benefit a household can receive; a two child limit for child tax credits (CTC's); and reduced support for those with limited capability for work (Kennedy et al, 2017). Furthermore, Universal Credit (UC), which combines in-work and out-of-work benefits within one system, has built in a five-week waiting period, replaced hardship payments with loans, and is piloting the extension of conditionality to the working poor.

Welfare issues have also been central to immigration control, and EEA migrants have seen reduced access to housing benefit (HB), and time-limited duration for unemployment support (Kennedy, 2015). Non-EEA parents of citizen children (Zambrano carers) are allowed to work but if workless are debarred from mainstream benefits and eligible only for lesser local authority provision (Sanneh and Ors v SSWP [2015] EWCA Civ 49; HC v SSWP [2017] UKSC 73, para 51). Other non-EEA migrants face heightened minimum income requirements (MIR's) for entry both as workers and as family members (Gower, 2015), and from 2012 leave to remain for human rights reasons, or on the basis of 20 year presence, imposes a ten-year route to settlement⁴ with permission to work but 'no recourse to public funds' (NRPF). Asylum support rates (already below mainstream welfare) were frozen from 2011-2015, and preferential rates for children were removed in 2016 (Gower, 2015a). Failed asylum seekers, care leavers without status, and undocumented migrants are only to be supported if demonstrably taking reasonable steps to leave (Harvey and Harper, 2017:356-7). This then is the resource related structure or 'topology' of the welfare-immigration-asylum regime, in a system resting on erosions of entitlement and forms of conditionality intended to incentivise or deter particular behaviours. Although the system displays a hierarchy of positions and entitlements, conceptions of layering, folding and filtering can serve to capture its recurrent rationales, objectives and devices, and their often overlapping effects across a

variety of groups. In what follows, these overlaps are traced along various dimensions of the resultant configuration, from the construction of a hostile environment, administrative error, recurrent discriminations, the treatment of children, and the harnessing of destitution as a mode of control.

Creating a hostile environment

A prominent feature of the emergent immigration regime has been the declared intent to create a ‘really hostile environment’ for irregular migrants.⁵ Though a deterrent approach goes far beyond this target group, it culminates in measures designed to make life prohibitively difficult for undocumented migrants (a term that includes failed asylum seekers). The guiding rationale is: ‘if you are here illegally you shouldn’t be entitled to receive the everyday benefits and services available to hard-working UK families and people who have come legitimately to contribute.’⁶ A notable element has been the creation of new criminal offences to prevent undocumented migrants’ access to work, housing, healthcare, bank accounts, and driving licences, and to enhance the (error prone) capacity for checks on status by employers, landlords, banks and the NHS⁷. This extension of powers was ‘based on a conviction that they were right in principle, rather than on any evidence they were working’ (Independent Chief Inspector of Borders and Immigration),⁸ and as with the reform of domestic welfare, one purpose has been to construct a moral message for public consumption.

In fact, the hostile environment has been more remarked on for its flaws than for its effectiveness. The most telling outcomes have been the ‘Windrush scandal’ of lost jobs, and denial of benefits and health care for commonwealth migrants with a legitimate right of abode (National Audit Office (NAO), 2018), and a court ruling (*Goloshvili v SSHD* [2019] EWHC 614 (Admin)) that landlord checks on the ‘right to rent’ are directly discriminatory against black and minority ethnic (BME) citizens. Commentators have highlighted the danger

of driving vulnerable people away from all contact with authority and support (eg. Corporate Watch, 2017) - one reported effect of embedding Home Office (HO) officials in local authorities (Busby, 2019) - while the hostile environment also extends to official neglect, and the NAO (2018) has criticised the HO's lack of a duty of care.

Though the parallel is not exact, public comment has begun to draw comparisons between the fall-out from the hostile environment and the functioning of welfare reform⁹, most notably its target driven culture¹⁰, privatisation of control¹¹, and the use of destitution as a policy tool¹². A taskforce was established in 2010 to address 'unacceptably high' levels of benefit fraud, error and debt, (DWP, 2015) and there is an online 'Benefit Thieves Reporting Form', though 86% of reports from the public have been found to be baseless (Cowburn, 2018). Meanwhile, intensified demands are argued to create a climate of fear that risks driving people away from support, detracts from their efforts to find work (Joseph Rowntree Foundation (JRF), 2014; CPAG, 2018), and screens everyone for potential wrongdoing in a system of total surveillance (Alston, 2018). Concern has been expressed about conditionality and sanctions for the long-term sick and disabled, (Work and Pensions Committee (WPC), 2018) and there has been repeated criticism of the lack of an evidence base (DWP, 2018) and failure to monitor outcomes, especially increased exits from benefit to unknown destinations (WPC, 2015).

