Irrational rationalities and governmentality-effected neglect in immigration practice: legal migrants' entitlements to services and benefits in the United Kingdom[1]

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Abstract

Governments' attempts to manage immigration increasingly restrict immigrants' eligibility to healthcare, education and welfare benefits. This article examines the operation of these restrictions in the United Kingdom. It draws on qualitative research with civil servants and NGO expert advisors, and applies sociological theories on bureaucracy as a lens to interpret these data. Conceptually, the paper employs a generative synthesis of Ritzer's notion of 'irrational rationality' and Foucault's perspective on 'governmentality' to explain observed outcomes. Findings show that public service-workers struggle with complex and opaque regulations, which grant different entitlements to different categories of migrants. The confusion results in mistakes, arbitrary decisions and hypercorrection, but also a system-wide indifference to irrational outcomes, supported by human factors in contexts of austerity. I consider this a form of governmentality-effected neglect, where power operates as much through inaction as well as through intention, but which results in exclusions of legal migrants that are harsher in practice than in law.

Keywords: Immigration, Bureaucracy, Rights, Governmentality, Rationality, Welfare

Introduction

In Spring 2018, the Windrush scandal broke, exposing the failings of the United Kingdom's Home Office policies which ordered people to prove their rights to live, work and access services and benefits. Those affected were immigrants from the Commonwealth who arrived in the UK from 1948 and were legally present, yet since 2002, had been detained or deported because they could not produce the correct paperwork (National Audit Office 2018). This was not least because of the British government's poor record keeping, including the Home Office's destruction of their landing cards. Amidst the interrogations as to why such a situation had arisen, commentators were quick to point out this was a predictable consequence of the 'hostile environment' package of policy measures. First referenced in 2012, the hostile environment marked an orientation to make life 'tough' for undocumented immigrants. It manifested in legislation under the Immigration Act 2014 and 2016 to prohibit them from renting accommodation, acquiring driving licences and bank accounts, while implicating citizens in immigration enforcement (Jones et. al. 2017; Yuval-Davis, Wemyss and Cassidy 2018).

The scandal was a candid reminder of the expanding frontiers of immigration policy affecting all migrants, including those whose presence within British territory is long-standing and legally granted. This article provides further original evidence of how this operates, by focusing on legally present migrants' access to healthcare, education and welfare benefits in the United Kingdom. It provides a new sociologically informed qualitative analysis of the operation of regulations governing access to services and benefits, from the perspective of relevant actors in local and national government settings and NGOs. It exposes a picture of bureaucratic practices that result in forms of exclusion that go beyond those established in

law. The malpractice is permitted to occur, I argue, amid a wider national culture of hostility towards immigrants, where there is little administrative motivation for corrective action.

The analysis sets out a sociological critique of the supposedly rule-governed access to services and benefits in immigration-related regulations, portraying it instead as a process that asserts new boundaries and creates new exclusions. The original contribution of the article is first a substantive one, demonstrating the importance of sociological investigation of bureaucratic processes and regulations to understand how exclusion works. Graeber (2012: 123 and 108) suggests that bureaucracy is often seen as a 'dead zone' by scholars, and considered 'boring' and 'devoid of any interpretive depth'. Yet, as he points out, such a perspective misunderstands the potential of bureaucracy to wreak structural violence. This article gives new insights into that process.

Second, the article forges new ground conceptually by operationalising two concepts from the sociology of bureaucracy within the same framework to show how exclusion is produced. I apply Ritzer's (1983:100) concept of 'irrational rationality' to show how perverse outcomes emerge from apparently rational bureaucratic processes. I show how rationality becomes irrational in the operation of the eligibility restrictions examined in the article, particularly through the sheer volume and bewildering mass of regulations in this field. Restrictions have mushroomed to a point that betray the logic and purpose they purport to serve. Rules on migrants' eligibility are unclear and confusing, and this leads to arbitrary decisions and hypercorrection in practice in hospitals, welfare-offices and education institutions.

Employing Foucault's concept of governmentality in tandem with Ritzer's concept, however illustrates how this dysfunction has deeply functional effects (Fassin 2011). Governmentality

exposes the 'meticulous, often minute techniques' exercised through the procedures, calculations and tactics of institutions through which the state's vision is advanced (Foucault 1977 [2001]: 139; Foucault 1978 [2007]). 'Governmentality-effected neglect' is a term I deploy in this article to refer to how the mistakes of public servants are overlooked, because they emerge from human limitations: from ignorance in understanding rather than maleficence, and from working conditions under a regime of austerity that mean eligibility judgments cannot be made with the time and understanding they need. Where laws are complex, and contexts pressurised and weighted towards disbelief, institutional indifference to arbitrary and incorrect decisions often remains intact. This also however occurs precisely because such outcomes correspond with the State's wider vision on immigration.

The article begins by outlining sociological perspectives on migrants' access to services, before exploring concepts in the sociology of bureaucracy to show how Ritzer's irrational rationality and Foucault's governmentality can be intellectually generative for understanding the production of exclusion. It outlines the design and methods of the research project, before presenting empirical data on the regulations nationally, as well as on how these were implemented locally in two case study cities. In the penultimate section, I show how and why dysfunction remains unchallenged, arguing that governmentality promotes neglect and indifference. As such, the article demonstrates how the hostile environment does not just target those deemed illegitimate, in dramatic raids, arrests and deportations. It extends too to legal migrants, through bureaucratic process, in banal (mis)understandings of guidance, forms, paperwork and procedures, that nevertheless have devastating effects.

