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RESEARCH ARTICLE

Conditionality, discretion and TH Marshall's 'right to welfare'

Ciara Fitzpatrick, Gráinne McKeever and Mark Simpson*

School of Law, Ulster University, Newtownabbey, UK and Law Centre Northern Ireland, Belfast, UK; School of Law, Ulster University, Newtownabbey, UK; School of Law, Ulster University, Derry-Londonderry, UK

Abstract

In an era of increasing interest in and concern about destitution in the UK, the leading studies place social security problems among the leading causes. This suggests that destitution is a failure of social citizenship, with social protection systems unable or unwilling to underwrite the guarantee of a modicum of economic welfare that, according to Marshall, forms the essence of the citizen's social rights. This article documents how the establishment of a comprehensive welfare state in the mid-20th century has been eroded by a series of social security reforms that have turned the focus back on local government and the voluntary sector for the support of the 'undeserving' migrant and unemployed poor. Empirical findings from a major study of destitution in the UK illustrate how the fulfilment of social 'rights' is becoming dependent on knowing where to seek support, having access to the right gatekeeper and enduring social stigma. The authors consider the compatibility of a welfare state characterised by strict conditionality, decision maker discretion and gaps in the safety net with the Marshallian 'right to welfare'.

Keywords: social rights; citizenship; welfare state; destitution; conditionality; discretion

Introduction

Although organised systems of poverty relief in the UK predate even the earliest Poor Law legislation in 1601, these were neither comprehensive nor rights-based (Marshall, 1981a; Charlesworth, 1999). The provision of relief, as much a church and charitable function as a state one (Stoker, 1994; Shiels, 2015), was geographically inconsistent and, for the able-bodied poor, focused as much on deterrence of uptake as facilitating access. A series of reforms between 1906 and 1948 altered this dynamic, with the state focus shifting towards citizen welfare. This ushered in a new understanding of citizenship as conferring rights in the civil, political and social realms (Marshall, 1992; Bew, 2016). These 20th century reforms have been defined by Marshall, the leading theorist in the area, as creating the social rights of citizenship, which include a 'right to welfare'¹ so that each member of society has at least a right to "a modicum of economic welfare and security," ideally to enjoy "the life of a civilised being according to the standards prevailing." (Marshall, 1992: 8). Having advanced throughout the greater part of the 20th century, there are signs that this right to welfare is in

* Corresponding author. Email: m.simpson@ulster.ac.uk

¹ The term 'welfare' refers to the individual's ability to attain a minimum standard of living. Means tested benefits for the relief of poverty (sometimes described as 'welfare') are referred to by name or collectively as 'social assistance'.

retreat. Local, discretionary and charitable welfare systems are again playing a significant role in enabling the least well off members of society to meet their essential needs, which means individuals' ability to access services may depend as much on resources and eligibility criteria in a particular geographic area as on need. Dramatic growth in food bank use is the best publicised example of this tendency (Lambie-Mumford, 2017), but increased reliance on discretionary housing payments and the fragmentation of other discretionary support systems have also received some attention (Meers, 2015; 2018; Work and Pensions Committee, 2016; Aitcheson, 2018).

If it has sometimes been imagined that 'real poverty' had been eliminated from advanced capitalist societies (Besharov and Call, 2009), any such notion should be dispelled by the finding that up to 1.5 million people in the UK were unable to afford their most basic survival needs at some point during 2017 (Fitzpatrick et al, 2018). Destitution tends to flow from the interaction of various legal, social and financial issues (McKeever et al, 2018), but social security problems are heavily implicated. This article examines how trajectories in social security policy, particularly the role of conditionality and discretion therein, have contributed to the return of destitution and the erosion of the legal and moral right to welfare in the 21st century. Part 1 outlines the developments between 1906 and 1948 that led Marshall to conclude that citizenship had gained a social element, the more incremental progress thereafter from discretionary systems towards a legal right to a minimum income, and the change in trajectory from the end of the 20th century. Part 2 then looks at how this shift has impacted upon claimants on the ground, drawing on qualitative research with 41 participants identified as currently or recently experiencing destitution. Gaps in coverage, inadequacy of benefit, conditionality, exercise of discretion and difficulty accessing one's entitlements are shown to play a role in reducing individuals to destitution. As outlined in part 3, this results in dependence on local government and charitable services characterised by patchy coverage, inconsistent levels of support, access problems, an even greater role for discretion and high levels of stigma. Part 4 then interrogates the implications for the 'right to welfare', as understood from both a legal and a moral perspective. The authors conclude that Marshall's advocacy of citizenship's social element remains a valuable tool in an era when public policy seeks to diminish the right to welfare.

The empirical findings discussed in this article flow from a wider study of destitution in the UK, conducted at Heriot Watt University (see Fitzpatrick et al, 2018). Users of crisis services at 16 locations across the UK first completed a survey exploring incomes, ability to access essential needs and experiences of destitution. 41 of the participants in this phase, whose responses identified them as destitute in accordance with the consensual definition previously developed for the Joseph Rowntree Foundation (Fitzpatrick et al, 2015), subsequently took part in qualitative interviews. The authors' analysis of this data initially focused on the relationship between destitution, justiciable problems and the use of legal advice. In practice, and in common with previous research on the legal needs of disadvantaged populations (Pleasence et al, 2004), it was difficult to disentangle specifically legal issues contributing to or exacerbated by destitution from the cluster of justiciable and non-justiciable problems that individuals experiencing severe poverty tend to experience. Social security emerges as one of the key legal issues facing destitute households (McKeever

et al, 2018). This, along with the very existence of 1.5 million destitute people, raises the questions this article seeks to address about the adequacy and dependability of the right to welfare in the UK.

The advance and retreat of the right to welfare?

The Marshallian right to welfare emerges alongside social citizenship in the first half of the 20th century. "The relief of the poor, the care of those who are unable to care for themselves" may always have been "among the unqualified objects of public duty," (Abbott, 1940: 74) but this duty was not previously matched by an unambiguous right to protection from poverty on the part of the citizen. Such relief as was provided for under the Poor Law could be meagre, residual and predicated upon onerous obligations to meet one's own needs if at all possible, and to forfeit one's liberty in return for any support received. By forfeiting their civil rights in this manner, paupers "ceased to be citizens in any true sense of the word." (Marshall, 1992: 15) Only with the extension of the franchise to a majority of adult males in 1884 and to all adult males and most women over 30 in 1918 – adding to the electorate those whose exposure to social risk was greater – would a critical mass of voters exist to demand a comprehensive, rights-based, non-punitive and less stigmatised system of protection against poverty (Marshall, 1992: 15, 32). The political and policy developments that led to the creation of the welfare state completed the trinity of civil, political and social rights that Marshall conceptualised as civil, political and social citizenship, traced as developments in the UK over the 18th, 19th and 20th centuries. Whether citizenship consists only of these three elements (Turner, 2001; Lister, 2003) and whether this teleological conception of citizenship applies to societies other than the UK (Mann, 1996), even to the UK itself (Dean, 2014), or at least to women within the UK (Bottomore, 1992; Rees, 1996), has been questioned, although Marshall is far from the first theorist whose 'ideal citizen' is distinctly male (Lister, 2003). Nonetheless, it is true that the first half of the 20th century was the critical period for the development of social rights in the UK.

