The serendipity of justice: The case of unaccompanied migrant children becoming 'adult' in the UK.

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Abstract

Drawing on work spanning a decade, this chapter considers what 'practical justice' means for unaccompanied migrant young people becoming 'adult' with uncertain legal status in the UK. As they turn 18, young people may be forced to return to countries of origin or denied further access to public resources. At this juncture the serendipity of justice comes to light, since it is arbitrated by multiple actors governing and/or connected to the different spheres of young people's lives. These chance and circumstance factors have implications not only for migrant young people but for notions of practical justice more broadly.

Introduction

Prior to 2015, an average of around 12,000 migrant children without any accompanying adult arrived in Europe each year. The refugee crisis in 2015 witnessed an unprecedented 90,000 such children arriving during a 12 month period. The UK receives several thousand such children each year who, on arrival, are systematically channelled through the asylum-seeking process – requiring them to demonstrate a 'well-founded fear of persecution' in line with the requirements of the 1951 UNHCR Refugee Convention. Most children do not receive refugee status as a result, but are instead given time-limited protections and support in the UK for the duration of their childhood. Depending on the age at which they arrive and given the notoriously lengthy procedures in determining the outcome of claims for asylum, by the time they receive a decision from the Home Office, on or after their 18th birthday, many have spent a number of their formative years in Britain. During this time they build friendships and networks, a sense of belonging and have begun to imagine futures in the UK, based around their new experiences of education, aspirations and world-views. If they are not granted the right to remain in the UK, turning 18 for many can mean a sudden change in status including the complete removal of all forms of support, immediate destitution, the prospect of detention and imminent return to countries of origin, or being forced to live illegally in order to avoid deportation.

It has been argued elsewhere that there is compelling evidence that a sense of wellbeing for children and young people migrating alone to the UK is intrinsically linked to their being able to establish a sense of routine, predictability and stability in their lives – that is, a sense of ontological security (Chase 2013). While the turmoil encountered prior to and during transit to the UK frequently threatens the core of their identity and leaves them feeling fundamentally insecure, given opportunities and resources, young people often find ways to build or regain feelings of security. Such resources are variously derived through friendships, social networks, support from civil society organisations, or faith in God and/or religion. Ultimately, however, the fundamental building blocks of ontological security, and the resources required to enable young people to have a sense of who they are and who they might become, are specific rights and entitlements and thus speak directly to issues of justice.

Broadly speaking, there exist five domains of rights relevant to migrant children and young people who arrive on their own in the UK and then make the transition to adulthood; their (potential) rights as refugees; their rights as children; their rights as looked after children and young people (and subsequently care leavers); their rights as non-citizens with legitimate temporary status in the UK; and their rights as humans.

The asylum-seeking process is founded on a very particular set of legal procedures which mean that access to due processes of justice is critical in determining the outcomes for young people. Soon after arrival in the UK, children complete a statement of evidence form in the presence of a solicitor, detailing the events leading up to their forced departure from their country of origin, their journey to the UK and what they perceive would be the consequences of returning. This 'interview' is often conducted through an interpreter and usually (but not always) takes place in the presence of a social work professional or foster carer. Subsequently, and prior to their 18th birthday, every young person who has not been given a right to remain in the UK in accordance with the refugee convention, has to make a legal case as to why they should be allowed to remain for an extended period of time. There is evidence that they are increasingly likely to have these claims refused (Refugee Council 2017). If this happens, then there are situations in which it is possible to make an appeal against the decision or it may be possible to make a fresh claim for asylum (for example as a result of new evidence coming to light regarding their asylum claim). The bureaucratic technicalities of these procedures require expert professional legal advice and guidance.

The reflections included in this chapter emerge from a substantive body of work spanning more than a decade which has explored the wellbeing outcomes of unaccompanied migrant children and young people subject to immigration control in the UK. The first study (2006-2007), funded by the Department of Health in England, examined the factors influencing the emotional health and wellbeing of unaccompanied children and young people seeking asylum in the UK (Chase *et al.* 2008). The subsequent 'In Protracted Limbo' study (2012-2013), funded by the Oxford University Fell-Fund (Chase and Allsopp 2013, Allsopp and Chase 2014), was a scoping study which culminated in a successful proposal for a three-year ESRC[1] research project entitled the 'Becoming Adult' study (2016-2018), which investigated the wellbeing outcomes of former unaccompanied migrant young people transitioning to adulthood with varied legal status (Chase and Allsopp forthcoming 2019; www.becomingadult.net).

