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Administrative Justice and Street-Level Emotions: Cultures of Denial in Entitlement Decision-Making

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Bureaucracies are central to the delivery of law in modern society. The realities of state law in everyday life are usually mediated by way of a bureaucratic organisation.² One need only consider the ways in which immigration law, refugee law, social security law, tax law or tort law are implemented (to name but a few) to recognise the importance of bureaucracy to law in society. Indeed, to understand properly the empirical reality of law, the study of bureaucratic decision-making is arguably as important – perhaps even more important – than the study of judicial decision-making.³

Since the pioneering work of Max Weber, bureaucracy has been associated with formal rationality, usually in rather negative terms.⁴ For Weber, the bureaucratisation of society entailed a tragic trade-off between technical efficiency and the human values of autonomy and spontaneity, reducing modern men and women to “specialists without spirit, sensualists without heart”.⁵ Weber’s classic treatment has since been compounded by analyses of bureaucratic rationality’s role in the Holocaust,⁶ with Bauman, for example, arguing that:

it was the spirit of instrumental rationality, and its modern bureaucratic form of institutionalization, which had made the Holocaust-style solutions not only possible, but eminently ‘reasonable’...⁷

Within such studies of bureaucracy, the individual bureaucrat is depicted as someone lacking sight of the big picture, distracted from the external morality of the broader enterprise of which they form part, and fixated instead on their isolated instrumental task. As Merton suggested in his classic analysis of the bureaucratic personality:

“[a]dherence to the rules, originally conceived as a means, becomes transformed into an end-in-itself... Formalism, even ritualism, ensues with an unchallenged insistence upon punctilious adherence to formalized procedures.”⁸

Although such work emphasises the correspondence between bureaucracy and rationality in modernity, and very powerfully highlights the dangerous potential of bureaucratic

¹ I am grateful to Mike Adler and Joe Tomlinson for reading and commenting on an earlier draft of this article, and to Rachel Morley for discussing the ideas behind it.

² Mark C Suchman and Lauren B Edelman, ‘Legal Rational Myths: The New Institutionalism and the Law and Society Tradition’ (1996) 21 *Law and Social Inquiry* 903.

³ Simon Halliday, Jonathan Ilan and Colin Scott, ‘Street-Level Tort Law: The Bureaucratic Justice of Liability Decision-Making’ (2012) 75 *Modern Law Review* 347.

⁴ Paul du Gay, *In Praise of Bureaucracy* (Sage 2000).

⁵ Max Weber, *The Protestant Ethic and the Spirit of Capitalism* (Unwin Paperbacks 1985), 182.

⁶ Hannah Arendt, *Eichmann in Jerusalem* (Penguin 2006).

⁷ Zygmunt Bauman, *Modernity and the Holocaust Introduction* (Polity Press 1989), 18.

⁸ Robert K Merton, ‘Bureaucratic Structure and Personality’ (1940) 18 *Social Forces* 560, 563.

rationality, we should nonetheless be careful not to overestimate the extent of rationality within bureaucracy. As Simon⁹ observed, rationality has distinct empirical limitations. More significantly for this article, however, even within the limits of ‘bounded rationality’, it would also be a mistake, it is suggested, to frame bureaucratic decision-making as an entirely rational enterprise. Weber’s essentially comparative method and his use of ideal types means that his stress on instrumental or formal rationality is best understood as a claim to a distinguishing feature of modern Western society when compared to earlier times or other parts of the world. The claim was not that bureaucracy is a *purely* rational enterprise in everyday reality. The real world is always messier than the comparative analytical construct.¹⁰ Both rational and irrational elements pervade the social realities of bureaucratic operations.

The implicit framing of bureaucratic decision-making as primarily a rational activity has, however, dominated scholarship within administrative law. This is, perhaps, understandable given the image of the rational decision-maker that underpins the legal construct of just decision-making. Doctrines of judicial review, such as the requirement to consider all relevant factors and to ignore all irrelevant factors before making a decision, place an emphasis on, and promote the importance of rational administrative decision-making. The danger with this framing, however, is that we base our policy prescriptions about improving decision-making on an incomplete model of the bureaucratic process.

Such is certainly evident in the field of administrative justice research, which concerns itself, amongst other things, with the nature and quality of decision-making within frontline governmental agencies that determine the legal entitlements of individuals, such as welfare claimants, homeless people, immigration applicants and asylum seekers. Increasingly, policy-makers and scholars alike are focusing on the challenges posed by poor primary decision-making in public agencies and the question of how to get it ‘right first time’.¹¹ Yet, the solutions proposed to meet these challenges are focused exclusively on the rational elements of the bureaucratic process.

Consider, for example, two recent key reports focusing on the importance of improving initial decisions:

“in order to get things right first time, public sector bodies must be learning organisations... [T]hey should audit and report on the volume and costs of handling appeals, complaints and reviews ... In addition, they must take demonstrable steps to feedback learning from appeals and complaints.”¹²

“Strengthening redress mechanisms and better training have a valuable role to play in driving up public service standards alongside improvements to audit, regulation and inspection regimes.”¹³

The overwhelming stress placed within this policy and research field on ‘learning from the problem ... where things have gone wrong’,¹⁴ on the importance of a ‘feedback loop’

⁹ Herbert A Simon, *Administrative Behavior: A Study of Decision-Making Processes in Administrative Organizations* (4th edn, The Free Press 1997).

¹⁰ Anthony Kronman, *Max Weber* (Stanford University Press 1983), 7.

¹¹ Robert Thomas, ‘Administrative Justice, Better Decisions, and Organisational Learning’ [2015] Public law.

¹² Administrative Justice and Tribunals Council, ‘Right First Time’ (2011).

¹³ Committee for Administrative Justice and Tribunals Wales, ‘Administrative Justice A Cornerstone of Social Justice in Wales’ (2016). 6.

¹⁴ Department for Constitutional Affairs, *Transforming Public Services: Complaints, Redress and Tribunals* (Cm 6243, 2004) para 3

between redress mechanisms and initial decision-making,¹⁵ and on the need for better information, guidance and training,¹⁶ ultimately rests on the premise that more knowledge and better cognitive skills are the appropriate solutions to the problems of poor decision-making.

It is important to stress that there is great insight and richness in this work. Such a line of enquiry and policy development is certainly very important. However, what is being overlooked is the role of non-rational elements in the problem – specifically on emotions as an additional driver of bureaucratic decision-making. Until the emotions of bureaucratic practice are fully explored and understood, reform proposals that limit themselves to rationality solutions are likely to miss their mark – to some extent, at least.

The emotional dimension of frontline entitlement decision-making forms the focus of this article. The central empirical claim – that emotions are part and parcel of street-level bureaucratic work – is illustrated through the study of a fundamental aspect of entitlement decision-making: the judgements made about whether a claimant is telling the truth about their circumstances. The central argument that follows is that prescriptions about how to address problematic decision-making must be sensitive to the emotional elements of bureaucratic practice, in addition to the rational elements. Emotion is capable of shaping entitlements decisions in problematic ways. Moreover, the role of emotion in shaping bureaucratic outcomes remains largely invisible to those auditing, inspecting, conducting reviews, or considering complaints and appeals *ex post facto*. In other words, the capacity of ‘feedback loops’ to address bureaucratic problems is more limited than we might think.

