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The malign system in policy studies: strategies of structural and agential political exclusion

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Abstract: The disciplinary development of policy studies has long been shaped by scholars working within liberal democratic traditions. In consequence, a long-held assumption that policy-making is, *prima facie*, motivated exclusively by the pursuit of the public interest has gone unchallenged, even while intersecting critical traditions – particularly in political science – have opened up research agendas on institutional and agential harms. This article critiques the latent assumptions of benevolence in policy studies. The article employs political exclusion as a methodological means to surface deviations from liberal democracy’s precepts of legitimacy. It applies this approach to analysing malignity in policymaking to the case of asylum seeker policy in Australia. In doing so, the article posits a conceptual binary of malignity in policy studies with respect to: 1) structural exclusion from participation in policy and politics; 2) agential exclusion from the sphere of political participation.

Keywords: political exclusion; malign policy; proscription; asylum seekers; policy studies; blacklisting; structure agency; hidden agendas.

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1 Introduction

A long-standing background assumption in public policy analysis has assigned policy-makers a latent benevolence in their decision-making motivations (Arestis and Kitromilides, 2010) where it is argued that democratic institutions and safeguards act as a protective factor against government incursions on the public interest (e.g., Rummel, 2017). On this view, liberal democratic models of government are, by definition, those which have public interest values either implanted or safeguarded via checks and balances in-built to the state: institutions are, indeed, benevolent by design. Yet the evidence is mounting that such a stance is ‘Panglossian’ (Howlett 2020, 2021) and overlooks or masks the potential of ‘hidden agendas’ (McConnell, 2018) and intentional

harms (Whiteford, 2021) to flourish. Today, there is no shortage of evidence that public servants across the world are implementing policies that subvert the public interest, harm minority groups and damage democracy. In just the past few years across the world, a string of punitive policies and laws – which variously punch down on the marginalised groups in society such as asylum seekers, immigrants, non-heterosexuals, ethnic minorities and political dissenters – have emerged not only in the ‘illiberal democracies’ of Brazil, Hungary, and Turkey, and others, but also in liberal democracies too. The targeting or amelioration of minority rights is the hallmark and consequence of populism, of course, and its global rise is well-rehearsed in contemporary political science (Albertazzi and McDonnell, 2015; Norris and Inglehart, 2019). Politics and public policy scholars are increasingly tracking populist governments’ systematic attempts to dismantle human rights (Roth, 2017), LGBTIQ+ rights (Krasteva, 2017) and citizenship rights (Howard, 2010) while introducing punitive measures against asylum seekers, journalists, political opponents, ethnic or religious minorities and more. As policy scientists, we must not ignore these developments since they demonstrate how public policy can be used a tool of oppression, whether or not we recognise it. Though we might aim (and hope) for public policy practices to be intrinsically ‘good’ and benign, the reality is that for better or worse public policy is an instrument of those in power. Historically, western democracies, in the name of security or sovereignty, have implemented policies of grotesque excess. The horrors of colonialism led to many such instances, but few worse than King Leopold II’s hands-for-rubber quotas in the Congo, or the British use of concentration camps during the Mau Mau insurgency in Kenya. Liberal democracies have been comfortable for centuries with policies criminalising homosexuality or queerness, sustaining racist practices, entrenching misogyny, and trapping communities in poverty. For those so affected by a colonial or domestic democracy, *it was the liberal state itself* that was their greatest source of insecurity.

The policy studies literature exploring the hidden, ‘dark’, sinister or malign dimensions of policy-making is nascent, but growing. McConnell (2018), for example, draws attention to ‘hidden agendas’ in policymaking:

“Hidden agendas have the potential to damage public trust in political figures, erode the legitimacy of policy processes, and harness energies towards producing outcomes that covertly serve some interests and perhaps even destroy others (p.1740).”

Similarly, in other recent work, Howlett (2020, p.613) cautions that ‘policy-makers are often driven by malicious or venal motivations rather than socially beneficial or disinterested ones’. Recognising these alarming trends, this article offers a new approach to the analysis of malign policy. In doing so, several additional calls are invoked: first, to take seriously the question of public interest motive. What evidence do we have that public policy is made *in the public interest*? To adopt a clear-eyed perspective on this matter: we cannot peer into the souls of those who make decisions and policy, and so we have no more basis to assume agents’ motives are benevolent than we have to believe they are malicious. While the design of liberal democracies’ institutions has installed checks-and-balances to putatively minimise abuses of power, these have only curbed the excesses of populist political leadership. And so, we are left wanting for a means to conceptualise malignity in public policy analysis, or indeed locate an appropriate methodology by which we may surface and analyse the data relevant to drawing such conclusions.