The process of putting in place a "guaranteed minimum" of income and services began with the tentative reforms of the post-1906 Liberal governments (Marshall, 1992: 32). These introduced contributory sickness and unemployment benefits, the former covering most employed wage-earners, the latter specific industries only, and retirement pensions of gradually increasing coverage and generosity. This represented a first step towards a modern welfare state, but with the focus largely on insurance-based benefits those who worked in uninsured industries, had insufficient income to make contributions or were not in paid employment were excluded. The 1930s depression prompted the introduction of a national, tax-funded, non-contributory unemployment assistance benefit, albeit that considerable official discretion remained as to the amount of relief to be awarded.

A *right* to a minimum standard of living began to take shape after World War 2. In arguing that "a revolutionary moment... is a time for revolutions, not for patching," Beveridge's (1942: para 7) report on the future of social insurance captured the mood of a public ready for a new conception of citizenship (Bew, 2016). This would include a social element encompassing "the whole range from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a

civilised being according to the standards prevailing in the society.” (Marshall, 1992: 8) Key features included family allowances – a contribution towards the additional costs associated with having children; a more comprehensive system of national insurance covering all employees except married women; and national assistance, a system of means tested support for those without insurance cover.

As national assistance gave way to supplementary benefit and later income support, the trajectory of social security would be towards forms of poverty relief based more explicitly on a legal right to assistance, although discretion has never been – perhaps can never be – completely eliminated. Supplementary benefit decision makers could reduce or withhold payments in undefined “exceptional circumstances,” while the inadequacy of headline benefit rates promoted reliance on one-off payments, awarded according to a vast, growing and often ignored set of guidance (Smith, 1975; Donnison, 1982; Prosser, 1977; Stewart and Bland, 1987). Efforts to increase clarity and consistency in the 1980s also had the effect of restricting eligibility and increasing conditionality (DHSS, 1979; Mesher, 1981; Lynes and Drabble, 1989). The introduction of income support meant more “clearly defined rights,” more consistently delivered for UK citizens (Walker, 1986: 93). Conversely, it marked the beginning of non-nationals’ exclusion from mainstream social assistance, with affected individuals forced back onto a complex web of residual, often discretionary, support depending on immigration status, age and health. The existence of different schemes for people in subtly different circumstances has too often resulted in the “lamentable state of affairs” when it is unchallenged that an individual should be supported, but the courts are required to determine which public body should pay (*RW v Sheffield City Council* [2005]: 26; *R (on the application of S) v Lewisham LBC* [2008]; *R (Westminster City Council) v Secretary of State for the Home Department* [2001]).

The limitation of some non-nationals’ social rights from the end of the 20th century can be viewed as a rehearsal of the ‘benefit tourism’ panic that would play a role in critiques of European integration (Larkin, 2009; European Council, 2016). Lord Hoffmann suggests:

Voters became concerned that the welfare state should not be a honey pot which attracted the wretched of the earth. They acknowledged a social duty to fellow citizens in need but not... to the world at large.

(*R (Westminster City Council) v Secretary of State for the Home Department* [2002]: 20-21)

This observation echoes sentiments in contemporary political discourses (Billings, 2002). However, the extent of the state’s duty to support the ‘wretched’ among its own citizens has seldom been uncontroversial (Golding and Middleton, 1982; Somers and Block, 2005) and this debate has seen a resurgence in the 21st century (Garthwaite, 2011; Wiggan, 2012). This has been marked on one hand by the diminution of the support available to working age claimants and more restrictive eligibility criteria for certain benefits, on the other by an increase in the social security authority’s ability to impose conditions for the receipt of, make deductions from and suspend payment of benefits. A renaissance of discretion has been driven by changes to housing benefit – the reduction of the local housing allowance, social sector size criteria (or ‘bedroom tax’) and household benefit cap – and increased

conditionality. The Department for Work and Pensions (DWP) has argued that claimants whose housing benefit no longer covers their rent should take steps to increase earned income, negotiate reduced rent with their landlord, move to cheaper accommodation, reduce non-housing expenditure or seek child maintenance (SG [2015]). Given that these steps are likely to be “simply unrealistic” for many claimants (SG [2015] para 202), the fallback option is to apply for discretionary housing payments (DHPs),² the “panacean payments” to which government has looked to fill many of the holes in the safety net created by reform (Meers, 2015; *Carmichael v Secretary of State for Work and Pensions* [2016]). By definition, DHPs are not available as of right, no matter how impossible a claimant might find it to mitigate a shortfall in housing benefit. Decisions may take into account numerous indicators of resources or desert, while awards may be subject to various behavioural conditions and are seldom long-term even if the applicant’s circumstances are unlikely to change (Meers, 2018). In November 2014, 34% of social tenants affected by the under-occupancy penalty had not even heard of DHPs, only 29% had applied for one and only 36% of applications were successful (Clarke et al, 2015).

The conditions for receipt of mainstream benefits – universal credit, jobseeker’s allowance and employment and support allowance – are not, at face value, particularly discretionary. These are defined by the category of claimant – jobseeker, limited capability for work or limited capability for work or work-related activity – and the penalty for non-compliance specified. However, the finer details of the claimant commitment, assessment of whether there was good reason for non-compliance and the award of a hardship payment following a sanction all involve the exercise of discretion on the part of the adviser or decision maker, subject to extensive guidance (DWP, 2013/2018).³ Sanctioned claimants who are refused a hardship payment, individuals who experience delayed payments or difficulties with the application process and those excluded from the system may be forced to rely on local government or voluntary sector welfare services, under which there is often *no* right to assistance. In these circumstances, discretion plays an even greater role and there are glaring geographical inconsistencies in provision (Fitzpatrick et al, 2018; McKeever et al, 2018). Local authorities can be asked to review decisions on DHP and discretionary assistance awards, but there is no right of appeal to an independent adjudicator (*EA v Southampton CC* [2012]; DWP, 2018; Birmingham City Council Benefit Service, undated).

These developments beg the question whether social citizenship is entering a post-Marshallian phase, or returning to a pre-Marshallian form; even whether, as Hoxsey suggests of Canada, citizenship is taking on an individualistic and marketised form shorn of its social element (Hoxsey, 2011). Such a conclusion does not inevitably flow from a reduction of generosity, renaissance of discretion or increased conditionality. Marshall’s definition of social citizenship is inherently flexible, if not ambiguous. As Dwyer (2010: 39) notes, “there is no overarching universal principle that emphatically defines what citizenship grants.” The social element can consist of anything from a “modicum of economic welfare” to the

² Discretionary Financial Assistance Regulations 2001 no 1167

³ There are 257 pages of guidance on universal credit sanctions, including 93 on the interpretation of ‘good reason’

resources necessary for full social participation and inclusion. Whether the minimal or maximal option is pursued is, presumably, a political decision, although there must be a point at which resources become so constrained that even a modicum of welfare is unattainable.