This, of course, represents a significant challenge for administrative justice research. Not only is our understanding of the emotional dimension of entitlement decision-making under-developed, but our capacity also to remedy this deficit is hampered by the challenge of gaining access to front-line bureaucrats and their decision-making processes. As a recent review of the administrative justice field demonstrates,¹⁷ empirical research has been dominated by a focus on redress mechanisms, with comparatively less work being conducted on initial decision-making within street-level bureaucracies. This imbalance is no doubt explained, in part at least, by the public nature of dispute resolution forums and the relative ease of research access. Yet, as Thomas reminds us: “[a]dministrative justice should be concerned not just with the redress of grievances, but with ensuring good initial decisions.”¹⁸ Thus, if we are to remain true to the conviction that administrative justice is first experienced in the primary decisions of public agencies, then a consideration of the significance of the emotions to street-level bureaucracy must be included within our enquiry.

The article proceeds as follows: in the next section, the assertion that assessing the truthfulness of a claimant’s account of their circumstances is a fundamental aspect of bureaucratic decision-making about people’s entitlements is set out in detail. The following section then explores a ‘credibility assessment dilemma’, suggesting that frontline bureaucracies are frequently faced with the predicament whereby they must decide whether it is better to give claimants the benefit of the doubt when determining the honesty of their

¹⁵ Sarah Nason, ‘Administrative Justice in Wales: A New Egalitarianism?’ (2017) 39 *Journal of Social Welfare and Family Law* 115; Robert Thomas and Joe Tomlinson, ‘Mapping Current Issues in Administrative Justice: Austerity and the “More Bureaucratic Rationality” Approach’ (2017) 39 *Journal of Social Welfare and Family Law* 380.

¹⁶ M Partington, ‘Restructuring Administrative Justice? The Redress of Citizens’ Grievances’ (1999) 52 *Current Legal Problems* 173; Greta Bradley, ‘Administrative Justice and Charging for Long-Term Care’ (2003) 33 *British Journal of Social Work* 341; Roy Sainsbury, ‘Administrative Justice, Discretion and the “Welfare to Work” Project’ (2008) 30 *Journal of Social Welfare and Family Law* 323; Committee for Administrative Justice and Tribunals Wales, ‘Administrative Justice A Cornerstone of Social Justice in Wales’ (2016).

¹⁷ UK Administrative Justice Institute, ‘A Research Roadmap for Administrative Justice’ (2018).

¹⁸ Thomas, ‘Administrative Justice, Better Decisions, and Organisational Learning’ (n 11) 119.

stories. The dilemma here is about whether it is better to risk granting a benefit to someone who does not deserve it (a Type 1 error: a false positive), or whether it is preferable to risk denying a benefit to someone who does deserve it (a Type 2 error: a false negative). The article then briefly sets out some new exploratory public opinion data about this issue of ‘error preference’, demonstrating that, in the abstract, ordinary people may be more prone to giving claimants the benefit of the doubt than street-level bureaucracies who have the unenviable responsibility of making the real decisions that affect claimants’ lives. The section following goes on to explore the question of why this might be so, arguing that, at an organisational level, a fear of being duped by duplicitous claimants can orient bureaucracies towards not giving claimants the benefit of the doubt. Such is an emotional coping mechanism, it is argued, a response to the conditions in which street-level bureaucracies operate. The penultimate section offers a discussion of the implications of this emotional dimension of entitlement decision-making for administrative justice. The article then concludes briefly.

Credibility Assessment in Entitlement Decision-Making

All legal entitlement claims submitted to frontline governmental agencies contain a factual element: after all, the determination of entitlement by the ‘street-level bureaucrat’, to use Lipsky’s phrase,¹⁹ involves the application of rules to the factual circumstances of the claimant. In some situations, the factual element may be straightforward and fairly easy to verify. In a claim for a local resident’s parking permit, for example, the key fact to be determined will be whether someone is resident within a particular locale – a matter that may be verified relatively easily. In other situations, however, such as a claim for asylum, the factual element may be more difficult to verify: the bureaucratic decision-maker needs to make an assessment about the existence of persecution of a given community in a country of origin, as well as the claimant’s membership of that community.²⁰ Evidence to support the factual basis of such a claim may be difficult to obtain and/or inconclusive.²¹ In such situations the decision-maker is forced to make a decision about whether (or, perhaps, the extent to which) the claimant is telling the truth. Such ‘credibility assessments’, as they are usually called, go to the heart of asylum decisions²² and have consequently received a great deal of attention in studies of refugee law.²³

Asylum decision-making certainly brings the question of claimant honesty into particularly sharp relief, but it is important to recognise that credibility assessment is central to other fields of entitlement decision-making too. This is true, not necessarily because of the potential elusiveness of corroborating evidence, as with asylum claims, but because of the conditions in which many frontline bureaucracies have to conduct their work. For example, when deciding claims for housing under UK homelessness law, the bureaucracy must make a factual determination about the circumstances of housing need: is the claimant really homeless? If so, did they become homeless due to their own actions? What is the nature of

¹⁹ Michael Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services* (Russell Sage Foundation 1980).

²⁰ Anthony Good, *Anthropology and Expertise in the Asylum Courts* (Routledge 2006).

²¹ Helen Baillot, Sharon Cowan and Vanessa E Munro, “‘Hearing the Right Gaps’: Enabling and Responding to Disclosures of Sexual Violence within the UK Asylum Process” (2012) 21 *Social and Legal Studies* 269.

²² Sean Rehaag, “‘I Simply Do Not Believe...’: A Case Study of Credibility Determinations in Canadian Refugee Adjudication” (2017) 38 *Windsor Review of Legal and Social Issues* 38.

²³ Hilary Evans Cameron, *Refugee Law’s Fact-Finding Crisis* (Cambridge University Press 2018).

their additional needs? And what kind of connections do they have to the local area?²⁴ Although the homeless claimant's factual assertions theoretically may be more amenable to corroboration than those of the asylum claimant, the stress now placed on the speed and efficiency of decision-making within frontline governmental bureaucracies²⁵ means that they often simply do not have the time to investigate thoroughly the facts asserted as part of entitlement claims.²⁶ Yet a decision must nonetheless be made in order to keep caseloads under control. The same can be said about many other aspects of entitlement decision-making within the modern welfare state.²⁷ It is not uncommon, therefore, for street-level bureaucracies to have to make decisions about entitlement when they are unable properly to verify the truthfulness of the facts underpinning the entitlement claim. Such uncertainty places a particular burden, accordingly, on the bureaucracy's assessment of a claimant's honesty and integrity, which, in turn, gives rise to a particularly awkward dilemma.

The Error Preference Dilemma of Credibility Assessment

Is it better to deny an entitlement claim that should be granted, or to grant a claim that should be denied? This question, which emerges from situations of factual precarity, is particularly invidious because, whichever way it is answered, a troubling residual risk remains: does one prefer risking the injustice of denying a benefit to someone who deserves it, or the injustice of someone cheating the system?²⁸ Cameron appropriately describes this in terms of 'error preference', acknowledging the inescapability of error risk and the need to determine which particular error risk is the worse of the two in a given context.²⁹ This question of which error risk should be preferred is as important as it is demanding. It is no surprise, then, that it has been subjected to extensive normative analysis within legal scholarship, approached through the lenses of, for example, philosophy,³⁰ economics³¹ or legal theory.³² The focus of this article, however, is more empirical: how is the error risk dilemma resolved in reality, why might this be so, and what are the implications for administrative justice research and policy?