The approach proposed to identifying malignity in public policy in this paper holds to the premise that the model of liberal democracy is, *ceteris parabis*, the ideal towards which western democracies strive. Within the broad swathe of liberal democratic principles – including the rule of law, separation of powers, free and fair elections, tolerance for minorities, and so on – is the recognition that all public policy decision-making relies on legitimacy: the inclusion of views and interests from the public in shaping the decision-making process, and a concern to deliver outcomes that meet the public interest. Where deliberate exclusion – whether structural or agential – occurs, I suggest below, decision-making falls beneath liberal democratic standards. At its most explicit, exclusion can take the form of proscription, which criminalises an individual or group. Or it may take the form of blacklisting (the application of sanctions), which ‘seeks to render its targets politically mute’ and placed ‘beyond the boundaries of political participation’ [De Goede, (2018), p.337]. Identifying the strategies to put individuals or groups beyond the boundaries of political participation is the purpose of this paper.

2 Public policy’s moral good ambitions

As a scholarly discipline, public policy was established with a clear moral purpose. Founded in post-war USA, with a view to applying a science-like approach to enhance policies’ dimensions, the view expressed by its founder, Lasswell (1950), anticipated a ‘policy science of democracy’ as a corrective to or safeguard against the ‘garrison-police state’ such as those responsible for Europe’s devastation. The horrors of state sanctioned genocide witnessed during the WWII underlined the need for ‘policy sciences’ to be forged as not only a field of study, but of practice too. States that allowed security or policing institutions to dominate, Lasswell (1950, p.47) argued, were dangerous: ‘The specialist on violence rises in power as other skill groups subside, such as the specialists on civil administration, party and pressure-group administration, and specialists on propaganda or persuasion’. Public policy, Lasswell hoped, would emerge as a technocratic approach to resolving social dilemmas in a manner holding to liberal democratic norms and without the resort to violence. Writing in 1950 as the Cold War was setting in as the chief global security dynamic, Lasswell (1950, pp.57–58) further related the underpinning principles of democracy to national security, arguing that ‘all measures proposed in the name of security’ should be measured against their impact on the ‘goal values and institutions of the USA’, and for which the freedom of information was central to making the public’s scrutiny of government effective:

“The principle of civilian supremacy is a characteristic of democratic government, and has obvious and immediate relevance to the defense crisis. Freedom of information is an essential feature of that public enlightenment which is valued in its own right, and is also an essential means to sound public opinion. The civil liberties of the individual are means of safeguarding the equality of respect which is a basic value in a free society.”

Today, it is widely held that public policy refers to the spectrum of capabilities and resources that lie in the hands of government – of any ideological persuasion – to deploy in pursuit of its agenda. Goodin et al. (2006, p.3) put this plainly: “Ruling is an assertion of the will, an attempt to exercise control, to shape the world. Public policies are instruments of this assertive ambition [...]”. Hence, for Howlett and Ramesh (2003, p.3) “[p]ublic policy is, at its most simple, a choice made by a government to undertake some

course of action”, or as Dye’s (1972, p.2) pithy observation goes, it is “anything a government chooses to do or not do”. Fischer (2019, p.2) makes a deeper claim about the link between values and facts in policy decision-making: “public policies are essentially political agreements designed for the practical world of social action where facts and values are inextricably interwoven”.

The evolution of policy sciences is problem-oriented and technocratic, holding that social problems could be solved by a rigorous application of scientific analytical techniques and the design of causal, prescriptive actions, or as Dryzek (2008, p.190) puts it, ‘to identify cause and effect relationships that can be manipulated by public policy under central and coordinated control’. Today, the rationalist, causal model of policy-making remains ascendant under the rubric of evidence-based policy-making. Early proponents of EBPM acclaim the value of ‘well-founded’ and ‘objective’ research [Solesbury, (2002), p.95] and argue that rationality – understood as a utilitarian appraisal of policy problems and application of causal logics to achieve optimal socio-economic outcomes – should trump the value-laden dogma of ideological politics. This was held so by reforming Prime Ministers, starting with the UK’s New Labour administration, which asserted: ‘we will be guided not by dogma but by an open-minded approach to understanding what works and why’, and also the Australian Prime Minister Kevin Rudd, who opined “policy design and policy evaluation should be driven by analysis of all the available options, and not by ideology... Policy innovation and evidence-based policy making is at the heart of being a reformist government”.¹

Doing so is not only a matter of problem-solving, but achieving public goals efficiently with slim public resources: “the ability to marshal the necessary resources to make intelligent collective choices about and set strategic directions for the allocation of scarce resources to public ends” [Painter and Pierre, (2005), p.2].

The temptation of the technocratic approach is to frame all social problems as value neutral – as Dryzek (2008, p.190) suggests, the technocratic approach (problematically), ‘implicitly assumes an omniscient and benevolent decision maker untroubled by politics’. Yet for many EBPM scholars what are construed as policy problems to be addressed, what sort of evidence is used, how, when and by whom remains inherently political (e.g., Head, 2010; Pawson, 2002; Sanderson, 2000). Policy, on this critical view, remains an extension and instrument of political interests of all ideological stripes.

