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Exercising 'bad faith' in the asylum policy arena

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Abstract:	<p>This article uses a 'scoping' methodology to identify the different ways in which asylum policy and practice fall short of policymakers' stated aims, are counter-evidential, and are inhumane in their effects. It highlights how asylum seekers, commonly constructed as undeserving economic migrants, are impacted by these powerful 'othering' narratives, before drawing on a breadth of research evidence to challenge dominant claims and expose the particular weaknesses of the asylum system. In doing so it asks why, if asylum policy is not informed by the evidence, does not achieve its stated objectives and yet causes suffering for those seeking asylum, such an approach persists. The article then develops the concept of 'bad faith' as an exercise of power, in order to theorise the actions of powerful agents in the shaping of asylum policy and practice with reference to hidden collective interests. It contends that the asylum policymaking community, in failing to acknowledge the suffering resulting from the diminishment of ASs into a 'typified other', are engaging in an oppressive power operation, concealed by the political narratives underpinning policy reforms from the 1999 Immigration and Asylum Act to the 2016 Immigration Act.</p>

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Abstract

This article uses a 'scoping' methodology to identify the different ways in which asylum policy and practice fall short of policymakers' stated aims, are counter-evidential, and are inhumane in their effects. It highlights how asylum seekers, commonly constructed as undeserving economic migrants, are impacted by these powerful 'othering' narratives, before drawing on a breadth of research evidence to challenge dominant claims and expose the particular weaknesses of the asylum system. In doing so it asks why, if asylum policy is *not* informed by the evidence, does *not* achieve its stated objectives and yet causes *suffering* for those seeking asylum, such an approach persists. The article then develops the concept of 'bad faith' as an exercise of power, in order to theorise the actions of powerful agents in the shaping of asylum policy and practice with reference to hidden collective interests. It contends that the asylum policymaking community, in failing to acknowledge the *suffering* resulting from the diminishment of ASs into a 'typified other', are engaging in an oppressive power operation, concealed by the political narratives underpinning policy reforms from the *1999 Immigration and Asylum Act* to the *2016 Immigration Act*.

Key words: 'Bad faith', power, asylum seekers, collective action, agency



Introduction

This article provides a ‘scoping’ review of existing scholarship in order to bring into focus the different ways in which asylum policy and practice fall short of policymakers’ stated aims, are counter-evidential, and inhumane in their effects. It highlights how asylum seekers (ASs) are commonly *constructed* as undeserving economic migrants, engaging in ‘bad agency’ – ie, attempting to access benefits and labour market opportunities they are not entitled to or deserving of – and examines the *consequences* these narratives have for ASs with reference to key asylum policy reforms. It challenges dominant narratives, exposing the weaknesses of the policies and practices ASs are routinely subjected to which have not, to date, been adequately addressed by successive UK governments, seemingly reluctant to act in the face of mounting evidence. Central is the argument that policies driven by assumptions about genuineness and deservingness inform a punitive approach to policy design which impacts *all* ASs, and *not* just ‘fraudulent’ applicants as policymakers claim, and do not deter would-be ASs from ‘choosing’ the UK as their destination.

Our scoping review methodology spotlights a neglected but important question: if asylum policy is *not* informed by the evidence, does *not* achieve the objectives identified as pivotal by policymakers, and has a profoundly negative impact on those seeking asylum, why does such an approach persist? Policy commentators have been unable to adequately explain this gap between policy rhetoric and reality and our aim is to make a contribution to this endeavour by introducing the concept of ‘bad faith’ as an exercise of power. We start by examining current conceptualizations of human agency in the policymaking context, taking up Wright’s (2012) call to gaze ‘upstream’ in a bid to interrogate the actions of UK politicians and policymakers. Analysing welfare-to work strategies, she claims the lens of ‘bad agency’ has been routinely applied to benefit claimants, neglecting the agency of politicians themselves, and especially the damaging impact of their actions. However, whilst seeking to theorise the agency of asylum-focused policymakers as a *collective* with *particular interests* in line with Wright’s call,

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3 we nevertheless identify *weaknesses* in the use of 'bad agency' as a concept for
4 understanding their actions 'upstream', making the case instead for introducing the
5 concept of 'bad faith'.
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10 We argue that the concept of 'bad faith' - understood as actions of particular collectives
11 at the institutional level which blind them to '*displeasing truths*' and generate '*pleasing*
12 '*falsehoods*' in an effort to '*disarm evidence*', take '*flight from social realities*' (Gordon,
13 1995,p.8), and achieve their specific group interests - has explanatory potential with
14 regards to the actions of powerful agents in the shaping of asylum policy and practice.
15 We contend that the asylum policymaking community, in failing to acknowledge the
16 *suffering* resulting from the diminishment of individuals into a 'typified other', are
17 engaging in an oppressive power operation, concealed by the political narratives
18 underpinning policy reforms from the *1999 Immigration and Asylum Act* to the *2016*
19 *Immigration Act*. We conclude that the notion of exercising 'bad faith' has more utility for
20 shedding light on political actions taking place in the asylum policymaking arena than
21 'bad agency' as it recognizes that in successfully achieving their hidden objectives,
22 policymakers can thus be said to be engaging in 'good agency' from their own partisan
23 perspective.
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‘Scoping’ the asylum policy arena: Reframing existing scholarship

This paper brings together what we know about asylum policy and practice from already existing scholarship, drawing on the wealth of empirical data generated by researchers in the field using a ‘scoping’ methodological approach. Colquhoun et al. (2014,p.1291) define this as a *‘form of knowledge synthesis that addresses an exploratory research question aimed at mapping key concepts, types of evidence, and gaps in research related to a defined area or field by systematically searching, selecting and synthesizing existing knowledge’*.

The approach involved selecting and mapping sources which identify those aspects of asylum policy that demonstrate a ‘dissonance’ between the dominant narratives and claims of powerful policy actors on the one hand, and the practice outcomes and consequences policy has for those seeking to navigate the asylum system on the other. It also sought to uncover instances whereby specific policies and practices, demonstrably counter-evidential and ineffective at meeting the stated objectives of policymakers, were nevertheless being pursued regardless. Central was our concern to reveal exercises of power, for example through the processes of ‘othering’ and agenda setting, which cause harm and suffering to those seeking asylum.

