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Cover page

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The Grammar of Administrative Justice Values

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ABSTRACT

The debate concerning administrative justice in the UK often involves reliance upon a certain set of values. Examples of such values include openness, confidentiality, timeliness, transparency, secrecy, fairness, efficiency, accountability, user-friendliness, consistency, participation, rationality, and equal treatment. These values are often deployed, both in academic and policy contexts, without much precision. This produces confusion which can hamper debate. This article therefore argues there is a need to reflect on how these oft-used values are deployed, and consider the particular concerns which underlie them. In this sense, this article suggests there is a need to refine the grammar of administrative justice. This argument is demonstrated through an extended analysis of the value of ‘user-friendliness’: a site of emerging disagreement in recent years. It proposes that an important distinction must be drawn between two understandings of the value: the ‘accessibility’ and ‘consumerist’ understandings. This article concludes by suggesting that, going forward, it is important to consider whether the use of abstractions is helpful at all in administrative law and justice debates.

KEYWORDS

Administrative justice; administrative law; public law; values; grammar; rationalism; abstraction; user-focus.

The values of administrative justice

In December 1998, Martin Partington, a central figure in the development of the modern study of administrative justice, gave a lecture on the topic of ‘Restructuring Administrative Justice’ at University College London (Partington 1999). In one part of the lecture he contended that administrative justice ought to be understood as a ‘single concept embracing two conceptually distinct aspects’. He labeled these two aspects the ‘institutional framework’ and ‘principles and values’. By the first of these terms, he referred to ‘all those tiers of decision-taking’, ‘obviously... the courts’, tribunals, inquiries, ombudsmen, and the ‘various other bodies’ involved in the delivery of government services. When referring to ‘principles and values’, he spoke of how administrative justice ‘implies important sets of principles and values, which must be considered as part of the conceptual framework’. Examples of such ‘values and principles’ that Partington notes are openness, confidentiality, transparency, secrecy, fairness, efficiency, accountability, consistency, participation, rationality, equity, and equal treatment. Other common examples include timeliness, courtesy, and user-friendliness. Understanding such values, he goes on to state, ‘adds to the complexity of conceptualising administrative justice, not least because not all of these principles and values are consistent with each other, and are often contingent in their nature and application’. Nonetheless, Partington urged that ‘we should revisit [the existing] conceptual language not only to see

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whether it is still appropriate... but also ... to see what other values and principles need to be brought into the framework'. His claim was, therefore, that:

At the risk of making our lives more complex... any consideration of the structure of administrative justice cannot shy away from analysis of these competing values and principles. How they ultimately are summarized and packaged for public and political consumption is another matter; but that should not deter proper intellectual investigation of the range of values and principles which might be said to underpin the administrative justice system.

This article highlights one way in which administrative justice has failed to supply the 'proper intellectual investigation' into values called for by Partington. Specifically, this article suggests that there remains space for reflection on the use of values talk itself in administrative justice, and that there is a need to refine the grammar of values in administrative justice (Gee and Webber 2013; Mashaw 2006).

There are two main parts to the discussion here. The first part identifies a problem in the administrative justice debate: key values are often deployed, both in academic and policy contexts, without much precision. This can create analytical confusion. As such, it is suggested that there is scope for the further clarification of the various understandings and meanings that animate such values. The second part of the article offers an extended case study which demonstrates this need to reflect on the use of administrative justice values. The example used is the oft-referred-to value of 'user-friendliness', or being 'user-focused'. In recent years, the UK Government and commentators alike have seen user-focus positively (O'Brien 2012) and research institutes are building agendas around the idea (e.g. UKAJI 2017a; UKAJI 2017b). Indeed, 'user-focus' could be said to now be a key value of administrative justice, and it is often used as an aspirational normative standard (e.g. Sossin 2017). This trend stands in stark contrast with the comments of Lord Reed in a recent UK Supreme Court (UKSC) decision concerning tribunal fees, where the government was criticised for emphasising users (*R (UNISON) v Lord Chancellor* [2017] UKSC 51). These judicial comments are also indicative of a wider developing critique of terms such as 'users', expressed by a range of commentators (O'Brien 2017) and in popular films such as Ken Loach's *I, Daniel Blake* (2016). This paper shows how this apparent disagreement about users can be illuminated by understanding that different concerns are often in play when the value of 'user-friendliness' is discussed. In light of this, the article proposes an important distinction—between what will be called 'accessibility' and 'consumerist' understandings of user-focus—that is necessary for understanding talk about 'user-friendliness'.