Turning to the role of discretion in contemporary social protection, it must be remembered that the conception of a 'right' as implying something laid down in law and judicially enforceable is not the only way of understanding the term. Marshall recognised that the technically discretionary awards from the National Assistance Board were "not strictly a legal right," yet felt that the scheme provided sufficiently comprehensive and dependable coverage to conform with "the idea that the granting of assistance is not an act of grace, but the satisfaction of a right." (Marshall, 1981b: 89) The Supplementary Benefits Commission would turn against discretion following publication of 'The right to welfare' because of its inherent complexity, the scope for decision makers' own "moral judgments" to shape decisions on eligibility and the attendant threat to claimant confidence in the scheme as a rights-based system (Supplementary Benefits Commission, 1975: 12, cited by Marshall, 1981b). However, Marshall argues that "the right to have one's claim assessed by the exercise of discretion in accordance with current policy" is "within the category of rights," the crucial consideration apparently being whether there is an opportunity to appeal the decision (Marshall, 1981c: 96). Prosser suggests that this emphasis on the moral right to welfare was consistent with a non-legalistic conception of welfare rights that dominated until the 'rediscovery of poverty' in the 1960s (Prosser, 1977).

There is also ambiguity around Marshall's stance on conditionality. As reformists accused mid-20th century welfare states of fostering a passive citizenship bereft of responsibility (Dwyer, 2004; 2016), so the Marshallian perspective has been cast as a mere "theory of entitlement" that neglects citizens' responsibilities (Turner and Rojek, 2001: 202). This conclusion is questionable. Certainly, Marshall (1992: 41) writes that "The claim of the individual to welfare is sacred and irrefutable and partakes of the character of a natural right." Yet a few lines later he expressly recognises the need to "harmonis[e] individual rights" with duties to "the common good."

As with the right to welfare, Marshall does not necessarily understand this individual duty to the common good in a legal sense, but he does recognise a moral duty to work as part of a wider "responsibility towards the welfare of the community." (Marshall, 1992: 41) The Marshallian view, then, seems potentially compatible with Plant's (1989: 125) construction of social citizenship as "an achievement rather than a status," with individuals required to contribute to a society "through work or other socially valued activities" in order to have a claim on its resources.

Given that most people will ensure their own economic welfare through employment (Marshall, 1981b), Watts et al argue that a degree of paternalistic "coercion into 'positive' citizenship" (Larkin, 2011: 385) may be legitimate if it helps them to do so (Watts et al, 2018; Watts and Fitzpatrick, 2018). In the context of social security, the question is whether such measures support or undermine the right to welfare. Evidence in the next two sections suggests that, for the research participants, the contemporary social security system erects

barriers for citizens who are seeking to realise their right to economic welfare and to social, political and economic participation in society (Harris, 2000; Lister, 1989). The safety net has given way to the stick.

Lived experiences of the 'right to welfare' in the 21st century

As noted above, while Marshall emphasises the importance of the social rights of citizenship, his work is not especially prescriptive about what standard of living the state ought to guarantee. The aspiration to a social security system that guarantees all citizens the resources necessary to “share to the full in the social heritage and to live the life of a civilised being” has always remained just that. The notion that social assistance “should be sufficient to allow its recipients to participate in the life of the community of which they are part,” based on a relative conception of poverty, has seldom had any real influence on the setting of benefit levels (Walker, 1986; Walker and Church, 1978; Davis et al, 2018). With 1.5 million people in the UK experiencing destitution during 2017 (Fitzpatrick et al, 2018), even the more modest ambition that a “modicum of economic welfare” should be guaranteed is not universally realised. If certain migrant groups have long been faced with “a law and policy framework that deliberately engineers poverty and destitution” (Harvey, 2015: 595), the findings of the *Destitution in the UK* studies underline York's (2017: 322) observation that:

Destitution is no longer confined to migrants (if it ever was). With industrial numbers of claimants refused disability benefits under the fitness to work procedures, and those 'sanctioned' under the benefits system, a similar level of hidden destitution is spreading through the general population, and even becoming normalised.

This and the subsequent section draw on a set of qualitative interviews with 41 individuals, who (on the basis of responses to a survey several months previously) had been identified as destitute in accordance with the consensual definition devised by Fitzpatrick et al (2016). That is, within the month prior to completing the survey they were unable to access two or more of adequate shelter, food, heating, lighting, clothing or toiletries, or had had an income too low to do so without charitable or familial assistance – below £70 per week for a single adult, £100 for a couple and £20 per child. The present authors' analysis of the data formed part of a far-reaching investigation into the links between destitution and administrative, civil and criminal justice problems (McKeever et al, 2018). While each individual's story revealed a complex, unique cluster of legal and non-legal problems, for UK citizens in the study social security problems – flowing from policy or from the administration of the system – frequently tipped households that were already struggling into destitution. Issues included lack of awareness or difficulty in accessing potential entitlements, delayed payments and sanctions. Sometimes these problems appeared to arise from failures of communication or the exercise of decision maker discretion to the detriment of the claimant, in some cases arguably incorrectly. Data from claimants alone cannot demonstrate whether this reflected individual errors or a systematic attempt to “fob people off from benefits” by creating an “inhospitable environment” in which the public are ignorant of their rights – an accusation made in the 1980s and echoed in recent media exposés (Loveland, 1987; Wintour, 2013). In any case, the result was destitute individuals and their families

falling back on charitable sources of assistance, where these were available, bringing further problems such as the need for a gatekeeper, rationing of support and stigma.

Interviewees' experiences were not consistent with the Marshallian vision of a "guaranteed minimum" of income and services (Marshall, 1992: 32), sufficient to ensure access to essential needs. Benefits were seen as prone to fluctuation, suspension or termination for reasons that were frequently beyond the claimant's comprehension, that could appear arbitrary and that interviewees often felt ill-equipped to challenge. Others – with or without their knowledge – were not receiving benefits to which they appeared to have a potential entitlement. Lack of knowledge of the complex system frequently lay at the heart of inability to access means of subsistence (Harris, 2013). Awareness of the support that might be available is the first step to realising one's rights, but various interviewees had little idea of the eligibility criteria for, or even the existence of, benefits of possible relevance to their circumstances. This was particularly true of disability- and incapacity-related benefits. Various interviewees with health problems struggled vainly to comply with the work availability and jobseeking conditions associated with jobseeker's allowance, in some cases experiencing multiple sanctions (resulting in further deterioration of their condition) before being told that they might be in a position to apply for employment and support allowance. Others assumed that being "fit for work" meant disqualification from personal independence payment (single male, 50-59, UK national), when eligibility is not affected by one's relationship with the labour market. The quote below illustrates how a little guidance can transform an individual's circumstances – helping the interviewee access emergency help, break a cycle of sanctions by getting onto a more appropriate benefit and ultimately increase his income and escape the benefit cap by applying for a disability benefit.

