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Malignity, Volatility and the Inherent Vices of Policymaking
Michael Howlett , Ching Leong , Tim Legrand
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1 Introduction

Policy studies often simply assume the existence of baseline parameters which facilitate the development of "good" policies, such as honest governments doing their best to create public value, publics responding in good faith and fair dealing, and both parties relying on policy-making processes that align squarely with the public interest (Moore, 1995; 2014). That is, ones which enjoy popular support and expert consensus and which are dedicated to enhancing public welfare. In such circumstances "good" policies are commonly expected to be produced through open mechanisms and participatory procedures in which the public can articulate its preferences and policy-makers listen to, and act in good faith upon, what has been said in determining their governments' courses of action (Howlett, 2020).

While these conditions and processes are indeed found in some circumstances in liberal democratic governments, in practice there is ample evidence from around the world, and even there, that much policy-making occurs without these pre-conditions and processes in place (Legrand & Jarvis, 2014; McConnell, 2018; Jarvis & Legrand, 2018). In such circumstances "bad" public policy is a more common outcome: that is, policies which reflect only very partial knowledge, are enacted at the behest of special interests or with decision-maker self-enrichment in mind, and typically fail to promote the social good. Exactly how this happens and what it is that makes for "bad" public policy are the subjects of this Element.

One concern, for example, which is somewhat independent of regime type, is maliciousness or the use of policy-making machinery to punish opposition or groups and individuals deemed undesirable. If the ethical basis of good public policy is concerned with its *alignment* with beneficial principles of public value and a latent concern for prioritizing the public interest, it can be considered *malign* where it is not.

Attention to these kinds of "negative" policy dynamics is the concern of what we describe as the emerging study of the "darkside" of public policy: where the consequences of factors such as uncertainty, malign (and relatedly, misaligned) policies, poor compliance, and other factors such as a lack of preparation in the face of new or existing challenges and problems, and a failure to learn from past experiences produce, at best, ineffective or inefficient outcomes (Howlett, 2020; 2022). At worst, such policies can marginalize, exclude, and funnel state resources away from vulnerable sections of the public or replace the public interest with private rent-seeking behavior in ways that intentionally evade the public interest and create little or no public value, or even detract from it (Moore, 1994; Wintrobe, 2000; Leong & Howlett, 2022).

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This Element aims to conceptualize and theorize this topic in the context of policy studies and the growing interest in policy design (Howlett, 2024). It argues that better understanding and planning for this "darkside" of policy-making is of growing urgency and importance in studies of policy-making and is a necessary adjunct to most studies of policy design, which tend to live on the "brightside" of policy-making (Douglas et al., 2021). It deals with how best to conceptualize and deal with the phenomena of bad policy, including maliciousness and internal risks of malfeasance but also looking at non-compliance and other similar "inherent vices" or internal risks of policy-making.

Although these kinds of problems are often acknowledged as common occurrences in policy-making processes, they have rarely been studied systematically in the policy sciences (Goodin, 1980; Leong & Howlett, 2022). This Element draws on the previous work of the three co-authors who have studied these phenomena for several years and produced a record of published work detailing this darkside, exploring how it leads to policy failures and poor design processes and discussing how bad policy occurs and how it can be corrected (Legrand, 2022). It summarizes, synthesizes, and condenses this work to provide a definitive short study of the subject.

Defining the Darkside

Although a distinct wave of "post-positivist," critical and/or interpretivist scholarship emerged in the last two decades of the 20th century which engaged with the role of values, beliefs, and politics in decision-making, policy thinking from its origins has continuously been criticized for its overly optimistic and often technocratic or 'positivist' tenor and its general neglect of many of the practical problems of policy-making (Tribe, 1972).

The "darkside" of public policy discussed in this Element is metaphorical in two senses: it refers both to the opacity of decision-making processes and to the "dark" or less than public interested motives of many of those involved in policy-making and "policy taking." As such, it can be contrasted with the "brightside" of policy-making and policy studies that deal with less self-interested and more transparent processes and outcomes (Compton et al., 2019; Douglas et al., 2021).