There are further concerns about the functioning of UC, with a reported 44% falling behind on bills or experiencing financial difficulty, and a high level of rent arrears (Public Accounts Committee (PAC), 2018). One effect has been the growth of private landlords refusing to let to 'DSS' tenants¹³ in an echo of the 'right to rent' checks on migrants. The PAC found that UC creates unacceptable levels of hardship for many and operates with a fortress mentality, within a system that is failing claimants. The WPC (2019:12) note that not a single statistic is

available on whether claimants are receiving payments on time – indeed one third of claims never reach payment stage and there is no follow-up system in place (Alston, 2018).

It therefore appears that the notion of a hostile environment and its dysfunctional effects applies well beyond the treatment of irregular migrants to permeate much of the functioning of what we can term the topology of the welfare-migration-asylum complex. Its features and effects are examined more fully in what follows in relation to administrative error, cross-cutting discriminatory effects, the treatment of children, and the creation of destitution.

Administrative error and access to justice

The more complex a system of control becomes, the more error prone it will be, and the implementation of both welfare and migration/asylum policy reveals multiple instances of poor decision making (evidenced by success on appeal) and questions of access to justice. All point to a form of ideological over-reach in terms of ambitions for control that are not matched by the capacity, and sometimes legality, of its administrative systems.

Welfare problems are apparent both in the ‘legacy’ system that precedes UC, and in the roll out of UC itself, which relate both to claimants’ capacity to negotiate the system and poor decision making on the part of officials. An independent review of intensified sanctions (Oakley, 2014) found failures of communication, claimants lacking understanding of what was required, and particular problems for those with mental health or learning disabilities (see also CAB, 2013; JRF 2014). There is a high level of error in the Work Capability Assessment, with just over 50% of appeals against fit for work decisions succeeding (Kennedy et al, 2017), and there have been successful challenges to the assessment process (MM and DM v SSWP [2013] EWCA Civ 1565), and the time limit for appeal (CJ and SG v SSWP [2017] UKUT 0324 (AAC)), both of which were held to disadvantage mental health patients. Retrospective validation of faulty regulations was also ruled a denial of access to

justice for a large number of pending sanctions appeals under the Work Programme (Reilly and Hewstone v SSWP [2014] EWHC 2182 (Admin)). From 2012, in-house Mandatory Reconsideration has partially displaced external review, but of those challenges that do advance to appeal, 81% succeed (CPAG, 2018).

As the UC system unfolds, wider questions have been raised (PAC, 2018) about a systematic culture of denial and defensiveness on the part of the DWP, a failure to monitor the treatment of vulnerable people, variable sanction rates across the country, and an overreliance on work coach discretion. There are reports of a system riddled with errors that cause ‘chaos and misery’ for claimants (Butler, 2019), including wrongful refusal of EEA workers¹⁴, loss of income on transition from the legacy system¹⁵, and an incapacity to deal with anything but the simplest claims (Johnson and Ors v SSWP [2019] EWHC 23 (Admin)). Philip Alston, the UN Special Rapporteur on extreme poverty, notes the paucity of alternatives to online application, though only 47% of those on low income use broadband at home, 21% of the population do not have basic digital skills, and only one third were able to verify their ID online. (Alston, 2018)

The picture of administrative error, high success rates on appeal, and problems for users is repeated in relation to immigration and asylum issues, and half of all immigration appeals now succeed,¹⁶ while immigration status is a key determinant of benefit status. Within the asylum system, there have been reports of poor decision making, incompetence and bullying within a target driven culture (Hill, 2019), with a success rate of around one third on appeal (Sturge, 2019). Access to support for asylum seekers and failed asylum seekers also has a history of poor decision making, with success for ‘destitution’ appeals fluctuating between 82% and 60% since 2011 (Asylum Support Appeals Project (ASAP), 2015) - usually for HO failure to apply the correct test and/or to consider submitted evidence. However, changes to

provision for failed asylum seekers in the 2016 Act (yet to be implemented) will remove the right of appeal, viewing obstacles to return as ‘simple matters of fact’ (HO, 2016).

Further problems flow from the 2012 regulations that replace Discretionary Leave (which allowed access to public funds) with a 10 year route to settlement and NRPF. This leave is commonly granted to parents of children with seven years presence or citizenship, and while it is possible to apply for removal of the condition in cases of destitution there are many barriers to success. This has also been a problem for other groups, with over-demanding requirements of proof of destitution for sanctioned claimants seeking hardship payments,¹⁷ and for asylum seekers and failed asylum seekers applying for basic maintenance (ASAP, 2015). Each of these groups must furnish exacting and sometimes humiliating evidence of their lack of funds and support, and additional difficulties arise from the absence of legal aid.