As a preliminary issue, the notion of 'grammar' requires elaboration. Grammar, at least in the non-technical sense it is used here, seeks to capture the words and phrases that are commonly deployed by a community about a particular subject (Gee and Webber 2013a). Here, the subject matter is administrative justice. The community is constituted of those who regularly discuss it—typically policymakers, researchers, advisors etc. And the particular interest of this article is in what we commonly refer to as the 'values', 'concepts' or 'principles' of administrative justice. To be clear, words and phrases—value terms for our discussion—can be used to undertake a range of actions. They can be used to criticise and defend systems, practices, rules etc. They can also be used to understand and explain administrative justice. In this sense, the values of administrative justice, as discussed here, are seen as a 'cognitive tool' (Gee and Webber 2013a). In the context of values, we must be particularly alert to the fact we are dealing with a language of abstractions. That is to say, values are non-material entities which operate at a high level of generality. Some administrative law scholars have expressed particular hostility to the use of this sort of language (e.g. Griffith 1979). The purpose of this article is not to fully explore the merits, or otherwise, of such hostility. Nonetheless, this article does indicate that, where abstract

language is used, a subsequent need to refine what is actually meant arises. As such, it may give us pause to reflect more deeply on the nature and use of abstractions in contemporary administrative law and justice thought (Gee and Webber 2013b).

Why we need to reconsider the grammar of administrative justice values

There has been no shortage of attempts to state the values that an administrative justice system ought to respect. Indeed, it was observed by the Administrative Justice and Tribunals Council (AJTC) that the UK has a ‘rich history of developing principles for administrative justice’ (2010). Many statements of the values of administrative justice have come from institutions which engage with and are (or were) part of the administrative justice system (for a detailed outline see AJTC 2010). Two prominent and relatively recent examples are the Parliamentary and Health Service Ombudsman’s (PHSO) Principles of Good Administration (2009) and the AJTC’s Principles of Administrative Justice (2010b).

The PHSO’s Principles of Good Administration set down a range of values intended not as ‘a checklist to be applied mechanically’ but as principles that could assist public bodies in taking action that achieves ‘reasonable, fair and proportionate results in the circumstances’. These principles formed part of a wider attempt by the PHSO to generate principles (see e.g. PHSO 2009b; PHSO 2009c). Six principles of ‘good administration’ were offered: getting it right; being customer focused; being open and accountable; acting fairly and proportionately; and putting things right; and seeking continuous improvement. These six principles—each explained through a few examples in the space of a few lines—were said to be informed by the experiences of the PSHO, with the introduction to the principles recognising that they ‘draw on over 40 years’ experience of investigating and reporting on complaints to propose a clear framework within which public bodies should seek to work’.

The now defunct AJTC was an advisory body with a statutory role to keep the administrative justice system under review, with the aim of making it fair, accessible, and efficient (Tribunals, Courts and Enforcement Act 2007, Schedule 7(13)(1)). In 2010, the AJTC produced a statement of Principles for Administrative Justice—principles which built ‘on previous work in this field, and in particular on the Parliamentary and Health Service Ombudsman’s Principles of Good Administration (these were reviewed as part of work in AJTC 2010). Richard Thomas CBE, the then Chairman of the AJTC, explained that the principles were ‘designed to be used by officials in public bodies and beyond... [t]hey also apply to those dealing with complaints or appeals’. Much like the PHSO’s principles, the AJTC drew its principles from practical experience, via broad-based engagement with stakeholders (AJTC 2010b). The principles set down by the AJTC stated that a ‘good administrative justice system’ should: make users and their needs central, treating them with fairness and respect at all times; enable people to challenge decisions and seek redress using procedures that are independent, open and appropriate for the matter involved; keep people fully informed and empower them to resolve their problems as quickly and comprehensively as possible; lead to well-reasoned, lawful and timely outcomes; be coherent and consistent; work proportionately and efficiently; and adopt the highest standards of behavior, seek to learn from experience and continuously improve.