Drawing on a sociology of rights, this chapter considers the practice of justice through the lived experiences of unaccompanied migrant young people and particularly at the point of coming of age in the UK. Issues of access to and equity of 'justice' are fundamental to how young people experience this juncture in their lives. This chapter considers some of the complex facilitators and barriers to young people's access to justice across multiple spheres of their lives and how these combine to magnify elements of chance and serendipity in determining wellbeing outcomes.

A sociological discourse of rights and justice

At the heart of a genuinely sociological discourse of rights and social justice are three key questions: first, to what extent are rights or, for our purposes, social justice, universally attainable; second, what is the difference between human rights and justice contained within legislative frameworks and a concept of human rights which is grounded in moral obligations and reciprocity; and third, what are the social processes which in practice mediate people's access to rights and justice?

The discourse of legal rights has evolved over many decades and is historically grounded in property rights, generating increasingly sophisticated systems with which to arbitrate the proper allocation of goods and privileges. By contrast, a sociological framing of rights and justice has only come more recently to the stage (see for example Turner 1993, Douzinas 2000, 2009a, 2009b, 20009c, Freeman 2002a, 2002b, Woodiwiss 2005, Benton 2006,

Landman 2006, Morris 2006, 2009). While the legal discourse of rights is concerned with the letter of the law and the arbitration through the courts of who has access to what, a sociological analysis of rights applies an inherently normative and moral lens. It asks questions such as whether rights and privileges are just, whether they are fairly administered, whose interests they protect, how rights come into social being and how they operate in social practice (Morris 2006).

These moral dimensions of rights are born out of a classical view of natural law and natural rights from the seventeenth and eighteenth centuries. The classical view held that all individuals within a given society have an inherent sense of justice – people, if left to their own devices will act in ways towards each other which are conducive to allowing individuals to exercise their fundamental freedoms. Benton (2006) recognises two 'moral intuitions' (p. 21) in this classical discourse of rights: 'the moral priority accorded to the well-being of the individual person, and the notion that all individuals have equal value, are equally worthy of respectful treatment'.

The United States Declaration of Independence (1776) and the French Declaration of the Rights of Man and Citizen (1789) - the precursors of the concept of universal rights – brought with them the imposition of legal order which would guarantee the rights of individuals to freedom, provided that these individuals did not interfere or restrict the freedom of others. If governments failed to uphold or violated certain inalienable rights (such as life, liberty and the pursuit of happiness in the USA; or liberty, property, security and resistance to oppression in France), then the citizens of the state had the right to abolish the government. From then on, individuals (in these countries at least) were said to be protected from restrictions to their freedom through a legal order. Yet such rights met with scepticism from philosophers such as Marx and Weber for being bourgeois and exclusionary and inextricably linked to processes of dominance, power and status. Far from being universal, they are largely unattainable to the poor, to the stateless and to women, among others.

Turner (1993) offered the first outline of a sociology of rights around three analytical props 'ontological frailty'; 'social precariousness' and 'moral sympathy' (p. 489). Ontological or embodied frailty, Turner claimed, was a human universal condition, compounded by the risky and precarious nature of social institutions. Such vulnerability could therefore be mitigated by an institution of rights, which protects human beings from ontological uncertainty. The

efficacy of such an institution however was contingent on there being a 'collective sympathy' and therefore had an intrinsically moral character.

Turner's theory of ontological frailty as a universalising concept is especially relevant to the issue of migrant young people's claims to resources which might secure them a viable future. Turner sees a dynamic relationship between human vulnerability and the precarious character of social institutions. All human beings are therefore ontologically members of a community of suffering, 'human frailty is a universal feature of human existence' (p. 504). And with this frailty comes the possibility for collective or moral sympathy – people have an awareness of their own frailty and so the strong can empathise with the weak, something which Douzinas (2009b) refers to as the pursuit of a shared universal moral code.

From a sociological perspective, therefore, the notions of collective sympathy and a shared moral code provide the fundamental bases for the institution of rights and justice. Applying these concepts to the lived experiences of unaccompanied migrant children transitioning to 'adulthood' in the UK enables us to interrogate the range of moral positionings which come into play in determining young people's outcomes.