3 Legitimacy and participation as a moral foundation of liberal democracy

Participation in political decision-making by a well-informed public is axiomatic to liberal democracies. This was Lasswell’s foundational assertion of the critical importance of freedom of information to an ‘enlightened public’. Elected decision-makers are accountable to the public whose evaluation of the government’s performance is measured against the alternate political parties’ manifestos and expressed through political processes, most prominently the ballot. Governments derive their decision-making authority from free and fair elections held at regular intervals, and in so doing receive popular imprimatur to implement their policy agenda. It follows that public policies should accord with citizens’ expressed desires about their wellbeing (or at least do not unfairly discriminate in their design or application). Where public policies are understood to accord with a fair process of determination to ascertain the public interest in the

aggregate, they are endorsed as *legitimate*, which for Scharpf (2003) is ‘a socially sanctioned obligation to comply with government policies even if these violate the actor’s own interests or normative preferences, and even if official sanctions could be avoided at low cost’.

Yet liberal democracies do not come with a handbook on how to attain legitimacy. Beyond elections, which are a precondition of liberal democracy, there is no universally-mandated approach to identifying public priorities, and states have arrived at their own idiosyncratic accommodations of how the citizens’ rights are accorded and protected. Debates on the precise mixture of liberal democracy’s qualities are legion, but Dunleavy (1987, p.5) suggests, ‘At a minimum, agreement has been reached that rights of free expression, organisation and elections of officials should always be included’. In liberal democracies, public policy must accord to the prevailing values, not least the rule of law, but also the respect for human rights and minority rights, to secure legitimate outcomes:

“Successful attainment of political *legitimacy* for a policy involves the extent to which *both* the social outcomes of policy interventions *and* the manner in which they are achieved are seen as appropriate by relevant stakeholders and accountability forums in view of the systemic values in which they are embedded.” [Luetjens et al., (2019), p.5]

By extension both the process-oriented and outcome qualities of policy instruments are required separately and jointly to achieve democratic legitimacy. Scharpf (1999) terms these, *input legitimacy*, which is decision-making that acquires the consent of the affected public through participatory processes, and *output legitimacy*, which is the accountability of decision-makers and the relative performance of the policies in meeting the public interest. In practice, this has meant that decision-making process is transparent, and involving a free flow of information to the public; involves elected officials that can be held to account; and that the public are allowed input to the decision-making process. These are a minimum expectation, which is why Goodin et al. (2006, p.10) argue: ‘every democratic polity worth the name has some mechanisms for obtaining public input into the policy-making process’. And it matters because legitimacy is central to achieving goals: ‘In order to penetrate and reshape societies, governments must have the legitimacy and efficiency to acquire information and mobilise consent, while simultaneously resisting capture by private interests’ [Kleiman and Teles, (2008), p.638].

In sum, to attain output legitimacy policy instruments themselves should be reasonably effective in meeting their stipulated aim, efficient in how they use resources to meet that aim, equitable in the distribution of their benefit, not serve a private or marginal interest, and allow the public to freely observe the policy’s functioning and outcomes. Understanding the relationship between public policy and legitimacy matters because the decisions made by those in power should reflect the interests of the public and not unfairly target or exclude a minority.

4 Policy malignity as political exclusion

Contemporary public policy scholarship is increasingly cognisant of how the design of policy, and how it intersects with other policies, can form implicit and explicit barriers to political participation in decision-making with respect to, *inter alia*, asylum policy

(Somerville and Goodman, 2010); climate change (Broadbent, 2016); indigenous policy (Maddison, 2012); and freedom of speech (Gelber, 2011). How policy is conjured, and its intended and unintended consequences, is as much a matter of politics as it is good policy design. For public sphere scholars, cultivating a public space in which political ideas can be freely advocated or resisted, refined and embraced or rejected by a free media is elemental to the historic evolution of democracy over time (Zaret, 2000) and in the digital age (Papacharissi, 2010). Though debates on the ideal forms and processes of liberal democracy are legion, it is generally accepted that governments' exclusion of dissenting political ideas, or preventing the public from forming evidence-based views of their performance, is antithetical to participatory models of liberal democratic norms. Yet, as ever, it is at the extremities where commitment to such principles is most sorely tested, particularly where political claims that challenge or question the authority of the state. 'Malignity' in policy occurs where governments operate in bad faith to use the resources of the state to further a 'hidden agenda', as McConnell (2018) suggests, or to target elements of the public for who they are, what they say or what they represent. With respect to the principles of liberal democracy, we may methodologically uncover these events or trends under the nomenclature of political exclusion by tracing where input and output legitimacy is denied.