More fundamental administrative failings have been revealed in implementation of the hostile environment, and PAC (2019) notes the HO failure to monitor the impact of a policy that requires documentary evidence while having no appropriate system in place, with effects that can rebound on all migrants and minority citizens. The committee has condemned a failure to keep accurate records, a complacent and neglectful approach to system failings, inadequate impact assessment, and life changing decisions made from incorrect data. There have also been official warnings that the settlement scheme for EEA nationals risks a repeat of the Windrush scandal (Home Affairs, 2019).

In summary, common to the governance of welfare and migration/asylum we find administrative error and inefficiency, poor record keeping and decision making, lack of response to awareness of error, inadequate use of discretion, and instances amounting to the formal or effective denial of access to justice. Many of these problems have been compounded by cuts to legal aid under LASPO 2012, which removed most welfare and

immigration cases from scope. The poor evidence base underlying these changes was itself deemed a neglect of due diligence (Amnesty International, 2016).

Recurrent discrimination and cross-over effects

Fairness has been a prominent theme of political discourse in relation to both welfare and migration, pitting each against the other, and setting both in opposition to the hardworking taxpayer. Claims to fairness have been problematised in various ways (Author, 2018; Taylor Gooby, 2016) but one distinctive feature of the whole welfare-migration-asylum complex is the recurrent evidence of discrimination as revealed by test-case challenges. Below we consider three central aspects of policy – caps and limits on benefit receipt, restrictions on the right to family life (article 8 of the ECHR), and differential maintenance rates for children. Each area displays the use of stratified devices of entitlement and control, with recognised discriminatory impacts, and effects that cut across the citizen/non-citizen divide.

The benefit cap and the two child limit

While claiming to promote ‘fairness’, the benefit cap was intended as a work incentive and provides one example of stratified welfare entitlement. It was first set at net median earnings, and excluded in-work benefits from the calculation, but a lowering of the cap broke even this rationale. Currently, 85% of those affected are lone parents,¹⁸ and the cap’s unequal impact on women, lone parents, large families, and minority ethnic groups has been acknowledged by the judiciary (*JS and Ors v SSWP* [2013] EWHC 3350). The Joint Committee on Human Rights (JCHR, 2011) also note that 80% of capped households have three or more children, and 30% contain an ethnic minority member, though minorities account for only 20% of benefit claims, but the discrimination entailed has been deemed justifiable in terms of policy objectives. The two child limit for receipt of CTC has a similarly skewed effect on large families with low income, and hence on BME groups (*SC and Ors v SSWP* [2018] EWHC

864 (Admin) para 37), but again its legitimate aims have been upheld, albeit with exemptions for coercive conception (rape) and households where a child is present under non-parental care.

Both measures have a significant impact on second or third generation migrants, and while new migrants are excluded from mainstream benefits until permanent residence it is notable that two claimants challenging the cap (see *SG and Ors v SSWP* [2015] UKSC 16) respectively arrived in Britain from Algeria and Belgium. In fact, the cap affects both settled migrants and refugees, and an illustrative case (*Nzolameso v City of Westminster* [2015] UKSC 22) involved a refugee lone mother of five, unable to meet her Westminster social housing rent as a result of the cap. She was offered (but refused) alternative accommodation outside the area, and the Supreme Court found no evidence that Westminster had considered the practicability of the move, especially as related to the best interests of the children. Nevertheless, the underlying policy remains intact, and like other large families subject to the cap, should Nzolameso move off the cap to work she would be hit by the two child CTC limit.

The right to family life under article 8

Though family reunification with a spouse and/or children from abroad is not directly a benefits issue, the MIR for such cases was designed to forestall future recourse to welfare support. Claiming to ‘bring fairness back to the immigration system’ (*MM and Ors v SSHD* [2013] EWHC 1900 (Admin) para 16), it set the level at ineligibility for means-tested benefits rather than the lower level of full-time employment on the national minimum wage, though incoming members are anyway denied entitlement for five years. The MIR has recognised negative effects for lower income groups (*MM and Ors*, EWHC, para 112-13), notably women and minorities, and though designed as a measure to limit migration it has a significant impact on British citizens seeking family reunification (*Middlesex*

University/JCWI, 2015). The resultant discriminations were held to be justified by policy objectives, though fairness was also placed in question by exclusion of the prospective earnings of an incoming spouse or reliable third-party support in calculating income, and by the impact on children, often citizens themselves. An exception is now allowed where human rights are at risk, but is unlikely to apply if a couple ‘chose to commence their family life together whilst living in separate countries’¹⁹.