Theoretical context: civic stratification, irrational rationality and governmentality

One of the most powerful aspects affecting the experiences of legal migrants is their 'partial citizenship', which limits access to services and keeps them at 'arms-length' from benefits routinely enjoyed by citizens (Bosniak 2006). These processes have been traditionally overlooked in migration scholarship, with its greater preoccupation with 'matters of entry and exclusion than on the general status of aliens who are already present' (Bosniak 2006: 42). There is however growing recognition of the wider effects of immigration policy on legal migrants, including through increased policing of migrants' status and processes of everyday bordering (Anderson 2013; Back, Shamser and Bryan 2012, Jones et. al. 2017, Menjívar 2014. Yuval-Davis et. al. 2018). Another means is through the growing phenomenon of restricting access to welfare. This originally applied to asylum seekers, as well as migrants from EU Accession States, although the regulation of access to benefits and services extends now to many types of migrants from within and outside Europe (Dwyer and Scullion 2014; Geddes 2000; Lafleur and Mescoli2018; O'Brien 2015).

Immigrants experience restricted access to services and benefits through a process of 'civic stratification', identified by Morris (2003). Civic stratification refers to a 'complex set of refinements and distinctions [which] variously shape the prospects of different categories of migrants' (Morris 2003: 77). The concept captures the ways immigrants are stratified into different entry categories according to their origin and motivations for migration: as asylum seekers, workers, family members, EEA Nationals, Third Country Nationals (TCN) etc. Those different immigration statuses bring differing levels of entitlements to benefits and services in education, the health service and welfare provision, as well as access to the labour market (Sainsbury 2012). The process of aligning access to public provisions and

immigration rules also extends the need for increased vigilance by personnel, and increases opportunities to police immigrants (Morris 1998).

However, eligibility regulations operate through a largely bureaucratic process, in which conditions of access to services and benefits are outlined in detailed legal stipulations. This provides a good example of how rationalizing principles of modern bureaucracies (originally identified by Weber (1948 [1922])) have extended further into broader societal arenas (Ritzer 1996). Rationalization aims to impart 'efficiency, predictability, calculability, substitution of non-human for human technology and control over uncertainty' into various domains of social life (Ritzer 1983:100). This rather benign view of rationalization apparent in Weber's earlier work was, however, replaced later by acknowledgement of its more oppressive character. Indeed, Weber famously identified the potential for bureaucracies to get out of control and ensnare individuals within an 'iron cage' of bureaucracy. His pessimistic vision is strongly borne out in Bauman's (1989:26) analysis of the Holocaust, which shows how a bureaucratic culture acted as a 'moral sleeping pill', where administrators evaded responsibilities and passed problems down the line. Bureaucracy enabled them to become remote and distanced from the horrific outcomes of the genocide of millions of Jews.

Of particular value in understanding the deviations of bureaucracy from its technical-rational aspirations is also the work of Ritzer. He coined the phrase the 'irrationality of rationality' (1983: 100; 1996) to capture the counterproductive side-effects of rationalization processes. For him, rationalization can lead to unintended outcomes, which dehumanize and degrade both service-providers and their clients. Ritzer (1993) explains this through his well-known exploration of McDonaldization, exemplified by the principles and operation of the McDonalds restaurant chain. Though established by a logic to provide quick, easy and

consistent service, this rationality becomes irrational, as McDonalds is experienced as a dehumanizing place to work, where relationships between customers and staff are reduced to fleeting, anti-human encounters and the experience of dining becomes fast and unsatisfying.

Ritzer's conception sees irrationality as a logical consequence of rationalization or a side-effect of bureaucracy. Embedding this notion in an additional concept, that of Foucault's governmentality (1978 [2007) is instructive however to show further how even the most 'irrational' malpractice can be quite 'rational' when viewed in the broader contexts of its operation. Fassin (2011: 218) argues that a full understanding of the governmentality of immigration requires a closer study of immigration bureaucracy, to show the 'discrepancies between the Weberian view of the fair and neutral state and its actual functioning'. Darling (2014) provides a valuable example, showing how governmentality operates in immigration control through the apparently anachronistic mode of letter-writing by the Home Office, which powerfully inscribes the authority of the State. Here, governmentality is practiced, 'through the production of paperwork, the filing of cases, and the posting of mail' (Darling 2014:485).

The perspective of governmentality advances a crucial point: that power does not operate only in a well-planned manner, but can do so through emergent and 'cobbled together' practices (Walters 2015). In this view, bureaucracy can act as a 'veneer', masking the 'everyday compromises, failings, and contingencies' of the State (Darling 2014: 489, see also Gupta 2013). Herzfeld's classic analysis of bureaucracy argues it is exactly its inefficient, messy and unfair character, which proves vital for a collective 'social production of indifference' (Herzfeld 1993). Clients might complain, but so too do bureaucrats, blaming 'the system', 'excessively complicated laws' or senior managers. Yet in doing so, they

confirm their place in the wider vessel of the nation state and reinforce indifference to its effects. Following these perspectives, it is vital then to consider the irrationalities of rationalities not only as accidental by-products, but understood by way of the 'functionality of these apparent dysfunctions' for the nation-state (Fassin 2011: 217).