Table 1 The benevolent vs. venal policy-maker

	<i>Benevolent 'ideal type' policy-making qualities</i>	<i>Malign 'venal type' policy-making qualities</i>
Rationality in policy-making process	Evidence-based, 'rational'	Rejection of expertise, embracing alternative facts/fake news, 'irrational'
Relationship with bureaucracy	Healthy principal-agent relationship	Toxic principal-agent relationship
Interests	Pluralist: understanding of/pursuit of the public interest	Captured or marginal: pursuit of self, venal or sponsor interests
Relationship with public sphere	Inclusive, participatory, multi-lateral, multiple inputs	Exclusive, unilateral, elitist
Agenda	Open, transparent, evaluated and accountable	Hidden, opaque, unevaluated and unaccountable

In conceptualising policy malignity, the aim here is to use the ideal-type (benevolent) forms of policymaking (in liberal democracy) as a contrast. And so policy malignity is defined by the government use of policy, law or regulatory powers to degrade or flout democratic principles, and/or to produce actual or intended harm on individuals, groups or segments of the population, or to serve marginal interests. It is characterised by actions (successful or unsuccessful) intended:

- 1 to conceal a policy's (real) aim
- 2 to erode the rights or everyday lives of the public, or any subsection thereof
- 3 to diminish the opportunity for, or quality of, public participation in decision-making
- 4 to secure or extend tenure of political power

- 5 to create institutional settings in which procedural decisions systematically discriminate against or are punitive towards against a group, a section of the public, or the public itself.²

Malign policy does not have to be a declared, enunciated policy, strategy or practice. Indeed, recognising this widens the possibility of policy analysis by extending our purview beyond the formal, enunciated, policies and capturing informal, *de facto* or implied policies and practices. Table 1 compares the two poles of this spectrum, but does not assume that each axis of benevolence or malignity is absolute, or indeed that the conditions are binary. Below I turn to the domain Laswell forewarned of the greatest source of democracy's instability: national security policy-making.

5 Political exclusion and national security

Depending on one's perspective, political discourses may be understood as critical, dissenting, radical, extremist, or seditious. In the past two decades, the language of religious extremism has been at the centre of debates around the state's regulation of politics, especially where and whether advocacy for (or acclaim of) violence is apparent as part of that politics. Fears around terrorism and radicalisation have spurred governments to introduce laws criminalising statements that glorify or advocate political violence and, in addition, laws to outlaw the organisations which promulgate those statements. These are powerful and severe laws: they suspend or degrade the precepts of liberal democracy, it is argued, in order to protect it. Rarely has it proven controversial in Western states to outlaw – or proscribe – groups designated as terrorist by the government, the purpose of which is two-fold: to deny terrorist organisations the lawful means to secure funds and members, and to close down any lawful means of promulgating (unwelcome) political ideas. The basis, of course, is that the ideas or actions advocated by an organisation are by nature 'terrorist', bent on the use of violence to advance an ideological or religious cause. Proscription grants the executive the capacity to determine what is, and is not, *legitimate* political enterprise. It is this instinct to regulate legitimacy of ideas that has been central to state power, liberal or otherwise, since the birth of the state. Yet increasingly, in the post-9/11 era, states around the world are showing a propensity to delimit the sphere of legitimate political discourse, in some countries by (mis)applying the anti-terrorism laws that are written with generous margins of interpretation to capture any anti-state speech as terrorist and in other instances creating illegitimate categories of politics by calling on a more subtle suite of (non-security) policies, laws and processes to delimit legitimate political speech and deny the possibility of meaningful scrutiny and political dissent. In these instances, the state narrows the categories of legitimate political speech and legitimate political actors.

6 Conceptualising structural political exclusion

Mainstream public policy scholarship has, in the main, been reluctant to engage with national security policymaking, with notable exceptions outside the mainstream from Bigo (2006). Models of policy-making, normative and analytical, are infrequently (if ever) applied to security policy, which have instead been subsumed within the

sub-discipline of security studies. This is a blindspot that requires urgent redress: if our goals as public policy scholars are to ‘make democracy work better’ [Ingram and Smith, (2011), p.1] then there are few, if any, areas of policy-making more likely to subvert democratic participation than maladroitness, misaligned or malign national security policy. Indeed, it follows there are few more serious policy interventions than those that exclude or excise segments of politics from the main body politic. The political exclusion literature has, to date, proceeded with structural analysis of exclusion, revealing the ‘spatial’, ‘relational’ and ‘socio-political’ (Macdonald, 2017) dimensions of exclusion, and how it operates in democratic systems through *non-repressive depoliticisation* (Field, 2016). In this section I show how four related concepts – exclusion, occlusion, preclusion and ostracism – combine powerfully to effect a narrowed, highly constrained polity.