The multiple arbiters of social justice

> *Sometimes I wonder you know. Sometimes people come here and they are too lucky.*
> *They have everything and sometimes people they come here and have nothing at all.*

The above quotation, which comes from a young woman who participated in the first of the studies cited earlier, neatly captures the perception of chance. What or who determines who gets what, why some young people can stay and others are forced to leave? Cumulative research experience across the past decade clearly indicates that there is no logical system or structure to explain these different outcomes, but something far less tangible and complex is at play. In order to try and make sense of young people's experiences of accessing rights and justice in the context of migrating alone, I pick up the earlier points about human frailty and collective sympathy and consider how they play out through the multi-layered systems and structures which ultimately determine young people's outcomes.

The Nation State

At the level of the nation state, a number of social practices determine the actual access to rights and justice (Arendt 1951, Morris 2006, 2009). In practice, rights become enmeshed in political debates concerning whose interests and entitlements should take priority over others. Rather than being constant and universal, rights are therefore in a persistent state of flux. Constituting a permanent work in progress, and determined by different norms and practices of judgement (Freeman 2002a), rights are in effect socially-constructed.

There are numerous contemporary examples of how socially-constructed rights sustain those with most power and undermine the needs of others who may be disadvantaged as a result of factors such as their gender, ethnicity, sexual identity, ability, age or citizenship status. Recent UK history has witnessed the rise in anti-migration sentiments (exemplified by the decision to leave the European Union following a national referendum in 2016) and media-fuelled moral panic about the numbers of people arriving in the UK. Efforts by the government to regain public support have resulted in more and more stringent asylum and immigration policies – typified by an explicit policy objective of creating a 'hostile environment' in the form of an increasingly punitive immigration and asylum context in the UK, and one which reflects broader trends across Europe (see for example Marfleet 2006, Heuser 2008, Düvell 2009, Squire 2009, Baldwin-Edwards *et al.* 2018).

Preventing people from specific countries from seeking asylum, criminalising those who fail to claim asylum within a limited time period or who have inadequate documentation, the increased use of welfare restrictions as a means to enforce immigration controls, and increased surveillance through finger printing, monitoring and identity cards (McDonald and Bellings 2007, ILPA 2007, 2009) are all indicative of this trend. Moreover, the increasing devolution of immigration controls to education, health and social care institutions (Yuval-Davis *et al.* 2017) means that immigration control has become everybody's business and is no longer the sole domain of the UK Home Office. Taken together, these measures amount to the contraction of individual and collective rights of those seeking asylum and set the political landscape for the treatment of children and young people subject to immigration control.

At the same time, the hostile environment has simultaneously formulated in the public imagination the stereotypical 'migrant' who scams the system, takes up disproportionate amounts of social housing, medical and social services and threatens the jobs and security of British citizens. Moreover interchangeable terminology and tropes such as 'asylum seeker',

'migrant' and 'illegal immigrant' are at the heart of a largely xenophobic public discourse which tends to construct everyone from outside as either a threat or otherwise undesirable. The dominant representation of the asylum seeker, therefore, further limits their rights - to dignity, to respect, to freedom from discrimination – and thus perpetuates a process which, contrary to upholding human rights, essentially dehumanises. The centrality of the nation state in being both *guarantor* and *transgressor* of human rights (Morris 2006, p. 14) cannot therefore be underestimated.

Day-to-day access to justice

Beyond national level discourses of immigration and asylum, migrant young people's access to rights and justice is also stratified in an infinite number of other complex and dynamic ways from the moment they enter the country. In order to exercise rights as potential refugees, young people require the assistance of lawyers who believe them; interpreters who do justice to their accounts of what happened to them; immigration officials who are empathetic and allow them to speak about what has happened; and sometimes medical specialists who will attest to them being the age they claim to be or confirm the extent of the trauma they have endured. Hence, in order to exercise their rights as children, young people in the first instance need to be believed by immigration officials and social services employees.

Later, children need access to carers, social workers, key workers, teachers, tutors, GPs etc, who are sympathetic and empathetic. They may also require advocacy services or other civic society organisations to intervene on their behalf when they are not recognised as children, a common experience typified by age assessments and disputes (see Crawley 2007). Young people's rights as looked after children and care leavers are contingent on their being accommodated within local authorities with social services departments adequately resourced to support them; social workers who are compassionate towards them and who prioritise their needs, rather than those of the institution. They frequently also require the intervention of solicitors, civil society organisations, or other significant others to intervene when their rights and entitlements are contested.