One of the guys at the Jobcentre said, 'You keep getting sanctioned. I know that you've got health problems and stuff like that. Maybe you should apply for ESA.' When I called up over the phone, another gentleman suggested to me, 'Apply for a PIP to get help out of the situation'... I worked up quite a good relationship with a guy at my local Jobcentre... he told me what was available to me... he went out of his way to help me to make sure I got the help that I needed... a lot of other people were dismissive and left me to rot in the situation.

(single male, 30-39, UK national)

If awareness of a benefit and one's possible entitlement is the first step towards making a claim, then in the event that the application is unsuccessful, or a benefit is reduced or stopped, it is crucial to understand why this happened so that, if appropriate, the decision may be challenged. When adverse decisions are appealed, success rates can be extremely high (80% of all universal credit sanctions to reach tribunal to October 2017) (MOJ, 2017; Webster, 2018), but the number of appeals reaching tribunals is low (0.3% of all universal credit sanctions – Webster, 2018). Many interviewees appeared ill-equipped to challenge the refusal, reduction or suspension of a benefit because their assessment of the reasons was mere speculation. Sanctions, having had something of a media profile, were reached for by some as the standard explanation for *any* reduction of benefit income, however caused. While at least six interviewees had been sanctioned, and several others threatened with sanctions, some described as 'sanctions' issues ranging from a request for more information before eligibility

for child tax credits could be confirmed (female lone parent, 40-49, UK national), to reduced housing benefit or being found ineligible for employment and support allowance (single male, 50-59, UK national) (see also Dwyer, 2018). This could be linked to difficulty understanding benefit-related communications, sometimes because of the complex language used. This could lead to the headline decision being taken at face value or left uncontested because the process seemed daunting.

I got that letter from tax credit saying that they gave me a big reason why they are still making me [replay an overpayment] and said that - oh, something about I couldn't appeal for another 90 days, but the case would only be open for another 30 or something. I just put it in the drawer. It's all really confusing. The way they word their letters and everything, it's so confusing.

(female lone parent, 30-39, UK national)

In other cases, appeals were not pursued because of the perceived futility of doing so. An unsuccessful request for mandatory reconsideration – the requirement that a claimant who is dissatisfied with a decision seek an internal review by the decision making authority before he or she can appeal to an independent adjudicator (SSAC, 2016; Thomas and Tomlinson, 2017) – sometimes appeared to have contributed to this perception. In other cases it simply seemed to contribute to fatigue, with potential appellants unable to sustain enthusiasm for a protracted battle (see Wright and Stewart, 2016). This is in keeping with concerns that the process acts as a barrier to justice, deterring applicants from pursuing their challenge to tribunal, where success rates are markedly higher (NAWRA, 2016; SSAC, 2016).

Participant: I keep saying to the DWP, that I should be on ESA but they won't listen, they wouldn't listen to the appeal or anything. I done that mandatory thing, mandatory reconsideration it's called. I tried that but they didn't want to know.

Interviewer: Did you take it any further than that, have you taken it to a tribunal?

Participant: No, I don't think it's worth it because I won't get anywhere.
(coupled male, 40-49, UK national)

When sanctions were experienced, the suspension of the benefit payment almost invariably resulted from one or more missed appointments at the Jobcentre. While the circumstances were not always described in detail, in two instances notification of the meeting had not been received by the claimant, having been posted to the wrong address or too late to have any prospect of being delivered ahead of the appointment. A further two interviewees appeared to have grounds to argue that they had good reason for non-attendance, which should result in the sanction being set aside (DWP, 2013/2018: Chapter K2: good cause). One had been left with no money for travel following a previous sanction, the other had experienced domestic abuse, mental health problems and financial hardship. The latter also appeared to have strong grounds for a hardship payment: since her rent exceeded her housing benefit by £100 per month, the sanction in principle left her with a *negative* income after housing costs, with no realistic possibility of meeting her own needs for shelter, heat, food, hygiene and clothing. This should bring her within the scope of a hardship payment (DWP, 2013/2018: Chapter L1: hardship). However, none was received and the claimant did not believe she was eligible, although it was unclear whether she had reached this conclusion

independently or following an enquiry. One ironic, although not unanticipated (Wright and Stewart, 2016; Patrick, 2017; Dwyer, 2018), consequence of sanctioning was to increase distance from the labour market, as existing health problems were exacerbated and the struggle for survival took priority over jobseeking.

Coping strategies

Faced with the inadequacy, reduction or loss of benefits, interviewees employed various coping strategies. Some sought to access residual public welfare systems – discretionary housing payments and local authority discretionary assistance – with mixed results. Assistance from charitable sources, relatives and the individual's wider social network was widely used. None of these sources of support is rights-based or offers a dependable source of protection from destitution; none of the empirical evidence explored below suggests that participants had access to the social citizenship standard of a modicum of economic welfare and security.

With rent in excess of housing benefit a widespread problem, various interviewees reported applications for DHPs. Success was far from guaranteed. One woman was unable to receive a DHP while living on her own, but was awarded one after her grandchildren moved in. The award was on a short-term basis even though the grandchildren looked set to stay for the long term, but the interviewee could expect to see her housing benefit increase once a tricky application for child benefit and child tax credits had been resolved, providing evidence that her home was no longer under-occupied. An award seemed less likely when children did not live in the house, even when the applicant's children stayed there some of the time, and awards could be derisory – in one case £1.40 per week compared to a £60 per month housing benefit shortfall. Various interviewees had used or investigated other forms of discretionary assistance, but could be vague about its source, so that it was impossible to say whether it came from the social fund, successor local government schemes, a budgeting loan or elsewhere. Cash advances, white goods or help with energy bills were typical examples. Such schemes were normally a last resort – only contemplated when "I'd probably been without food for three days" (single male, 50-59, UK national). Nonetheless, applicants could struggle to convince the decision maker of the urgency of their circumstances – one was advised to "cut out some of our outgoings" rather than claim discretionary assistance when already using a food bank (female coupled parent, 30-39, UK national). Other reasons for refusal included not having a keypad meter or the sudden closure of a scheme. Support was rationed so that, despite being a public service, discretionary schemes could appear little more reliable than charity.

