

Policy Legitimacy: A Model for Disability Policy Analysis and Change
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Abstract: In this paper we present and apply Legitimacy Policy, a framework for policy analysis that applies a legitimacy lens to the examination, understanding, and illumination of directions for purposive policy change. Interrogating historical and current disability policy: (a) reveals the context-based value-foundations and continued dominance of medical explanations of disability inherent in disability-specific policy and (b) maps a direction for policy change that can advance human rights for disabled citizens.

Key Words: policy, legitimacy, values

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Introduction

In this paper we present, discuss, and illustrate a contemporary disability policy analysis framework: Explanatory Legitimacy. Although applied to several seminal policies in the U.S. for illustration, the model is useful and potent at all levels of policy formulation and promulgation. The conceptual framework synthesizes principles from legitimacy theory and pragmatism, creating a scaffold in which to look at the evolution of ideas and principles within axiological and purposive contexts. We conclude with the application of the analytic model to disability policy exemplars.

Before we begin the discussion we pose three definitions.

Policy – Policy definitions range from informal rules that govern conduct and access to resources at multiple system levels to formal legislation advanced by government bodies. In this paper, we define policy as the set of explicit statements that guide legitimate status and responses to membership status in the form of resource access, allocation, and other action responses to legitimate category members.

Disability - As we discuss in detail below, we define disability as a contextually embedded, dynamic grand category of human diversity.

Disability policy – Disability policy is complex and thus we have parsed it into three subdivisions; disability-exclusive policy, disability-embedded policy, and disability-implicit policy. Disability-exclusive policy is the set of explicit statements that legitimate membership criteria in the disability category and guide responses to legitimate category members. Disability-embedded policy has a similar function to exclusive policy, but disability is one of two or more groups addressed in the policy. Disability-implicit policy does not name disability but tacitly defines and responds to it through its prevention, elimination, or manipulation.

Explanatory Legitimacy Theory

Explanatory Legitimacy Theory is embedded within and builds on the genre of legitimacy theories, which have a long, interdisciplinary history. According to Zeldich (2001), legitimacy theories can be traced as far back as the writings of Thucydides in 423 B.C., in which questions were posed and answered about the moral correctness of power and its muscled acquisition. The birth of legitimacy theory in political theory renders it potent for policy analysis, as it has been applied to numerous domains, including but not limited to social norms and rules, distributive justice, and power. And while there are differences in the application of legitimacy theories to diverse substantive questions, what all have in common is their search for credibility and normative acceptance. That is to say, legitimacy theory examines the basis on which a phenomenon is seen as genuine or authentic.

Legitimacy theories have posited a range of factors that determine the authenticity or acceptability of laws, rules, or determinations. These elements can be explicit, such as public consensus about genuineness, or tacit as in efforts to obscure power brokering (Zeldich, 2001). Among legitimacy theorists, Weber is perhaps best recognized for his assertion that social order inherent in values, norms, and beliefs cannot be maintained without acceptance of this order as valid (Lembcke, 2007). Applied to policy, legitimacy theory has the potential to denude the normative beliefs that underpin hierarchies, power relationships, and categorization and to expose the values that imbue category status and acceptable responses.

In the tradition of legitimacy theories, Explanatory Legitimacy Theory seeks to analyze, detangle, and clarify categorization and response by focusing on the the source of authentication and valuation of explanations for category membership. Rather than focusing exclusively on political power as its object and subject, Explanatory Legitimacy Theory is concerned with the credibility, value, and purposive acceptance of causal theories which parse and assign humans into groups and then fashion responses to group members. Thus Explanatory Legitimacy calls upon pragmatism to locate category placement and response as well as category creation within a purposive perimeter.