Levels of the error preference dilemma

The error preference dilemma manifests itself in different ways in the politico-legal system and so is resolved empirically at differing levels of generality. At its broadest, error preference touches on the nature of obligations between individuals and the state, and so is a matter for political judgement by political leaders, often in response to perceived public opinion. The ways in which, for example, poverty has been framed and responded to at a systemic level reveals something of the error preference dilemma. Systems of poverty relief

²⁴ Ian Loveland, *Housing Homeless Persons* (Oxford University Press 1996); Dave Cowan, *Homelessness: The (In)Appropriate Applicant* (Ashgate 1997); Caroline Hunter and others, 'Legal Compliance in Street-Level Bureaucracy: A Study of UK Housing Officers' (2016) 38 *Law and Policy* 81.

²⁵ Thomas and Tomlinson (n 15).

²⁶ Dave Cowan and Simon Halliday, *The Appeal of Internal Review: Law, Administrative Justice and the (Non)Emergence of Disputes* (Hart Publishing 2003).

²⁷ Thomas, 'Administrative Justice, Better Decisions, and Organisational Learning' (n 11).

²⁸ Robert Thomas, 'Consistency in Asylum Adjudication: Country Guidance and the Asylum Process in the United Kingdom' (2008) 20 *International Journal of Refugee Law* 489.

²⁹ Cameron (n 23).

³⁰ E.g., Michael Bayles, 'Principles for Legal Procedure' (1986) 5 *Law and Philosophy* 33.

³¹ E.g., Thomas R Lee, 'Pleading and Proof: The Economics of Legal Burdens' [1997] *Brigham Young University Law Review* 1.

³² E.g., Mike Redmayne, 'Standards of Proof in Civil Litigation' (1999) 62 *Modern Law Review* 167.

can be structured in such a way that they operate like obstacle courses,³³ making it difficult or demeaning for the claimant seeking assistance. Such system design expresses (in part, at least) an anxiety about the risk of granting assistance to the ‘inappropriate applicant’:³⁴ if the application process or the conditions of assistance are made sufficiently difficult, the chancers and cheats are more likely, it is imagined, to think twice, leaving the genuinely eligible as users, but not abusers of the system. The history of poor relief suggests that system design has swung back and forth in this regard over two and a half centuries.³⁵ Contemporary analyses of the welfare state suggest that we are currently in a period of anxiety about abuse of the system.³⁶ Such can also be seen in the UK’s recent re-organisation of asylum claims determination.³⁷

The legal system, of course, also acknowledges the error preference dilemma and resolves it through particular bodies of law, sets of legal provisions and soft law guidance. Most obviously, perhaps, the law of evidence is a response to this dilemma. The standard of proof within the law of evidence regarding criminal prosecutions, for example, displays a strong preference for erring on the side of acquitting the guilty, rather than convicting the innocent. Equally, to take another example, UN guidance in relation to refugee law expresses (albeit a little ambiguously) a preference for giving claimants ‘the benefit of the doubt’ under situations of factual uncertainty, so long as the claimant is found to be generally credible.³⁸ Likewise, in relation to English homelessness law, soft law guidance acknowledges that facts in relation to one specific aspect of the entitlement test can sometimes be unclear and, where so, suggests that decision-makers may not be able to satisfy themselves that the claimant fails that part of the test.³⁹ Such is a distinctly soft (and somewhat tortuous) leaning towards erring on the side of the claimant.

Significantly, however, the error preference dilemma can also be resolved less formally. In the course of the implementation of law within street-level bureaucracies, it operates more at an organisational cultural level. It is on this cultural level of work within street-level bureaucracies that this article focuses. Empirical accounts of ‘cultures of disbelief’,⁴⁰ ‘cultures of denial’⁴¹ and ‘cultures of suspicion’⁴² are descriptions of the ways in which, in the routines of front-line decision-making, organisational knowledge and orientation can be skewed towards an error preference whereby it is considered better – or safer – to err on the

³³ Peter Robson and Paul Watchman, ‘The Homeless Persons’ Obstacle Race’ (1981) 3 *The Journal of Social Welfare and Family Law* 1; Frances Fox Piven and Richard Cloward, *Regulating the Poor: The Functions of Public Welfare* (Vintage Books 1993), 155.

³⁴ Cowan (n 24).

³⁵ Lynn Hollen-Lees, *The Solidarities of Strangers: The English Poor Laws and the People 1700-1948* (Cambridge University Press 1998).

³⁶ David Garland, *The Welfare State: A Very Short Introduction* (Oxford University Press 2016); Michael Adler, *Cruel, Inhuman or Degrading Treatment? Benefit Sanctions in the UK* (Palgrave Macmillan 2018).

³⁷ Margaret S Malloch and Elizabeth Stanley, ‘The Detention of Asylum Seekers in the UK’ (2005) 17 *Punishment & Society* 53; Robert Thomas, ‘Assessing the Credibility of Asylum Claims: EU and UK Approaches Examined’ (2006) 8 *European Journal of Migration and Law* 79.

³⁸ United Nations High Commissioner for Refugees, *UN Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (December 2011, HCR/1P/4/ENG/REV. 3) paras 196, 204

³⁹ Ministry of Housing, Communities and Local Government, *Homelessness Code of Guidance for Local Authorities* (HMSO, 2018) para 9.6

⁴⁰ Olga Jubany, ‘Constructing Truths in a Culture of Disbelief: Understanding Asylum Screening from Within’ (2011) 26 *International Sociology* 74.

⁴¹ James Souter, ‘A Culture of Disbelief or Denial? Critiquing Refugee Status Determination in the United Kingdom.’ (2011) 1 *Oxford Monitor of Forced Migration* 48.

⁴² Simon Halliday, *Judicial Review and Compliance with Administrative Law* (Hart Publishing 2004); Maybritt Jill Alpes and Alexis Spire, ‘Dealing with Law in Migration Control: The Powers of Street-Level Bureaucrats at French Consulates’ (2014) 23 *Social & Legal Studies* 261.

side of denying benefits. As Jubany notes, for example, on the basis of her ethnographic study of front-line asylum decision-making:

the initial stage of the asylum screening process is ... shaped by the criteria, values and influence of the immigration service subculture in the screening process, informed by a meta-message of disbelief and deterrence.⁴³

Before we explore this cultural level in more detail, the next section considers some exploratory public opinion data that suggest a contrasting set of perspectives.

Public Opinion about Error Preferences under Factual Uncertainty

Very little, if anything, is known about public opinion about which error risks are preferred in various situations of factual uncertainty. Public opinion data on error preference, of course, are fundamentally different from error preference in street-level bureaucracies: whereas public opinion is, by its nature, a snap consideration of an issue in the abstract, the assertion of error preference in street-level bureaucracies occurs in the context of real work that makes a real difference to claimants' lives. Nonetheless, the value of public opinion data lies, to some extent at least, in this difference. Any contrast between public opinion data and qualitative data about the social reality of street-level bureaucracy operates as a kind of research puzzle – it raises a question, in other words, about why the contrast might exist.