In considering the pervasive, subtle and complex ways in which processes of domination operate, including through irrational practices, governmentality is also instructive since it calls attention to how these processes are embedded and entwined with practices of self-government - in other words, how people behave. This too is vital for my analysis, because we see how the outcomes emerge because individuals tasked with administering regulations have absorbed certain values and look to behave in acceptable ways (Rose 1999). When I argue in the following analysis that governmentality generates neglect, I argue not that individuals themselves are necessarily inactive. It is rather the opposite as workers are quite cautious in making eligibility judgements. What I found was that exclusions are not (at least, in most cases) driven by maleficence, but rather by functionaries' ignorance and anxiety to apply the regulations correctly in stressful working contexts.

The problem occurs at a system-level however because fear drives accountability to the government, but the government is more concerned with policing incorrect authorisation of access than refusals. There is only limited systematic attempt (apart from through the work of NGOs and limited private consultants) to provide training, which would equip workers with a richer understanding. Generally however, in contexts of limited corrective oversight, there is little impetus for addressing mistakes. The responsibility falls to civil society, where NGOs play a vital role not only in correcting error, but also mobilising and bringing legal cases which challenge aspects of the regulations and their application. And while institutional

accountability exists, malpractice is exposed often much later than the events occur (for example, the Windrush scandal was eventually exposed to scrutiny by the National Audit Office). Meanwhile, the behemoth of unwieldy, ad hoc and additive immigration-related regulation of access to services and benefits grows more irrational, increasing too the likelihood of governmentality-effected neglect of its outcomes.

Methods

The article draws on evidence from a large cross-national research project on entitlements for migrants relating to education, welfare benefits, employment, housing, healthcare and voting rights and their impacts on the economic, social, cultural and political integration of migrants in four EU Member States in 2012-14. The IMPACIM project was funded by the EU Fund for the Integration of Third Country Nationals, and involved mixed methods research with academic partners in the UK, Germany, Spain and the Netherlands (see compas.ox.ac.uk/project/impact-of-admission-criteria-on-the-integration-of-migrants-impacim/). The countries were selected to consider how such practices varied across difference welfare regimes, since this variation leads to different dynamics of migrant inclusion (Sainsbury 2012). The UK represents a 'liberal' welfare regime, a type of welfare system characterized by defining attributes of modest social insurance benefits, minimal benefits based on means-testing as well as reliance on private welfare benefits and market solutions (ibid.) This regime is different to the conservative and social democratic welfare regimes of Germany and the Netherlands. Finally, Spain represents something of a hybrid between those two ideal types (see Hemerijck, Palm, Entenmann and Van Hooren 2013).

The article draws on data from research in the UK conducted by the author, within a research team comprising Hiranthi Jayaweera, Sarah Spencer and Vanessa Hughes. Some time has

passed since data collection but arguably the messages from research have stronger resonance now than at the point of data collection, as the intervening years have seen restrictions escalate further (for example in healthcare[2]). The prospect of Brexit also suggests that conditions will likely become more complicated.

The focus of the project was the issues of migrants' rights, but the team employed a lens on the topic by focusing on people moving to join family members. These included 'third country nationals' (TCNs) who move legally from outside the EU to accompany or join a family member residing in the UK (e.g. spouse, partner, parent) as well as 'dependents' joining others with temporary permission to stay (e.g. those on work or study visas). Family migration here is used as an instance, a good way to explore the topic, since this is far from a 'unitary' category; the rights of migrants joining family members fragment and split according to the status of the sponsor they join or accompany, whether British citizen, refugee, worker, student etc. In practice however, the research found that the issues family migrants faced were common to many other migrants, and therefore the article broadens the reflections offered by practitioners to explain wider experiences by those beyond the specific policy category of family migrants.

The article draws on first, a desk-based mapping exercise of policy documents, investigating entitlements to services and benefits for different migrants joining family members (Jayaweera and Oliver 2013). A subsequent period of qualitative research with 43 individuals enabled both verification of the mapping, and exploration of the impacts of regulations in practice (Oliver 2013). Particularly here, the experiences found to affect family migrants were often closely related to experiences of other migrant categories, and therefore at some points in the discussion of empirical data, I use those broader examples too. The research

involved specialists at the national level, including in the Home Office, non-departmental public bodies (so called 'quangos') and NGOs e.g. the *Red Cross, the Refugee Council* and *Rights of Women*. It also included research in two cities, Birmingham and Reading with civil servants in local authorities, as well as advisors in citizens' advice bureaus and migrant-focused voluntary organizations. Policy workshops were held in both cities with (overall) thirty-five participants, facilitating respondent validation, probing of emerging findings and the development of further insight.

The selection of cities was inspired by the motivation to research a large and smaller urban area with relatively significant migrant populations. Selection was informed by considering administrative evidence on family migrants at a national level, using Home Office data from 2010 on the top five nationalities obtaining 'family route' visas: those from Pakistan, Nepal, India, the United States, the Philippines. Annual Population Survey microdata was used subsequently to select local areas according to population and nationality criteria, selecting areas where the nationalities of the two local areas matched well the nationalities of family migrants overall in the UK enabling at least a focus on the top three nationalities (Pakistanis, Indians and Nepalis). Individuals within cities were recruited by targeting local government officers in relevant departments and contacting local NGOs to explore their perspectives; the research team also used snowball sampling to reach more individuals through recommendations.