Problems with policy designs caused by the darkside of policy-making – the uncertainty inherent to real-world political settings, as well as the endemic recalcitrance of many policy-makers and policy-takers to comply with or promote the public interest and public value in their activities – remain very much underexplored in the orthodox policy studies literature (Colebatch, 2018; Turnbull, 2018; Howlett, 2020). The larger thrust of research in policy sciences and adjacent literatures remains firmly oriented toward the production of

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modelling and generalizable insights that accrue from a dispassionate, scientific engagement with policy-making, which is held as a process that is expected to deliver on government goals, and to do so in an efficient way (see Farr, Hacker & Kazee, 2006; Durnová & Weible, 2020).

This literature on policy-making and policy design, while well-disposed to help deal with many "external" crises and changes that pose risks to government goal attainment, has examined much less thoroughly the behavior of policy-makers and policy takers (Howlett et al., 2020), which pose "inherent" risks to good policy outcomes. These risks are linked to the nature and logic of policy-making itself and whether and how it is carried out in the public interest.

It is only fairly recently that the literature on policy design and practice has recognized the importance of identifying and accounting for this kind of "risk" (Howlett et al., 2022). However, other policy-related literatures, especially those that fall under or overlap with political science, law and public administration, have long-accepted that the ideal of good government is continually besieged by a range of pathologies and manipulative practices (Goodin, 1980). These works variously include explanations of how badly construed information can skew government policy, especially where state and governance knowledge bases and capacities are limited; how decision-making are often motivated by interests other than the creation of public value; and how policy targets – those whose behaviors government attempts to manage – often embark on forms of lawful and unlawful "misconduct," such as fraud, gamesmanship, evasion, deliberate non-compliance, and others, to undermine government intentions (Saward, 1992; Howlett, 2020).

This tendency toward optimism is understandable for several reasons. First, much policy and policy-making "on the darkside" is almost by definition opaque and resistant to scrutiny and analysis. This is the case, for example, with corruption or covert practices, which agents involved in them often try to cover-up and with the malign exercise of power in the interests of national security, for example, which states generally make opaque, do not publicize and protect with preventative information disclosure laws. It is also the case with corporate and special interest groups lobbying policy-makers to protect their private interests, which have in the past resulted in harms to the public interest including, variously, environmental contamination, tropical rainforest deforestation, smoking, alcohol consumption, licit and illicit drug use, and beyond. Obscuring these kinds of influence, as well as the outcomes, is very much part of the malignity of such influencers (Oreskes & Conway, 2011).

Many policy scientists do widely declaim such lack of inclusion and transparency as indicators of poor policy-making practice, but a more fundamental value is also at stake in this behavior: the essence of democracy or rule of the people which demands that the public be able to properly evaluate government

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performance and reward or punish them in elections for incompetence, corruption, or other kinds of policy and political scandals and failures.

Diamond and Morlino, for example, specify the minimum qualities of democracy are "1) universal, adult suffrage; 2) recurring, free, competitive, and fair elections; 3) more than one serious political party; and 4) alternative sources of information" (2004, p. 21). The latter point is often overlooked, but it is in fact pivotal. To assess whether their interests are well-served, the public must have ample high-quality and accurate information on government efforts, intents, and outcomes. The principle of transparency is often expected to be provided by a free, untrammeled press corps and through access to government information, but in practice often neither function effectively in this manner. In reality, the conglomeration of media ownership and broad exemptions to freedom of information laws mean that even in liberal-democratic regimes many government intentions and outcomes can remain hidden in the shadows. As Hallsworth and Rutter (2011) note, "The more that this process is illusory, the more democracy is undermined."

Second, bad policy is by definition non-inclusive. The exclusion of specific sections of the public, either selectively or entirely, from participating in policy-creation processes and outcomes can be, and often is, the result of poor practice or unconscious bias, but is also often the result of *intentional* structural and agential strategies to shape how policy is made, and whom it benefits. Rather than promote openness and transparency, these efforts can intentionally exclude, occlude, preclude, or ostracize some sections of the populace in order to meet nefarious and undemocratic goals, from overly rewarding loyal or client-groups to exchanges of favors with campaign financiers or the personal enrichment of civil servants or politicians, or worse (Herzog, 2018).

Third, many purportedly beneficial policies in practice rely on expected and anticipated high levels of compliance of those targeted by policies with government aims (Weaver, 2015). This includes mundane activities such as having members of the public generally obey traffic laws and pay their taxes, but also expecting contractors and service providers to comply with contract terms and intentions or individuals not gaming rules and regulations or otherwise failing to comply with their intent. Although often assumed to be automatic, compliance behaviors almost always require compliance mechanisms of monitoring, enforcement, and sanctions, which come with sometimes large additional costs (Weaver, 2009). These compliance efforts often do not themselves perform well and thus limit the reach and effectiveness of the policy. Uncertain compliance and policing thus introduce additional risks into policy-making that lead to uncertain outcomes, even with the best of intentions (Weaver, 2013).