Most interviewees had received charitable assistance, normally food parcels, sometimes small amounts of money from a church, mosque or temple fund, occasionally larger or regular payments. As with social security, accessing charitable support depends on being aware that the service exists, meeting the criteria and knowing how to access it. Those seeking assistance might also have to demonstrate that they are deserving recipients. Some sources of help were only available to certain classes of people, for instance asylum seekers, ex-service personnel and their families or members of a church. A church "poor fund" used by one participant was reported to have asked her not to reveal that she was receiving support

(single female, 60-69, non-EEA national), raising questions about how widespread knowledge of its existence might be even among the limited pool of potential beneficiaries. Awareness of food banks was high, but some interviewees were not clear how to access the services, notably about the requirement for a referral. This was a potential hurdle even for those who were aware of it: the journey to the food bank could involve trips to a social security office, then an advice service for a referral form and finally to the food bank itself. If these were far apart, transport costs could be a problem. While walking *to* the food bank might be possible for some, "five miles coming back carrying 20 kilos of food isn't fun" (single male, 50-59, UK national). Opening hours could be limited: having been told the wrong times by the referring organisation, another interviewee had to wait two days to receive a food parcel, while soup kitchens were so far away that "by the time I walk there and then have some food and then walk back I'm going to be hungry again" (single male, age not stated. UK national).

Even when there appeared to be no practical barrier to accessing charitable assistance, interviewees could be reluctant to do so. In two cases this was due to awareness that food aid was a scarce resource and the perception that "there's people worse off than me" (single female, 60-69, UK national; female lone parent, age not stated, UK national). More often reluctance was caused by the stigma of dependence on charity, whether this emanated from the person him- or herself, wider society or even those providing the service. Interviewees routinely described feeling embarrassment, like they were "almost begging," on their first visit to a food bank (male coupled parent, 30-39, UK national). Ultimately, most experiences of charitable support were more positive than initially anticipated, with volunteers described as "really nice" (female lone parent, 20-29, UK national), "very generous" (female lone parent, 20-29, non-EEA national) and "diamond" (single female, age not stated, UK national). One reluctant user was reassured to be told: "You're not scrounging, you're out of work, you haven't got no money, we're just offering you some food" (coupled male, 40-49, UK national). Undoubtedly these near-universal expressions of gratitude were sincerely felt, but it did seem that receipt of charitable assistance carried an unspoken obligation to be grateful in a way that rights-based systems such as social security may not. One interviewee observed that "they were really, really lovely, but you feel like bad, like... the little minions of society" and felt there was "no way" a food bank user had a right to negotiate over the contents of a food parcel, even if it included things she did not lack or lacked things she needed (female lone parent, 40-49, UK national).

Some experiences were less positive. One interviewee had felt unable to return to a food bank after an ugly exchange with a volunteer and the manager, prompted by her arrival without a referral. Individuals with specific dietary needs, even when they felt able to raise them, could find that these were not reflected in the contents of their food parcel. Volunteers' strategies for reassuring reluctant users could involve stigmatising others:

Like some lady said there, 'You'd be quite surprised how many people come in here, and they will just take anything and everything that they can get their hands on.' I said, 'I only want what the children need. I'm not coming in here taking more than I actually need.'
She said, 'No, no. I see that, yes.'

(female lone parent, age not stated, UK national)

This kind of differentiation between self and other users was displayed by other interviewees, one of whom reported using soup kitchens “seven days a week” but spoke condescendingly about “the type of clientele that go there” (single male, 50-59, UK national). In other cases the stigma came from society as a whole: “I've heard people talking about, 'I would never use a food bank; that's for beggars' kind of attitude” (single male, 50-59, UK national).

In addition to problems of access and stigma, charitable assistance could suffer from a lack of adequacy. Provision is often rationed, with food banks limiting the amount supplied, the frequency of visits and the number of visits per referral. Interviewees reported that three food parcels in a six-month period was a common limit, but these were often used within three months. This was unproblematic if the individual's finances had improved – for example, the delayed commencement of a benefit payment – but has potential to result in considerable hardship. Sometimes interviewees did not know how long they would have to wait to become eligible again and (unsurprisingly given the embarrassment described) some were reluctant to ask. The contents of food parcels could be inconsistent and, for those with no other resources, insufficient to see them through to the next visit: “the food is supposed to last you for two weeks but you're not allowed to have more than one voucher a month” (single male, 50-59, UK national). Non-food items were even less reliable. Basic toiletries and sanitary products were sometimes included and sometimes absent, while limited availability of clothing, in this case at a soup kitchen, could lead to “squabble[s]” over its distribution (single male, 50-59, UK national).

Similar barriers existed to accessing informal support from family and friends. While some interviewees were heavily reliant on this kind of help, others were reluctant to request it or could not have accessed it even if they had wanted to. Relatives' finances could be as precarious as the interviewee's own, or borrowing money from one's social network might be regarded as “a good way to lose friends” (single female, 60-69, non-EEA national). Assistance in kind, like second-hand clothing, was more readily accepted and there were fewer qualms about seeking help on behalf of children rather than the interviewee personally. Assistance from family and friends tended to be even less structured than that from charitable sources – small amounts of money on an ad hoc basis, a cooked meal or some groceries from time to time, some second hand clothing or furniture, even a lift to an appointment. A similar sense of stigma to that associated with food bank use could be felt: it might be “embarrassing at 60... asking your parents for money” (male lone parent, 50-59, UK national) or a shock to the system to go from being “the strong one” in the family to needing support oneself (female coupled parent, 30-39, UK national). Again, while this stigma was usually internal, this was not always the case, with those providing financial assistance making it clear that they “weren't happy” about doing so (coupled male, 40-49, UK national). Acceptance of informal support could place recipients in a vulnerable position, with several performing unpaid work – normally childcare, but sometimes cleaning – in return for credit or shelter.

The right to welfare in the 21st century

It bears stressing that the people whose experiences are documented are among the most impoverished two per cent of UK society. Their experiences are unlikely to be representative of the many claimants for whom social assistance, however ungenerous, does enable access

to basic needs. Nor does the article seek to valorise an imagined 'golden age' of the welfare state – the question of whether one existed is beyond its scope. Nonetheless, if the right to welfare is to mean anything, it must mean even those at the bottom of the income distribution should be able to afford adequate housing and other survival needs.

As noted, there are different interpretations of what constitutes a 'right'. Marshall holds the view that if the moral right to welfare is fulfilled, it does not necessarily matter if a legal right is absent. As legal scholars, the authors would argue that rights laid down in statute are more secure, at least until Parliament changes its mind – indeed, one recommendation flowing from the research is the creation of a statutory duty to protect against destitution. Yet the interviewees' experiences demonstrate that a formal right on paper is not necessarily a substantive right enjoyed (Lister, 2003). Up to 28% of those eligible for supplementary benefit and up to 44% of those eligible for income-based jobseekers allowance failed to claim the benefit (Fry and Stark, 1987; DWP, 2017); Spicker identifies complexity, adequacy and stigma as deterrents to take-up (Spicker, 1986). For Marshall – like others in previous eras (Lister, 2013) – the question is not what is set down in statute, but whether in practice people can be confident of enjoying a modicum of economic welfare and security. Dependable, consistently applied discretionary provision with a mechanism for independent review of decisions is capable of fulfilling the moral right to welfare, while a statutory entitlement might fail to do so if inaccessible in practice. The problem today is that neither statutory protection nor discretionary provision enables the social security that citizenship requires.