To this end, the existing scholarship was analysed using stages 1-5 of Arksey and O’Malley’s (2005) framework, whilst paying attention to Levac et al’s (2010) key recommendations where practical. For example, we sought to combine our broad research question relating to ‘exercises of bad faith’ with a clearly articulated *scope* of enquiry by focusing on UK asylum policy *within a specified time period*.

Both researchers were involved in: extracting the ‘essence’ of this broad and diverse set of sources using a qualitative content analysis method; sorting for key terms and policies that kept re-emerging in the literature; and identifying less common policy and practice issues that connected to both our research question and theoretical framework. The data chart constructed from this process was then used to generate discrete

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3 thematic categories where power operations could be identified and subsequently
4 theorised.
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8 Given the small scale of the project, the scoping process was not perhaps as iterative
9 as it could have been, though the data chart was updated to incorporate recent
10 publications as the research progressed. Whilst the research may not be entirely
11 replicable (Levac et al,2010), we were able to identify strong recurring themes and sub-
12 themes in the literature which could then be used to test our analytical framework. The
13 thematic areas identified are: The construction of bogus claimants; The shaping of a
14 policy terrain; An asylum system fit for purpose, and; Challenging powerful asylum
15 discourses.
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25 **The construction of bogus claimants**

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28 Not unlike the unemployed and other categories of benefit claimants, in recent decades
29 ASs have been subjected to a barrage of unsubstantiated, often counter-evidential
30 claims from politicians, policy advisors, and much of the mainstream media about their
31 status and behaviours. They are routinely constructed as 'bogus' claimants (despite the
32 *universal* right to claim asylum), here as 'economic migrants' masquerading as ASs to
33 access rights and entitlements illegitimately. Parallels also exist in the way false binary
34 opposites are employed; just as the 'striver'-'skiver' distinction fails to recognise that
35 many relying on benefits are in paid work and many labelled 'skivers' make valuable
36 contributions (Carter and Whitworth,2015), so the 'economic migrant' is positioned as
37 distinct and entirely separate from the 'asylum seeker'. This is despite the fact that
38 engaging in a constant struggle to feed your family *is* a battle against destitution
39 potentially *no less profound in its consequences* than war itself, in turn triggering
40 'asylum' seeking in places where the fight for life may be perceived as less precarious
41 (Castle-Kanerova,2002). As Tyler (2013,p.83-4) notes, the constitution of ASs as "*not-*
42 *refugees*", *bogus, illegals*', both through policymaking, media representations and
43 popular culture, *invokes the non-status of a person who has not been recognised as a*
44 *refugee*' and provides a political opportunity to *'manoeuvre around the rights afforded*
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3 *the refugee, a subject category with a specific international legal genealogy*, and *'its*
4 *international obligations as a signatory to the 1951 Convention'* on the rights of
5 refugees. Furthermore, following Lister writing on poverty and the 'underclass', we
6 argue that the use of the AS narrative can thus be seen *'as an exercise in conceptual*
7 *contamination'* (2004,p.110) given that it shifts the focus from a principled humanitarian
8 approach to policymaking, towards a culture of suspicion and unwelcome, providing
9 legitimisation for the treatment of ASs as a category of 'non-humans', as distinct from
10 'refugees' who are imagined as a 'legitimate' group in search of protection
11 (Hargrave,2014).
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20 However, UK governments routinely present themselves as the tough guardians of
21 public interest when it comes to asylum policy - meeting 'genuine' need whilst
22 safeguarding resources. This has led to the continuous reconstruction of a deserving-
23 undeserving distinction as a crude process of 'othering' which has a significant role in
24 shaping the asylum narratives of the major parties once in office, making for more policy
25 continuity than change. Spencer (2011,p.55) highlights the mainstream media's role in
26 driving asylum discourse, noting how, whilst policy critics in opposition, New Labour
27 governments feared the impact of press coverage on public confidence in its ability to
28 control immigration, and did little to challenge ignorance-fuelled attitudes and build
29 support for more effective and humane policies. As Tyler demonstrates, it is an
30 accumulation and repetition of political *and* media representations that ensures the
31 construction of ASs as a 'national abject' – or 'typified other' – and the manufacture of a
32 moral panic around an 'asylum invasion complex' in the public sphere. This in turn
33 incites and sanctions *'public fear, anxiety and disgust'* (2013,p.88). The lack of positive
34 images of ASs, for example as often highly skilled individuals with the potential to make
35 a positive contribution to British cultural, social and economic life, fuels an anti-AS
36 sentiment as well as *harnessing* xenophobic attitudes amongst some sections of the
37 public. Following Hall, these narratives and the negative, stereotypical assumptions that
38 underpin them, are publicly imagined and reimagined in and through the communicative
39 practices of everyday life, 'on the streets' (1978,p.129), and now also through social
40 media. This demonstrates how politicians and policymakers, in conjunction with much of
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3 the media, contribute to the AS constituting process, building support for their actions,
4 and even a *demand* for punitive policymaking and entry restrictions, recently
5 manifesting in the rise of support for UKIP and Brexit (Clarke et al.,2017; Ford and
6 Goodwin,2014), particularly but not exclusively from those most affected by neoliberal
7 anti-welfarism. Indeed, in the current era, '*determined not to let a good crisis go to*
8 *waste*' (Farnsworth, 2011,p.60), the UK Coalition and subsequent Conservative
9 governments have conjured up an austerity programme (Clarke and Newman,2012).
10 This has opened up additional opportunities for policymaking that further widen
11 inequalities and social injustice, illustrated in the asylum policy arena by the passing of
12 the 2016 Immigration Act (see below), fuelled by the political confidence that such
13 actions will garner public support, especially amongst those most affected by
14 precarisation.
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24 Blinder (2015) notes that ASs are far more likely to feature in the 'imagined immigration'
25 of the public than any other category of migrant, despite them making up just four per
26 cent of immigrants in 2009 (Migrant Observatory,2011). We therefore suggest here that
27 powerful contemporary media and political discourses from the mid-1990s have worked
28 in tandem (Dean, 2012 – see also Hargrave,2014; Kundnani,2001) to generate such
29 anti-Refugee sentiment, and focus public xenophobia on refugees in the UK, *whilst*
30 *systematically reconstituting them* as ASs. In doing so, they have not only contaminated
31 public conceptualisations of refugees as a group deserving of our humane interventions,
32 but have also fuelled the shift away from benevolent, principled policymaking *and*
33 sustained the public's authorisation of that.
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45 The ongoing, complex interaction between 2010, 2015 and 2017 UK governments'
46 representations, media accounts, policy reforms and public attitudes continues to
47 perpetuate the marginalisation and suffering of ASs, creating further inhumanity in
48 public life (Philo et al,2013). Consequently, ASs are now almost entirely consumed in
49 the 'asylum problem' narrative, falling victim to what Bloch and Schuster term a '*moral*
50 *consensus against asylum seekers*' (2002,p.404). Those historically seen as deserving
51 of support have been *re-presented en-masse* as a danger to 'the British way of life' and
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3 economic opportunity for British citizens, rather than *in danger themselves*. The
4 'problem' presented by increasing numbers of asylum applications is constructed as a
5 simple 'social fact', requiring a 'technical', value-neutral response, self-evident and
6 rational, whilst the values and judgments informing policy are marginalised in
7 discussions about what needs to be done (Clarke,2001).
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14 The negative assumptions underpinning powerful asylum discourses work to construct
15 ASs as a legitimate focus of punitive policies and controlling interventions so extreme in
16 form as to include: indefinite detention; enforced dispersal; exclusion from the
17 mainstream welfare and employment systems, and hence wider society; benefit
18 dependency coupled with reduced entitlements; and, at key points in the asylum
19 process and sometimes on numerous occasions, destitution. As such, policy is
20 profoundly damaging to *all* individuals seeking asylum. Moreover, where it marginalizes
21 claimants, it has consequences for their integration should they acquire 'refugee' status
22 (Mulvey,2010,2013).
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33 **The shaping of a policy terrain**