For the purposes of this article, an exploratory question probing public opinion about error preference was inserted into an omnibus survey.⁴⁴ Respondents were presented with three entitlement claim scenarios, representing different benefits of the modern welfare state: (1) someone applying for public housing (for him/herself and his/her child) on the basis that they had become homeless through no fault of their own; (2) someone applying to live in the UK on the basis that they feared persecution in their own country; and (3) someone applying for a discount on their council tax (a local government property-based tax) on the basis that they lived alone. Having been informed that it is sometimes genuinely impossible to verify if a claimant is telling the truth about their circumstances, respondents were invited to indicate whether, in such a situation of uncertainty, they thought it was better to grant or deny the claim.

As Figure 1 below illustrates, the data suggest that public opinion favours giving the benefit of the doubt to the claimant in two of the three scenarios: council tax and homelessness. Indeed, error preference opinion was strongly in favour of granting the benefit in the homelessness scenario (81% / 19%). In relation to the refugee scenario, public opinion was more evenly divided, with a slight preponderance towards not giving the claimant the benefit of the doubt (46% / 54%).

⁴³ Jubany (n 40) 88.

⁴⁴ This survey used members of the YouGov Plc GB panel of 185,000+ individuals who have agreed to take part in surveys. Panellists were selected at random from the base sample. The total sample size for this survey was 1,623 adults. Fieldwork was conducted online and undertaken between 30th - 31st July 2020. The figures have been weighted and are representative of all GB adults (aged 18+).

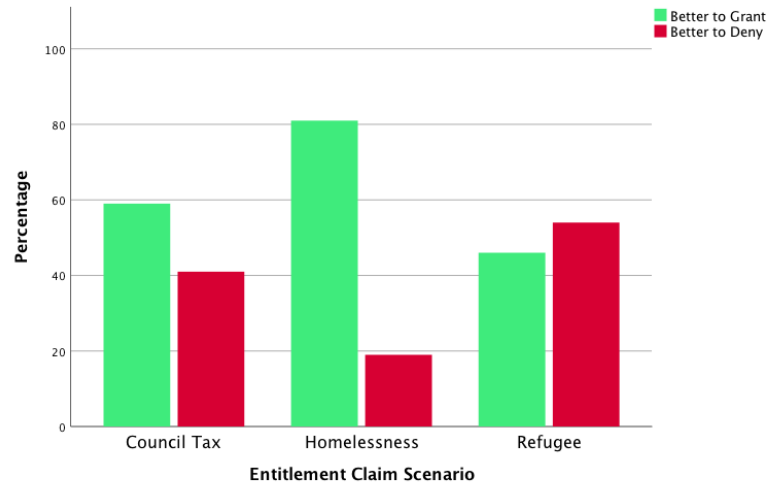


Figure 1: public opinion data on error preference

As always, we must exercise care in assessing such data. They represent a response to a single exploratory question in a polling company’s omnibus survey.⁴⁵ Nonetheless, we might still suggest that public opinion in the abstract about error preference seems to differ from the depictions of error preference in the empirical socio-legal research about street-level bureaucracies. Even in relation to the refugee scenario, a slight preponderance towards denying asylum in situations of factual uncertainty seems somewhat different from a culture of ‘disbelief’ and ‘denial’,⁴⁶ particularly in the aftermath of Brexit,⁴⁷ where concerns about immigration and asylum featured prominently in public discourse.

Why might this be so? What is it about deciding real cases in street-level bureaucracies that seems to alter error preference from its consideration in the abstract? And what role does the emotional dimension of decision-making play? It is these questions that we address in the next section.

Credibility Assessments and the Emotions of Error Preference

Although, as asserted above, credibility assessment is a fundamental feature of a number of entitlement decision-making settings within the modern welfare state, the socio-legal literature that has addressed the topic directly has been dominated by studies in refugee law. We must, accordingly, examine this literature to determine what insights it might offer about when error preference within street-level bureaucracies inclines towards the denial of benefits, and about the specific significance of emotion in this regard.

Credibility Assessment in Asylum Decision-Making

⁴⁵ Although the respondents were selected at random from the base YouGov sample of over 185,000 individuals, and although the figures were weighted to be nationally representative of all adults (aged 18 and over), it is still a non-probability sample. Caution is required, accordingly, in drawing inferences about the wider population.

⁴⁶ Jubany (n 40); Souter (n 41).

⁴⁷ A logistic regression analysis of demographic factors (age, gender, ‘social grade’ (‘A’ to ‘E’), ethnicity [‘white’ or ‘BAME’] and political persuasion [whether or not voted Conservative at the most recent General Election; whether or not voted for Brexit in the referendum]) suggested that, controlling for other demographics, Brexit preference was a statistically significant predictor ($p = .000$) of error preference in the refugee scenario.

The analysis of credibility assessment within refugee law focuses both on decision-making in street-level bureaucracies and in the tribunals and courts that consider appeals from initial refusals of assistance. The findings across both kinds of work are much the same, however. The bulk of the work highlights various cognitive failures within the processes of determining credibility: inadequate appreciation of the cultural conditions from where asylum claimants have come;⁴⁸ inappropriate methods of determining whether claimants are members of persecuted communities;⁴⁹ the application of crude stereotypes about sexual orientation;⁵⁰ unreasonable expectations about how claimants would express themselves emotionally;⁵¹ failure to appreciate the effects of trauma on the ways that claimants might tell their stories, or the extent to which they might be able to recall events;⁵² unreasonable expectations of narrative consistency and coherence;⁵³ and failure to give due weight to, or properly interpret expert reports, particularly from across a disciplinary divide.⁵⁴ Such problems, it is argued, incline decision-makers in asylum cases towards the conviction that claimants have been dishonest in setting out their factual circumstances, which in turn inclines decision-makers towards the rejection of claims. Accordingly, much like the more general administrative justice literature, reform recommendations generally focus on enhanced training and better guidance with a view to more knowledge and improved cognitive skill.

However, although most of the work within refugee law focuses on cognitive problems, a few studies of asylum decision-making have additionally explored the significance of emotion to error preference. Baillot *et al*'s work offers a particularly clear example, it is suggested.⁵⁵ Like others' discussion of 'vicarious traumatisation',⁵⁶ Baillot *et al* suggest that exposure to claimants' trauma in the handling of asylum claims can lead to 'emotional contagion' whereby decision-makers themselves become vulnerable to the effects of the trauma. This, in turn, triggers the defensive emotional reactions of detachment and denial, whereby the potential traumatisation is resisted. Although such may be a functional emotional response for the decision-maker, it leads to 'case hardening', which is detrimental to claimants' chances of success. Baillot *et al* conclude that,

⁴⁸ Neal P Pfeiffer, 'Credibility Findings in INS Asylum Adjudications: A Realistic Assessment' (1988) 23 *Texas International Law Journal* 139; Cécile Rousseau and others, 'The Complexity of Determining Refugeehood: A Multidisciplinary Analysis of the Decision-Making Process of the Canadian Immigration and Refugee Board' (2002) 15 *Journal of Refugee Studies* 43.

⁴⁹ Michael Kagan, 'Is Truth in the Eye of the Beholder? Objective Credibility Assessment in Refugee Status Determination' (2003) 17 *Georgetown Immigration Law Journal* 367.

⁵⁰ Laurie Berg and Jenni Millbank, 'Constructing the Personal Narratives of Lesbian, Gay and Bisexual Asylum Claimants' (2009) 22 *Journal of Refugee Studies* 195.

⁵¹ Anthony Good, 'Witness Statements and Credibility Assessments in the British Asylum Courts' (2009) 12 *Irish Journal of Anthropology* 45.