Interviews followed a semi-structured interview schedule, with variance in follow-up questions based on answers and the expertise of each participant. Discussions were recorded and fully transcribed. Fieldwork was approved by Oxford University's departmental Ethics Committee, guaranteeing participants' informed consent, rights to withdraw and anonymised

presentation of results. I conducted thematic data analysis using NVivo 10, applying a coding guide initially to assist comparison across the national studies, followed by inductive analysis. Emerging themes were connected to broader theoretical debates in the literature through a process of mid-range coding (Dey 1993), peer review and discussions with critical friends, including policy experts and academics. Drawing on this research, in the following two sections, I present a brief summary of the regulations and official justifications, showing how civic stratification is expected to work, before interpreting local implementation.

Legal and Policy Context

In this section, I summarise regulations dictating eligibility to services and benefits for migrants. This is, in many ways a vain exercise, since 'this is an extremely complex and changing area of law and policy, which makes any written account likely to be out of date as soon as it is published' (Integration UpNorth 2015). However, the following table indicates and summarises in a very crude manner some of the key domains of services, locations of operation and conditions affecting access at the time of the research, with explanations of key terms beneath. Information should not be read line by line across the table into the final column, since the domains and access are not directly linked. Moreover, all the areas of policy have conditionality attached, and vary across the regions depending on whether the area of policy and law is devolved. Explaining fully how this applies to each area and category however would run into hundreds of pages (see Jayaweera and Oliver 2013 for more detail).

Fig. 1 Indicative table of conditions affecting access to services and benefits for immigrants in the
UK

Domain	Responsible department and agency	Location of service or benefit	Access
Compulsory Education (age 5-16) **Healthcare:** - Emergency - Primary	Department for Education Department of Health	Schools Accident and Emergency departments; GP practices	Granted to all
Labour market **Welfare benefits** (income and contribution based), **housing and social assistance** **Post-compulsory education** Eligibility for home student fee rate for Further Education and Higher Education **Healthcare:** Secondary	Department of Work and Pensions, HM Revenues and Customs Department for Business Innovation and Skills the (Education) Skills Funding Agency Department of Health	Job-centres; Local authority departments Further and Higher Education Providers Hospitals, clinics	Conditional on: • **Nationality and origin e.g.** -Third Country National -EEA National -Commonwealth citizen • **Reason for migration, e.g.** - Asylum and refugee (seeking, granted, on temporary leave to remain, refused, or refused and supported) - Family reasons – depends on the status of *the sponsor* the migrant is joining (EEA mobile citizen; or British citizen, Refugee, Worker etc.) - Work (EEA or points-based system) - Study (EEA or TCN) • **Residence length and status e.g.** - Settled - Residence length and type, as ordinary or habitual residence for a specified period prior to applying for benefit or service • **Changes in national, European and international law** governing the above, or ad hoc amendments • **Exceptions applying** which may override the conditions above such as the *Destitution and Domestic Violence* Concession, or domain-specific discretionary exemption (e.g. for student funding).

Key terms used in analysis:

DDV: Destitution and Domestic Violence Concession;

EEA: European Economic Area;

Home Office: the lead government department for immigration and national security.

NASS 35: Document used historically by asylum seekers once they moved out of asylum support to prove entitlement to welfare benefits;

NINO: National Insurance Number, a number required to join an employer's payroll;

NRPF: No Recourse to Public Funds, a condition, which subject to their immigration status, prohibits many migrants' access to non-contributory benefits, tax credits or housing assistance.

TCN: Third Country National: people migrating from outside the European Economic Area.

As is characteristic of governmentality, the rules are dispersed and are linked to other functions beyond immigration. They operate through the Department of Health, the Department of Work and Pensions, non-ministerial departments like HM Revenues and Customs, and other arms-length bodies, such as the Skills Funding Agency. Practical implementation occurs in hospitals, GP surgeries, further and higher education institutions, job-centres, or in local authorities**.**

In summary, the table shows that most migrants had access to compulsory education in schools, NHS accident and emergency services in hospitals and primary care in GP services. However, depending on their immigration status, migrants could face qualified or no access to the labour market, state welfare benefits and social assistance, post-compulsory education and non-emergency healthcare. In these domains, access to services and benefits depended on immigrant origin and entry categories: whether a migrant is a TCN, from the European

Economic Area, a Commonwealth citizen, and what their status is: as a refugee, a worker, family member, student or asylum seeker etc. (Morris 2003). If a person moves for family reasons (e.g. to join a spouse or partner) eligibility depends on their sponsor's status. Many, but not all, family migrants' experience a probationary period of five years before they can apply for independent settlement. They have 'No Recourse to Public Funds' (NRPF) during this time, a condition documented in their passport or biometric residence permit, which restricts their access to certain welfare benefits[5.] It also enshrines a legal dependence on their sponsor, since they would lose rights if they separated.[6]

Access in some domains is governed not explicitly by immigration legislation, but by residence conditions about 'settlement' and place of 'ordinary' or 'habitual residence'. This continues to affect access to the National Health Service[3] and post-compulsory education for example (author citation). A further factor is that the regulations also change frequently. Since the time of the research, there have been stricter rules implemented on access to healthcare for non-EEA nationals subject to immigration control, through the immigration health surcharge (IHS) and an increasing use of biometric residence permits (BRPs).