34 **The uses and abuses of detention**

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39 Officially, the Home Office (HO)/UK Border Agency (UKBA) uses detention only in
40 specific circumstances: when there is a need to establish a person's identity and/or the
41 basis of their claim; in the run up to removal; where a 'fast-track'/'super fast-track'
42 procedure is deemed appropriate; or where it is believed applicants will not comply with
43 conditions attached to release or temporary admission. However, the need to minimize
44 'community tensions' and 'threats to social cohesion' have been used to legitimize
45 increased detention (Malloch and Stanley,2005), despite the greater cost-efficiency of
46 community-based alternatives (Detention Forum,2015). Moreover, evidence suggests
47 that ASs can be detained on 'signing' at immigration offices without warning and risk
48 being detained, released and detained again, whenever deemed appropriate by the HO,
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3 and for indefinite periods. Bosworth (2014) thus argues that detainees have fewer legal
4 protections than convicted criminals. Furthermore, claimants can be detained
5 irrespective of their psychological/physical vulnerability (BID,2012). Significantly, the
6 official line that detention is used primarily to facilitate removal is *not* supported by the
7 UK government's own statistical evidence: in 2015 just 47% of detainees were deported
8 from detention (HO,2015a). Detainees *can* apply for 'bail' after seven days, but *only* if
9 they can pay or have 'sureties' willing to pay if they break the conditions (eg missing a
10 signing). The independent charity *Bail for Immigration Detainees* has extensively
11 researched this process, highlighting the lack of bail accommodation provided by the
12 HO (BID,2014a), as well as a lack of transparency, fairness and accountability
13 (BID,2014b). It concludes that penal environments are *routinely* used for administrative
14 convenience (BID,2014c), with lengthy stays resulting from *systemic inefficiencies*. That
15 policymakers have ignored this evidence suggests that creating a just, humane system
16 for processing asylum claims is not a key driver of policy and practice.
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30 Dispersal and accommodation on a no-choice basis

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34 Whilst the rhetoric is of spreading the financial and social costs (Robinson et al,2003),
35 the consequences of dispersal are significant. They include societal marginalisation and
36 reliance on informal support where there are gaps in statutory provision (Wren,2007),
37 whilst simultaneously excluding applicants from '*social and kinship networks*' crucial to
38 their settlement (Schuster, 2005,p.3). The Joseph Rowntree Foundation (2013) argues
39 that dispersal - initially fraught with problems under the now defunct NASS (National
40 Asylum Support Service) which contracted out housing provision to *local authorities* -
41 saw *improved* outcomes as experience was gained, support agency networks were
42 developed, and wider objectives relating to social value, social cohesion, settlement and
43 integration were nurtured. However, following the UKBA's decision to outsource *only* to
44 private providers after 2012 - a result of the cost cutting objectives which could only be
45 achieved '*by procuring much poorer accommodation in less desirable areas, or by using*
46 *the accommodation more intensively, or both*', alongside a '*failure to exercise due*
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3 *diligence in the procurement process'* (JRF, 2013,p.5-7) - the broader objectives that
4 *had* impacted positively on ASs as dispersal policy bedded in, were subsequently
5 neglected. This lends further weight to the argument that UK government action in this
6 policy arena must be serving a purpose other than supporting ASs.
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10 11 12 No right to paid work or access to mainstream welfare support 13 14 15

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17 Since 2002 it has been illegal for ASs to access paid employment, with very few
18 exceptions, positioning them as benefit dependents irrespective of their skills,
19 willingness, or ability to find work (Doyle,2009). This feeds UK government rhetoric that
20 as net *consumers* of public funds, the costs of claimant support must be reduced *and*
21 shared, thus legitimising both cuts *and* the dispersal system. Able to track employed
22 ASs, and amidst a moral panic about welfare expenditure, denying applicants the right
23 to work seems counterintuitive, once again suggesting another set of objectives at play.
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31 As enforced benefit dependents, ASs have been systematically excluded from
32 accessing the mainstream social security system, and forced to rely on separate, lower-
33 level entitlements. Central is the *1999 Immigration and Asylum Act*, section 95 (S95) of
34 which offers cash support, via the Application Registration Card. Its flat rate value was
35 reset at £36.95 in August 2015 - a considerable downgrading of support for families with
36 children (previously paid £52.96 for each child under 16). This resulted from an internal
37 HO review which concluded that previous arrangements were too generous and did not
38 '*reflect the possibility of economies of scale within households*' (Gower, 2015,p.8). The
39 *stated objective* is to make the UK a less attractive destination. This is despite evidence
40 that such policies are unlikely to work given ASs' lack of knowledge about comparative
41 welfare support levels (discussed below). Once again the spectre of hidden objectives,
42 beyond the provision of a fair, humane asylum support system rears its ugly head.
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Hard case funding for refused asylum seekers and destitution