The period since 2010 has seen a diminution of the legal right to welfare. There has been "a marked and unprecedented reduction in the real value" of working-age benefits (Stephens, 2015: 5), access to certain benefits has become more restrictive, awareness and application can be problematic and conditionality has escalated. The empirical findings do not implicate 'welfare reform' as the sole cause of destitution among UK citizens, but it is clear that failures of both policy and administrative justice within the system are important contributors. Discretionary awards provide a lifeline for many, but are not enjoyed as of right, cannot be depended on in the long term, sometimes have to be repaid and in some cases are tightly rationed. This has left many reliant for their survival needs on the goodwill of others, whether on an organised scale through charities or in the form of ad hoc assistance from family, friends and strangers.

Concerns about decision makers' moral judgements undermining citizens' welfare rights remain in 21st century welfare states (Altreiter and Leibetseder, 2015; Blomberg, Kroll and Kallio, 2018). The risk, though, multiplies in charitable schemes without statutory eligibility criteria or the equality and human rights obligations applicable to public authorities. For Marshall, the absence of a right of appeal in itself means charity cannot fulfil the right to welfare. The experiences of the research participants reinforce this conclusion. Charitable assistance cannot be dependable if its geographical distribution is based on the distribution of goodwill rather than need. It is unlikely to be adequate if limits are placed on what aid can be accessed or duration of eligibility. Administrative consistency is impossible when delivery is by different organisations with different priorities, target beneficiaries and

levels of organisation and resources. Local government discretionary assistance in England is similarly hamstrung by budget limits and the lack of any obligation to provide a scheme. The use of discretion within the mainstream social security system, where there is extensive guidance on its exercise and a right to request mandatory reconsideration – whose flaws have been noted – or appeal, may be more in keeping with a right to welfare. However, when the exercise of this discretion forms part of a policy environment that engineers “destitution by design,” as has been claimed of the sanctions regime in particular (Goulden, 2018; Simpson, 2015), or there are barriers to the realisation of one’s rights or the meaningful exercise of the right of appeal (Adler, 2016; Thomas and Tomlinson, 2017), this conclusion becomes more questionable.

There is a need, therefore, to assert the rights of all citizens to a modicum of economic welfare and security. The failure of the state to ensure protection of this right needs to be addressed, and the authors have recommended a statutory duty on Ministers to promote and facilitate the take-up of social security entitlements and to establish statutory minimum standards for discretionary assistance. Both recommendations are achievable and, notably, are being implemented in a devolved social security system in Scotland which seeks to prioritise the dignity of claimants, recognising their status as citizens in a way that stigmatised legal and discretionary benefits have failed to do. Aligned with this, the authors recommend a review of the parsimonious nature of working-age benefits and establishing a set limit below which household income should not be reduced, either by sanctions or other deductions, because the moral hazard argument about encouraging dependency has been demonstrably outweighed by the lived experiences of destitution. And drawing on Marshall’s construction of the role of independent appeal to distinguish a moral right to welfare from mere charitable giving, the authors recommend improvements to the process of appealing adverse decisions to encourage statutory decision makers to make better decisions that do not rely on claimants having to forge through additional processes to engage their rights.

Conclusion

A social security system that provides an income for working age claimants well below both the minimum income standard and the relative low income threshold – alternative benchmarks for the income required to enjoy a normal standard of living – hardly guarantees the ability to “live the life of a civilised being.” One that fails to prevent 1.5 million people falling into destitution fails even to ensure a “modicum of economic welfare and security” for all. Marshall seemed relatively relaxed about the existence of discretionary system and gaps in the framework of legal entitlements as long as the moral right to welfare was upheld, but this is not happening at present. Interviewees’ accounts illustrate the shortcomings of the discretionary safety net and are suggestive of discretionary decision making at odds with the official guidance in mainstream social assistance. Problems particularly arose with the conditionality regime. The right of appeal was undermined by lack of comprehension of both the process and the reasons for adverse decisions and by perceptions of remoteness and futility. Administrative justice is a crucial element in delivering full legal entitlements to claimants and the authors have identified the need to remove barriers to the appeal process

and improve the feedback loop from tribunals to decision makers so that more decisions are got right first time (McKeever et al, 2018).

Work-focused conditionality is not inherently incompatible with a right to welfare – given the central role of the paid labour market in supporting economic welfare, constructive conditionality that genuinely supports entry to suitable employment can potentially support it (European Committee of Social Rights, 1999-2000). Nor, as discussed, does Marshall deny the existence of a duty to work, although this does not equate to support for the position that the unemployed claimant must be prepared to accept *any* job. While condemning “utter laziness, a desire literally to do nothing at all,” Marshall also recognises that an “aversion from work may spring from a desire to be doing something different rather than from an unwillingness to do anything.” (Marshall, 1973). This implies greater tolerance of “choosiness” on the part of jobseekers than advocates of disciplinary forms of activation might allow (Dunn, 2013: 801). Ultimately, a sanctions regime that can reduce income to zero after housing costs can *only* be put in place if policymakers accept that they are constructing a system of social protection with a built-in risk of destitution.

Informal welfare provision can soften the blow of destitution, and formed a crucial part of interviewees’ survival strategies. However, charitable and familial assistance are in no way rights-based. The test for comprehensiveness, consistency and a right of appeal is unquestionably failed and this is compounded by the level of support and surrounding stigma. A civilised being does not have to live in shame. There is a limit to how much reliance can be placed on local and charitable discretionary welfare services before the moral right to welfare is no longer realised – the question is whether the UK welfare state has yet reached this level of reliance.

A final question concerns the contemporary relevance of a theorist who officially retired more than 60 years ago. Clearly, the welfare state, whose emergence ‘Citizenship and social class’ explains, has evolved since 1949. The foundations of today’s less generous, more conditional model had scarcely begun to be laid at Marshall’s death in 1981. Yet Marshall was not merely describing – given the flaws in his account, his reputation would hardly have survived if this were the case – but advocating. An empirical discussion of *what citizenship is* cannot be separated from normative arguments around *how citizenship should be* and this is precisely how his work should be understood (Lister, 2005). These normative arguments retain force today. Different governments, different states, different eras have different levels of ambition regarding the minimum standard of living the state should support and different methods of doing so. Marshall’s vision of social citizenship allows for this, and recognises that rights come with responsibilities. But the bottom line that everyone should enjoy a modicum of economic welfare remains a useful benchmark that should not be lightly discarded, particularly by a state that has overseen 1.5 million of its citizens become destitute.