Finally, rules change too because previous incarnations of regulations need swift action to overcome unforeseen consequences, demonstrating the rather ad hoc nature of policy making in this area. For example, the *destitute domestic violence (DDV) concession* was established to circumvent restricted access, in cases where migrants were being forced to remain in relationships where they experienced domestic violence. Under the concession, spousal migrants could lodge a fast track application to the Home Office and gain access to welfare and housing support.[7] However, eligibility is restricted and does not apply to all migrants experiencing domestic violence. Finally, ad hoc changes are also significant. For example the

Case Resolution Directive[8] from 2006 was a one off process to grant asylum seekers

Indefinite Leave to Remain (ILR) but stopped short of giving them full refugee status.

However it was only when subsequent changes to the Family Migration Rules in 2012 were

introduced that this lesser status became significant, reducing possibilities of family reunion

and limiting entitlements of joining family members[9].

The operation of civic stratification is clearly a complex process. In the following section, I

turn to the empirical data, first considering how those aims were articulated at the Home

Office, before exploring the implementation of regulations locally.

The national vision: Fair and clear rules

I begin by presenting an interview held with an official in the department from which the

regulations originate, the UK Home Office. As the above explanation shows, national

regulations are by no means simple. However, in a Home Office interview room, the

explanation given by a senior civil servant (surrounded by four silent observing employees)

was that they were clear and straightforward. He explained that administering the regulations

was the task of public service workers. They were employed as 'the custodians of publicly

funded services', who had 'responsibilities and must do their best to make sure they make the

right decision'. Appealing to the Weberian view of the legal-rational administration, he

continued, 'these are fair rules which command policing, to avoid fraud and error'.

The web of regulations governing access to services and benefits had arisen 'over a number

of years' he said, some reflecting decades-old conditions, for example healthcare access had

been defined by residence since the birth of the NHS. From the 1996 Housing Act,

immigration rules started more pointedly to define access; during this period, the senior civil

servant explained, the regulations reflected the political zeitgeist promoting immigrants' 'self-reliance'. In 2009, the Borders, Citizenship and Immigration Access was particularly important in establishing new rules affecting TCNs access to welfare, local authority housing and homelessness assistance (Dwyer and Scullion 2014).

The civil servant explained that the logic for regulations increasing was ostensibly financial. For example, he explained that an extension of 'the probationary period' of NRPF from two to five years before a migrant could apply for settlement (and restricting access to welfare) was founded on the belief that the government should not be expected to 'subsidise family life brought in from elsewhere'. Austerity was a driver too, with cuts affecting citizens and new migrants alike, in a context where 'sacrifices were being made across the board'. Policy changes reflected growing expectations from the government that migrants should not expect rights, but be prepared to meet responsibilities: 'to stand on their own two feet and make a contribution to society'. By restricting entitlements upon entry, he justified, 'prevention is better than cure. Here the aim is for a properly controlled migration system, which is clear from the outset' (see Home Office 2011).

Local implementation and the development of irrational rationality

Complexity and arbitrary outcomes

Local implementation of regulation revealed a picture at odds with the Weberian view of the fair and neutral state offered by the Home Office official. Rather than providing clarity (Eggebø 2013) I consider now how the bureaucracy of these regulations fuelled irrational rationality, where the complexity of rules was experienced as baffling and led to arbitrary outcomes and hypercorrection.

It was clear that only in limited domains (e.g. social housing) did practitioners consider the law to be straightforward. A housing operation manager in Reading for example explained about housing, 'if you don't have the right immigration status, you can't access the service'. In most sectors, it was less clear-cut. Interviewees reported that service-providers working in GP surgeries, job-centres and further and higher education institutions struggled to interpret the complex rules around immigrants' access to services. The majority of interviewees described instead a regulatory quagmire, complaining of deeply complicated rules, dense explanations and regular changes. The rules appeared to demand specialist knowledge of practitioners, for them to be able to understand and apply regulations correctly.

This point is exemplified through reference to access to funding for post-compulsory education. An expert from a national education think-tank explained for example that 'the rules change every year and are incredibly complex'. Admissions tutors had to interpret intersecting eligibility rules coming from multiple sources including immigration, educational arm's length bodies and job centres. The interviewee explained:

> I have yet to find a[n education] provider that fully understands them. The example I wanted to give you was that of the Skills Funding Agency rules. [These] are overlaid of course by the UKBA[10] rules so that ESOL[11] providers have to interpret the immigration status of their prospective learners, and *then* they have to interpret the eligibility for funding regulations for a prospective learner. And it's entirely possible as well that they may –if that learner was referred through the job centre, or the provider thinks that learner could be referred through a job centre– they *then* overlay that with a *third* set of rules - which are the *JobCentre plus* eligibility rules. So there are three possible sets of guidance.

Frontline staff had little guidance in traversing this intricate maze of regulations when making eligibility decisions. Unsurprisingly, this led to arbitrary outcomes for migrants rather than results based on efficient, predictable calculations (see also Gupta 2012). The education spokesperson explained that migrant learners with the same status across the country would likely receive different decisions on their eligibility for educational course funding, with some people unfairly refused access. She described one regional meeting of three education providers, where she had witnessed every provider arriving at a different interpretation of one migrant's eligibility.