Discriminatory effects have also arisen from the NRPF condition for non-citizen parents allowed to remain under article 8, and a test case challenge was stayed in March 2019 when the HO agreed to conduct an equality review of the policy. Related research reveals a pattern of disadvantage very similar to the effects of the benefit cap (Woolley, 2019) and of the estimated 90% who apply to have the condition removed, 85% are women and almost all are single parents. Again there are effects that cut across the citizen/non-citizen divide, and 90% of cases involve a British citizen child, almost always from a BME group.

Differential children’s rates

Stratified entitlement, possible race and/or gender discrimination and the impact on children also arose in relation to Zambrano carers - non-EEA parents with a right to remain under EU law, as necessary for a child’s genuine enjoyment of their citizen rights. In contrast to leave under article 8, these families cannot apply for the condition to be lifted, but since the exclusion of Zambrano parents from mainstream benefits falls under national welfare law, it does not constitute unlawful discrimination under the EU Charter of Fundamental rights (HC v SSWP [2017] UKSC 73, para 22). The outcome has been to confine Zambrano households to the lesser level of support available under S17 of the Children Act, and again the adults affected are mostly female lone parents (Sanneh v SSWP [2015] EWCA Civ 49, para 120). As with the NRPF condition, the measure has the effect of withholding benefit rights from British citizen children.

One further case concerned the removal of preferential rates for child asylum seekers to a level little more than half of standard benefit rates for children. A challenge based in part on discrimination as compared to children of nationals with full entitlement did not succeed. Indeed, prior to this case, asylum rates were cited in one of the benefit cap challenges (*SG and Ors v SSWP* [2014] EWCA Civ 156) as the marker below which a family will experience destitution. The disposable income of two of the capped households in the case roughly equalled asylum rates, and thus '(did) not approach the level of destitution' (para 104-5) that would amount to breach of respect for private life.²⁰ However, asylum support has not been the yardstick normally applied as the guaranteed minimum for domestic welfare, and the comparison suggests a shifting standard that itself is far from stable.

All the measures explored above involve stratified rights to support that produce repeated patterns of discrimination concerning women, lone parents, large families, BME citizens and settled persons, and children. This recurrence is part of the topology of a system that counterposes welfare and migration/asylum but faces increasing difficulties in drawing clear lines of difference, and has disproportionate effects for vulnerable groups in all fields. The treatment of children is implicated in each of the areas discussed, and raises issues that warrant further comment.

The treatment of children

Britain is a signatory of the Convention on the Rights of the Child (CRC), which requires the best interests of children to be a primary consideration in all measures affecting them, though the convention has not been incorporated into domestic law. In fact, measures that seek to influence adult behaviour through negative effects on children are a marked feature of the topology of the whole welfare-migration-asylum complex. In 2010 the government committed itself to due consideration of obligations to children in all new policy (JCHR,

2011:15), but the JCHR has condemned the absence of any detailed compatibility exercise to assess the 2012 welfare reform. The lowering of the benefit cap in 2016 went ahead despite urging from a Supreme Court judge (SG and Ors v SSWP [2015] UKSC 16) that the government review its effects on children, and together with the two-child limit, it has been criticised for punishing a child for the actions of its parents²¹.

Amounts above the level of the cap are deducted from HB, the shortfall to be met from remaining household income, which includes benefits paid on behalf of children. The Children's Commissioner has questioned whether it was acceptable 'to treat child benefits as no more than a component of the family income' (SG and Ors v SSWP [2015] UKSC 16, para 123), and campaigners have argued 'there is nothing fair about trying to balance the books on the back of poor children' (Kennedy et al, 2016:37). The proffered justification is 'reversing the detrimental impact on families and children of benefit dependence' (SG and Ors, para 104), despite the fact that 82% of capped claimants were not required to work (WPC, 2019a). One judge specifically questioned why the viability of a scheme directed at parents is 'so disproportionately dependent on child related benefits' (SG and Ors, para 127), and three out of five Supreme Court judges found an incompatibility with the CRC, though non-incorporation of the convention limited the force of this finding.

A later case against the lowered cap focused on lone parents with a child under 2, and again considered whether there had been a breach of the CRC. However, Parliamentary deliberation was taken as evidence that children's best interests *had* been considered at a primary level (DA and Ors v SSWP [2019] UKSC 21, para 87), and it was not for the court to question the conclusion. A dissenting view from Lady Hale declared that the measure was not achieving its aims, was not fair, made few savings, and provided little evidence of attention to the risks of harm to young children, while Lord Kerr asserted that the 'ephemeral aspirations' (para

192) of policy were insufficient to displace the primary status to be accorded to the child's best interests.