Until the passing of the 2016 Act, when S95 support was withdrawn, usually 21 days after the final refusal of a claim, ASs experienced forced destitution unless they could access 'hard case support' under section 4 (S4) of the 1999 Act, or there were dependent children (discussed below). To qualify for S4 support the applicant had to be destitute and satisfy one or more of 5 conditions:

'(a) he is taking all reasonable steps to leave the UK or place himself in a position in which he is able to leave the UK, which may include complying with attempts to obtain a travel document to facilitate his departure;(b) he is unable to leave the UK by reason of a physical impediment to travel or for some other medical reason; (c) he is unable to leave the UK because in the opinion of the Secretary of State there is currently no viable route of return available; (d) he has made an application for judicial review of a decision in relation to his asylum claim; (e) the provision of accommodation is necessary for the purpose of avoiding a breach of a person's Convention rights, within the meaning of the Human Rights Act 1998 (for example, because they have submitted further representations)' (Gower, 2015,p.13).

S4 support was thus primarily available to those deemed to be *'taking all reasonable steps'* and those willing but unable to leave for reasons beyond their control. Provision comprised compulsory accommodation and a 'voucher card' for use in particular shops, to the flat-rate, weekly value of £35.39. Entitlement was regularly reviewed and could be withdrawn at any point. Hickey (2008) and Gillespie (2012) argue that refused ASs were thus at risk of forced destitution where the UKBA would not accept they had taken 'all reasonable steps', even when the *International Organisation for Migration* has been unable to assist someone to return (eg due to a lack of travel documentation, or the 'home' nation either refusing to recognise them as their national, or agree to their return) (see: Crawley et al,2011; Refugee Council,2012). The limitations of S4 as UK governments refused to accept evidence regarding the complexities of and barriers to

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3 return is a clear illustration of a political unwillingness to address the system's deficits,
4 hinting again at other agendas at work.
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8 Picking up the case of families with dependent children, S95 support continued until
9 these families left the UK. However, section 9 (S9) of the 2004 *Asylum and Immigration*
10 *(Treatment of claimants, etc.) Act* empowered the state to terminate *all* support
11 (including the NHS, other than in an emergency/for a communicable disease) for
12 families deemed by the Home Secretary to be in a position to leave after fourteen days
13 of that decision. The result again would be forced destitution. Cunningham and
14 Tomlinson (2005) equated this to an attempt to '*starve them out*', noting that S9 *also*
15 threatened to accommodate children consequently deemed 'at risk' of destitution, at
16 enormous cost to the state. They argued that families may well 'go to ground'
17 subsequently navigating the combined threats of destitution and irregular migrant
18 status, rather than lose custody of their children. Interestingly, the HO's *own* 2006 report
19 concluded that S9 measures did *not* significantly affect ASs' behaviour with regard to
20 cooperating with removal (Cunningham and Cunningham,2007). Subsequently, this
21 provision was not used routinely. However, in August 2015 the HO (2015b,p.2)
22 suggested it may resume on a 'case by case' basis *despite its ineffectiveness*. As this
23 would result in what Wacquant (1998,p.31) terms '*state induced illegality*', here built into
24 the very logic of the asylum system, it represents a further indication of UK
25 governments' commitment to political objectives beyond the delivery of an effective
26 support system.
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43 In 2015 the UK Parliament voted to respond positively to the *All Party Parliamentary*
44 *Group on Refugees and Migration* (2015) report recommendations to impose a 28 day
45 detention limit, pursue community-based resolutions, and thus tackle the over-use of
46 detention. However, that did not mean a UK government change of direction. Indeed,
47 the passing of the *2016 Immigration Act* suggests the opposite - further punitive
48 measures likely to *increase* destitution, a rejection of the call for both a detention time
49 limit of 28 days and the right to work where ASs have been awaiting a decision for over
50 6 months, and few concrete proposals to improve the effectiveness of the assessment
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3 process. Indeed, the *Act* continued to reflect problematic narratives and reinforce the
4 damaging actions by policymakers. For example, Part 5 of the *Act* changes the support
5 provisions afforded by the *1999 Act*, replacing S4 with new arrangements to cover *all*
6 destitute ASs *and* their families should they face what is judged to be a '*practical or*
7 *genuine obstacle*' (HO,2015c, 2015b) to leaving the UK, following a refusal. This means
8 families with dependent children who would have remained in receipt of S95 support
9 now have the same *one* recourse to public funds as *all* other ASs, and that is
10 *conditional* on passing the practical/genuine obstacle test. The HO justified this in terms
11 of removing financial incentives for failed ASs to stay. The loss of appeal rights at this
12 juncture was explained away on the grounds that genuine obstacles '*are generally*
13 *straightforward matters of fact (eg medical evidence shows the person is unfit to*
14 *travel)*' (HO, 2015b,p.3). However, given the diverse obstacles facing refused applicants
15 relating to documentation and recognition, it is clearly not that simple. Indeed, where the
16 system is not perceived to be robust - starting as it does from the assumption that
17 applicants are 'bogus', not recognising asylum claims from 'safe' countries, and where a
18 genuine fear of return persists - refused applicants will remain, hoping to make a 'fresh'
19 claim, or surviving as irregular migrants. Research suggests that for many refused
20 applicants, the risks of irregular migrant life are seen as preferable to returning to a
21 place where they feel unsafe (Crawley et al,2011). Here there is a gulf between the
22 HO's and individual AS's perceptions regarding what constitutes both a reason to seek
23 asylum *and* a safe environment. Moreover, we must consider the extent to which the
24 rate of successful appeals suggests that the system is not in fact fit for purpose, driven
25 as it is by perceptions that most are fraudulent, and *not* by evidenced debate
26 (Fletcher,2008).
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47 **An asylum system fit for purpose?**