Four interviewees at women's charities reported similar experiences in relation to access to welfare, describing how some migrant women experiencing domestic violence were incorrectly refused welfare benefits in job-centres, despite their eligibility for the DDV concession. All agreed the concession itself was 'fantastic' and could be 'pretty efficient', but a study from the Department of Work and Pensions (Lloyd and Mulraney 2013: 16) confirms the advisors' observations that practice in Job-Centres was patchy. It states, 'awareness and understanding of the DDV concession was limited…a large number [of interviewees] had either not read or did not recall reading this part of the guidance, and few demonstrated a detailed knowledge of it'. A legal advisor in a migrant women's charity described this ad hoc awareness, stating, 'We've heard pot luck really, as some *Jobcentre plus* people know about it, some don't. Some are great, some will just turn the women away'. She continued, 'in [one London borough] there was a *Jobcentre plus* that was excellent, but in other areas of London women would be told, "well we've never heard of this, you're *no recourse to public funds*. Go away"'. In another example, an advisor in a women's rights' charity explained the case of a woman separated from an EEA National who had received a letter from the Inland Revenue saying that she had no recourse to public funds and was liable for deportation. The advisor

explained, 'in fact that information was wrong - and that was coming from the central government agency'. Those wrongly refused face a difficult choice between enduring further violence or leaving their sponsor and losing their legal status and rights.

Such examples were not isolated cases, and similar instances of limited knowledge and misunderstandings of regulations were found across multiple sectors of education, healthcare and welfare provision. Echoing Gupta's (2012) observation that 'bureaucratic action repeatedly and systematically produces arbitrary outcomes in its provision of care,' here too it is the case that rational systems produced perverse outcomes.

Attrition, hypercorrection and unintended consequences

The interpretation of irrationality of rationality is further supported in observations of other practices arising in workers' administration of regulations. Observers from NGOs described how they were aware of gatekeepers applying attritional tactics, where additional, unnecessary conditions for migrants to access services were imposed, and where practitioners thought they were doing their job well when they did so. I found cases where even when regulation was simple, frontline staff made it more complicated by hypercorrecting decisions. For example, I was told that migrants were asked to provide further information to prove their eligibility for services, particularly healthcare, generating unnecessary bureaucratic impediments or hoops for them to jump through. A voluntary service worker working with healthcare professionals in Birmingham explained:

> we found a lot of confusion, particularly amongst frontline health professionals not
> understanding what people's health entitlements are, particularly around primary care.
> And actually the situation around primary care is very straightforward, but people

believe it to be very complicated. And there's been a tendency to refuse everybody, to demand people present passports they don't necessarily need, they actually *don't* need to provide.

Other examples of additional impositions were of GP receptionists asking migrants to get their partners to amend utility bills to include the joining spouse's name. Sending migrants away repeatedly to meet these added demands worked as a form of attrition, and was frustrating since on many occasions, there was not a genuine reason to do so. An advisor in Birmingham commented, 'no surgery in [local area] is full and they're all supposed to take patients. But sometimes they refuse if they [migrants] haven't got paperwork. But they're not supposed to ask'.

Requests for unnecessary evidence placed a burden on new migrants if they did not understand the request and in other cases, were unable to meet the conditions. An advisor in Reading explained, 'How can a person who is staying in a room in a [shared] house produce a utility bill for a GP? It's very difficult'. Satisfying requests could be technically impossible, especially when front-line workers requested outdated documents that were no longer in circulation. An NGO advisor in Birmingham gave the example of how staff in job-centres would ask refugees for a document known as the NASS35, a form documenting residence and when asylum support ends provided by the Home Office (UK Visas and Immigration). Advisors mistakenly insisted on seeing the document, despite it not always being issued. This created frustration, as the advisor explained, at:

the DWPs insistence on people presenting the NASS35 document and routinely not processing people's claims for welfare benefit until they provide a NASS35 document. They [Home Office] no longer do that [provide a NASS35]. That payment

no longer exists, so it serves no purpose at all! And yet they insist that people present it before they even look at processing the claim. It was never a barrier to processing the claim anyway; it just told you how much extra money the person should be entitled to. That's a very typical [case]…

In some cases, accessing one benefit often acted as a passport to other services, so refusals created a domino effect of further inconveniences. Four advisors described how some migrants faced difficulty getting access to national insurance numbers (NINOs). Since this was a prerequisite to working in the labour market and claiming benefits in the UK, the delay could have knock-on impacts that could spiral disproportionately beyond the original effect. An advisor at a voluntary agency explained, 'Once a client is having difficulty getting their national insurance, then they can't access anything anywhere at all. From housing to seeking a job, everything would be affected'. Another NGO advisor in Reading explained how some EEA Nationals had experienced delays of six to eight months in getting access to child benefit through not getting a NINO, despite their legal entitlement. Two advisors from refugee charities also explained how refugees experienced delays transferring onto mainstream benefits after asylum support, placing them at risk of destitution. The advisor explained:

we've had…people losing their passports and if you send your passport off and it's there for months and months and months. And you start getting into visa problems because you haven't got your passport anymore.

The evidence suggests a production of irrational rationality, as the 'clear and fair system' envisaged within the Home Office produced a range of unfair outcomes in practice. Misunderstandings and attritional strategies at the frontline had counterproductive and domino effects, which in the long-run, increased staff workloads and could lead to more

severe exclusions for migrants than in law. Those consequences included destitution and migrants falling into illegality, outcomes that by no stretch of the imagination would meet the original aim of 'reducing the burden' of immigration.