The weighing of the child's best interest was also central to consideration of a challenge to the two-child limit for CTC. While the judge found the differential treatment of the parents to be justified, he recognised the need to take the CRC into account, noting 'there was no consideration at all of whether it was fair to impose the consequences of the parents choices on their children' (SC and Ors [2019] EWCA Civ 615, para 151). Again the point at issue is treating children unfavourably in order to motivate parents, and the judge points to a conflict between responding to the child's best interests and influencing parental behaviour (para 156). However, this was seen to be a political question, and (beyond the exemptions noted earlier) not a proper matter for the court's intervention.

The treatment of children in the implementation of measures directed at their parents has also arisen in various aspects of immigration policy. Welfare issues have a prominent role, and JCHR (2015) note the disproportionate impact of austerity measures on *both* children in low income households and the children of migrants. In 2008 the reservation on the CRC for children subject to immigration control was lifted, and the 2009 Borders Citizenship and Migration Act imposes a duty to treat the child's best interests as a primary consideration. Nevertheless, the JCHR sees a deterioration in recent years and a focus on immigration control rather than children's rights, the All Party Parliamentary Group (APPG, 2013) has remarked on neglect to consider the best interests of the child in relation to the partner visa MIR, and Baroness Hale sees the aim of strengthening immigration control in Zambrano cases to be 'irrelevant to children who are not subject to it' (HC v SSWP [2017] UKSC 73, para 51).

Nor does the lifting of the reservation on the CRC displace the stratified system of entitlement in relation to welfare. A parent without status may be allowed to remain where it

‘would not be reasonable’ to expect the child to leave²², and the basic principle is that a child should not be blamed for the conduct of a parent. (JO and Ors v SSHD [2014] UKUT 00517 (IAC)). However, the NRPF condition can have a direct effect on children and has raised concern over their inability to access free school meals or children’s benefits²³. Though the condition can be lifted where the welfare of a child is at stake, onerous or unachievable evidential requirements make this prohibitively difficult (Woolley, 2019).

In cases of destitution families may have recourse to local authority assistance under S17 of the Children Act, as with Zambrano families, but this confines British citizen children to a lower level of support as a deterrent to ‘benefit tourism’ (HC v SSWP [2017] UKSC 73, para 32). One judge observed ‘these are British children, born and brought up here’, and urged local authorities to take into account the impact on their development of being denied support consistent with their peers (para 46). There is a parallel here with the children of benefit capped households, denied access to benefits at the level of minimum need in order to incentivise their parents.

A harnessing of the position of children to influence the behaviour of parents is also apparent in aspects of asylum support, and in the treatment of failed asylum seekers. Asylum support rates have been held below mainstream benefits, in part for fear of attracting “non-genuine” claims (Home Affairs Committee, 2013), and the freeze on rates from 2011 was part of a more general drive “to demonstrate fairness to the taxpayer”. (Refugee Action v SSHD [2014] EWHC 1033 (Admin), para 26) The later removal of preferential rates for children was upheld by the High Court, given its ‘legitimate aim’ of discouraging economic migration (Ghulam and Ors v SSHD [2016] EWHC 2639 (Admin), para 241).

Changes under the 2016 Act (yet to be implemented) will tighten access to support for failed asylum seekers and their families, and make this more strongly conditional on co-operation with removal (Blanchard and Joy, 2017; Harvey and Harper, 2017:356-7). These changes

have been advanced despite objections that destitution is being used as a tool of control (Parliamentary Inquiry, 2013), that this will drive families underground and/or increase demands on local authorities, and that families will opt for destitution before endangering their children by return²⁴. The latter argument is confirmed by findings from the pilot of a 2004 policy designed to enforce departure by withdrawing support²⁵.

In sum, reduced support for children is a topological feature of the governance of welfare, migration and asylum. We have seen an erosion of benefits paid on behalf of children to incentivise their parents to work under the benefit cap and the two-child limit on CTC, and denial of children's access to mainstream benefits in a drive against 'benefit tourism'. A similar logic is apparent in the lowering of asylum support for children, and in rendering failed asylum seekers destitute, with the aim of deterring arrival and encouraging departure.

Destitution

Destitution is a more general issue that emerges from both welfare reform and immigration control. The definition applied by JRF (2018) is a lack of two or more essential items, and they estimate the make-up of destitute people in Britain to be 68% British and 16% migrant, with a further mixed group having 'complex needs' at 15%²⁶. They calculate that 1.5 million people including 365,000 children in the UK were destitute at some point in 2017, 45% lacking three or more items and 22% having no income at all.