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51 In 2014 59% of applications were initially refused. A majority of refused applicants
52 lodged appeals - in 2014 28% were successful, not including those who made 'fresh'
53 claims as additional evidence was accessed. Considering decisions since 1994, the
54 majority of initial decisions have been refusals, although among 2004-2013 cohorts on
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3 average 76% of rejected applicants appealed, with a success rate of 24%, and from
4 2007 to 2014, successful appeals ranged from 22.5% to 28.5% (Blinder,2015a).
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9 These figures should be seen in the context of those procedures used to maximise the
10 number of immediate refusals and swift removals (Fletcher,2008), and dubious initial
11 and 'substantive' assessments, alongside appeals practices, in a context where there is
12 a growing culture of disbelief (see: Asylum Aid,1999; Canning,2014; HRW,2010;
13 Maniar,2014; UNHCR,2006). Here robust decision making and just process are
14 routinely sacrificed in the face of political imperatives to demonstrate a reduction in
15 applications *and* numbers granted leave to remain. ASs themselves report being viewed
16 and treated as 'less than human' by policymakers and street-level bureaucrats engaging
17 in damaging practices that reflect punitive policy agendas (Gillespie,2012; Green,2006).
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27 As signatories, the UK government cannot return ASs to a place of danger without
28 being in contravention of the EU (Council of Europe,1950) and UN conventions (see
29 UNHCR,2010), and cannot be certain that the system is robust enough to ensure this -
30 as the appeal statistics illustrate. Hence the use of forced destitution to promote
31 voluntary repatriation is tempting for those minded to refuse as many as possible
32 (Schuster, 2005,p.4). Hamilton and Harris (2009) show ASs are *most* at risk of
33 destitution resulting from administrative errors/delays, but claim there has been a shift
34 away from making the system more fit for purpose and increasing capacity. Indeed, the
35 HO (2015c,p.2) estimates that in 2014-15, S95 support cost £100million, almost half of
36 which was for refused AS families, with the cost of S4 support estimated at £28million in
37 that same period. Defending proposals embodied in what became the 2016 Act, the HO
38 (2015c,p.2) claimed this support: '*is wrong in principle and sends entirely the wrong*
39 *message to those migrants who do not require our protection but who may seek to*
40 *exploit the system. It also undermines public confidence in our asylum system.'*
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53 However, the decision to tighten eligibility and reduce appeal rights as a mechanism for
54 reducing costs seems preferable to tackling backlogs, getting it 'right first time' (Asylum
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3 Aid,2013), and hence decreasing housing, benefit, administrative and legal costs. This
4 is puzzling, particularly where controlling public expenditure and developing a just
5 asylum system are claimed priorities.
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11 Challenging powerful asylum discourses

14 Contesting claims to deterrence

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17 Examining recent policy developments, Spencer (2011,p.60) argues there has been a
18 concerted attempt to reduce UK AS numbers, highlighting the role of increased carrier
19 sanctions, and attempts to establish '*extra-territorial processing*' - ie, the provision of
20 temporary protection and application processing *outside* of the state territory where
21 asylum is being sought (Betts,2004). The criminalisation of ASs has been the focus of
22 Webber's (2012) work. Notwithstanding the use of detention, contemporary
23 developments have also worked to increase the numbers out with the law *on arrival*.
24 Documentation is a key mechanism here whereby those not in possession of the correct
25 paperwork are criminalised (along with their facilitators) and become a focus for
26 immediate deportation. Opportunities for business are also increased through such
27 processes, for example through outsourcing to private agencies working in 'buffer'
28 states and on UK borders, adding to contracts for other provisions such as detention
29 (Tyler,2013).
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43 Others have examined changing procedures around accessing AS status and
44 associated support mechanisms, noting their *assumed* deterrent effect. For example,
45 Cunningham and Tomlinson (2005) argue that since 2002 those deemed not to have
46 applied speedily enough are denied support whilst their claim is considered. In addition,
47 since 2000 those needing housing support must accept forced dispersal and no-choice
48 accommodation, or be left dependent on informal support (Robinson et al,2003;
49 Schuster,2005). Fletcher (2008) surmises that such techniques seek to facilitate a
50 reduction in numbers through deterrence and a culture of unwelcome.
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5 So, what do we know about the impact on ASs' destination choices of these initiatives?
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7 The Westminster government's *own research* refutes that applicants have detailed
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9 social policy knowledge and come seeking benefits, noting that where 'choice' of
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11 destination *is* exercised it is in relation to *other* factors (Robinson and Segrott,2002).
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13 Crawley (2010,p.5-7) found similarly: only about a quarter of her respondents had any
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15 prior knowledge of UK benefits; most had '*no expectation*' of welfare support. The
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17 overwhelming majority worked in their home country and expected to remain self-reliant
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19 on arrival; few knew they would not be allowed to work. Less than a third *chose* the UK
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21 and those who did cited '*the presence of family and friends and a belief that their human*
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23 *rights would be respected...as the most important factors underlying that*
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25 *decision*'. Others cited access to relevant travel documents, though '*the single most*
26
27 *important reason*' cited was the role of agents '*facilitating the journey*'.

28 29 Contesting claims to the 'bogus'