Political exclusion is a concept that occupies political sociology scholars, especially those concerned with democratisation and developing states. This is the concern of scholars such as Alvarez et al (2018, p.10), whose exploration of Latin American social movements of the 1960s and 1970s reveal ‘the very boundaries of what is to be properly defined as the political arena: its participants, its institutions, its processes, its agenda, and its scope’. They find that the dominant political cultures of Latin America’s military regimes were ‘organised around the administration of exclusion’ at its most brutal:

“Exacerbated authoritarianism transformed political exclusion into political elimination through state repression and systemic violence. Bureaucratic and technocratic decision-making procedures provided an additional rationale for further contracting the definition of politics and its participants.”

These exclusionary practices drew the interest of western democracies. A declassified CIA cable, for example, reveals how in the 1970s Argentine security agencies were instructing Western agencies in the ‘management, administrative and technical aspects’ of its anti-subversion policies and practices in operation Condor, which was ultimately responsible for the deaths or disappearances of tens of thousands of South Americans.

“Representatives of West German, French and British intelligence services had visited the Condor organization secretariat in Buenos Aires during the month of September 1977 in order to discuss methods for establishment of an anti-subversion organization similar to Condor.” (Goñi, 2019)

Exclusion also has impacts on political participation. Dalacoura’s (2006, p.518) survey of extremism in Algeria’s political development finds: ‘the prerequisites for the radicalisation of Algerian Islamism may have existed well before 1992 but the political exclusion and repression of the FIS was not only the catalyst but also its cause. The question of the link between political exclusion and the turn to political violence is one well-rehearsed, if not settled (e.g., Weinberg, 1991). Lemarchand (2005) for example, suggests that: ‘political exclusion is the obvious explanation behind the Hutu insurrection of 1972 [in Burundi], in turn leading to the first genocide recorded in the annals of the Great Lakes’ (2005). It is also a topic occupying political philosophy under debates around ‘disenfranchisement’ (Munn, 2014); in journalism scholars engaged with ‘news publics’ the neglect of group issues in the media (Clarke, 2014) and the political exclusion of ethnic minorities (Okonta, 2017) and gender, health, and human rights (Laurie and Petchesky, 2008).

Groups can also be precluded from participating in political activity. Field argues that minority groups are vulnerable to exclusion via ‘depoliticised acquiescence’. On this view, the structures of political participation preclude participation on the basis of

literacy, political vocabulary, understanding of rights, and so on. Field (2016) uses the example of literacy tests in the USA to illustrate how an administrative process can be used to exclude individuals from basic political participation – in this instance to prevent African Americans from voting:

“These excluded groups are mostly depoliticised: they are not politically involved, do not seek to make political claim on a larger share of the benefits of social co-operation, and do not mount a serious challenge to the broad stability of the political order or to popular compliance with its laws and institutions.”

Field’s work calls attention to how administrative processes, authorised in government policy-making, can be used to depoliticise segments of the population. There is no outward repression, but an effective removal of political agency (cf. *non-repressive depoliticisation*). In public policy, political exclusion can involve policy instruments that deny or delay access to the political arena, or voice within that arena, to ideas or agents of a certain economic, ethnic, social, political or religious provenance. Finally, national security is often seen to be ‘above’ partisan politics, prompting the ostracism of those seemed to call into question to motives or methods of security decision-making. In this respect, the terms of the debate prohibit the questioning of ‘sacred’ values.

Table 2 Structural exclusion in the political sphere

	<i>Function</i>	<i>Outcome</i>
Occlusion	Suppression of information, stifling of voice or status in debates.	Stifles voice, removal or attenuation or participation of access
Preclusion	Structure of debate is incompatible with agent resources/capabilities; laws designed to punish political participation.	Deters whistleblowers; Denies status in debate; denies vocabulary or resources to meaningfully engage in debates.
Ostracism	Public discourse (by those in power) that discourage or disparage dissent on specific topics.	Public opprobrium, shaming of individuals, ad <i>hominum</i> attacks.
Removal	Physical removal of the person or their means of communication.	Imprisonment or off-shore incarceration, seizure of assets; deportation.

7 Conceptualising agential exclusion

At the furthest end of the spectrum of political exclusion, individuals are subject to proscription or outlawry. By designating a political entity as unlawful, proscription excises the source of political ideas, either by banishing or outlawing the individual or entity concerned (Jarvis and Legrand, 2018, 2020). As a means of regulating political discourse, such powers have clear limits. First, they are tempered in liberal democracies by laws that establish fundamental freedoms of speech and association. Yet less well-understood is how the impulse to regulate, or exclude, other political ideas is extended by other mechanisms. Especially those that intrude on domains drawn into the remit of ‘national security’. So, here we might reflect on how the state – the Australian state in the case explored below – coordinates and mobilises discourses, regulatory mechanisms, public policy and criminal law to produce *de facto* exclusion of certain sorts of politics, and categories of political agents, within the sphere of border security.