These statements of values, largely reflective of others which have been produced by various institutions in recent years, can potentially serve some role as a general aide to public bodies (whether they actually do is a question for another day). What is left without development in the principles are deeper, more reflective considerations of how such values are to be understood. For instance, the PHSO’s principles state, under the rubric of ‘acting fairly and proportionality’, that people ought to be treated ‘impartially, with respect and courtesy’. This begs some important questions, including how are values such as ‘impartiality’ to be understood in an administrative justice context? This comment is, no

doubt, a cheap shot of sorts: this type of reflection would not be the sort of analysis of values that bodies such as the PSHO or AJTC would have any incentive (or time) to produce. However, documents such as Principles of Good Administration and Principles of Administrative Justice are often referred to as statements of administrative justice values, and it could be said they exert some impact on the shaping of administrative justice thought. More importantly, the way these documents discuss and deploy values is not too far from how academic literature does too.

Looking to academic analysis, the values of administrative justice are occasionally reflected upon more deeply. For instance, such reflection can be found in the well-known work on the ‘models of administrative justice’ by Mashaw (1974; 1983) and Adler (2003). One recent, and clear, example is the work of Cowan et al, concerning the mandatory reconsideration system (2017). In the context of discussing values for redesigning the system, they consider the value of ‘accuracy’. They suggest that the value of accuracy, in the context of decision-making, concerns ‘an ascertainment of the facts of a case sufficient to enable the public official properly to apply the law to those facts’. This ‘elaboration’, they suggest, acknowledges that the value of accuracy ‘embraces both the proper ascertainment of facts and the appropriate application of law’. This sort of clarification is, as this article is suggesting, helpful: it distills two distinct concerns about the actual process which, if spoken of only as ‘accuracy’, could have been elided. But this sort of conceptual clarification remains rare and limited in the literature more generally. Far more common in the literature is the deployment of contested values without much, if any, acknowledgment of their contested nature (see Nason 2016 for further discussion of this). There is of course a great challenge in suggesting this to be a general problem with values talk in administrative justice scholarship: full evidence for such a claim would require a systematic analysis. In the stead of providing such an analysis here, I will refer to one recent example in this journal, which is indicative of the issue: Nason’s work on administrative justice in Wales (2017). In particular, Nason’s discussion of the various incarnations of the Wales Bill in 2015 and 2016, and their impact on administrative justice in Wales, provides a clear example. The 2015 Bill is criticised because its ‘logic and consistency were questionable’. The Wales Bill 2016 is said not to be ‘a clear and accessible piece of legislation’. The values of ‘consistency’, ‘coherence’, ‘clarity’, and ‘accessibility’ are all terms that could each represent a wide range of anxieties in the context they are being used. To be clear, this is not to criticise a particular author. It is to highlight that general values talk is something almost all (including myself) and even the most reflective administrative justice researchers do.

General values talk in administrative justice is thus a problem as it often leaves a lack of clarity that hampers discussion. Values are protean concepts and the same value can act as a label for a range of more specific concerns—concerns which are often overlapping but ultimately different. For example, the value of ‘timeliness’ can be seen as a manifestation of a concern for efficient administration, the desire to reduce stress of those subject to a decision-making procedure, or a variety of other concerns. There are multiple concerns which may therefore underlie the value of timeliness, and thus any discussion or claim that hinges upon it. This means that, put very simply, authors can be talking about the same ‘values’ but, in substance, talking about very different issues. This is particularly troublesome where terms are widely used. Mashaw, for instance, has shown how the ‘millions of word spilled on the subject of accountability’ can be shown to be scholars ‘talking about different method and questions of accountability without specifying with any precision either the particular accountability problem that engages their attention or the choices they are making implicitly among different accountability regimes’ (Mashaw, 2006).

While there is a strong case for further reflection on how we use the values of administrative justice, there is an important objection which could be made to such an

