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Economic and Social Rights Law: Incorporation, Justiciability and Principles of Adjudication, by Katie Boyle, (New York and London: Routledge, 2020), xxii + 268, hb, £120, ISBN: 9781138298880.

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In this ambitious new book, Katie Boyle takes initial steps towards remedying what she identifies as the United Kingdom's "legal accountability gap" in protecting economic and social rights (ESRs) (p. 1). The book considers the extent to which ESRs are protected in the United Kingdom, while drawing on constitutional and human rights theory, comparative experiences and practical considerations, to examine how the rights can be better protected – incorporated into UK law and ultimately enforced by UK courts. From this emerges a detailed, contextualised and thoughtful study of ESRs in the United Kingdom that will be of interest to academics, legal practitioners and politicians alike.

This book could not be timelier. It comes on the heels of the damning Final Report of the UN Special Rapporteur on Extreme Poverty and Human Rights, Philip Alston, following his November 2018 visit to the United Kingdom. Alston criticised the Government's austerity policies which have "deliberately gutted local authorities and thereby effectively eliminated many social services", leading to a proliferation of food banks, a large increase in homelessness and rough sleeping, and a falling life expectancy for many groups (Alston Report, p. 4). While ESRs may not necessarily be "enough" to combat this economic inequality (see S. Moyn, *Not Enough: Human Rights in an Unequal World* (Cambridge, MA: Harvard UP, 2018)), they can undeniably help move the United Kingdom in a positive direction. Boyle's book also fits squarely within, and engages with, contemporary debates among politicians, lawyers and academics in the United Kingdom about potential reforms to human rights legislation. These potential reforms include the recurring proposal made by Conservative politicians over the last decade to introduce a "British Bill of Rights" and the Independent Review of the Human Rights Act 1998 ("HRA") set up by the Government in December 2020.

The book comprises six chapters. Chapter 1 provides the theoretical framework for the book. In the chapter, in addition to the usual introductory remarks (e.g. defining key terms), Boyle draws on some of the voluminous literature on ESRs and their enforcement by courts to identify "principles of good practice" for ESR adjudication: namely, the "Principle of Accessibility", the "Principle of Participation", the "Principle of Deliberation", the "Principle of Fairness (Process and Substance)", the "Counter-majoritarian Principle" and the "Remedial Principle". For Boyle, these principles, largely derived from deliberative democracy theory, "counteract the multiple critiques of" ESRs that have been advanced in the literature to date, while granting the judiciary the flexibility it requires "to respond to its constitutional role as a deliberative accountability mechanism" (p. 25). These principles serve as the basis for Boyle's assessment in later chapters of the models by which ESRs can be incorporated into UK law and enforced by UK courts.

In Chapters 2 to 5, Boyle substantiates her claim of an ESR "legal accountability gap" with a rich exploration of the United Kingdom's ESR obligations at the international, regional and national levels. In Chapter 2, her primary argument is that the "UK position [on ESRs] is out of step with international law requirements" (p. 67). By tracing the history of ESRs at the international level, Boyle refutes any suggestion that ESRs are of lesser status than civil and political rights, and she shows that "the right to an effective remedy" (including a judicial remedy) for a violation of ESRs forms "a component of ESR obligations in international law"

(p. 57). The UK Government's position, however, reflected in a 2009 Green Paper, is that it "does not consider a general model of directly legally enforceable rights or responsibilities to be the most appropriate" (p. 67). It has insisted that the United Kingdom has satisfied its ESR obligations via legislation and administrative measures. Whereas "these mechanisms may implement some rights to some degree", Boyle says, "they have fallen short of normative standards in international law and do not facilitate access to an effective remedy as an accountability mechanism" (p. 68).

Chapter 3 illustrates that the United Kingdom's membership in the Council of Europe and then-membership in the European Union (EU) do little to augment the protection of ESRs in the United Kingdom. The European Social Charter is largely toothless because the United Kingdom is not a party to the Additional Protocol, removing "the option of accessing a remedy for a breach" (p. 81). The European Convention on Human Rights, although it somewhat protects ESRs owing to the European Court of Human Rights' jurisprudence, "there is only so much the court can do", yielding "systemic limitations" to enforcing ESRs via this avenue (p. 83). And while there is potential for greater protection of ESRs under EU law given the recent introduction of the European Pillar of Social Rights, it is unclear what impact (if any) this will have in the United Kingdom in light of Brexit.

In Chapters 4 and 5, Boyle turns her attention to ESR protection (or lack thereof) at the national level. She argues that in parallel to the United Kingdom's general "constitutional resistance to human rights", there is a "constitutional resistance to ESR[s]" (p. 136). Readers may find the discussion in Chapter 4 of human rights protection under the UK constitution overly detailed and potentially unnecessary; but it does provide a helpful background, especially for those who may not be familiar with the UK constitution. Boyle does not claim that there is no protection of ESRs at the national level. Rather, she says, the "UK lacks a coherent overarching framework" for ESRs which in turn means that these rights "do not form part of everyday governance" (p. 136). Boyle therefore "proposes potential ways forward to address the incoherent human rights framework" (p. 136). She draws on other jurisdictions (South Africa, Colombia, Argentina and Germany) to demonstrate that "ESR justiciability is possible, it happens elsewhere and it can occur with appropriate safeguards to ensure the separation of powers remains intact" (p. 104). And then, in Chapter 5, she proceeds to survey and assess the models by which ESRs can be incorporated into UK law and enforced by UK courts (some of which do exist in the United Kingdom). Ultimately, Boyle advocates a "constitutional model" under which the state creates "an overarching theoretical, conceptual, normative legal framework [which would include the protection of ESRs] against which other implementation mechanisms can be measured" (p. 141). For her, this model is "the most robust and democratically legitimate way of ensuring adjudication of ESR[s] according to best practice", setting "a foundation for the operation of the institutions of government – legislative, executive and adjudicative – each of which is bound to comply with the same legal framework embedded in the constitution, including the recognition of ESR[s]" (p. 141).