'Teach us our own rules': governmentality-effected neglect

The analysis thusfar shows the operation of irrational rationality, where worse exclusions are created in practice than dictated by law. In this section, I show the system-wide acquiescence to this irrational rationality. Within a broader context of the 'hostile environment', I show how a combination of factors operates at a range of scales (from individuals to workplaces as well as through the wider policy and regulation environment) to tip the balance away from a public-facing accountability towards system-wide indifference to mistakes. A similar observation was made in the Windrush review, which highlights that even when failings in the system were known, opportunities to act on them were simply ignored (NAO 2018). In this section, I examine how this occurs through what I term as 'governmentality-effected neglect'.

I advance my claim through considering another example of (mal)administration of restrictions. A voluntary sector worker in an NGO in Birmingham explained how, in a curious turn of events, he had been invited into a *Job-Centre Plus* to give the staff training on their national government department's (the DWP's) *own rules*. He explained:

> I was in a *Job Centre Plus* once – I won't name which one – and I went there to advocate for a client […] And at the end a few managers came around just to learn about what we were saying, and said, 'can you come back and give us training?' And

I said 'well I can't really, I mean this is your own [line of work]'. So therefore the person…apologised actually, [and said] 'we do these mistakes every day, we need help, we need training'.

The example was not a standalone case; it was clear that the NGO sector played a significant role correcting mistakes, since they had become knowledgeable about 'the nooks and crannies' of the regulations (as described by an advisor in Birmingham). Five NGO participants referred to how they educated public sector workers, as one put it, 'to develop a consistent base of knowledge'. The example however is particularly important since it provides insight into the mentalities behind administrators' bureaucratic practices. It reveals that in some cases workers were not aware of the incorrect decisions they were making, and might even be embarrassed about the mistakes they made. Rather than exemplifying 'street-level bureaucracy' where public servants held agency in operating discretion at local-level (Lipsky 1980) their apologetic admission and request for help in the example above revealed limited confidence in workers' understanding.

The irrational rationality described in the previous section can be understood then, at least partly, as a consequence of workers' insecurity. Jones (2013) observes with reference to local government workers that those who are operating governmentality are also often subject to it themselves. In this case, workers were aware that their decisions around eligibility might be scrutinised, yet they had no clear means of checking the validity of their decision-making. For example, staff in further education were audited on their funding decisions, with financial consequences for the organization –and perhaps consequences for individual members of staff– if they made incorrect decisions on eligibility to funding. A local authority official in Reading explained:

we are audited to death by the Skills Funding Agency. So if we can't prove things like

National Insurance Number, date of birth, things like that, we would have that money

taken away from us. So it is very…it is an issue.

Under these conditions, it was more comfortable for service-providers to deny services rather than allow migrants' access, considering that if, due to their misunderstanding, this might be later exposed as the wrong call. Imposing false stringency in decision-making and overzealous guarding of public goods arose as a personal response to the absence of clear guidance. Hypercorrection was a means for workers to quell their own feelings of uncertainty, and yet still to be seen to be doing 'a good job'.

In addition to workers' limited confidence within an audit culture, the data suggested their working conditions, drastically shaped by austerity and public services' contraction, contributed to this climate of neglect. With services subject to stringent budget cuts, reduced capacity and higher workloads, workers were already overstretched (Hastings et. al. 2015). Researching migrants' eligibility was time-consuming. As a local government official in Reading explained with reference to assessing FE funding eligibility, 'it takes time out of what most providers think of as teaching'. In health services too, staff are experiencing rising workloads and there is concern about the impacts on staff of administering the health surcharge (Department of Heath 2017:22). Understanding legal jargon for eligibility judgements required a heavy time investment for workers, which many could ill afford in pressurized working conditions. Moreover, there was little perceived need, given sanctions seemed to apply only if workers granted access incorrectly, not refused it – and the worst consequence facing a worker more likely would be embarrassment if an advisor exposed the mistake.

A second aspect compounds the system-wide acquiescence to irrational rationality: in encounters with public services, migrants were the weaker party. They lacked awareness of their entitlements (Morris 2012) or had limited language fluency to question decisions, especially given the technical jargon involved. Practical barriers of time, expenses or confidence to return repeatedly to job centres and surgeries also left mistakes unchallenged. The voluntary sector offered some chances for redress, but even there, severe funding cuts meant workers had competing priorities for their time. Moreover, there is also a very real possibility that racism was operating in encounters (Jones 2017). Back et. al. (2012) show that social institutions engender white privilege, featuring implicit bias and racialisation. In this study, two advisors suggested that TCN migrants were 'just automatically assumed' by frontline workers to be ineligible for access to welfare. Migrants' legal status was incorrectly 'automatically read' from people's bodies and nationality. This could help explain why advisors reported that TCN migrants joining EEA Nationals often experienced the worst exclusions, despite often being eligible for benefits. A legal advisor gave an example of a Nigerian client married to a French man, explaining:

> She should be treated as if she is French, exercising her treaty rights in this country. But often I think the local authority or the Job Centre Plus or wherever she goes to seek help or financial support will see her Nigerian passport and will say 'oh you must be *no recourse to public funds*, I'm sorry we can't help you'.

Anderson (2013) and Mayblin (2017) argue that postcolonial legacies remain significant even amid 'neutral', deracialised political and policy discourse around migration control. Racialized and unequal encounters, combined with workers' own insecurity and internalisation of responsibility in contexts of audit and austerity, powerfully combine to

generate a collective culture of indifference to unjust outcomes. This, I suggest, reveals governmentality-effected neglect.