approach. Stated succinctly, that objection is that the consequence of the argument's success is the opening up of an abstract debate from which little may be gained in practice. In other words, there is a 'risk of making our lives more complex' through encouraging nitpicking around values (Partington 1999). Public law more generally has perhaps fallen into this trap in recent years. Gee and Webber, applying Oakeshott's concern about the use of rationalism (1991) to contemporary public law, identify a 'push within the study of public law for a more rationalised, formalised, and institutionalised constitution' (2013). This 'push'—or 'search for principle'—could, they suggest, lend itself to two readings about the approach of public lawyers to their discipline. One is that it could be what Oakeshott feared come true in modern public law thought, it being symptomatic of a 'rationalistic propensity among public lawyers to prioritise the universal over the local, the uniform over the particular and, ultimately, principle over practice... culminat[ing] in public lawyers losing the ability to differentiate between the frailty of the constitution and the frailty of their own understanding of it' (2013). Another, more positive, reading of the rationalistic 'push' within public law is that it is 'evidence of [an] increasing sophistication and surefootedness' in the understanding of a public law system which emerged out of haphazard conditions. Gee and Webber's central thesis is that the optimum approach in public law is, in the 'search for principle', to be 'sensitive to the place of practical knowledge'. In refining the grammar of administrative justice values—which this article suggests would be a helpful pursuit—there is need for caution not to wander into the territory of having a rationalistic debate. The administrative justice corner of the public law field has not been afflicted by such excessive rationalism. This may largely be due to the socio-legal approach many of the scholars occupying the field have adhered to in recent decades not providing a fertile space for such work. Indeed, administrative justice has, as this article suggests, had the contrary problem: it has neglected clarity when it has used concepts. The benefits of conceptual clarity can be seen in looking at the contemporary scholarship on public law generally, and particularly constitutional law. While, as Gee and Webber demonstrate, the field has succumbed to some of the problems associated with rationalism, it has also gained a greater awareness of the fact that the language of values is inherently general and ambiguous. A great deal of attention has, for instance, been given to elucidating the fundamental values of the Rule of Law, the separation of powers, and democracy (often discussed in terms of legislative sovereignty). There are many possible examples of the benefits of this awareness. Here, the recent case of *R (Evans) v Attorney General* [2015] UKSC 2 will be discussed.

Evans revolved around the advocacy activities of Prince Charles. He would, from time to time, send letters to Ministers to express his stance on various government policies. This correspondence became known as the 'black-spider memos'. A catchy, somewhat menacing tagline with a banal cause: Prince Charles's choice of ink and particular style of handwriting. Mr. Evans, a journalist, sought to use the Freedom of Information Act 2000 (FOIA) in order to bring these memos into the public domain. Subsequent to various departments declining to release the letters on public interest grounds, Mr. Evans went to the Information Commissioner. The letters were still not released. The resistance to the release of the letters finally broke in the Upper Tribunal (*Evans v Information Commissioner* [2012] UKUT 313 (AAC)). In a remarkably meticulous judgment which gave detailed consideration of constitutional conventions concerning the role of the heir to the throne (see generally: Murray, 2013), the UT held that the public interest justified the release of the letters. After that judgment, the Government (specifically, the Attorney General) used its 'veto' power contained in section 53 of the FOIA, issuing a certificate claiming that it had 'reasonable grounds' for having formed the opinion that non-disclosure would not be unlawful. The Government thus sought to end the effect of the UT's order. The case then went on to judicial review, where Mr. Evans went from failure in the Administrative Court (*R (Evans) v Attorney*

General [2013] EWHC 1960 (Admin)) to success in the Court of Appeal (*R (Evans) v Attorney General* [2014] EWCA Civ 254). The stage was thus set for a ‘constitutional blockbuster’ in the UKSC (Elliott, 2015a). The question was ultimately a clear one of statutory interpretation: was the Government’s veto *intra vires* section 53? The reasoning within the UKSC took three paths (*R (Evans) v Attorney General* [2015] UKSC 21, [2015] 2 WLR 813). The majority in the UKSC was made up of two lines of reasoning. Lord Neuberger, with Lord Kerr and Lord Reed, read section 53 so that the Attorney General had no power to overrule the Tribunal, rendering the certificate unlawful. Lord Mance, supported by Lady Hale, rejected Lord Neuberger’s approach, but held that the Attorney General could not overrule the UT’s findings. Lord Hughes and Lord Wilson dissented. They held section 53 could only be read as authorising the Attorney General to override the UT in situations where he took a different view of the public interest. Divisions about the correct approach to statutory interpretation were readily apparent. The various approaches within the UKSC were attacked and defended by a range of commentators (see e.g. Ekins and Forsyth 2015; Elliott 2015a; Fairclough 2017; Allan 2016). The validity of the different positions set out by the many commentators who had something to say about *Evans* is immaterial to this article’s argument. What is material is that these arguments traded on and were informed by a clear understanding that core constitutional values—particularly parliamentary sovereignty, the Rule of Law, and the separation of powers—are widely contested as to their content and relationship. The whole debate around *Evans* was shot through with a clear awareness that ‘such questions [as those in the case] do not admit of straightforward answers’ but that they ‘form sites of controversy’, with ‘how they fall to be approached being coloured heavily by the underlying constitutional perspective that one adopts’ (Elliott, 2015a). For instance, Elliott (2015a) highlights how *Evans* speaks to disagreement about the values of parliamentary sovereignty, the Rule of Law, and separation of powers:

The basic architecture of the constitution consists of a series of relational principles. They make subtle, overlapping, sometimes-contradictory, sometimes-complementary claims. None of them stands for a simple proposition, and the degree of complexity that they exhibit when viewed in isolation is multiplied when they are—as they must be—conceived of in relational terms. For this reason, a large part of the complexity of constitutional adjudication in cases such as *Evans* derives from the need to determine not simply what these fundamental principles mean, but how they interact with, qualify and inform prevailing conceptions of one another. Unsurprisingly, there is considerable scope for differences of view in relation to such matters, as *Evans* amply attests. Those differences are manifested not only by the very different positions adopted by the majority and minority judges, but by highly significant differences of emphasis within the majority.

In understanding such the lack of clarity around constitutional values talk, the constitutional law debate has found itself in place to recognise that a range of different underlying concerns operate beneath general labels. Similar awareness about the lack of clarity in values talk in administrative justice would be a welcome development.

Overall, there is a need to revisit the grammar of administrative justice values, and to refine it. The alternative is a debate which suffers from a problematic lack of clarity. This is not to call for a nitpicking and needlessly complex discussion of what various values mean. Instead, this is to call for more clarification and care when various values are deployed. A detailed case study is useful to explain, in a more concrete way, how such clarification on the values of administrative justice may assist debate. The next section will focus on the value of ‘user-friendliness’: a major site of disagreement in recent years.

The turn to ‘users’ in administrative justice: revisiting the value of ‘user-friendliness’

In UK administrative justice circles, it would be easy to get the impression that we are all ‘user-focused’ now. Particularly since the 2004 White Paper on Transforming Public Services, the parts of the government concerned with administrative justice (notably the Ministry of Justice and HM Courts and Tribunals Service) have consistently spoken of building tribunals and other administrative justice systems to fit user needs. There is no sign of change here either. A policy document published in late 2016—Transforming Our Justice System—announced a huge investment in the justice system and set out, among other things, a vision for online tribunals (Tomlinson 2017). Part of this vision involved online tribunals being ‘specifically designed to meet user needs’ and systems ‘focused around the needs of individuals so that claimants can be more confident that their needs will be understood’ (MOJ 2016). Government departments, including the Ministry of Justice, are even adopting ‘agile’ or ‘design thinking’ approaches, which use techniques premised on the value of user-focused design (Kimbell and Bailey 2017). Often, commentators have seen user-focus positively (e.g. O’Brien 2012) and research institutes are building agendas around the doing ‘user research’ (UKAJI 2017a; UKAJI 2017b). ‘Being user-focused’—or, perhaps more simply, ‘user-friendliness’—could be said to now be a key value of administrative justice, and is often used as an aspirational normative standard (e.g. Sossin 2017). While there is a growing—if still small—body of academic literature on users (Partington 2017), there has been little discussion about user-friendliness as a value, even though it is often used as such. There is, in the first instance, the basic question of who is the ‘user’? This could be a lay user, a lawyer, some other professional user (such as a welfare advisor), or even a judge. Typically, the term ‘user’ relates to the lay user. But, putting that question aside and adopting its usual meaning of focus on the lay user for the sake of discussion, the concept of for ‘user-friendliness’ can represent multiple different ideas. This was particularly evident in the recent UKSC decision in UNISON, which appeared to offer a critique of focusing on users.