⁵² Jenni Millbank, "'The Ring of Truth': A Case Study of Credibility Assessment in Particular Social Group Refugee Determinations' (2009) 21 *International Journal of Refugee Law* 1; Baillot, Cowan and Munro (n 21).

⁵³ Anthea Vogl, 'Telling Stories from Start to Finish: Exploring the Demand for Narrative in Refugee Testimony' (2013) 22 *Griffith Law Review* 63.

⁵⁴ Jill Hunter and others, 'Asylum Adjudication, Mental Health and Credibility Evaluation' (2013) 41 *Federal Law Review* 471; Jill Hunter, Linda Pearson and Mehara San Roque, 'Mental Health Expertise in Refugee Status Decision-Making: Judging or Caring?' (2014) 18 *The International Journal of Evidence & Proof* 310.

⁵⁵ Helen Baillot, Sharon Cowan and Vanessa E Munro, 'Second-Hand Emotion? Exploring the Contagion and Impact of Trauma and Distress in the Asylum Law Context' (2013) 40 *Journal of Law and Society* 509.

⁵⁶ Rousseau and others (n 48); Jane Herlihy, Kate Gleeson and Stuart Turner, 'What Assumptions about Human Behaviour Underlie Asylum Judgments?' (2010) 22 *International Journal of Refugee Law* 351.

“such an approach may develop into an automatically dismissive and sceptical attitude towards claimants, impacting on the way in which their credibility is assessed...”⁵⁷

To what extent does Baillot *et al*'s suggestion of 'emotional contagion' within asylum decision-making offer insights into emotion's significance for credibility assessment more generally - insights that could be important for the wider administrative justice community?

Clearly, there is some value in the notion of emotional contagion, whereby the suffering of the claimant can enter a bureaucracy by way of the application process but then be deflected by decision-makers in dysfunctional ways. However, there are distinct limits, it is suggested, to the extent of the notion's applicability to entitlement decision-making more widely. Indeed, there are grounds for doubting the extent to which emotional contagion offers a full explanation of the dismissiveness and scepticism observed in Baillot *et al*'s study.

The problem here is that the asylum field might legitimately be thought to represent too extreme a case study for the analysis of street-level bureaucracy more generally. Although entitlement decision-making is a welfare state response to a broad range of needs, many of which will have associated traumas, the *extent* of trauma in asylum applications is undoubtedly extreme when compared to other fields. As such, the analytical purchase of a theory of emotional contagion will diminish as the level of trauma of claimants' stories diminishes. Yet, the reality is that the emotional responses of dismissiveness and scepticism outlined by Baillot *et al* are found well beyond the asylum context – in sectors where the level of claimant trauma is not as extreme. As set out further below, we also find dismissiveness and scepticism in studies of street-level bureaucracy more broadly, including, for example, social security, housing and immigration. So, there must be more to dismissiveness and scepticism than vicarious traumatising or emotional contagion.

The suggestion of this article is that, although emotional contagion may play some role in case hardening amongst asylum decision-makers, we must also consider the significance of a more banal emotional experience, one that is common to a much wider field of entitlement decision-making – the fear of being duped by dishonest claimants. The broader social science literature on the role of emotions in street-level bureaucratic work can help us understand this.

The Fear of Being Duped in Credibility Preference

Within the field of public administration, there is a burgeoning literature on the emotions of street-level bureaucracy, much of it focussing on the unavoidable emotional labour involved.⁵⁸ A key aspect of street-level bureaucrats' emotional labour (at least for the purposes of this article) is the management of a specific kind of emotional dissonance: the tension that exists between, on the one hand, an animating motivation to assist those in need and, on the other, the functional incapacity to do so to a full extent. Public service agencies frequently have to operate under conditions whereby the demand for public benefits outstrips

⁵⁷ Baillot, Cowan and Munro (n 55) 531.

⁵⁸ E.g., Chih Wei Hsieh, 'Burnout Among Public Service Workers: The Role of Emotional Labor Requirements and Job Resources' (2014) 34 *Review of Public Personnel Administration* 379; Mark Wilding, Kyungjin Chae and Jiho Jang, 'Emotional Labor in Korean Local Government: Testing the Consequences of Situational Factors and Emotional Dissonance' (2014) 38 *Public Performance and Management Review* 316; Mary E Guy, Meredith A Newman and Sharon H Mastracci, *Emotional Labor: Putting the Service in Public Service* (Routledge 2014); Sung Wook Choi and Mary E Guy, 'The Link between Emotional Labor and Organizational Culture in Korean Bureaucracy: How Taxing Is Tax Work? How Enforcing Is Law Enforcement?' (2020) 25 *International Review of Public Administration* 129.

available supply,⁵⁹ and the human resources of available staff and time are inadequate.⁶⁰ Thus, it is well recognised that many who enter public service, as they learn the job, experience a level of disenchantment whereby their initial public service motivation diminishes.⁶¹ Blau, in his classic ethnographic study of a US public welfare agency, described this phenomenon in terms of a ‘reality shock’.⁶² Novice welfare bureaucrats quickly learned that a key part of their job is the refusal, and not just the granting of assistance. Equally, they discovered that those refused assistance may well personally blame them for the rejection of the claim. The emotional impact of these experiences can be very stressful.⁶³ As Blau noted: “The disillusioning experience of the reality shock often alienated the case worker from clients.”⁶⁴

Yet, the conditions that give rise to such stress are unalterable by the street-level bureaucrats: they are powerless to increase the supply of distributable public benefits; equally, they cannot control the reactions of rejected claimants. Instead, in order to assuage emotional dissonance, decision-makers focus on what does lie within their power: the way in which claimants are characterised and understood within the bureaucratic process – what Lipsky describes as “conceptual modifications of the clientele”.⁶⁵ By reframing some claimants as being inherently unworthy of assistance, decision-makers can cope better with the emotional tensions of street-level work: compassionate motivations are directed towards the ‘good’ claimant, while the unavoidable rejection work can ‘justifiably’ be directed towards the ‘bad’ claimant. As Lipsky notes:

Thus, as the work is experienced there is no dissonance between the job as it should be done and the job as it is done for a portion of the clientele. The worker knows in a private sense that he or she is capable of doing the job well and can better defend against assaults on the ego which the structure of street-level work normally delivers.⁶⁶

Such, it must be emphasised, is a process of socialisation: reality-shocked bureaucrats do not engage in an isolated, inwards-facing thought experiment to manage their stresses, but rather draw on organisational culture in the form of informal knowledge of what claimants are ‘really’ like. In the context of credibility assessment, such differentiation between the ‘good’ and the ‘bad’ translates into the honest and the dishonest. And, of course, it is important to recognise that there is an element of truth in such a distinction. In all welfare state entitlement schemes, some claimants will lie. As Blau noted, “the situation in which recipients found themselves made honesty a luxury.”⁶⁷ In a similar vein, in the context of asylum, Thomas counsels that,

⁵⁹ Loveland (n 24) 148–9.

⁶⁰ Lipsky (n 19); Thomas and Tomlinson (n 15).