Phenomena such as non-compliance and self-interested or malign policy behavior are termed here "*policy vices*" and, importantly, can occur in all

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different kinds of states and at all different levels within them. While more prevalent in forms of government less concerned with the public interest than democratic states, they also occur in liberal democratic ones, although the ethics of open government, participation, and probity associated with democratic states are expected to limit the opportunities for such behavior and resulting bad policy to emerge (Legrand, 2021). Additionally, such vices can come from all segments of civil society and public life, not just governmental actors.

Beyond Capacity Challenges: The Idea of Inherent Policy Vices

Previous studies, of course, have noted that policies do not always succeed (McConnell, 2010). But these studies have often argued that poor policy-making and policy outcomes are not inherent to the policy process but rather often emerge from capacity limits in the face of external challenges: so that, for example, poorly paid civil servants in many poor countries may have little option but recourse to bribes and favoritism in order to survive in their positions (Graycar, 2013, 2015) or that better analysis and more administrative resources can ensure better policy formulation and implementation of government plans (Ingram & Schneider, 1990; Cameron & Evans, 2024).

But while this may be true in some instances, one key pillar of our thesis is that the challenges facing the achievement of better policy outputs and outcomes amount to more than simply overcoming capacity limits and external risks. While it is true that some of the problems encountered by policy-makers and policy thinkers are indeed due to a mismatch between the external and internal funding demands and other environmental challenges faced by government, and that often critical capacity challenges do exist (Howlett & Ramesh, 2016), it is the argument of this Element that there are other additional risks that are *inherent* to policy-making and cannot be avoided, although they can be mitigated.

These risks to policy-making can be framed as sources of *policy volatility* or the likelihood or propensity of any policy design to fail. Like a stock portfolio in which some failures are expected and can be hedged against, it is argued here that policy designs must deal with these kinds of internal risks head-on rather than simply assume that all will simply work out for the best if a government's intentions are good (Howlett & Leong, 2022).

Howlett and Leong (2022), for example, have pointed to the importance of three such *inherent vices* or risks to public policy, which are detailed in subsequent sections. These include the inherent uncertainty of policy-making, as well as malice on the part of policy-makers and non-compliance in policy-takers, as set out earlier. Together with other problems such as (un)preparedness and (non) learning identified by other authors (Dunlop, 2017; McConnell, 2002), the

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omnipresence of these vices challenges many aspects of contemporary policy theory that were developed in earlier periods when these kinds of vices or risks were largely ignored or simply assumed away.

Thus, as Legrand (2021) has argued, many current problems in policy theory and practice are now often seen to be the product of a crisis in the core values that previously defined the telos of "the good state" – commonly viewed as a benign representative public body designed to enhance public values in a relatively unproblematic way. In this view the main impediment to the achievement of the public interest has often been posited to be inadequate knowledge of exactly how to identify the public interest or interests, or a lack of the resources needed to pursue or achieve such interests, rather than being due to the nature of the task itself or to the characteristics of the principal actors who define, address and take part in it (Moore, 1995; 2014; Colebatch, 2010).

Recent examples such as the "war on terror" post-9-11, the 2008 financial crises, and the 2019 COVID pandemic show that global challenges can trigger societal polarization and generate crises for the rule of law, upsetting the balance of support for state action and leading to declining trust in institutions. All of these have extensive implications for the quality of democracy and government. Bennett and Lemoine (2014a), for example, are only two of many observers of what is often thought to be an increase in such phenomena, noting many trends toward increased volatility, uncertainty, and complexity in world affairs and arguing they only promise to increase in future years as wars and climate change impacts increase in an ever more highly interconnected world. They term this policy environment as one that is increasingly volatile, uncertain, complex, and ambiguous (VUCA).

We argue here, however, that these developments have not so much introduced new elements into policy-making but have rather exacerbated problems already *inherent* to policy-making itself. Extensive regulatory capture, especially by powerful firms; the normalization of policy goals that transgress human rights; and deliberate obfuscation of the policy process by its core players in many countries for security purposes, or by leaders who lambast the media and engage in corrupt and venal practices, have always posed a threat to traditional notions of effective policy-making in the public interest, even where this latter sentiment was common. In other countries where open and transparent government has never been the norm, already sizable problems with these modes and ways of thinking have intensified even further.