UNISON has some trademark features of an instant classic in public law—it being high-profile in mainstream media (e.g. Hughes 2017), carrying significant practical effects (in terms of the reimbursement of tribunal fees paid under an unlawful scheme and the removal of the fee going forwards), and advancing in-vogue talk of common law constitutional rights (Elliott 2015b). The legal issue at stake was, much like *Evans*, relatively simple. Section 42 of the Tribunals, Courts and Enforcement Act 2007 provides that ‘[t]he Lord Chancellor may by order prescribe fees payable in respect of’ various tribunals, including the Employment Tribunal and the Employment Appeal Tribunal. In 2013, Chris Grayling, the then Lord Chancellor and Secretary of State for Justice, used the section 42 power to make the Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013 (SI 2013/1893). The effect of that Order was—stating in a broad fashion—that most people who wished to make use of the Employment Tribunals had to pay fees where, previously, no such fees had been payable. This led to a dramatic and sustained drop in the number of claims lodged in Employment Tribunals. There are three ways to measure of demand for employment tribunals: volume of cases, volume of claims, and volume of jurisdictional complaints (Adams and Prassl 2017) Demand fell significantly upon the introduction of the fees, whichever of these metrics is used (Adams and Prassl 2017). Overall, claims dropped by nearly 80% with the introduction of fees (MOJ 2012; MOJ 2015). The core legal issue before the UKSC whether the Order was lawful.

UNISON argued successfully that the Order was unlawful (having failed to win in the High Court and Court of Appeal)—with their central argument being that the Order impeded access to justice, and that the Lord Chancellor’s order-making power, granted by section 42 of the Act, did not extend to impeding such access. At the heart of the case, therefore, was a question of statutory interpretation. Given the nature of the claim, issues of fundamental constitutional principle were engaged as part of the interpretive exercise. The UKSC offered

a clear, unanimous judgment. In delivering the judgment of the Court, Lord Reed, in a passage on the ‘constitutional right’ to access to justice, stated the following:

The importance of the rule of law is not always understood. Indications of a lack of understanding include the assumption that the administration of justice is merely a public service like any other, that courts and tribunals are providers of services to the ‘users’ who appear before them, and that the provision of those services is of value only to the users themselves and to those who are remunerated for their participation in the proceedings. The extent to which that viewpoint has gained currency in recent times is apparent from the consultation papers and reports discussed earlier. It is epitomised in the assumption that the consumption of ET and EAT services without full cost recovery results in a loss to society, since ‘ET and EAT use does not lead to gains to society that exceed the sum of the gains to consumers and producers of these services’ (UNISON para. 66).

On the back of these observations, Lord Reed went on to explain ‘the importance of the rule of law, and the role of access to the courts in maintaining the rule of law’, and why, in his view, ‘the idea that bringing a claim before a court or a tribunal is a purely private activity, and the related idea that such claims provide no broader social benefit, are demonstrably untenable’. He further explained that ‘courts exist in order to ensure that the laws made by Parliament, and the common law created by the courts themselves, are applied and enforced’ and that function ‘includes ensuring that the executive branch of government carries out its functions in accordance with the law’. This function of courts was said to entail the requirement that ‘people must in principle have unimpeded access to them. Without such access, laws are liable to become a dead letter, the work done by Parliament may be rendered nugatory, and the democratic election of Members of Parliament may become a meaningless charade’ (para. 68). That, he explains, is why ‘the courts do not merely provide a public service like any other... [a]ccess to the courts is not, therefore, of value only to the particular individuals involved’ and ‘[t]hat is most obviously true of cases which establish principles of general importance’. Lord Reed’s comments seem to suggest that focusing on users does not lead us to a better justice system, but to one where the UKSC feels the need to reprimand the executive and provide a Rule of Law 101.

At the heart of Lord Reed’s critique of the government is that, in their assessment of whether tribunals fees were a good idea, it focused too much on users as consumers of legal services and did not focus enough on the wider role that a user may play as a citizen in the maintenance of a good political community (through, in this instance, bringing a claim to a tribunal). Such an underlying mode of thought is apparent in multiple comments—perhaps most notably where he criticises the alleged ‘assumption [on the part of the government] that the administration of justice is merely a public service like any other, that courts and tribunals are providers of services to the ‘users’ who appear before them’. As a somewhat technical aside, Lord Reed’s critique seems to be unduly sweeping in this case. The quote of the government referred to by Lord Reed—that ‘ET and EAT use does not lead to gains to society that exceed the sum of the gains to consumers and producers of these services’—does not make the claim that the employment tribunals ‘provide no broader social benefit’. Instead, it shows a balancing exercise where the broader social benefit has been recognised as part of a value judgment. Even if it had not been given enough weight in Lord Reed’s view, it would be too far to suggest the government did not recognise the social benefit the justice system can provide. Furthermore, a key element of the UKSC’s judgment is that tribunal fees had the effect of disadvantaging users accessing justice or, in other words, hampering users. It therefore seems that a more accurate criticism would be that the government pursued a policy on a misunderstanding of user needs, or in denial of negative impacts on users. However, that point aside, Lord Reed’s comments—when placed next to the generally positive way user-focus has been perceived in many quarters—presents some obvious tensions within the value of ‘user-friendliness’.