⁶¹ E.g., Anne Mette Kjeldsen and Christian Bøtcher Jacobsen, ‘Public Service Motivation and Employment Sector: Attraction or Socialization?’ (2013) 23 *Journal of Public Administration Research and Theory* 899; Anne Mette Kjeldsen, ‘Dynamics of Public Service Motivation: Attraction-Selection and Socialization in the Production and Regulation of Social Services’ (2014) 74 *Public Administration Review* 101; Stéphane Moyson and others, ‘Organizational Socialization in Public Administration Research: A Systematic Review and Directions for Future Research’ (2018) 48 *American Review of Public Administration* 610.

⁶² Peter M Blau, ‘Orientation Toward Clients in a Public Welfare Agency’ (1960) 5 *Administrative Science Quarterly* 341.

⁶³ Robert Garot, “‘You’re Not a Stone’: Emotional Sensitivity in a Bureaucratic Setting’ (2004) 33 *Journal of Contemporary Ethnography* 735.

⁶⁴ Blau (n 56), p. 350.

⁶⁵ Lipsky (n 19) 151.

⁶⁶ *ibid* 151–2.

⁶⁷ Blau (n 56), 348.

“[i]t would be naïve to suppose that some claimants do not claim asylum for the purposes of economic betterment as they do not qualify for entry under normal immigration rules.”⁶⁸

Thus, one cannot realistically expect all welfare state claimants to be scrupulously honest. But this modest fact gets inflated and distorted by the problem of emotional dissonance. The incontestable fact of some claimants’ dishonesty becomes a foundation for systematic and routine suspicion. Indeed, this is the context in which street-level bureaucracies’ fear of being duped becomes a motivating force. The spectre of duplicitous claimants taking advantage of not only a legitimate scheme of entitlement, but also the compassionate motivations of the workforce renders the bureaucracy ultra-sensitive to the risk of dishonesty. It also makes them hyper-vigilant in terms of trying to spot it.

It is important to note that, for the individual bureaucrat, the (dis)honesty of claimants can become quite a personal and emotional matter. As Blau argued:

“Finding out that people one has trusted have lied is a threatening experience. It implies that one has been made a fool of and that others are laughing behind his back at his naivete. To protect his ego against these threats, a case worker is under pressure to change his orientation toward clients. If he anticipates deception by distrusting the statements of recipients, their lies no longer pose a threat to his ego.”⁶⁹

Thus, the qualitative literature on street-level bureaucracy, including socio-legal literature on entitlement decision-making, is replete with examples of bureaucrats developing a kind of ‘sixth sense’ about whether claimants are lying, often framed in terms of ‘gut instinct’,⁷⁰ ‘professional instinct’⁷¹ or ‘intuition’.⁷² The development and employment of ‘sixth senses’ are ego-protecting mechanisms; and they can be highly stimulating for individual bureaucrats. The ability to demonstrate or document the claimant’s dishonesty can become a central goal of case work. The attainment of this goal will be emotionally rewarding, while the failure to attain it will be emotionally painful, as the following examples demonstrate.

In Halliday’s study of UK homelessness decision-making, he quotes a bureaucrat in the following terms:

“There’s a competitiveness, I think, between us and them, them being applicants - not your ordinary applicant, but if somebody is likely to get a negative decision and is always lying, there is a determination to root out the truth. And that’s quite an enjoyable exercise. I think most people would find that enjoyable - the sleuth part.”⁷³

The converse of pleasure in rooting out the cheats is, of course, anger or frustration in failing to achieve that goal, as Eggebø’s study of decision-making in Norway’s immigration bureaucracy illustrates (quoting an immigration officer):

⁶⁸ Thomas, ‘Assessing the Credibility of Asylum Claims: EU and UK Approaches Examined’ (n 37) 80.

⁶⁹ Blau (n 56), 349.

⁷⁰ Cowan (n 24); Helga Eggebø, ‘“With a Heavy Heart”: Ethics, Emotions and Rationality in Norwegian Immigration Administration’ (2013) 47 *Sociology* 301.

⁷¹ Jubany (n 40).

⁷² Loveland (n 24); Halliday (n 42).

⁷³ Halliday (n 42); Alpes and Spire (n 42) 269.

“I remember having this instant feeling about whether a particular marriage was genuine or not, whether everything was OK or not. Sometimes, I was really annoyed when the Directorate accepted an application when I had this feeling that they were cheating.”⁷⁴

The process of applying rules to facts in these settings, despite wearing the apparel of pure rationality, can thus be rather emotional. As one merits review tribunal member in Australia noted about his/her work in re-considering refugee applications:

“we’re all human beings and you don’t want to be taken for a fool...”⁷⁵

Error Preference in Cultures of Denial

The argument of the above section was that a rather banal emotion – fear of being duped – can resolve the error preference dilemma of credibility assessment towards framing claimants as dishonest. Yet, one might legitimately question whether this insight actually reveals anything about the error preference dilemma. There is clearly merit in identifying the significance of the fear of being duped to entitlement decision-making, but the notion of error preference being a *dilemma* requires the existence of uncertainty on the part of decision-makers. The situation discussed above, it could be suggested, is better framed as one of certainty rather than uncertainty – the highlighting of an emotional failure that leads to mistaken certainty, which thus fails to give rise to any dilemma for the individual decision-maker.

The answer to this potential objection is that issues of credibility assessment and risk preference at the level of the individual cannot be adequately understood unless seen in the context of organisational culture. Thus, notwithstanding the confidence of individual decision-makers about a particular case, the error preference dilemma still exists. The risk of making an error – either to deny an entitlement claim that should be granted, or to grant a claim that should be denied – is always present in the background of routine decision-making, forming part of the context of street-level bureaucracy, and is resolved at the cultural level in organisational knowledge and practices. Mistaken confidence, then, can actually be evidence of how the dilemma has been resolved, rather than evidence of its absence. The dilemma is resolved in the culture of denial.

Research that seeks to account for cultures of denial in street-level bureaucracies, such as in asylum, immigration, social security or housing work, sometimes looks towards the broader political context as an explanation.⁷⁶ Negative and exclusionary signalling from the external environment bleeds into the routine operations of the bureaucracy, it is thought. There is clearly importance in this reasoning.⁷⁷ However, as this section has sought to argue, such insights do not tell the whole story. Cultures of denial, it is suggested, can emerge from the bottom up, as it were, and not simply from the top down. Even absent an exclusionary political context, inclinations towards disbelief and rejection can emerge from the bureaucracies themselves due to the conditions in which they operate and the emotions such conditions provoke.

⁷⁴ Eggebø (n 67), 308.

⁷⁵ Quoted in Trish Luker, ‘Decision Making Conditioned by Radical Uncertainty: Credibility Assessment at the Australian Refugee Review Tribunal’ (2013) 25 *International Journal of Refugee Law* 502, 523.

⁷⁶ Cowan (n 24); Jubany (n 40); Souter (n 41); Alpes and Spire (n 42).

⁷⁷ See, e.g., Keith Hawkins, *Law as Last Resort: Prosecution Decision-Making in a Regulatory Agency* (Oxford University Press 2002).

Moreover, it is not simply a matter of emotional contagion, as Baillot *et al* have suggested in the context of asylum decision-making,⁷⁸ whereby the claimant's experience of trauma gets transferred over to the decision-maker. Rather, a more banal emotion can be generated from within the bureaucracy itself. The fear of being duped is central to the emergence of cultures of denial, it is suggested. It looms large in street-level bureaucracies and can distort the implementation of the laws that promise the various entitlements of the welfare state. A sense of having been fooled by an unscrupulous claimant can be emotionally costly for bureaucrats. And, unfortunately, the problem of emotional dissonance exaggerates the extent of this risk and makes decision-makers particularly sensitive to it.