Local authority social services departments are charged with the provision of welfare and support to migrant children and young people and should in principle be well-placed to facilitate their access to other resources they require. Yet such departments increasingly have limited resources and capacity to provide such services and a lottery emerges regarding

access and quality of care for unaccompanied migrant children and young people across different geographic areas (Humphris and Sigona 2017). Furthermore, as argued elsewhere (Chase *et al.* 2008, Chase 2010) professionals are increasingly conflicted in the roles they are expected to play in terms of both supporting young people and having a legal obligation to assist in the control of borders, hence undermining the fundamental rights-based principles of the social work code of practice (Humphries 2016, 2004b). The net result is that social care practitioners working with unaccompanied young people are forced to draw distinctions between who they will and will not provide assistance to, and in what ways. Because of this, they must assume a moral stance in relation to individual young people and form judgements as to who are the deserving and who are undeserving of support.

While legal aid services and civil society advocacy organisations are better placed to independently uphold the rights of all children and young people with respect to the letter of the law, they are similarly constrained in what they can and cannot do through systematic restrictions to their resources and funding by successive governments.

Ultimately the decision as to whether or not a young person is granted a right to remain is made by a Home Office official, who may never meet the young person. The arbitrary nature of this decision-making is well known among those who work with refugee and asylum-seeking communities. There is growing evidence that the lottery of the asylum granting process may to some extent result from the increasing devolution of decision-making powers for individual asylum cases to a range of intermediate actors, including local authority employees. As a number of researchers have observed, this process affords a high degree of discretion and power to an expanding number of individuals and increases the likelihood of subjective and discriminatory decision making and treatment of asylum seekers which may not necessarily be based on relevant criteria (Holzer *et al.* 2000, Thomas, 2006, Camp-Keith and Holmes 2009, Gill 2009). Each of these intermediaries has to make decisions on what constitutes a 'credible' claim for asylum. Thomas (2006) for example has noted how such 'credibility' in asylum claims is culturally bound and quotes one Member of Parliament as stating that 'credibility is a way by which the interviewer is able to express his ignorance of the world. What he finds incredible is what surprises him' (Hansard HL Deb., vol. 659, col. 1681, April 5, 2004 cited in Thomas 2006). More recent work by Burridge and Gill, (2016) and Gill *et al.* (2018) has highlighted the uneven geographies in access to justice for asylum seekers through legal aid and the chance and luck elements involved in the process and decisions surrounding their asylum claims.

Collective sympathy or antipathy

Throughout the body of research reflected on in this chapter, unaccompanied migrant children and young people have repeatedly described huge differences in how people treated and responded to them at each stage of their encounters with institutional structures and systems relevant to their pursuit of justice. When they first arrived and found themselves embroiled in the asylum claim system, they variously described some people they met as 'nasty' and 'horrible'; and others who demonstrated compassion or care and who intervened on their behalf, even if this was just to ensure that they were able to have food or water. At different stages of the asylum and appeals processes, or in relation to their access to entitlements to social care, housing, education or financial support, young people repeatedly mentioned occasions on which they were unable to exercise certain rights or were at risk of having their rights denied. At these points, it was often the intervention of key individuals or services who mediated on their behalf and facilitated their access to justice and/or core services such as accommodation or financial assistance. Some young people's situations have become causes célèbres due to advocacy efforts involving whole communities, exemplifying the collective moral sympathy alluded to by Turner. One young person in the Becoming Adult project, for example, spoke of how he was on the point of being forcibly removed to Afghanistan when a local media campaign got national attention and the Home Office intervened to release him. Soon after, he was granted indefinite leave to remain in the UK. His reflections on what happened capture the notions of both collective sympathy and antipathy,

> *I know there are a lot of good people. You know when I was detained, 3,000 people signed the petition. I never judge everybody by one person…But some people, you know like I couldn't go forward (with his life) for 10 years. At that time, I couldn't say hello to the police man, now I can say 'hello officer' – but I am the same person. And all this time H (friend) is still here, he signed the petition and called me when I was in the detention centre. That's what you call human you know? Humans should take care of humans. And you know, sometime animals take care of each other and the human beings are very useless.*