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33 Focusing on the evidence around the *context* of asylum seeking activity enables us to
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35 highlight the impact of wider structural forces and global realities, and question
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37 homogenizing narratives around the 'bogus' applicant. Here Crawley (2010,p.5) claims
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39 '*there is clear evidence that conflict is the single biggest reason why asylum seekers*
40
41 *come to the UK... most asylum seekers are primarily concerned with escaping from*
42
43 *persecution or war*'. Gittins and Broomfield (2013,p.20) found '*A large proportion of*
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45 *applications...are linked to security situations in third countries*', for example in
46
47 '*Afghanistan, Pakistan, Iran, and Iraq; the civil war in Syria, tensions in the Southern*
48
49 *Mediterranean; and the situation in Chechnya and the Caucasus region*'. Fletcher
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51 (2008) also cites research showing the number of asylum applications is more closely
52
53 linked to global conflicts than UK social policy shifts, and Canning (2014) highlights the
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55 increased perpetration/threat of sexual violence against women during conflict as a
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57 trigger in their asylum seeking (see also: Refugee Council,2009).
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3 Clearly, there is a need to recognise the relationship *between* structural forces and
4 individual agency, by considering wider contexts. Acknowledging that the 'agency' of
5 ASs is inherently 'social' and situational lays bare the crude and reductionist nature of
6 UK asylum policy, illuminating the unacceptability of policy agendas which assume
7 'universal' asylum seeking motivations. Such pathologising narratives deny ASs' plight
8 in all its diversity, and that agency is socially contextualised.
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15 That such insights have *not* informed the vast majority of UK asylum policies again
16 suggests policymakers are ignoring the evidence. Fletcher (2008,p.26) concludes:
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21 *'The paucity of references to statistics and evidence in political discourse reveals*
22 *how ideas gain ground not through reasoned discussions informed by empirical*
23 *research, but through the expounding of ideologies, rhetoric and persuasion. Even*
24 *when Parliament is presented with evidence that severely undermines the*
25 *explanation behind a policy, this does not prevent the legislation being passed.'*
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31 Indeed, the reality is the continued treatment of ASs as 'bogus' and undeserving until
32 'proven' otherwise, with dire consequences for *all* applicants given we cannot know *who*
33 the 'genuine' refugees are until their applications have been *fully and justly* assessed.
34 Here, preventing some 'undeserving' individuals from taking advantage of the system,
35 takes precedence in policy shaping, even if that means leaving 'deserving' ASs destitute
36 and unprotected.
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43 The policy themes evidenced here cast serious doubt on the validity of claims to the
44 'bogus', and the stated objectives of asylum policymaking regarding efficiency,
45 effectiveness, and fairness on the one hand, and deterrence on the other. So what *are*
46 policymakers' actions seeking to achieve in this policy arena? How might we better
47 understand the gap between rhetoric and reality? The next sections address these
48 questions by examining the work of others grappling with these broad issues of counter-
49 evidential and apparently contradictory policymaking, before going on to conceptualise
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3 'bad faith' as an exercise of power which can be used to theorise asylum policymaking
4 and its impacts.
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10 Looking 'upstream': Reframing agency 11 12

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14 In recent years there has been increased interest in the concept of agency in social
15 policy analysis. Wright (2012,p.310) defines agency as *'purposive action or behaviour'*
16 in order to examine how it has been operationalised by policymakers in the welfare-to-
17 work arena with particular regard to the now routine political claims that working age
18 benefit claimants are engaging in 'bad agency', ie, purposively acting to avoid work and
19 access benefits that they do not deserve. Hence, it is argued that, culpable for their
20 unemployment status and benefit dependency, they must be subject to increasingly
21 punitive welfare reforms aimed at stimulating entry into paid employment through crude
22 behaviourist techniques (see also eg: Wiggan,2012). However, Wright (2012) argues
23 that in gazing 'downstream' in a bid to universally responsabilise individuals for their own
24 plight, policymakers draw attention away from the agency being exercised by
25 themselves. One of Wright's objectives is to redress the balance by bringing centre
26 stage the actions of policymakers, and questioning their representations of themselves,
27 along with frontline workers, as mere 'respondents' to the 'problem', under the cover of
28 'rational, neutral actor', seeking only to defend the interests of the 'strivers' whose hard
29 work finances the welfare system that is being milked by the feckless idle.
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43 These processes render claimants legitimate targets for increased scrutiny, benefit
44 conditionality, and sanctioning. Meanwhile, policymakers remain impervious to counter-
45 evidence suggesting the opposite of their homogenising and stigmatising labelling
46 practices, namely most who can work do, most who are out of work want to work, and
47 most who find work do so without the help of job programmes. As Wright (2012,p.321)
48 notes, *'in policy rhetoric, the lived reality...is largely ignored in favour of a version of*
49 *events that magnifies the worst examples of misbehaviour...and generalises this to all*
50 *benefit claimants'*, fuelling their construction as immoral 'others' acting in a vacuum,
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3 untouched by structural unemployment, recession, and involuntary individual constraints
4 on their labour market entry. These narratives feed the stigmatisation and
5 marginalization of particular categories of claimant (Lister,2004), and for Wright indicate
6 'bad agency', *but on the part of policymakers themselves*.
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11 This important argument raises questions about the actions and motivations of
12 politicians which are highly relevant to the experiences of ASs too. However, whilst
13 following Wright's important call to spotlight actions 'upstream' at the level of
14 policymaking, we nevertheless argue that applying the concept of bad 'agency' to these
15 policymakers is problematic. This is because in so far as their activities construct the
16 claimant as the undeserving 'other', in a context of ideologically-driven anti-welfarism,
17 policy actors are *not engaging* in 'bad agency' at all. Indeed, where resultant policies
18 reflect their broad ideological and collective group interests (Wiggan,2015), what
19 constitutes 'bad agency' from the standpoint of claimants, is 'good agency' from that of
20 powerful actors. Ideology is seemingly more important than the evidence, but we would
21 argue that partisan interests are also powerful shapers of policy design in the furthering
22 of what can be seen as a global political project to disempower the 'other' in all its
23 guises. Such operations are noted by Anderson (2013) who highlights efforts to
24 marginalize and control the mobility of the global poor. Central are mechanisms through
25 which they are stigmatised as this century's '*folk devils*', and a threat to social order.
26 Here she draws parallels with processes in evidence as far back as the fourteenth
27 century vagrancy laws.
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43 Barnes' (2000) work provides a nuanced account of collective agency with reference to
44 the *real* practice of agents within a grouping, bureaucracy or administrative system, and
45 is valuable here in two key ways. First, he argues that social actions, understood as the
46 practices of 'responsible agents' who act fully reflexive of the external pressure of the
47 'system', are *oriented to success according to their own interests*. Specifically, Barnes
48 conceives agency as the *reflexive, strategic activity* of individuals making *calculative*
49 *assessment* in the face of the demands of *specific contexts*. In this sense agency, by
50 definition, is *intentional* - it has a purpose in that it is directed to goals, themselves
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3 shaped by particular interests. These interests can be covert or exposed, but all agency
4 attempts to successfully achieve specific goals. Second, Barnes posits that whilst
5 individuals constantly adapt, internalize and habituate beliefs and practices to fit newly
6 encountered situations according to personal goals, interests, and changing contexts,
7 they *always* do so under the *constraints of group dynamics*. Indeed, as individuals do
8 not operate in isolation but are in constant interaction with others, it is in and through
9 this interaction within the group setting that agency emerges as a *collective practice*
10 aimed at achieving *collective interests*.
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13 It follows that if we understand agency as actions *purposefully oriented* to achieving
14 success for a *collective of individuals* composing an administrative or institutional
15 corpus, in the asylum arena policies will be oriented to successfully fulfil the *particular*
16 *interests and goals of the policymaking collective*. Asylum policies can thus usefully be
17 understood as the product of particular interests, and their design and implementation
18 will correspond to and reflect the goals of the government of the day, and the HO in
19 particular.
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22 Here agency is conceptualized as fulfilling a particular collective's interests, over and
23 above those of other collectives. Thus agency should be conceived as 'expedient' rather
24 than 'good' or 'bad'. It seeks to achieve its goals, by whatever means necessary, and
25 either succeeds or fails.
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28 Making reference to the *partisan interests of policymaking collectives* thus has the
29 potential to address the specific question of what drives policy reforms that are
30 seemingly wilfully blind to: the complexity and diversity of claimants' identities, situations
31 and motivations; the impact that wider structural forces and global realities have on
32 them; and evidence that the current system is neither fit for purpose or effective, nor
33 humane in its dealings with ASs – all of which have been demonstrated by our scoping
34 review. Indeed, the maintenance of these policies and practices *must* respond to
35 particular 'goals' or 'interests' not explicitly formulated by policymakers.
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38 However, we further argue that policymakers' agency goes beyond mere expediency in
39 so far as it has consequences for other collectives. For example, in the AS arena where
40 the actions of policymakers are damaging and cause suffering to others, the agency of
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3 those 'upstream' acquires a political and moral dimension. Moreover, in denying or
4 blinding themselves to the nefarious consequences of their actions, they are engaging
5 in a form of agency which is better understood as an exercise of 'bad faith' than 'bad
6 agency'. This paper now turns to focus on conceptualisations of 'bad faith' that further
7 our analysis of policies and practices which are dissonant, counter-evidential and cause
8 suffering.
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15 **Conceptualising 'bad faith' as an exercise of power**