These (twinned) dynamics are apparent in *de facto* forms of proscription, which operates as an outcome achieved by the application of formal and non-formal powers to either exclude individuals from political participation. Here the *operative objects of exclusion* are multiple, as are the modes by which they are ostracised (disparaged and denied status in the political debate):

- 1 personal
- 2 place
- 3 provenance
- 4 practice
- 5 the issue (sacred (totems)).

Crucially, and unlike *de jure* proscription, the operative subjects of exclusion are only sometimes made explicit. In removing proscription from its juridical depiction and framing it more broadly as reflex of executive power to regulate political legitimacy, I suggest several dimensions of proscriptions – *objects* of exclusion – of politics become apparent:

Table 3 Agential exclusion in the political sphere

	<i>Categories</i>	<i>Agents/actors targeted</i>	<i>Narrated as...</i>
Person	(Domestic) critics or dissenters	Political opposition	Unpatriotic, opportunistic
Provenance	Foreigners	International (non-government) organisations Maritime asylum seekers	Potential terrorists, aliens, illegal's; foreign meddlers <i>Or relabelled as</i> Undeserving of asylum; potential criminals
Profession	Public officials, professionals (medical, legal, etc.)	e.g., whistleblowers, doctors, teachers, public servants, lawyers.	Activists, unpatriotic

By defining the boundaries of sanction-free political agency, agential exclusion represents the regulation of ideas, the drawing of boundaries of what is, and is not, legitimate political enterprise. The central claim advanced herein is that whereas *de jure* proscription and anti-terrorism powers enable states to exclude entities and narratives from the political sphere on the basis of security claims (Jarvis and Legrand, 2018, 2020), states can (and do) orchestrate a wider repertoire of instruments to gradually exclude specific political topics.

8 Australia's political exclusion of asylum policy debate

The securitisation of the border is a process well under way across the world: during his tenure, the US polity was seized by the ambitions of President Trump to secure the USA-Mexico border against a constructed threat of 'drug dealers, criminals, rapists'. Similar border 'security' dynamics are apparent in Israel and Hungary, though they are contested for their social not security consequences. In Australia, the link between

national security and the border is powerful, and has a long and racialised history, embodied in the ‘White Australia’ policy, which sought to preserve Australia as predominantly white Europe society. The policy operated, in many instances, as a means to explicitly exclude non-whites. For example, in the early 20th century a ‘dictation test’ was given to would-be immigrants. Under the Immigration Restriction Act 1901, the dictation test, which after 1905 allowed the immigration official to test the applicant’s ability to write down a given passage *in any language*, set up non-white immigrants to fail and be thus eligible for deportation. One example in 1908 of correspondence between immigration officials that era bears out how this was maliciously, but quite lawfully, used. One official writes to advise another: “it is probable Kang Yu Wei understands English... [and] your officers should be in readiness to apply the test say in Spanish or Italian”. Over the 20th century, the politics and legacy of that policy has persisted. Indeed, in the weeks prior to 11th September 2001, the Australian government refused permission for a Norwegian ship carrying Afghan refugees permission to enter Australian waters. This was far from the first instance of the Australian Government acting against international humanitarian norms, but its timing prior to the initiation of the US-led ‘global war on terror’ marked a watershed in border security. From 2001, the Australian government enhanced its border security practices, refusing or turning back asylum seekers arriving via boat or, since 2012, redirecting these to offshore detention centres on Pacific island states. Political dissent over the Australian government’s border security practices have made asylum debates one of the most fractious political issues in Australian politics. In the past decade, the Australian government resistance to public scrutiny has increased rapidly and proceeded with measures to tightly regulate – suppress – political debate on asylum seekers with one aim, according to Tazreiter (2017a, p.246): “asylum seeker boat arrivals have been systematically dehumanised and hence made invisible to public empathy”. Broadly, the strategies employed by the Australian government to delimit the sphere of political debate on this policy issue are structural or agential, which are set out below.

8.1 Structures of exclusion

Table 4 sets out the mechanisms of structural exclusion employed by Australian government agencies to narrow the sphere of scrutiny and debate on this topic. It achieves this in several ways.

First, the issue of border management policy has been rapidly securitised and privatised; thus put beyond public scrutiny. The government’s strategy to manage maritime asylum seekers has been placed under the mantle of ‘operation sovereign borders’, an operation headed by senior military personnel, using military standard vessels and technology – backed by a force-based agency, ‘the Australian Border Force’ – to regulate and patrol Australia’s border. Armed personnel are equipped to intercept maritime asylum seekers at sea.

Second, the management of asylum seekers is one of displacement: all maritime asylum seekers are denied entry to Australia, with the government’s explicit policy that no maritime arrivals will ever be settled in Australia and are to be returned to their home country – subject to Australia’s non-refoulement commitments – or to a third country. All others are placed in detention centres, on the islands of Nauru or Papua New Guinea’s Manus Island, which are run by private service providers that operate with fewer obligations on reporting their operations than government-run centres.