The problem appears to be that when ‘user-friendliness’ is deployed, it can represent multiple—and contradictory—understandings. There are at least two understandings which are commonly adopted. The first is that user-focus conceives the justice system as a private product for consumption by the individual (and not as a system where individuals can partake in the state’s public decision-making processes). We can call this the ‘consumerist’ understanding. The second understanding is that the system should be convenient, accessible, and simple for lay users. We can call this the ‘accessibility’ understanding. Clarifying and drawing a distinction between these two aspects of the notion of being user focused—by articulating the more specific meaning—may assist the administrative justice debate.

This distinction, by way of continued example, can help us make sense of Lord Reed’s comments on the perils of user-emphasis in *UNISON*. As explained above, Lord Reed’s comments present a tension. On the one hand, many concerned with administrative justice have championed ‘user focus’ as a means of improving access to justice. In this light, Lord Reed’s critique aimed towards user-focus would seem odd. It would seem especially odd given that the critique was offered as part of a wider discussion of the importance of the constitutional right of access to justice. But if we recognise that the concept of user-friendliness represents more than only the accessibility understanding, Lord Reed’s comments can be clarified. Specifically, they can be read as a concern about the consumerist understanding of user focus. This reading is supported by numerous points of the judgment. Lord Reed denounces the idea that ‘bringing a claim before a court or a tribunal is a purely private activity’. He also speaks about ways in which court cases—such as the landmark tort case of *Donoghue v Stevenson* [1932] UKHL 100—are not only ‘of value... to the particular individuals involved’ but also to the wider community. He directly speaks of the role of citizen in forming the law which regulates the community, that being said to be ‘most obviously true of cases which establish principles of general importance’. All of those comments map onto a concern about ‘user-friendliness’ in its consumerist sense. Understanding Lord Reed’s judgment on those terms therefore allows us to reconcile his critique of user-focus with the fact that the critique is situated in a discussion about the constitutional right of access to justice.

The size of the possible gap between these two faces of the same concept—user-focus—is evident in two articles by O’Brien, published in *The Political Quarterly* in 2012 and 2017 respectively. In the former article, O’Brien reflects on the 2010-2015 Coalition Government’s proposal to abolish the AJTC. At times, he casts the value of user-focus in a positive light. In the following passage for instance, it forms part of his regret about the demise of the AJTC and ‘its vision of a transformed, and transformational, future’ that was to be ‘consigned to the Whitehall archives’:

The Coalition government’s decision to abolish the Administrative Justice and Tribunals Council (AJTC) in its Public Bodies Bill (now the Public Bodies Act 2011) brings to an end a brief period during which administrative justice had seemingly come of age. The previous government’s 2004 White Paper *Transforming Public Services: Complaints, Redress and Tribunals* for the first time in more than a generation had set out a vision for administrative justice that aimed to give it parity with civil and family justice: it spoke ambitiously of an administrative justice ‘system’ that would comprise not just courts and tribunals, but ombudsmen and departmental first-instance decision makers, too; it proposed as the guiding principle for the construction of this ‘system’ the principle of ‘proportionate dispute resolution’, in effect applying to administrative justice a ‘horses for courses’ philosophy; and it elevated the ‘user’ of the system to a position of pre-eminence at the expense of judges and administrators, for whose benefit other parts of the judicial system seem so often to have been organised.

In same article, there is also worry about the notion of user-focus:

The price, so far as administrative justice in particular is concerned, has been the adoption of a predominantly consumerist approach to justice that, whatever its merits in other fields, in the arena of public law diminishes the status of the actors, both individual citizen and state, by reducing them merely

to the purchasers of dispute resolution services. The idea that there might be a public interest in the relationship between state and citizen that eludes the easy categories of a consumer transaction and that invites solutions that are not rigorously instrumental or pragmatic is in this, as in so many other areas of once ‘public’ life, largely alien to the zeitgeist. The consecration of ‘the user’ as part of the ‘new public management’ ethos has no doubt introduced a welcome re-balancing of priorities in favour of an element of ‘customer focus’, but the possibility that the word ‘customer’ might in this instance be a metaphor seems not to have much currency.