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19 This section clarifies what constitutes an act of 'bad faith' by borrowing from Gordon
20 (1995,1993) in particular, and conceptualises 'bad faith' as an exercise of power.
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23 Gordon (1995) reconstructs Sartre's notion of 'bad faith' from an individualistic to a
24 collectivist concept. He argues that where particular collectives at the institutional level
25 blind themselves to '*displeasing truths*' and generate '*pleasing falsehoods*' in an effort to
26 '*disarm evidence*', deny '*social realities*' (Gordon, 1995,p.8), and thereby achieve their
27 group interests, they are engaging in acts of 'bad faith'. Further, he posits that 'bad faith'
28 exemplifies an attitude in which human beings attempt '*to take flight from freedom....*
29 '*hide from responsibility*' (Gordon, 1993,p.1), and in doing so evade practices which
30 recognize humanity whilst constituting categories of people in ways which are false, but
31 are believed: '*For in bad faith, one chooses the false as the true while being aware of its*
32 '*falsity. One deceives oneself*' (Gordon, 1993,p.2). His work on antiblack racism
33 examines how African-Americans in particular are constituted in relation to an absence
34 of whiteness, and are this constructed as a non-white, non-human (and hence
35 racialized) homogenous 'other'. In this way they become fixed in a category of
36 'generalised other' which embodies only negative attributes and inferiorities, and
37 negates the recognition of black individuals as humans. Such practices and their
38 supporting narratives work to obscure the responsibilities we have towards others.
39 Moreover, unwilling to face the suffering their actions cause, powerful agents are
40 engaging in a form of self-deception and are exercising collective 'bad faith' which
41 embodies an '*ontological denial of human reality*' (Gordon, 1995,p.98). Here Gordon
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3 understands acts of 'bad faith' as a productive mechanism of power, that is, one that
4 actually constructs new social reality through the process of 'othering'; the constitution
5 of the 'generalised other' obliterates the realities of the individual's 'lived experience'.
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7 This power operation seeks to manipulate the perceptions of different 'dominated'
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9 groupings by drawing attention away from powerful and towards less powerful
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11 collectives, ie the 'othered' ASs in our policy arena. As already noted, the mainstream
12
13 media is a powerful means through which to shape perceptions and disseminate
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15 particular representations of ASs (see also Lukes,2005), notwithstanding the complex
16
17 and dynamic interplay of media, politicians and policymakers and sections of the public
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19 as actors in this arena, acknowledged above.

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22 In this particular policy site, we must also understand this power operation in terms of
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24 the reconstruction over time of the AS as a separate and inferior 'subject' to the refugee,
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26 with neither equivalent rights nor legal protections, as previously noted, itself bound up
27
28 with the rejection of their humanity, individuality and lived reality. The suffering that
29
30 results is denied, the research evidence either dismissed or ignored.