In the book's final chapter, Boyle considers the understudied topic of ESRs and devolution. In the voluminous literature on ESRs, the sub-national level often goes overlooked – and Boyle's analysis in Chapter 6 fills an important gap. Offering a thorough exploration of ESRs in Wales, Northern Ireland and Scotland, she shows that "the devolved jurisdictions have each gone further and faster with ESR[s] than the UK as a whole since the onset of devolution" (p. 200). The "most significant gap to emerge", Boyle suggests, "has been the potential lack of rights and remedies available in England compared to the devolved jurisdictions" (p. 200). In this analysis, she invites readers to "reflect on what lessons can be learned from the devolved

experience and what pathways are open in terms of future development within the UK and comparatively” (p. 199).

Boyle’s book makes a clear contribution to debates in the United Kingdom. As the United Kingdom grapples with how best to protect human rights, including in the presently ongoing Independent Review of the HRA, the book is undeniably relevant. Granted, many politicians are looking to restrict rather than expand human rights protection (especially those who have called for a British Bill of Rights and the HRA Independent Review). However, for the politicians and others who are aiming to extend human rights protection to ESRs, this book offers an invaluable resource. It provides a careful consideration of how the United Kingdom currently protects ESRs, and a theoretically rich and comparatively informed analysis of the options available to the United Kingdom for it to so extend.

At the same time, as Boyle herself identifies, the insights offered in the book have relevance beyond the United Kingdom. In particular, the book offers helpful commentary for jurisdictions which have shown a parallel “constitutional resistance” to ESRs. One example is Canada. Though Boyle draws on Canada as a comparator, identifying it as a jurisdiction that protects ESRs under equality provisions, this takes an overly generous reading of Canadian equality jurisprudence. The Canadian Charter of Rights and Freedoms does not contain express ESR provisions (with one exception for minority language education). Unlike jurisdictions like Germany, India and Israel, however, Canadian courts have been reluctant to read ESRs into more general provisions such as the right to life or the equality provision (see *Chaoulli v. Quebec* 2005 SCC 35; *Tanudjaja v. Canada (Attorney General)* 2014 ONCA 852). The UN Committee on Economic, Social and Cultural Rights has criticised Canada with respect to its courts’ treatment of ESRs. Boyle’s book can contribute to debates in Canada. The “constitutional resistance” observable in the United Kingdom and elsewhere is most often rooted in the same set of concerns that Boyle addresses: the distinction between negative and positive rights, the separation of powers, and the judiciary’s institutional legitimacy and competence. Echoing the position of many ESR writers, Boyle explains that “[i]t is time to move on from the old debates, stereotypes and myths that characterise the rejection of ESR[s] as ‘real rights’ and that hold ESR adjudication as an affront to democracy” (p. 266). And the analysis that she offers in her book goes a long way towards challenging the constitutional resistance maintained by jurisdictions like the United Kingdom and Canada.

The breadth of issues covered in the book, while admirable, does sometimes come at the expense of nuance. In Chapter 5, for instance, adopting the categorisation developed by Mark Tushnet, Boyle assumes that a codified constitution in the United Kingdom would necessitate a “strong” role for the courts. Based on this assumption, she concludes that in the United Kingdom, given its commitment to parliamentary sovereignty, a codified constitution would mean “a paradigmatic shift in the operation of constitutionalism from political to legal” (p. 195). Although a codified constitution usually corresponds with a system of judicial supremacy, this outcome is not inescapable. The Canadian Charter of Rights and Freedoms, as an example, includes in section 33 the famous notwithstanding clause, empowering Parliament to “expressly declare in an Act of Parliament . . . that the Act or a provision thereof shall operate notwithstanding a provision” in the Charter. It maintains (at least arguably) Parliament’s supremacy, giving the courts (again arguably) a weaker role. A codified constitution in the United Kingdom could include an analogous provision. Relatedly, in discussing a codified constitution vis-à-vis incorporating ESRs into UK law, Boyle relies heavily on a limited range of sources and does not engage with the growing literature on the codification of the UK constitution (see N. Barber, “Against a Written Constitution” (2008) PL 11; J. King, “The

Democratic Case for a Written Constitution” (2019) 72(1) CLP 1). Also, the discussion in Chapter 1 of the “Principles of ESR Adjudication” again relies on a limited range of sources. It could have drawn more on the growing constitutional literature on enforcing ESRs, especially works built on principles like participation and deliberation that Boyle labels “good practice” (see S. Fredman, *Human Rights Transformed: Positive Rights and Positive Obligations* (Oxford, UK: OUP, 2008); B. Ray, *Engaging with Social Rights: Procedure, Participation and Democracy in South Africa’s Second Wave* (Cambridge, UK: CUP, 2016)).

Economic and Social Rights Law: Incorporation, Justiciability and Principles of Adjudication makes an important contribution to public law scholarship. Balancing theory and practice, it makes a convincing case for greater protection of ESRs in the United Kingdom while offering readers much food for thought about how ESRs can be incorporated into UK law and enforced by UK courts. It is this reviewer’s hope that the book’s message will be heard by UK politicians and “propel the national discourse beyond discussions around regressive human rights reform” (p. 268).

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