Given the debates about the nature of disability, Explanatory Legitimacy provokes thought and analysis of diverse policies and has the potential to validate the use of each within different purposive contexts. Moreover, capitalizing on the clarity of seminal legitimacy thinkers such as Habermas and Parsons, the Explanatory Legitimacy framework clarifies theory types so that each can be compared to those similar in structure and subject. Explanatory Legitimacy Theory builds on historical and current diversity analyses and debates as well. Different from locating disability in a singular domain of the body or the environment, Explanatory Legitimacy analyzes the construct of disability as a contextually embedded, purposive, dynamic grand category of human diversity. Thus, who belongs and what policy responses are afforded to category members are based on differential, changing, and sometimes conflicting judgments about the value of explanations for diverse atypical human phenomena. Explanatory Legitimacy considers the influence of multiple factors on value judgments as the key to understanding

categorization, the legitimacy of individuals and groups who fit within a category, and the policy responses that are deemed legitimate for members.

Explanatory Legitimacy Theory makes the distinctions among descriptive, explanatory, and the axiological or the legitimacy dimensions of the categorization of human diversity, and identifies the relationships among these elements. Thus, similar to legitimacy-based analyses of other areas of human diversity, disability that is defined and analyzed through the lens of Explanatory Legitimacy is comprised of the three interactive elements: description, explanation, and legitimacy. This tripartite analytic framework provides a potent platform through which to examine policy responses to members of categorical groups (DePoy & Gilson, 2008). Let us look at each element now.

Description

Description encompasses the full range of human activity (what people do and do not do and how they do what they do) appearance, and experience. Of particular importance to an understanding of disability definitions and policy responses is the statistical concept of the “norm.” Because the understanding and naming of what is normal and, in contrast, not normal are value-based, use of terms such as normal and abnormal do not provide the conceptual clarity sufficient for distinguishing description from axiology. Thus, in applying Explanatory Legitimacy to disability policy, we use the terms typical and atypical to depict frequently and infrequently occurring human description respectively. Disability is located in the realm of the atypical.

Explanation

The second element of Explanatory Legitimacy is explanation. Applied to disability, explanation is the set of reasons for the atypical. What is important to highlight with regard to the link between description and explanation is that explanation is always an inference. Because of the interpretative nature of explanation, this definitional element lends itself to debate, differential value judgment and diverse policy responses. As we discuss further in more detail, the current explanatory debate between two explanatory genres (interior and exterior causes of disability) is a heated one and has great relevance for policy. Interior causes attribute atypical phenomena to a medical-diagnostic condition of long term or permanent duration (Smart, 2001), while the exterior lens identifies an unwelcoming and even discriminatory environment as causal of disability, in which the atypical is met with barriers and exclusion.

Legitimacy

The third and most important definitional element of Explanatory Legitimacy is legitimacy, which we suggest is comprised of two sub-elements: judgment and response. Judgment refers to value assessments of competing groups on whether or not what one does throughout life (and thus what one does not do), how one looks, and the degree to which one's experiences fit within what is typical, have valid and acceptable explanations consistent with both explicit and implicit value sets. Category membership, in this case, is a purposive, value-

encased determination about the extent to which the posited explanation for the atypical renders individuals and groups eligible for disability category membership.

Responses are the actions (both negative and positive) that are deemed appropriate by those rendering the value judgments about membership and responses to category members. Disability policy lies in the response element of Explanatory Legitimacy, at multiple points in time, beginning with the decision to consider the need for a category specific policy, proceeding to the promulgation of the actual policy, continuing with who is legitimately eligible for consideration under the policy, and finally to the response to legitimate category members guided by the content and nature of the policy. Thus teasing apart description, explanation, and values provides the opportunity for understanding and analyzing policy formulation and enactment from a complex, context-embedded perspective.

Explanatory Legitimacy Analysis of Policy

Typically, disability policy has been categorized into two areas: policies that guide the provisions of specialized services and resources, such as Social Security Disability Insurance (SSDI) in the U.S. that was established by the Social Security Amendments of 1956 (Berkowitz, 1989) for legitimately disabled populations, and, more recently, policies that protect and advance the civil rights of legitimately disabled populations such as the Americans with Disabilities Act (ADA) (Scotch, 2001). However, through the lens of Explanatory Legitimacy, and in the context of the 21st century, we suggest a different taxonomy that is depicted in [Table 1](#).