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33 Conceptualising 'bad faith' in this way captures *both* the negative and nefarious
34
35 consequences of purposive asylum policymaking for those attempting to navigate their
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37 way through the system – in short, their suffering – but also the role policymakers'
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39 actions 'upstream' play in creating and perpetuating a form of self- and other- deception.
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41 An approach which identifies power by conceptualising agency as exercises of bad faith
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43 resonates with Bourdieu's (1995) concept of symbolic power. Here the narratives
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45 nourishing current AS policy and practice over time work to both conceal the particular
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47 power relations at play, *and* enable the misrecognition of an oppressive relationship as
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49 one characterised by the provision of help, support and effectiveness. For Bourdieu
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51 (1995,p.68): '*every power which manages to impose meanings and to impose them as*
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53 *legitimate by concealing the power relations which are the basis of its force, adds its*
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55 *own specifically symbolic force to those power relations*'. This in turn provides an
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57 effective framework for understanding the power mechanisms that *sustain* such
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59 exercises of 'bad faith'. We therefore argue that the central power mechanism at work in
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3 the asylum policy arena is a form of 'symbolic power', exercised as a type of agency
4 which hides its real, intentional actions, and which uses a set of labelling practices to
5 systematically reconstruct the lived realities of heterogeneous individual ASs into a
6 'generalised other'. By doing this, policymakers are engaging in a form of 'bad faith' that
7 is built upon the resultant narratives; they are turning a blind eye to evidence that their
8 policies and practices do not achieve their own stated objectives and, by ignoring their
9 effects on ASs, are engaging in a form of self-deception. This then is *how* power
10 operations occur tacitly in the devising and implementation of asylum policy, resulting in
11 injury and suffering, and the perpetuation of ineffective policy and practice, revealed
12 here by the *actions* of the holders of power *and* with dire consequences for ASs, as
13 evidenced in our scoping review.
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24 Foucault argues that we must identify the mechanisms by which power operates in
25 order to perceive where power resides: '*Power is neither given*
26 *or exchanged . . . but rather exercised. It exists only in action*' (1980,p.89). Furthermore,
27 he too contends that power is not only oppressive but also productive, ie, it constitutes
28 the subjects immersed in it - in the asylum arena resulting in the 'othering' we have
29 exposed. However, it *also* reveals the particular interests of the policymaking collective,
30 hidden by the narratives underpinning AS policy and practice. The exercise of political
31 power thus seeks to ensure that policy issues are formulated in the interests of a
32 particular collective, whilst hiding their interests and goals from scrutiny and open
33 debate – a covert operation involving 'agenda setting' and the manipulation of public
34 attention which can be 'observed' and 'measured' by evaluating the visible outcomes
35 that the particular practices of one person or group have for another (Lukes,2005).
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46 Under this analytical lens, and based on what we have uncovered in our critical analysis
47 of AS policy and practice, we argue that policymakers, exercising agency across the
48 last twenty years, have been playing out a particular set of interests centring around the
49 need to: (i) be *seen* to be responding to pressures coming from the wider public and
50 political environment relating to immigration fears (themselves shaped and fuelled by
51 complex interactions between much of the mainstream media, politicians and sections
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3 of the public, as posited above) and; (ii) exercise their neoliberal ideological proclivities,
4 not least around expanding markets, rolling back welfare entitlements and broader
5 social rights, and maximising opportunities for profitmaking. This brings centre stage
6 agency understood as 'bad faith' that functions to fulfil *unacknowledged* interests, and
7 connects to Wiggan's (2015) call to read policy *politically*.
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12 Finally, to be clear, we are not saying that there is no 'neglectful' agency at play here in
13 terms of poor management, understanding and judgment. Rather, we are arguing that
14 these dimensions of policymakers' actions are not sufficient *on their own* to explain what
15 is happening in this arena in terms of the persistence of counter-evidential policy and
16 practices.
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22 23 Conclusion

24
25 This paper provides an analysis of asylum policy from the late 1990s to the 2016
26 *Immigration Act*, drawing on already existing research to show how policymakers have:
27 routinely ignored evidence about ASs' diverse identities, experiences and motivations;
28 failed to acknowledge the negative impact of asylum policies on *all* applicants; largely
29 ignored the widely-documented weaknesses of asylum assessment/support processes;
30 and fallen short of their stated objective of deterring UK asylum applications.
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36 It also illustrates the numerous ways in which forced destitution, detention, and other
37 punitive policies have been used as sticks to beat asylum claimants with, whilst the
38 rhetoric that the UK is '*committed to providing a place of safety for genuine refugees*'
39 (Gittins and Broomfield, 2013,p.3) retains its place in political discourse.
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45 Wright (2012,p.322) argues that policymakers in the welfare-to-work arena ignore '*well-*
46 *documented, but politically unpalatable, causes, which block the development of*
47 *effective policies*', and in doing so engage in 'bad agency'. This article has argued
48 similar processes are underway in relation to asylum policy but has theorised that
49 successive UK governments have demonstrated their commitment to the wider global
50 political project of disempowering the 'other', not least by constructing ASs as 'bogus',
51 undeserving claimants and consequently legitimising punitive policy and practice
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3 developments which can be utilised to present themselves as responsive to the
4 electorate's immigration concerns that their *own* actions have worked to generate and
5 sustain. It has looked 'upstream' at the actions of policymakers themselves, *but* in doing
6 so has posited a particular conceptualisation of 'bad faith', as an alternative to 'bad
7 agency', in order to facilitate a better understanding of the particular actions of particular
8 neoliberal government agents in the AS policy arena, in a particular time period, with
9 reference to their hidden interests.
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17 At a time when little political capital can be made out of offering refuge to those fleeing
18 persecution and violence, there is much to be generated from focusing on the imagined
19 'pull' factors driving increased UK asylum claims by 'economic migrants' seeking to
20 abuse the system. Policymakers can present themselves as 'tough' on fraudsters,
21 achieving measurable outcomes in terms of taxpayers' money saved, and fuelling the
22 romantic and imaginary in relation to protecting 'social cohesion', defending 'the British
23 way of life' and maintaining opportunities for British citizens. Here immigration in the
24 form of asylum seeking is weaponised, as 'bogus'-asylum narratives and the practices
25 they inform are used as political currency to further the interests of policymakers
26 themselves, whilst distracting attention away from neoliberal objectives and the impact
27 of anti-welfare activities legitimised by the particular politics of austerity at play. Given
28 the outcome of the 2015 and 2017 UK General Elections, we might reasonably
29 conclude that such a strategy is set to enjoy continued success. Indeed, whilst
30 recognising the Conservatives were returned with a reduced majority in 2017, and in the
31 context of Brexit and increased calls from some political quarters to abandon Human
32 Rights legislation on the one hand, and the growing pressures on the UK economy and
33 a diminished social safety net still under siege on the other, it seems reasonable to
34 imagine a further deterioration of the plight of ASs, as illustrated by the passing of the
35 *2016 Immigration Act*. This makes it all the more pressing to challenge the current
36 hegemony. By identifying and thus exposing the specific mechanisms at work in the
37 current context, it is hoped that effective resistance can be better facilitated.
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