Implications for Administrative Justice

What are the implications of the above argument for administrative justice? There are three principal lessons, it is suggested.

The importance of focusing on primary decision-making

The first thing we might take from this analysis is a re-emphasis of the importance of focusing on first-instance decision-making in front-line governmental agencies.⁷⁹ It is now common in the socio-legal research literature to note that the term 'administrative justice' has a dual meaning: it may refer both to the justice of government administration, and to that part of the justice system that concerns itself with government administration.⁸⁰ Yet, the preponderance of research activity to date has focused on the latter conception, it is suggested, with many scholars taking a dispute-centred approach to the subject. Thus, over the last half century, a growing interest has been shown in various modes of redress, including tribunals, ombudsmen and judicial review.

There is clearly considerable merit in this line of enquiry; and it is easy to understand why socio-legal scholars are drawn to the study of disputing and dispute resolution forums – not only is research access easier, but a focus on disputes and their authoritative resolution is a key element of legal enquiry more broadly. However, this focus on what we might term the 'back end' of administrative justice risks neglecting the significance of the 'front end', where all the primary decisions are made and where individuals first encounter the 'justice' of governmental administration. In many settings, only a small proportion of primary decisions make it to dispute resolution forums,⁸¹ and the capacity of such accountability mechanisms to influence positively primary decision-making is still fairly limited.⁸² Thus, as much as (perhaps more than) a dispute-centred approach to the topic of administrative justice, we need a decision-making-centred approach which puts at least as much energy into focusing on the 'justice' of primary decisions in front-line agencies.

⁷⁸ Baillot, Cowan and Munro (n 55).

⁷⁹ Jerry L Mashaw, *Bureaucratic Justice: Managing Social Security Disability Claims* (Yale University Press 1983); Michael Adler, 'A Socio-Legal Approach to Administrative Justice' (2003) 25 *Law and Policy* 323; Partington (n 16); Thomas, 'Administrative Justice, Better Decisions, and Organisational Learning' (n 11).

⁸⁰ Tom Mullen, 'Access to Justice in Administrative Law and Administrative Justice' in Ellie Palmer and others (eds), *Access to Justice: Beyond the Policies and Politics of Austerity* (Hart Publishing 2016); Michael Adler, 'The Rise and Fall of Administrative Justice - A Cautionary Tale' (2012) 28 *Socio-Legal Review* 28.

⁸¹ Hazel Genn, 'Tribunal Review of Administrative Decision-Making' in Hazel Genn and Genevra Richardson (eds), *Administrative Law and Government Action* (Oxford University Press 1994); Cowan and Halliday (n 26); Thomas and Tomlinson (n 15). The exception to this general rule is the asylum context, where many refusals of claims are appealed.

⁸² Simon Halliday and Colin Scott, 'Administrative Justice' in Peter Cane and Herbert Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010).

The importance of a cultural understanding of primary decision-making

The second lesson to take is the importance of taking an ethnographic approach to the exploration of primary decision-making in frontline governmental agencies. Irrespective of the particular research techniques employed (which may, of course, be constrained by issues of research access), the ambition must nonetheless be to understand properly bureaucratic *culture*. Such a rounded assessment of entitlement decision-making is required in order to identify the problems that should be the subject of reform endeavours and to structure the efforts to resolve them.

Even though, as just argued above, administrative justice researchers tend towards a focus on the ‘back end’ of the field, there is certainly a healthy dose of research that does focus on the ‘front end’. However, this research agenda has been dominated by the identification of the ‘models’ of justice that can be observed in the decision-making routines and operations of street-level bureaucracies. Inspired by the pioneering work of Mashaw,⁸³ this line of enquiry has focused mainly on the trade-offs between values that are unavoidable in decision-making systems.⁸⁴ Again, there is great merit in such research work, not least because it offers an analytical framework for both normative theory and empirical enquiry. Yet, in its focus on competitive models of justice, it tends to operate at the meso-level of analysis: Mashaw, ultimately, was interested in system design. What this body of work often overlooks are the insights about human interactions and street-level culture at the micro-level. Thus, there is a need to increase our focus on the problems and challenges that may exist *within* a particular model of justice, rather than on the trade-offs *between* models of justice.

For example, welfare entitlement decision-making is frequently dominated by, in Mashaw’s terms, a ‘bureaucratic rationality’ model of administrative justice,⁸⁵ particularly in ‘liberal’ welfare state regimes,⁸⁶ including the UK.⁸⁷ This model of procedural or administrative justice stresses the values of accuracy and efficiency at the cost of the values Mashaw associated with competing models: service (‘professional treatment’), and fairness (‘moral judgment’).⁸⁸ In other words, the organisation of the system that is set up to implement welfare state entitlement schemes is legitimated by a stress on the system’s accuracy and efficiency (as opposed to its service to clients, or the fairness of its decision-making procedures). What an ethnographic approach to administrative justice scholarship offers is the capacity to problematise these foundational values, such as the notion of ‘accuracy’ within the bureaucratic rationality model. As this article has sought to demonstrate, while accuracy is unquestionably a vital concern of street-level bureaucracies, its operationalisation – its actual meaning on the ground – is shaped by a fear of being duped, which distorts the bureaucracy’s perceptions of its claimants. Such a distorted characterisation of claimants is, it has been suggested, an emotional coping mechanism; and, significantly, this emotional coping mechanism is made necessary by the conditions in which the bureaucracies operate. In other words, there is a tension *within* the model of justice between the core values of efficiency and accuracy. Somewhat paradoxically, then,

⁸³ Mashaw (n 79).

⁸⁴ Jerry L Mashaw, ‘Models of Administrative Justice’ in Marc Hertogh and others (eds), *Oxford Handbook of Administrative Justice* (Oxford University Press, forthcoming).

⁸⁵ Michael Adler and Paul Henman, ‘E-Justice: A Comparative Study of Computerization and Procedural Justice in Social Security’ (2001) 15 *International Review of Law, Computers & Technology* 195.

⁸⁶ Gosta Esping-Andersen, *The Three Worlds of Welfare Capitalism* (Princeton University Press 1990); Christopher J Jewell, *Agents of the Welfare State: How Caseworkers Respond to Need in the United States, Germany, and Sweden* (Palgrave Macmillan 2007).

⁸⁷ Thomas and Tomlinson (n 15).

⁸⁸ Mashaw (n 79) 31.

bureaucratic rationality, as a legitimatising mode of implementation, is capable of producing a form of ‘accuracy’ that undermines its claim to be a model of administrative *justice*.

The challenge for law and policy, of course, is that this emotional dimension of street-level work is largely invisible after the event. One cannot get a feel for the emotions of street-level bureaucracy by reading decision-letters or case papers. Emotions are not documented. Indeed, inevitably, the outside world – including claimants, courts, auditors, inspectors and policymakers – are consistently presented with only half-truths. The process of writing a formal decision-letter or report is an exercise in stripping out any emotion that underpinned the decision. Yet, as this article has argued, emotion is part and parcel of bureaucratic life. The development of administrative justice theory and practice is diminished by a failure to take account of it.