The gatekeepers governing young people's access to justice constitute an incongruous mix of bureaucrats, professionals and caring individuals - some who seemingly make it very difficult for young people to access the support they need, while others work tirelessly to facilitate

their access to it. They include politicians and public servants, UK Home Office officials, immigration officers, solicitors, interpreters, foster carers, social workers, teachers/tutors, key workers, personal advisors, psychologists and other health professionals. They also include advocacy services, children's rights organisations, other civil society organisations and individual MPs – the list is endless. They adopt a range of positions in relation to rights and justice at individual as well as institutional levels. Some represent the institutional goals of their organisations such as to control borders or rationalise services, while others (even sometimes within the same institutions) may instead assume a moral position which champions social justice and the rights of others. Equally these different protagonists assume a stance in relation to each migrant young person. Whether they classify a young person, for example, as 'deserving', 'credible' and 'sincere' rather than 'undeserving', devious or, as has emerged frequently throughout the research, not acting as they 'should', fundamentally determines the degree of collective sympathy (Turner 1993) that a young person can muster and which ultimately dictates the extent to which justice is brought within their reach. These different stances are exemplified in the following account from a young man participating in the Department of Health-funded study (Chase *et al.* 2008), although it should be noted that on some occasions, other young people reported their social worker being their main source of support rather than their adversary,

> *The social worker came to see me and she said, 'he is not 15'. I told her that the Home Office believed me and have given me five years, so you can't say that to me'. Maybe she didn't like me. Why can she say that? She doesn't even know me. She kept saying, 'he is not 15'. The interpreter said, 'why are you saying that, he is just 15. He is shy and he's really scared – he just came yesterday. How can you say that'?. Then they complained about the interpreter. The interpreter never came to see me again, but he just wanted to help me.*

Increasingly remote and uncaring asylum systems

If access to justice is based on moral claims and the ability to draw on the sensibilities of a shared understanding of frailty, then where does that leave the practice of justice in the context of the 'hostile environment' which has been purposefully generated to deter people from moving to the UK? Moreover how can such interactions occur when those governing

access to justice are increasingly distanced from those who are trying to exercise their right to it? As implied by Bauman (2004, 2007), the systemised bureaucracy of late modernity and its inherent functional division of labour tends to suppress morality and encourages people to prioritise the purposes of the state over personal wellbeing and the good of others. In the case of young people seeking asylum, this form of bureaucracy is typified by asylum officials making decisions on cases of young people they may never meet and to whom they have no personal or emotional investment; thus there is both practical and mental distance placed between the system determining asylum outcomes and those affected by the decisions. Young people repeatedly talk of how they feel reduced to being a number, that there is no interest in them as a person – and how they view the systems and structures of asylum and immigration as processes of total control. One young woman in the Department of Health-funded study (2006-2007) reflected on the arbitrary nature of decision making about asylum cases and described her efforts to cease being a number and to make sure that she became recognised as an individual through persistently writing to the Home Office,

> *I am thinking that someone in the Home Office as we speak now, someone who is working in the Home Office – I am sure they are not seated with their feet up. There is someone out there wearing glasses, really trying to concentrate on someone's case...trying to decide what to do next. I try to think like what they are doing in that time and I am thinking they are doing a lot. And they say they have something like 60,000 cases at one time. And I can just imagine how many documents they have to go through. And I am thinking to myself, 'my document is somewhere in there'. But if I can put in a reminder, constantly pressure them... my case is going to stand out...it is not just going to be put under there. Someone is going to say, 'this person has been writing too much, can someone take her case and review it?' I don't want to be that person who is waiting for six, eight years ...'cos I am not comfortable. I feel like something has to be done. I need to be told where I stand, you know, because I really don't know.*

Discussion and Conclusion

As discussed earlier, migrant young people arriving alone in the UK have access to five domains of potential rights as they make the transition to adulthood: their (potential) rights as refugees; their rights as children; their rights as looked after children and young people (and subsequently care leavers); their rights as non-citizens with legitimate temporary status in the UK; and their rights as humans.