An APPG report on hunger and food poverty concludes that the state has become a generator of destitution (APPG, 2015), and a recurrent theme of commentary is that the guaranteed minimum income secured by welfare provision is no longer effective (LGiU, 2015; Church Action on Poverty, 2015; WPC, 2019a). UC has forced many into debt, in a system reportedly beset by design flaws and causing immense hardship, (Brown, 2018; Alston, 2018) and claimants have been forced to choose between heating, eating and paying their bills. The

WPC (2019a:5) reports ‘harrowing stories of people going hungry, struggling to feed their children, and building up crippling rent arrears’, and Trussell Trust figures show a 73% rise in the use of their foodbanks over 5 years to reach 1.6 million²⁷, with over half the usage accounted for by benefit delays, errors and sanctions. These figures understate take-up by migrants from diverse religious backgrounds and more likely to apply to other outlets²⁸.

The five-week waiting period for UC has led to a high dependence on advances, which like hardship payments are repayable loans, and 47% of UC claimants have a repayment debt of 20% or more in place (Public Law Project, 2019), with over half of these having further deductions relating to overpayment, social fund loans, hardship payments, etc. (Webster, 2019). There were 228,000 sanctions in 2018, equivalent to 12.5% of the total who fall under conditionality (Webster, 2019), 31% of sanctions exceed 3 months (Alston, 2018), and the WPC (2019b) has confirmed claims that welfare reform has driven some women to survival sex.

There has, however, been a fall in the take-up of hardship payments, with the result that many claimants sanctioned under UC are living off very low or zero income²⁹. Though take-up is falling, private debt is increasingly incurred for payments to government organisations, and benefit related problems are common (Barrett, 2019). At the margins of the system are those who discontinue their claim when sanctioned, those who begin a UC claim but do not see it through to completion, and those who suffer ‘digital exclusion’ (Alston, 2018). Arrears and evictions are a generally observed feature of those who do secure a claim (PAC, 2018; WPC, 2019a), and they feed a visibly growing population in extreme destitution, with a 169% increase in rough sleeping from 2010 to 2018.³⁰ Camps of the homeless forcibly removed by local authorities have trebled in five years, and are linked by charities to changes in the benefits system³¹. The average age of death for rough sleepers is 47, and the suicide rate nine times that of the general population³².

Though a direct connection between welfare reform, increasing destitution and premature death has not been formally established, multiple press reports suggest an association,³³ and Dr. Jay Watts, a consultant clinical psychologist has stated ‘nearly everyone in the mental health field...recognises the link between the current benefits system and suicide risk’.³⁴ Alston (2018) notes that a Minister has been appointed for suicide prevention and that multiple organisations have instituted relevant training. These developments fall within the penumbra of a welfare system in which guaranteed minimum standards have fallen away, and they are echoed and amplified by the experience of migration and asylum.

The Windrush scandal unfolded at the interface between welfare and migration, and similar problems have arisen for children reaching adulthood with no immigration status, some of whom were born here and are entitled to register as citizens. (Skehan et al, 2017; Coram, 2017). Even those with the prospect of secure status (as with discretionary leave) can be rendered destitute by HO fees that have trebled in five years³⁵. Several groups survive on resources short of the welfare minimum, and as with the welfare reform there are degrees of destitution associated with different policy targets. The continuum includes refugees with full entitlement but problems in accessing mainstream benefits, reportedly driven to homelessness and even the verge of suicide (Basedow and Doyle, 2016). Outside of full entitlement are EEA jobseekers - denied HB and targeted for removal when sleeping rough, Zambrano carers on S17 support, asylum seekers on (reduced) survival rates, failed asylum seekers on voucher support, and migrants with leave to remain but NRPF. Others fall into the pool of undocumented persons, a growing proportion having no income whatsoever (JRF, 2018). Even before the 2016 reductions, the Home Affairs Committee (2013) concluded that all asylum seekers and many recognised refugees experience destitution, but the situation for failed asylum seekers is set to worsen. Access to support will be more tightly linked to co-operation with return, and care leavers will be especially vulnerable as the 2016 Act excludes

those with no immigration status from all forms of care-leaving provision (Harvey and Harper, 2017:388-9). Denied status and support, many will join a larger group of failed asylum seekers who a growing body of evidence (see Children's Commissioner, 2015; Still Human Still Here, 2015) suggests will opt for destitution rather than return. In many cases removal is not viable because of lack of documentation, and refusal by target destinations to accept returns (Blanchard and Joy, 2017), a situation to be exacerbated by shifting the onus of proof onto applicants, who lack the knowledge and resources to advance their case.