The centrality of emotion to bureaucratic culture

The third and final lesson to take – the central point of this article – is the importance of treating emotion as a core focus of enquiry when seeking to understand bureaucratic culture in frontline governmental agencies that determine the legal entitlements of the welfare state. For sure, as noted above, there are existing calls for administrative justice research to turn its face towards the routine quality of primary decision-making,⁸⁹ matched by a concern with getting administrative decisions ‘right first time’,⁹⁰ particularly in relation to decisions that, theoretically at least, may proceed upwards to redress forums.⁹¹ Yet, despite the importance of this emerging research work and the policy prescriptions that follow, they tend, as suggested in the introduction to this article, to focus on the rational elements of the decision-making process to the exclusion of a consideration of emotions. Much like the bulk of empirical work on refugee law, the reform recommendations generally focus on enhanced training and better guidance with a view to more knowledge and improved cognitive skill. While such is important, what is also required is the additional research focus on the emotions of street-level decision-making on entitlements.

Indeed, what is needed is not simply a focus on emotions that can run in parallel to the focus on rationality or cognition, but rather a greater recognition of the intimate connection *between* emotions and cognition. As Lange has noted in the regulatory context,

“discussions about cognition in legal regulation inevitably need also to address emotions because cognition and emotion are closely related.”⁹²

Our understanding of the rationality of bureaucracy is impoverished by a failure to consider emotions: as this article has tried to show, emotions can influence assessments of credibility, which can shape assessments of the facts, which can lead to denials of assistance. Emotions and rationality, empirically speaking, are inextricably linked in the decision process.

This, of course, has clear implications for policy development too. Policy, as well as research, needs to be sensitive to the emotions of bureaucracy. Reform attempts to improve

⁸⁹ Thomas, ‘Administrative Justice, Better Decisions, and Organisational Learning’ (n 11).

⁹⁰ Administrative Justice and Tribunals Council (n 12).

⁹¹ Committee for Administrative Justice and Tribunals Wales (n 14); Trevor Buck, Richard Kirkham and Brian Thompson, *The Ombudsman Enterprise and Administrative Justice* (2013); Chris Gill, ‘Right First Time: The Role of Ombudsmen in Influencing Administrative Decision-Making’ (2011) 33 *Journal of Social Welfare and Family Law* 181; Nick O’Brien, ‘Administrative Justice in the Wake of *I, Daniel Blake*’ (2018) 89 *The Political Quarterly* 82.

⁹² Bettina Lange, ‘The Emotional Dimension in Legal Regulation’ (2002) 29 *Journal of Law and Society* 197, 202.

primary decision-making must include a focus on the working conditions that trigger problematic bureaucratic emotions, or that enable bureaucrats to overcome them where required. We cannot hope for an emotionally healthy implementation of law unless the conditions permit it. This must surely go well beyond the recommendations of counselling, emotional support and targeted recruitment that we find in limited studies of emotion in refugee law.⁹³ Reform efforts would have to acknowledge the tensions between efficiency and accuracy, and focus on the structural or policy changes that could be made to promote greater reflexivity in terms of bureaucrats' capacity to recognise negative emotions when they occur. How, for example, can we foster greater "cognitive empathy", in terms of the capacity to look beyond one's intuitive presuppositions and "[think] about what the world might look like from another's stance"?⁹⁴

These questions, of course, are very difficult to answer and it is beyond the scope of this article to attempt such a feat. Indeed, as suggested earlier, they represent a major challenge for administrative justice research and policy. Yet, without a sustained focus on the role of emotion in entitlement decision-making, administrative justice research and policy is overlooking much of what matters. In the absence of such work, the capacity to get it 'right first time' is seriously limited.

The focus of this article, it must be acknowledged, has been on the significance of only one basic emotion (fear) for a single (albeit fundamental) aspect of entitlement decision-making (credibility assessment). We might additionally wonder about the role of anger, compassion, disgust, sadness, joy, shame and solidarity in street-level operations. Equally, we might explore emotions across decision-making sectors within the welfare state and consider the significance of emotions in a range of settings that represent the various models of administrative justice we find discussed in the literature.⁹⁵ Such would require a sustained research effort from a community of researchers, employing a mixture of research methods,⁹⁶ and would focus on the central challenge of exploring the capacity to create and sustain bureaucratic conditions that are emotionally healthier for administrative justice.

Conclusion

Legal research on the role of emotions in law and the legal system has gathered considerable pace over the last two decades,⁹⁷ focusing on an eclectic range of sub-topics.⁹⁸ Very little of this work, however, has focused on the implementation of law in entitlement decision-making within street-level bureaucracies. Yet it should not surprise us that emotions form a significant part of entitlement decision-making. As Graham notes, "emotions and feelings are an integral component of all social practice, including the bureaucratic".⁹⁹ Likewise, Dubois

⁹³ Rousseau and others (n 48); Baillot, Cowan and Munro (n 55).

⁹⁴ Charlie Irvine and Laurel Farrington, 'Mediation and Emotions' in Heather Conway and John Stannard (eds), *The Emotional Dynamics of Law and Legal Discourse* (Hart Publishing 2016) 230.

⁹⁵ Although not an example of entitlement decision-making, ethnographic work on social workers who write reports for the criminal courts has shown how status anxiety can problematise the 'service' offered within a 'professional treatment' model of administrative justice: see Simon Halliday and others, 'Street-Level Bureaucracy, Interprofessional Relations, and Coping Mechanisms: A Study of Criminal Justice Social Workers in the Sentencing Process' (2009) 31 *Law and Policy* 405.

⁹⁶ On the question of research methods and the study of emotions, see Lange (n 92).

⁹⁷ Susan A Bandes and Jeremy A Blumenthal, 'Emotion and the Law' (2012) 8 *Annual Review of Law and Social Science* 161; Susanne Karstedt, Ian Loader and Heather Strang (eds), *Emotions, Crime and Justice* (Hart Publishing 2014).

⁹⁸ Heather Conway and John Stannard (eds), *The Emotional Dynamics of Law and Legal Discourse* (Hart Publishing 2016).

⁹⁹ Mark Graham, 'Emotional Bureaucracies: Emotions Civil Servants, and Immigrants in the Swedish Welfare State' (2002) 30 *Ethos* 199, 222.

reminds us that the street-level bureaucrat, like the constitutional construct of the Crown, is, in the same body and at the same time, both state official and human.¹⁰⁰ The engagement of emotions in the process of the implementing law is thus unavoidable.

Of course, not all emotions are problematic for the street-level implementation of law. Dubois' ethnography of French welfare administration offers an excellent example of the positive role that compassion might play.¹⁰¹ The same can be seen in elements of Zacka's ethnography of a US public service agency.¹⁰² Yet, as this article has shown, other emotions can be damaging to the quality of decision-making. The fear of being duped can trigger a defensive strategy that, while emotionally cathartic for the street-level bureaucracy, is pathological for the justice of government administration. It can exaggerate the risk of the dishonesty problem and increase the likelihood of dishonesty being 'discovered'.

For sure, not all bureaucrats and not all bureaucracies may suffer this problem to the same extent; but, as the ethnographic literature on street-level bureaucracy demonstrates, it is sufficiently widespread and serious a problem to merit sustained attention from administrative justice researchers and policy-makers.

¹⁰⁰ Vincent Dubois, *The Bureaucrat and the Poor* (Ashgate 2010).

¹⁰¹ *ibid.*

¹⁰² Bernardo Zacka, *When the State Meets the Street* (Harvard University Press 2017).