If, by the time they turn 18, young people have no legal right to remain in the UK, they enter early 'adulthood' with few, highly contingent rights. At this transition, they face the potential end to discretionary leave (granted according to their status as 'children'); have commonly exhausted the appeals process and hence have no further access to legal processes; no longer meet the criteria of 'children' with respect to international frameworks such as the United Nations Convention on the Rights of the Child (UNCRC); and frequently face substantially fewer rights as care leavers compared to their looked after peers who are UK citizens. As they become non-citizen adults, opportunities for contesting their denial of rights are diminished. Ultimately, their claim to the final domain of rights, or 'human rights', risks being devoid of meaning since they have such tentative links to any systems or structures which can uphold their rights as human beings. At this juncture, therefore, they risk becoming both state-less and rights-less.

However, the converse scenario is equally possible. There are examples throughout the body of research described here demonstrating that when different people acted either on their own or collectively to lobby on behalf of young people, things did happen and things did change for the better. Practical justice then became something tangible with sometimes transformative results. A recently- published short animation entitled *Dear Habib*, and produced for the Becoming Adult project (https://www.youtube.com/watch?v=_WdprHcOuJU) captures beautifully the story of one migrant young person while reflecting the anxieties and dilemmas for many others. It does this by telling Habib's story, the distress and trauma he experiences throughout his migration, the strength of the relationships he builds and how these fundamentally determine what happens to him. What Habib's story illustrates best are both the human frailty generated by life circumstances and events, and the ad hoc acts of human kindness and 'collective sympathy' which ultimately provide him with a pathway to build his life and future here in the UK.

Young people interviewed throughout the research described in this same project were acutely aware of the extent of luck and lack of logic in how decisions on asylum claims were made. Several talked of how they could not understand why others they knew had been granted indefinite leave to remain with apparently weaker claims to asylum than themselves. On the other hand, others knew of young people who had been refused and in some cases returned to countries of origin, and they felt 'bad' that these young people had not had the

same opportunities as themselves. One young man from the Becoming Adult project who had secured legal status in the UK after seven years, commented on the difficulty of managing conversations with friends who had spent they youth in the UK but who nonetheless had been deported,

> *When he calls he asks, "how is X (the name of the city)?, how is it doing?". Or "What about this person, how is he doing?", or "Do you remember when we barbecued in this place?, and "do you remember those pictures?", and "have you got those pictures?". And stuff like that. And sometimes you feel like you don't want to talk about it because you will upset the person isn't it? But you feel like you are lucky because you are still here, but you feel sorry about the person who didn't get to stay.*

The arguments presented in this chapter draw strength from the depth and longevity of the evidence at hand. Many of the difficulties related to young people's transition to 'adulthood' emerged in the first Department of Health funded study (2006-2007) even though it was not the primary focus of the research. In particular the evident arbitrariness of whether young people could access services, support and legal advice and justice came very much to the fore. Ten years on, as I write up the findings from the most recent ESRC-supported Becoming Adult study, the insights from a justice perspective are strikingly similar. There is no logic to the likelihood of receiving refugee status; there is no systematic access to justice or legal recourse for making a claim to stay in the UK; there is no pattern in the likelihood that the social worker, foster carer or teacher with whom a young person builds a relationship will be in a position or take the moral stance to mediate and support their access to justice and rights in ways which bring about a positive outcome. As such, serendipity and chance combined with moral judgements are as likely to determine the outcomes for young people as any process of legal rights or justice.

The theatre of rights and justice is evidently played out on many different stages. Whether these be supra-national, national, local or individual dramas, they continue to raise fundamental questions about the universality of rights and their relevance to the plight of individuals. While I have considered the various ways in which the UK asylum and immigration system upholds or withholds rights and the various posturing that takes place (see for example Landman 2006) it is at the micro level analysis of the factors influencing individuals' access to rights and justice that we see the propensity for luck and serendipity.

An adequate theory of practical justice needs to recognise the multiple arbiters of social justice and the powerful roles they can assume in simultaneously widening access to it for some while closing its doors to others. For the young people who were part of this body of research over a substantial period of time, the patterns of serendipity and chance appear paradoxically consistent. As a result, migrant young people continue to struggle with how they might navigate their way to the futures they aspire to with no clear signs or signals to guide them, and no evident rules to the social justice game.

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[1] The Economic and Social Research Council (ESRC) is one of the major funding bodies for the social sciences in the UK.