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References

Bibliography

- Abbott, E. (1940). *Public assistance*. Chicago: University of Chicago Press. Cited in Marshall, T.H. (1981). The right to welfare. *The right to welfare and other essays*. New York: Free Press.
- Adler, M. (2016). A new leviathan: benefit sanctions in the twenty-first century. *Journal of Law and Society*, 43(2), 195.
- Aitchison, G. (2018). *Compassion in crisis: how do people stay afloat in times of emergency?* Salford: Church Action on Poverty
- Altreiter, C., and Leibetseder, B. (2015). Constructing inequality: deserving and undeserving clients in Austrian social assistance offices. *Journal of Social Policy*, 44(1), 127.
- Besharov, D.J. and Call, D.M. (2009). Income transfers alone won't eradicate poverty. *Policy Studies Journal*, 37(4), 599.
- Beveridge, W. (1942). *Social insurance and allied services* (Cmd 6404). London: HMSO.
- Bew, J. (2016). *Citizen Clem: a biography of Attlee*. London: Riverrun.
- Billings, B. (2002). Alienating asylum seekers: welfare support in the Immigration and Asylum Act 1999. *Journal of Social Security Law*, 9(3), 115.
- Birmingham City Council Benefit Service (undated). *Local welfare provision policy*. Birmingham: Birmingham CC.
- Blomberg, H., Kroll, C., and Kallio, J. (2018). On the changing frontline of welfare delivery: views on social assistance recipients among Finnish frontline workers. *Journal of Poverty and Social Justice*, 26(2), 263.
- Bottomore, T. (1992). Citizenship and social class, forty years on. Marshall, T.H. and Bottomore, T. *Citizenship and Social Class*. London: Pluto.
- Charlesworth, L. (1999). The poor law: a modern legal analysis. *Journal of Social Security Law*, 6(2), 79.
- Clarke, A., Hill, L., Marshall, B., Oxley, M., Pereira, I., Thompson, E. and Williams, P. (2015). *Evaluation of removal of the spare room subsidy: final report* (RR913). London: DWP.
- Davis, A., Hirsch, D., Padley, M. and Shepherd, C. (2018). *A minimum income standard for the UK 2008-2018: continuity and change*. York: Joseph Rowntree Foundation.

This is the Author's Original Version and Accepted Manuscript of an article published by Taylor & Francis in the Journal of Social Welfare and Family Law. The version of record is: C Fitzpatrick, G McKeever and M Simpson, 'Conditionality, discretion and TH Marshall's "right to welfare"' (2019) JSWFL

<https://www.tandfonline.com/doi/full/10.1080/09649069.2019.1663016>

Dean, H. (2014). A post-Marshallian conception of global social citizenship. Isin, E. and Nyers, P. (eds.) *The Routledge handbook of global citizenship studies*. Abingdon: Routledge.

Department of Health and Social Security (1979). *Reform of the Supplementary Benefits Scheme* (Cm 7773). London: HMSO.

Department for Work and Pensions (2013/updated 2018). *Advice for decision makers*. London: DWP.

Department for Work and Pensions (2017). *Income-related benefits: estimates of take-up in 2015/16*. London: Department for Work and Pensions.

Department for Work and Pensions (2018). *Discretionary housing payments guidance manual*. London: DWP.

Donnison, D. (1982). *The politics of poverty*. Oxford: Martin Robertson.

Dunn, A. (2013). Activation workers' perceptions of their long term unemployed clients' attitudes towards employment. *Journal of Social Policy*, 42(4), 799.

Dwyer, P. (2004). Creeping conditionality in the UK: from welfare rights to conditional entitlements? *Canadian Journal of Sociology*, 29(2), 265.

Dwyer, P. (2010). *Understanding social citizenship: themes and perspectives for policy and practice*. Bristol: Policy Press.

Dwyer, P. (2016). Citizenship, conduct and conditionality: sanctions and support in the 21st century UK welfare state. Fenger, M., Hudson, J. and Needham, C. (eds) *Social policy review* 28. Bristol: Policy Press.

Dwyer, P. (2018). Punitive and ineffective: benefit sanctions within social security. *Journal of Social Security Law*, 25(3), 142

European Committee of Social Rights (1999-2000). *Conclusions XVI-1 – United Kingdom – article 1-1*. Strasbourg: Council of Europe

European Council (2016). *European Council meeting (18 and 19 February 2016) – conclusions* (EUCO 1/16). Brussels: European Council.

Fitzpatrick, S., Bramely, G., Blenkinsopp, J., Johnsen, S., Littlewood, M., Netto, G., Sosenko, F. and Watts, B. (2015). *Destitution in the UK: an interim report*. York: Joseph Rowntree Foundation.

Fitzpatrick, S., Bramley, G., Sosenko, F., Blenkinsopp, J., Johnsen, S., Littlewood, M., Netto, G. and Watts, B. (2016). *Destitution in the UK*. York: Joseph Rowntree Foundation.

Fitzpatrick, S., Bramley, G., Sosenko, F. and Blenkinsopp, J., with Wood, J., Johnsen, S., Littlewood, M. and Watts, B. (2018). *Destitution in the UK 2018*. York: Joseph Rowntree Foundation.

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<https://www.tandfonline.com/doi/full/10.1080/09649069.2019.1663016>

Fry, V. and Stark, G. (1987). The take-up of supplementary benefit: gaps in the "safety net"? *Fiscal Studies*, 8(4), 1.

Garthwaite, K. (2011). "The language of shirkers and scroungers?" Talking about illness, disability and coalition welfare reform. *Disability and Society*, 26(3), 369.

Golding, P. and Middleton, S. (1982). *Images of welfare: press and public attitudes to poverty*. Oxford: Martin Robertson.

Goulden, C. (2018) Summary: Destitution in the UK 2018. York: Joseph Rowntree Foundation.

Harris, N. (2000). *Social Security Law in Context*. Oxford University Press

Harris, N. (2013). *Law in a complex state: complexity in the law and structure of welfare*. Oxford: Hart.

Harvey, C. (2015). Refugees and human rights: the future of international protection in the United Kingdom *European Human Rights Law Review*, 595.

Hoxsey, D. (2011). Debating the ghost of Marshall: a critique of citizenship. *Citizenship Studies*, 15(6-7), 915.

Jackson, M.P., Stewart, H.R., and Bland, R.E. (1987). Appeals tribunals on supplementary benefits. *Social Policy and Administration*, 21(1), 58.

Lambie-Mumford, H. (2017). *Hungry Britain: the rise of food charity*. Bristol: Policy Press.

Larkin, P. (2009). A policy of inconsistency and hypocrisy: United Kingdom social security policy and European citizenship. *Journal of Social Welfare and Family Law*, 31(1), 33.

Larkin, P.M. (2011). Incapacity, the labour market and social security: coercion into "positive" citizenship. *Modern Law Review*, 74(3), 385.

Lister, R. (1989). Social Security. McCarthy, M. (ed.) *The New Politics of Welfare*. London: Macmillan.

Lister, R. (2003). *Citizenship: feminist perspectives*. Basingstoke: Palgrave.

Lister, M., "Marshall-ing" social and political citizenship: towards a unified conception of citizenship. *Government and Opposition*, 40(4), 471.

Lister, R. (2013). "Power not pity": poverty and human rights. *Ethics and Social Welfare*, 7(2), 109.