This adds a new dimension to the idea of a "darkside" of policy-making as not only a perennial problem but a worsening one and lends urgency to efforts to better understand these policy risks and mitigate them. These flaws and vices have been with us for some time, but they flourish in volatile policy

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environments, and amid the "dark" misalignment of the public interest and policy settings in many countries it must be asked what are the prospects for policy studies to help resolve these challenges (Peters and Nagel, 2025). These considerations motivate this volume.

Aim of the Element

To further this end, this Element develops terms and concepts such as policy volatility, policy malignancy, and policy vices not as a wholly new platform for research, but rather as a means to marshal the existing range of theoretical and conceptual work on these aspects of policy-making. Recognition of how these pathologies carry over into policy-making currently remains limited in the policy literature (Arestis & Kitromilides, 2010; Legrand, 2022) and correcting this gap is a major aim of this Element.

Specifically, the Element draws from recent work in policy studies that focusses attention to these kinds of behaviors in much the same way as, for example, Allan McConnell does in dealing with "hidden agendas" or policies with covert aims lurking behind ostensible purposes (McConnell, 2018). It further examines the question of how policy scholars should engage with long-standing internal risks amidst a decline in the normative democratic principles of good governance that were presumed in earlier eras (Wagle, 2000) and discusses what lessons can be derived from current and past studies for improving policy practice in such an environment.

Structure of the Element

This opening section makes the case for the need for policy-makers to pay attention to the darkside of policy-making and more closely examine their own behavior and that of policy targets in formulating and implementing policies and undertaking their design. It introduced key concepts to be used in the analysis from "policy volatility" to "inherent vices," which are useful in this endeavor.

Section 2 then surveys emerging policy theory, concepts, and research on the "darkside" of policy-making, sketching out a framework of analysis that accommodates multidisciplinary contributions to better understanding these topics. The foundation of this framework is normative, insofar as it appeals to principles of non-subjugation, public service ethos, and universal human rights, and it seeks to advance effective and legitimate policy-making behaviors by understanding their limits and constraints. It explains how the use of utilitarian measures and hedonic compliance-deterrence models in the policy sciences has dominated the field and contributed to some of the problems encountered in

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identifying and correcting internal policy risks. By bringing together conceptual possibilities and normative values in this framework, the section establishes a theoretical beachhead for better understanding and managing the "darkside" of public policy. The section argues for the need to re-examine policy-making problems and limits in order to address their presence in policy-making, as well as for a better recognition of what greater uncertainty implies for the likelihood of policy success and failure and the reasons for them.

Section 3 then offers a normative critique of the traditional policy studies literature and examines in detail the general notion of malign or "bad" policy. As this introduction has pointed out, the disciplinary development of policy studies has long been shaped by scholars working within liberal democratic traditions. In consequence, a long-held assumption has been that policy-making is, *prima facie*, motivated exclusively by the pursuit of the public interest, and this assumption has gone largely unchallenged, even while intersecting critical traditions – particularly in political science – have opened up rich research agendas on topics such as historical bias and institutional and agential harms (Goodin, 1980). The section critiques the often-latent assumptions of benevolence found in many policy studies and develops the notion of political exclusion as a methodological means to identify deviations from liberal democracy's precepts.

Section 4 then expands on five specific categories of inherent vices associated with volatility in policy-making set out earlier: namely uncertainty, maliciousness, (non)compliance; unpreparedness and non-learning, with a focus on the lesser-explored first three. Exploring the origins and development of these problems the section suggests ways to mitigate and address the contributions that these vices make to the darkside of public policy.

Section 5 discusses how, precisely, proposed policies can be assessed and altered to promote and lead to more benevolent outcomes. It shows how each of the risks set out in earlier sections can be managed through a variety of means from institutionalizing foresight agencies in order to deal with the risk of surprises affecting government agendas, in the case of unpreparedness, to the implementation of mandated and comprehensive evaluation and measurement activities in order to reduce the risk of poor or non-learning in policy evaluation. The section emphasizes the kinds of "procedural" tools or techniques governments have at their disposal to deal with these vices (Howlett, 2000). These are tools (Bali et al., 2021) that are put into place to control aspects of policy processes and policy behaviors rather than, as in the case of more substantive tools such as a public enterprise or regulatory commission, to alter the behavior of actors involved in delivering specific kinds of goods and services in society.