Table 4 Exclusionary structures in Australian asylum policy

	<i>Function</i>	<i>Mechanisms</i>	<i>Outcome</i>
Occlusion	Suppression of information, stifling of voice or status in debates.	Public Service Act Section 42 of the Australian Border Force Act 2015; Off-shore detention	Stifles voice, removal or attenuation or participation of access
Preclusion	Structure of debate is incompatible with agent resources/capabilities; laws designed to punish political participation.	Electoral roll; Constitution (esp. pre 1967 s.127); education policy; 'White Australia' policy	Denies status in debate; denies resources to meaningfully engage in debate.
Ostracism	Public discourse (by those in power) that discourage or disparage dissent on specific topics.	Public announcements; media interviews; press release.	Public opprobrium, shaming, ad hominum
Removal	Physical removal of the person or their means of communication.	Off-shore detention centres; boat 'turnbacks'	Individuals put physically beyond the political sphere.

In off-shore detention, asylum seekers are allowed highly limited external communication or support, which is in any case limited by the remoteness of the islands. In addition, the Nauru government imposes strict limits on journalists, with only a handful of selected individuals allowed entry, and at a cost of \$8,000 per visa. The geographic and bureaucratic limits imposed by 'off-shore processing' diminish substantially the possibility of asylum seeker's political agency, and the Australian public's access to information on the conditions of their detention. Nethery and Holman (2016, p.1018) write, 'the explicit policy goal is to control information and create a closed, opaque system of detention'. This observation is underpinned by considerable evidence, not least the argument of military necessity made by then Prime Minister, Tony Abbott, justifying the strict control of information: "if we were at war we would not be giving out information that is of use to the enemy just because we might have an idle curiosity about it ourselves" (ABC News, 2014).

Third, the regulation of political enterprise has been achieved by the introduction of legislation suppressing the release of information relating to either off-shore processing centres or Operation Sovereign Borders. The *Australian Security Intelligence Organisation Act 1979* (Cth) prohibits any media reporting of 'special intelligence operations', which are designated by the government, and in practice relate to almost any aspect of Operation Sovereign Borders. In addition, political agency for employees of the Commonwealth has been strictly curtailed by several recent shifts in policy that prohibits public servants from expressing anything but support for the government and its actions:

"As members of the Australian community, Australian Public Service (APS) employees have the right to participate in public and political debate. But this is not an unlimited right. APS employees have particular responsibilities under the Public Service Act 1999 that come with being employed as a public servant by the Commonwealth of Australia. In some cases, these responsibilities limit their ability to participate fully in public discussions, including on social media." (Australian Public Service Commission, 2017)

The *Border Force Act 2015* (Cth) (https://www6.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/abfa2015225/) prohibits immigration and border protection workers from ‘unauthorised’ public disclosure about their work, including child protection workers and teachers. It also initially included health care workers (doctors, nurses). Both these laws were augmented by the *Telecommunications (Interception and Access) Amendment (Data Retention) Act 2015* (Cth) (<https://www.legislation.gov.au/Details/C2015A00039>) which significantly enhanced the investigative capacity of Australian policing agencies to compel internet providers to release journalists’ metadata, revealing their sources. The sum structural effect of these legislative has been to confound and, where possible, diminish contestation over border practices, especially as they relate to asylum seekers, under the pretext of national security.

8.2 Narratives of exclusion

At the same time as the structural transformation of the asylum seeker political debate, senior Australian government officials have deployed narratives of exclusion to further delimit the realm of public debate, and narrow the range of valid political contributions thereto. Between 1996 and 2007, the years of John Howard’s Prime Ministership, these focussed on the status of maritime asylum seekers: framing them as having ‘different and threatening values’ (McDonald, 2011), as ‘undeserving queue jumpers’ [Cameron, (2013), p.242]. These were not labelled as asylum seekers, but rather as ‘unlawful non-citizens’, to ‘illegal entrants’, ‘illegal’s’, or ‘parasites’ (Pickering and Lambert, 2002). Further, in this period, their status as security threats was also the subject of the framing: as ‘potential terrorists’ (McDonald, 2011). Under Rudd’s Prime Ministership, the focus turned to ‘people smugglers’ who were cast as ‘evil’, ‘scum of the earth’ and ‘the vilest form of human life’ (Rodgers, 2009). Such rhetoric has been echoed by Tony Abbott, who as Prime Minister conceived Operation Sovereign Borders, who has framed asylum seekers in Europe as ‘invaders’ (Karp, 2016), or ‘terrorists’ (Maiden, 2015).

What is of particular importance is how public policy narratives do not engage with what is said – the political ideas or debates themselves – but rather turn the focus on who speaks, or where they are from, or who they work for. Table 5 shows how these narratives, as mobilised in Australia’s asylum seeker debate, can be analytically unpacked in terms of their framing of:

- 1 person
- 2 provenance
- 3 profession.