In his 2017 article, O’Brien revisits similar themes via a review of the Ken Loach film *I, Daniel Blake* (2016). The film follows the character of Daniel Blake. It depicts his troubled interactions with the Department for Work and Pensions, concluding with his death from a heart attack as he waits at the door of a delayed tribunal hearing. In the film’s final scene, a passage written by Blake is read out at his funeral:

I am not a client, a customer, nor a service user. I am not a shirker, a scrounger, a beggar nor a thief. I am not a national insurance number, nor a blip on a screen. I paid my dues, never a penny short, and proud to do so. I don’t tug the forelock but look my neighbour in the eye. I don’t accept or seek charity. My name is Daniel Blake, I am a man, not a dog. As such, I demand my rights. I demand you treat me with respect. I, Daniel Blake, am a citizen, nothing more, nothing less. Thank you.

Drawing upon this impassioned message of rage against bureaucratic despair, O’Brien suggests it—and the message of the film more generally—provides cause to pursue a ‘reimagined sense of citizenship’ in the administrative justice sphere. He argues that ‘Daniel Blake’s ‘manifesto’ is strong in its insistence that ‘citizenship’ must supersede other ways of characterising the relationship between the individual and the state, especially those informed by the language of the market-place: the depiction of the individual as ‘client’, ‘customer’ or ‘service-user’ is as a result to be abandoned’. In these passages and across both articles, O’Brien wrestles with the tensions within the value of being user-focused. He ultimately engages with both of its contradictory understandings: his apparent desire to welcome its recognition of accessibility concerns are coupled with a deep-seated reluctance to acquiesce to the consumerist understanding of user-focus.

This case study of the value of user-friendliness is brief but it highlights how talk of key values in administrative justice may benefit from further reflection of the sort which this article has argued there is an important role for. The notion of ‘user focus’ is just one instance of where the grammar surrounding administrative justice lacks clarity, however, the strongly contradictory understandings of ‘user-focus’ outlined above demonstrates the imperative to be specific in articulating the underlying concerns when the concept is used. In its general form, the concept is a placeholder for at least two sharply contrasting meanings.

Conclusion

Nearly twenty years on from Partington’s landmark ‘Reconstructing Administrative Justice’ lecture, there have been multiple attempts to state important values in administrative justice and much reliance of values in analysis. There has, however, been a persistent failing in this values talk: key values are often deployed, both in academic and policy contexts, without much precision. This can create analytical confusion which hinders debate. The solution proposed here is to recognise the need to reflect upon and refine the current grammar of administrative justice values. In other words, we should seek to specify the particular concerns which typically underlie these values—these values often being a placeholder for a range of often overlapping but ultimately different concerns. This article has sought to demonstrate this problem and proposed solution in the context of concerns about the value of user-friendliness. In this respect, it has been shown that underlying the often-used notion of

user-friendliness are two sharply contrasting understandings. In this context, general values talk has led to conceptual confusion about the matter that is the subject of disagreement.

There is a question which this analysis puts firmly on the table, but leaves unresolved: are abstractions helpful at all in administrative law and justice debates? One argument could be that, given the need this article has identified to refine abstract values language, it is more useful just to avoid such language altogether. JAG Griffith—no doubt among the greatest administrative lawyers in the subject’s relatively short history in the UK—railed against the use of abstractions (1979). He condemned the ‘elaborate facades’ of language ‘deliberately constructed to fool most of the people most of the time’ and the ‘out of date piece of stage paraphernalia which someone had forgotten to clear away with the other impediments of Professor Dicey’s England’. There are many examples of Griffith expressing concern about how ‘the natural lawyers, the metaphysicians and the illusionists’ traded on abstractions. The functionalist tradition that Griffith was a part of consistently cautioned of the dangers of getting bound up in concepts at the expense of material substance (Loughlin 2005). This is not a position without hazard, though: some have expressed concern that materialism and empiricism—which may be caricatured as a ‘cold-eyed budgetary approach’—can go without the benefits that attach only to ‘emphatically normative’ theorising (Waldron 2013). This article has addressed a different question and it is not the place to rehearse the full arguments around this point, but the analysis here does suggest this is an issue ripe for further exploration in the administrative law and justice context (Gee and Webber 2013b).

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