Reluctance to leave has been linked to a lack of faith in the asylum process, with its high level of success on appeal (Jesuit Refugee Service (JRS), 2018). Once appeal rights are exhausted, and no further submissions are possible, then failed asylum seekers unwilling to leave experience the most extreme forms of exclusion and destitution. The planned removal of a right of appeal against decisions on 'obstacles to departure' is a particular concern for support groups. The Red Cross (Blanchard and Joy, 2017) report that a majority of those denied support but unable or unwilling to depart live in limbo with no control over their lives, and in many cases have considered suicide. Nearly half of refused asylum applicants have mental health problems that are worsened by their experience (Still Human Still Here, 2015)

Thus, the rationale of 'incentivisation' underpinning the welfare reforms and the deterrent features of immigration/asylum policy both produce patterns of destitution linked to expectations of 'behavioural change'. Destitution has therefore been harnessed as one of the devices of governmentality, such that bare life increasingly encroaches into mainstream society. Across diverse policy areas we find that unsubstantiated assumptions shaping policy have created experiential exclusions imposed on disparate groups of people who live and are allowed to die not in camps but in the interstices of our society.

Conclusion - the topology of welfare and migration

The outsiders inside are a mixed group who may have fallen foul of either the welfare system or the migration/asylum system, each being subject to the law's capacity to stratify and divide, and the complex array of distinctions that this produces. The disciplinary nature of the whole topology of welfare-migration-asylum is derived from conditions and requirements that permeate the system with a view to shaping behaviour in terms of incentives to work, the conduct of family life, and measures to deter arrival or encourage departure. Though a dominant discourse sets up lines of opposition between the welfare subject and varied categories of migrant, while counterposing both to the hardworking taxpayer, we have seen notable overlaps in treatment and experience.

A topological approach serves to highlight the way a simple hierarchy between such groups can coexist with a system of folding and filtering, driven by a discourse of 'fairness' that shapes both the terms of welfare support, and the conditions of entry and stay for migrants and asylum seekers. Its translation into policy not only generates increasingly refined distinctions but has exposed a variety of groups to a hostile environment, administrative error and formal or effective denial of access to justice. Recurrent effects are discriminatory outcomes for women, lone parents, large families, BME groups, and children, all of whom are disproportionately affected by the constraints of the benefit cap, the two child limit, the family unification MIR, and the NRPF condition. Furthermore, both citizen sponsors and settled migrants on low incomes can be affected by the family unification constraints, and both citizen and non-citizen children can be subject to public funds restrictions on migrant parents.

While some of the privileges of citizenship remain intact, and a hierarchy is still detectable, the guarantee of social inclusion associated with full membership has suffered substantial erosion. The particular impact on BME groups points to a failure to accommodate the changing make-up of the British citizenry, and is one instance of a stratifying dynamic within

citizenship itself. Furthermore, a topological approach serves to foster awareness of the disciplinary devices of governance that increasingly determine the treatment of all vulnerable groups, while children emerge as the target of attempts to shape parental behaviour by various incentives or deterrents. Pushed to the outer limits of the system are welfare claimants falling victim to conditions and sanctions, migrants granted leave to remain but no welfare entitlement, refugees with problems accessing mainstream benefits, asylum seekers on basic survival rates, and failed asylum seekers or undocumented migrants with recourse only to charitable support. In this sense, bare life is not confined to 'the camp' but rather infiltrates the basic fabric of society.

While the 'camp' serves as a provocative term for those that occupy an apparently rightless zone on the outskirts of society, within Britain's welfare-immigration-asylum complex, this zone is not a physical location, but a legal and experiential space. Agamben's reference to the metamorphoses and disguises that infiltrate 'the camp' as the paradigm of exclusion in modernity is therefore telling. We see from the account above that in austerity Britain this space sits not outside but within society, at the end of a continuum in which the whittling away of rights in the name of control ends in destitution for those who are driven to the extremes of the system. They are not without rights, but in a system dominated by conditions and filters, governed by harsh and error prone administration, and offering little in the way of legal advice, the outsiders inside can find they have exhausted their access, and the outcome for some has been a life that is no longer worth living.