On all three dimensions, the objective is to delimit who has, and who does not have, valid political standing. In the first, the *person* is subject to ostracism and denigration. In this debate, we see political opponents ostracised as weak, and unsupportive of the national interest. Asylum seekers are cast as threats, variously as terrorists or criminals or undeserving of asylum. Those not of Australian *provenance* are described as ‘meddlers’ and having no standing in the ‘domestic debate’, while serving a ‘negative globalism’ agenda’. Those of specific *professions* are described as acting in bad faith, with lawyers for refugees cast as ‘un-Australian’ and refugee advocates as improperly instigating self-harm amongst refugees to garner sympathy.

Table 5 Micro-exclusionary discourses – (direct) suppression of agency

	<i>Instruments of exclusion</i>	<i>Categories</i>	<i>Narrated by policymakers as ...</i>
Person	Ostracism (disparagement, slurs)	Political opposition	Unpatriotic, unsupportive of ‘the national interest’ (Howard and Ruddock, 2001), ‘weak’ [Gelber and McDonald, (2006), p.285].
	Denigration	Non-Australians (e.g., maritime asylum seekers)	Potential terrorists, aliens, illegal’s: ‘not genuine refugees... smart-alecs’; (Wazana, 2004) ‘economic migrants’ [Wazana, (2004), p.91] ‘child-killers’ (McMaster, 2001).
Provenance	Denial of status	International organisations; NGOs; foreign journalists	International demands ‘coercive’, ‘negative globalism’; ‘international institutions demand conformity’ (Laschon, 2019); foreign meddlers’ (Laschon, 2019). [this is a] ‘domestic political debate’; (Downer, 2001) international criticism is ‘emotive’; ‘lacks objectivity’, is ‘misguided, and ‘misrepresents’ true state of affairs.
Profession		Public officials; lawyers, NGO workers.	Lawyers for refugees described as ‘un-Australian’ (https://www.smh.com.au/politics/federal/lawyers-representing-asylum-seekers-are-unaustralian-peter-dutton-20170828-gy5ci7.html); NGO workers as promoters of ‘self-harm’ amongst refugees (https://www.sbs.com.au/news/refugee-advocates-encouraging-people-in-detention-to-self-harm-dutton/c469347fdd76-4a96-8337-e432a8aa921c).

Together, these narratives are disparagements that seek to diminish the political standing of their targets. To return to the central contention of this article: it is crucial to pay attention to how public officials deploy such narratives in the midst of conceiving and applying public policy, because such narratives complement the structural exclusion mechanisms in controlling the sphere of legitimate political participation. The discourses of exclusion, as suggested above, work by undermining or denying the political standing of those making or seeking to contribute to political debate.

9 Conclusions

The structure and agency dynamics of ‘malignity’ are apparent in Australia’s (and similar countries) immigration debates. The gradual state encroachment on the sphere of political contestation is both subtle and powerful. Some target individuals’ participation in political processes, while others operate as structural impediments on or harm towards the interests of groups or categories. The steady expansion of formal powers to exclude or occlude political participation has, in part, provoked resistance from legal quarters,

who decry the erosion of fundamental principles of liberal democracy. This expansion is part of a much broader trend in which legal or discretionary instruments are used to regulate access to and participation in the sphere of political contest in Australia.

How malign policy-making occurs and produces categories of illegitimate politics is a topic of urgent enquiry. At stake is the question of legitimacy: how is political legitimacy conferred, and who confers it? While in authoritarian regimes this sphere is relatively constrained and tightly regulated with severe sanctions for political agency beyond those boundaries of legitimacy. Yet liberal democracies, it is hoped, should have much a broader scope of the political and permit a wider range of political praxis and less severe judicially determined sanctions. For many states, such as Australia, a written constitution specifies the fundamental rights of citizens, their relationship with the state and how they may participate in democratic processes. Yet, increasingly, the rhetoric and imperatives of ‘national security’ has been (mis)deployed as the pretext of a range of laws and powers to regulate politics through direct and indirect exclusion, as the case of its recent asylum seeker policy illustrates. Here the state has – with malign purpose and outcome – deployed multiple policy and legal instruments to harden the edges of a category of politics to deny or delimit the scope of dissent, to constrain the flow of information to prevent the public forming effective scrutiny of the state’s performance and, ultimately, to deny legitimacy to any political contributions that run counter to government policy.

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Notes

- 1 Address to Heads of Agencies and Members of Senior Executive Service, Great Hall, Parliament House. Speech Transcript, <https://pmtranscripts.pmc.gov.au/release/transcript-15893>.
- 2 This definition does not extend to encompass corruption insofar as corruption produces an indirect harm to the general public interest (but excluding where corruption is a means to harm a specific segment of the public corruption).