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Section 6 continues this discussion and draws on a comparative analysis of recent empirical experiences in several OECD countries attempting to address these inherent risks and concerns. The section sets out a set of management practices that can help inform policy design and curb the worst excesses of bad policy.

Finally, we conclude **Section 7** with a call to make malignity, volatility, and inherent vices mainstream concepts in policy analysis. Our concern in this Element is not just that these are real and corrosive phenomena but that they have gone unnoticed or sidelined by all but a handful of policy scholars. If good policy-making is, at heart, a result of a shared normative commitment to values of transparency and openness and the public good, then safeguarding that commitment requires ongoing vigilance and mitigation. It is our plea for such vigilance from the policy science community that concludes the Element.

2 Studying the Darkside: Advancing the Concepts of Policy Risk, Malign Policy, and Policy Volatility in the Policy Sciences

Introduction: Dr. Pangloss and the Policy Sciences

Is all for the best, in the best of all possible worlds? Voltaire's 1759 satirical work *Candide; or The Optimist*, tells the story of the eponymous hero and his mentor Professor Pangloss who is always prone to see even the worst possible circumstance as part of God's beneficial plan for humanity. Candide is taught in his early years living in a garden of paradise the Leibnitzian philosophy that, "all is for the best in the best of all possible worlds." The story follows Candide as he leaves his garden idyll and encounters the outside world, and despite seeing a world of apparent violence, tragedy, and suffering, tries to maintain his unfaltering, but increasingly ludicrous optimism in the face of the realities of a very uncertain and unhelpful present.

Voltaire's novel is satirical, but for contemporary policy studies there are instructive parallels. Not so long ago, a widespread view about the nature of the world in the post-Cold War period, for example, held that liberal democracy represented a kind of ideological gravity well that peoples of the world would be inevitably drawn toward as the best of all possible worlds unfolded in the absence of a totalitarian threat. Francis Fukuyama's teleological "end of history" analysis was the apotheosis of this view, heralding liberal democracy's ideological supremacy and inevitability. For much of the world, he argued, "there is now no ideology with pretensions to universality that is in a position to challenge liberal democracy, and no universal principle of legitimacy other than the sovereignty of the people," thus anticipating a gradual, but still fairly rapid, movement toward utopia (Fukuyama, 1992).

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Yet subsequent global trends in illiberal, autocratic and poor government and governance have revealed that we are not at the end of history, and there is mounting evidence of a continued malaise in many formerly prominent liberal democratic regimes across the world that are under attack from populism and a distinct trend toward authoritarianism (Howlett, 2021; Legrand, 2021).

Now more than ever, policy-makers and scholars in more and more countries alike must deal directly, and with eyes wide open, with the "darkside" of policy-making. Many of these aspects of policy-making are unavoidable, being part of the "inherent vices" of the subject in the same way that food will spoil and ships will sink. These kinds of behaviors have always been with us but are arguably more pronounced and/or take a different shape in the present-day interconnected, social media saturated, and increasingly volatile, uncertain, complex, and ambiguous world.

This section examines key concepts in the field that allow us to better understand these phenomena and the risks they pose to "good" policy-making.

Dealing with a Messy Policy World

Understanding the risks posed to policy-making can be framed as understanding the sources of *policy volatility* or the likelihood or propensity of any given policy design to fail. Howlett and Leong argue that policy designs must deal with such volatility head-on rather than assume simply that all will work out well in the best of all possible worlds (Howlett & Leong, 2022). Legrand, similarly, has argued that many current problems in much existing policy theory and practice are caused by a crisis in the core values of liberal democracy that underlie much of the policy sciences. That is, that the values and freedoms that previously defined the telos of "the good state" toward which all policies were commonly thought to be oriented, or at least should be oriented toward if they are to be beneficial and serve the public interest, are difficult to maintain and are not an automatic or default condition.

That having been said, in the current era, policy problems are more interwoven and their solutions often more ambiguous than in previous years, often with an interlocking international and national dimension which can make them more intractable (Levin et al., 2014). But the challenges facing policy-makers are more than simply an administrative or political system capacity challenge. Cousins (2018), for example, has identified the volatile, uncertain, complex, and ambiguous (VUCA) nature of the world as the central characteristic of the current policy environment that has serious continuing consequences for effective public policy-making and policy designs.

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