Notes

¹ Ex-minister for families and children

<https://www.theguardian.com/theguardian/2013/jul/12/sarah-teather-angry-voices-immigration>

² <https://www.telegraph.co.uk/news/uknews/immigration/10995875/David-Cameron-Were-building-an-immigration-system-that-puts-Britain-first.html>

³ <https://cpag.org.uk/welfare-rights/resources/article/universal-credit-universal-panacea>

⁴ <https://www.freemovement.org.uk/what-are-10-20-year-rules-on-long-residence-immigration-rules-paragraph-276-continuous-lawful-residence/>

⁵ <https://www.telegraph.co.uk/news/uknews/immigration/9291483/Theresa-May-interview-Were-going-to-give-illegal-migrants-a-really-hostile-reception.html>

⁶ <https://www.gov.uk/government/publications/immigration-bill-2015-overarching-documents/immigration-bill-201516-overview-factsheet>

⁷ <https://www.freemovement.org.uk/briefing-what-is-the-hostile-environment-where-does-it-come-from-who-does-it-affect/>

⁸ <https://www.freemovement.org.uk/inspection-report-on-hostile-environment-finds-hundreds-wrongly-denied-services/>

⁹ <https://www.theguardian.com/uk-news/2018/apr/30/hostile-environments-go-way-beyond-immigration>

<https://www.theguardian.com/commentisfree/2019/apr/22/stephen-smith-benefits-system-dying>

<https://www.theguardian.com/society/2019/apr/24/benefits-system-set-up-for-cruelty-not-efficiency>

¹⁰ Neil Coulings denies official targets but shows evidence of a target culture, see:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/199242/sanctions-report.pdf see also

<https://www.theguardian.com/society/2013/mar/28/jobcentre-scorecard-areas-stopping-benefits>

¹¹ Eg <https://edm.parliament.uk/early-day-motion/51086/privatisation-of-job-centre-call-centres>

¹² As with heightened sanctions

¹³ <https://www.turn2us.org.uk/About-Us/News/%E2%80%98No-DSS-discrimination>

¹⁴ <https://www.theguardian.com/society/2019/aug/05/surge-in-eu-citizens-unfairly-refused-access-to-universal-credit>

¹⁵ <https://www.theguardian.com/society/2019/jul/23/universal-credit-poor-advice-costs-claimants-thousands-say-mps>

¹⁶ <https://www.freemovement.org.uk/half-of-all-immigration-appeals-now-succeed/>

¹⁷ <https://suwn.files.wordpress.com/2019/07/19-05-uc-hardship-payments-d.webster.pdf>

¹⁸ <https://www.theguardian.com/society/2019/jan/04/benefit-cap-single-mothers-make-up-85percent-of-those-affected-data-shows>

¹⁹ <https://www.freemovement.org.uk/home-office-makes-changes-appendix-fm-minimum-income-rule-following-mm-case/>

²⁰ Also under Article 8

²¹ <https://cpag.org.uk/sites/default/files/CPAG-submission-JCHR-Welfare-Reform-and-Work-Bill-2015-Nov2015.pdf>

²² <https://www.freemovement.org.uk/can-children-and-parents-apply-to-remain-after-seven-years-residence/>

²³ <https://www.theguardian.com/uk-news/2019/jun/13/no-recourse-public-fund-damning-immigration-report-criticises-home-office-child-poverty>

²⁴ <https://stillhumanstillhere.files.wordpress.com/2009/01/response-to-the-consultation-on-reforming-support-for-failed-asylum-seekers.pdf>

²⁵ https://refugeecouncil.org.uk/assets/0001/7040/Section9_report_Feb06.pdf

²⁶ One third migrant

²⁷ <https://www.trusselltrust.org/news-and-blog/latest-stats/end-year-stats/>

²⁸ See <https://www.theguardian.com/society/2014/apr/02/muslim-groups-food-banks-tackle-poverty>

²⁹ See note 17

³⁰ <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CDP-2018-0099>

³¹ <https://www.theguardian.com/society/2019/jun/17/removal-of-homeless-camps-trebles-as-charities-warn-of-out-of-control-crisis>

³² <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CDP-2018-0099>

³³ See for example <https://www.independent.co.uk/news/uk/home-news/disability-benefit-claimants-attempted-suicides-fit-to-work-assessment-i-daniel-blake-job-centre-dwp-a8119286.html>

<https://www.independent.co.uk/news/uk/home-news/universal-credit-benefits-suicide-stress-mental-health-welfare-conservatives-report-a8636661.html>

<https://www.theguardian.com/society/2016/may/13/suicides-of-benefit-claimants-reveal-dwp-flaws-says-inquiry>

³⁴ <https://www.theguardian.com/society/2018/nov/19/angered-by-the-damage-that-austerity-does-to-the-poor>

³⁵ <https://www.theguardian.com/uk-news/2019/jul/31/leave-to-remain-but-no-home-to-remain-in-after-fees-treble>

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