Conclusion

The article has drawn attention to latent exclusions operating through the bureaucracies of multiple realms of state services and benefits - of further education colleges, GP surgeries and welfare offices. It described a set of complex regulations that regulate membership privileges according to principles of 'civic stratification' (Morris 2003). These form part of a governmentality of immigration, operating via rules dispersed in domains far from the original immigration function, where the state can connect its aims around immigration 'to a diversity of forces and groups' that already try to administer individuals' lives (Rose et. al. 2006: 87). Rules come from multiple sources, and change regularly as old conditions are deleted or adapted. Actors outside the sphere of immigration control are entrusted to implement regulations, but against a backdrop of accountability and austerity, many did not feel confident, trained or informed enough to do so. Bureaucratic reason was dislodged through hypercorrection, which was caused by personal uncertainty and limited knowledge. The fear of getting it wrong led to a wider and systematic 'erring on the side of caution'. Deep in the heart of 'rational' administrations, an 'irrational rationality' persisted (Ritzer 1983) to the extent that administrators needed educating on their own rules. Reinforced by wider conditions of public sector work and implicit racialisation, the result was an indifference to do anything about it.

The research has conceptual, political and methodological implications. Conceptually, bringing together irrational rationalities with governmentality expands the explanatory power of both concepts. It shows how irrational rationality is shown to operate at a variety of levels:

through policy that produces outcomes far from its intended aim, through misinterpretations of complex rules and through hypercorrection. It also shows how governmentality accomplishes the same ends not only through wilful technologies of control, but through apparently 'accidental' byproducts of these 'irrationalities of rationality' (Ritzer 1983). The article demonstrates a collective metaphorical 'shrug of the shoulders' and discharging of the state's duty of care, leading to perverse outcomes where 'failings' ironically support the original aim of the state and there is no impetus to challenge those outcomes. Rose et al. (2006) posit that governmentality is contingent and invented. However, the true extent of that creativity is revealed in this case, when power operates even through irrationality and neglect: where illogical practices, and inaction rather than action, drives outcomes complicit with the government's aims.

There are also practical and political implications from the analysis. There is a clear need for streamlining and simplifying of eligibility rules, as well as the provision of training for public service workers. This is especially significant given the fact that migrants' access is likely to be complicated further[12] following the Brexit negotiations. More profoundly the analysis advances a critique of the nature of public services, which ultimately has implications for wider society. Failings in legal rational processes and unresponsive public services are factors that undermine trust in institutions, fuelling populism and driving further demand for the regulation of migrants in the first place. I have shown that the effects of poor practice can be long term social exclusion, and even destitution and irregularity. This does little to dispel sentiments of migrants as a burden to the welfare state and society (Schmidtke 2012). In this way, there are only negative consequences for society and politics.

Finally, I return to the methodological implications of the study, especially the need to be alert to the substantive issues lurking in the 'dead zones' of bureaucracy (Graeber 2012). When wading through complex terminologies of migrant entitlement devoid of emotion and voices to listen to, my sociological eyes glazed over. However, engaging in these 'dead zones' (Graeber 2012) was imperative for a rich sociological understanding, since understanding how exclusion was created practically needed understanding of the finer detail of policies and regulations. This insight enabled fuller comprehension of the spread of immigration power across diverse governable domains, and awareness of 'the new forms of power, authority, and subjectivity being formed within these mundane practices' (Rose et al 2006: 101). If sociologists consider policy to be beyond the remit of the discipline, we close our eyes and ears to its effects. Dealing with the details of paperwork and bureaucratic regulation certainly can 'repel the imagination' of social scientists; nevertheless as Graeber (2012: 123) points out, '[…] if we ignore them entirely, we risk becoming complicit in the very violence that creates them'.

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Notes

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2. Since April 2015, the NHS introduced a surcharge for all overseas visitors (including migrants, visitors and former residents) to gain access to non-emergency services.

3. As part of the health surcharge, 'Ordinary residence' was qualified to include only those with 'Indefinite Leave to remain'.

4. Intra-EU migrants are generally more privileged than TCNs, although are becoming subject to more aggressive restrictions (O'Brien 2015). TCNs joining EU citizens enjoy 'derived rights' but are vulnerable by their position at the fringes of EU free movement law and immigration law (Shaw, Miller and Fletcher 2013).

5. Benefits prohibited to those with NRPF include: income-based jobseeker's allowance; income support; child tax credit; universal credit; working tax credit; a social fund payment; child benefit; housing benefit; council tax benefit; council tax reduction; domestic rate relief (Northern Ireland); state pension credit; attendance allowance; severe disablement allowance; personal independence payment; carer's allowance; disability living allowance; an allocation of local authority housing; and local authority homelessness assistance (https://www.gov.uk/government/publications/public-funds--2)

6. See: https://www.gov.uk/visas-when-you-separate-or-divorce/apply-stay-uk)

7. Spousal migrants get three months' access to benefits while they make a fast-tracked application for ILR. The DDV concession followed lobbying from academics and voluntary organizations (Anitha 2010).

8. Aimed at clearing the backlog of undecided asylum cases from 2006.

9. Those affected share the same rules as British citizens for Family Migration, needing to meet the income requirement and having joining children for example having less eligibility to services and benefits than those joining refugees.

10. UKBA was an agency of the Home Office, responsible for border control. It was abolished in 2013, following complaints upheld by the Parliamentary Ombudsman about incompetence and poor service.

11. English for speakers of other languages.

12. Suggestions raised include that emergency services would be restricted for some migrants (Department of Health 2017).

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