Loveland, I. (1987). Welfare benefits, administrative discretion and the politics of the new urban left. *Journal of Law and Society*, 14(4), 474.

Lynes, T. and Drabble, R. (1989). The Social Fund – Discretion or Control? *Public Law*, 297

Mann, M. (1996). Ruling class strategies and citizenship. Bulmer, M. and Rees, A.M. (eds) *Citizenship today: the contemporary relevance of TH Marshall*. London: UCL Press.

- Marshall, T.H. (1973). *Work and wealth. Class, citizenship and social development* Westport: Greenwood.
- Marshall, T.H. (1981a). Changing ideas about poverty. *The right to welfare and other essays*. New York: Free Press.
- Marshall, T.H. (1981b). The right to welfare. *The right to welfare and other essays*. New York: Free Press.
- Marshall, T.H. (1981c). Afterthought on "The right to welfare". *The right to welfare and other essays*. New York: Free Press.
- Marshall, T.H. (1981). Citizenship and social class. Marshall, T.H. and Bottomore, T. *Citizenship and Social Class*. London: Pluto.
- McKeever, G., Simpson, M. and Fitzpatrick, C. (2018). *Destitution and paths to justice*. London: Legal Education Foundation/York: Joseph Rowntree Foundation.
- Meers, J. (2015). Panacean payments: the role of discretionary housing payments in the welfare reform agenda. *Journal of Social Security Law*, 22(3), 115.
- Meers, J. (2018). Awarding discretionary housing payments: constraints of time, conditionality and the assessment of income/expenditure. *Journal of Social Security Law*, 25(2), 102.
- Meshor, J. (1981). The 1980 social security legislation: the great welfare chainsaw massacre. *British Journal of Law and Society*, 8(1), 119.
- Ministry of Justice (2017). Tribunals and gender recognition statistics quarterly, July to September 2017 (provisional). London: MOJ
- National Association of Welfare Rights Advisers (2016). *Social Security Advisory Committee consultation review into decision making and mandatory reconsideration*. London: NAWRA, 2016.
- Patrick, R. (2017). *For whose benefit? The everyday realities of welfare reform*. Bristol: Policy Press.
- Plant, R. Supply side citizenship? (1999). *Journal of Social Security Law*, 6(3), 124.
- Pleasence, P., Balmer, N.J., Buck, A., O'Grady, A. and Genn, H. (2004). Multiple judicial problems: common clusters, problem order and social and demographic indicators. *Journal of Empirical Legal Studies*, 1(2), 301.
- Prosser, D.T. (1977). Poverty, ideology and legality: supplementary benefit appeals tribunals and their predecessors. *British Journal of Law and Society* 4, 39.
- Rees, A.M. (1996). T.H. Marshall and the progress of citizenship. Bulmer, M. and Rees, A.M. (eds) *Citizenship today: the contemporary relevance of TH Marshall*. London: Routledge.

- Shiels, R.S. (2015). The Tay Bridge disaster and the major personal injury claim. *Reparation Bulletin*, 122(Feb), 4.
- Simpson, M. (2015). "Designed to reduce people... to complete destitution": human dignity in the active welfare state. *European Human Rights Law Review*, 66.
- Somers, M.R. and Block, F. (2005). From poverty to perversity: ideas, markets and institutions over 200 years of welfare debate. *American Sociological Review*, 70, 260.
- Stephens, T. (2015). Income-replacement benefits, child benefit and inflation, 1992-2015. London: Child Poverty Action Group.
- Smith, C. (1975). Judicial attitudes to social security. *British Journal of Law and Society*, 2, 217.
- Social Security Advisory Committee (2016). *Decision making and mandatory reconsideration* (OP18). London: SSAC.
- Spicker, P. (1986). The case for supplementary benefit. *Fiscal Studies*, 7(4), 28.
- Stoker, M. (1994). Bentham's proposals for reform of the poor law. *UCL Jurisprudence Review* 173
- Supplementary Benefits Commission (1975). *Annual report*. London: SBC. Cited in Marshall, T.H. (1981). Changing ideas about poverty. *The right to welfare and other essays* New York: Free Press.
- Thomas, R. and Tomlinson, J. (2017). *Work and Pensions Select Committee inquiry on PIP and ESA assessments: written evidence submission*. London: UKAJI.
- Turner, B.S. (2001). The erosion of citizenship. *British journal of sociology*, 52(2), 189
- Turner, B.S., and Rojek, C. (2001). *Society and culture: principles of scarcity and solidarity*. London: Sage.
- Walker, C. (1986). Reforming supplementary benefit: the impact on claimants. *Social Policy and Administration*, 20(2), 91.
- Walker, C.L. and Church, M. (1978). Poverty by administration: a review of supplementary benefits, nutrition and scale rates. *Journal of Human Nutrition*, 32(1), 5.
- Watts, B., Fitzpatrick, S. and Johnsen, S. (2018). Controlling homeless people? Power, intervention and legitimacy. *Journal of Social Policy*, 47(2), 235.
- Watts, B. and Fitzpatrick, S. (2018). *Welfare conditionality*. Abingdon: Routledge.
- Webster, D. (2018). Benefit sanctions statistics: universal credit, JSA, ESA and income support – February 2018. Glasgow: University of Glasgow.
- Wiggan, J. (2012). Telling stories of 21st century welfare: the UK coalition government and the neo-liberal discourse of worklessness and dependency. *Critical Social Policy*, 32(3), 383.

This is the Author's Original Version and Accepted Manuscript of an article published by Taylor & Francis in the Journal of Social Welfare and Family Law. The version of record is: C Fitzpatrick, G McKeever and M Simpson, 'Conditionality, discretion and TH Marshall's "right to welfare"' (2019) JSWFL

<https://www.tandfonline.com/doi/full/10.1080/09649069.2019.1663016>

Wintour, P. (2013). Jobcentre was set targets for benefit sanctions. *Guardian*, 21 March. <<http://www.theguardian.com/society/2013/mar/21/jobcentre-set-targets-benefit-sanctions>>

Work and Pensions Committee (2016). *The local welfare safety net*. HC 373. London: House of Commons

Wright, S. and Stewart, A.B.R. (2016). First wave findings: jobseekers. York: Welfare Conditionality.

York, S. (2017). "The law of common humanity": revisiting *Limbuella* in the "hostile environment. *Immigration, Asylum and Nationality Law*, 31(4), 308.

Case law

RW v Sheffield City Council [2005] EWHC 720 (Admin)

R (Westminster City Council) v Secretary of State for the Home Department [2001] EWCA Civ 512

R (on the application of S) v Lewisham LBC [2008] EWHC 1290 (Admin);

EA v Southampton CC [2012] UKUT 381 (AAC)

R on the application of SG v Secretary of State for Work and Pensions [2015] UKSC 16

R on the application of Carmichael v Secretary of State for Work and Pensions [2016] UKSC 58