Policy Legitimacy: A Model for Disability Policy Analysis and Change

Stephen Gilson, Ph.D. & Elizabeth DePoy, Ph.D.

University of Maine

**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 limtied 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 genuiness, 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 authentification 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 Legitiamcy calls upon pragmistism to locate category placement and response as well as category creation within a purposvie 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 Legimacy 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.

Table 1

New taxonomy for disability policy using Explanatory Legitimacy Theory

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Legitimacy as worthy of life** | **Legitimacy of citizen participation** | **Legitimacy of citizen responsibility** | **Legitimacy for material and rights benefits** | | |
| **Safety net benefits for non-workers** | **Benefits to access opportunity for remunerative employment** | **Generalized rights to participation** |
| **Interior Explanations** | Prenatal testing  Abortion rights (EM)  Genetic manipulation EM) | Rehabilitation Act of 1954 (EX)  Rehabilitation Act of 1973(EX)  ADA (EX) | Death penalty and MR (EX) | SSDI (EX)  SSDI (EX)  Medicare (EM) | Rehabilitation Act of 1954 (EX)  Rehabilitation Act of 1973  IDEA (EX) | ADA  Golden Access Passport (free entrance into National parks) (EX)  IDEA (EX) |
| **Exterior Explanations** | Death penalty (I)  Freedom from harm (EM)  Protection from Hate crimes (EM) | Rehabilitation Act of 1954 (EX)  Rehabilitation Act of 1973 (EX)  ADA (EX)  Immigration Laws (EM, I) | Environment-al laws (I)  OSHA legislation (I)  Motor Vehicle laws (I)  Food safety (I) | SSI (EM)  Medicaid (EM) | Ticket to Work and Work Incentives Improvement Act of 1999 (EX)  GI Bill (EM) | ADA (EX)  Voting Rights (I) |

\*EX-Disability Exclusive, EM-Disability Embedded, I-Disability Implicit

Three analytic dimensions are presented in Table 1.

Dimension 1. The horizontal axis consists of four divisions of policy on the basis of both content and explicitly intended outcome. As illustrated by our exemplars, these categories are not mutually exclusive. Moreover, the policies that we chose as exemplars are not exhaustive by any means but they offer a range of diverse approaches to disability policy in the U.S. that can be applied to policy in other countries as well.

Legitimacy as worthy of life refers to policies that are concerned with conferring and removing life. These are underpinned by ascribing worth to the nature and circumstances of life as well as one’s legitimacy for protection against fatal harm. Legitimacy of citizen participation, the second division, contains policies that situate individuals and groups as bona fide, partial, or excluded members of their local, state, national and global communities. The third division, legitimacy of citizen responsibility, addresses the extent to which citizens are held accountable for their behavior and its consequences. Legitimacy for material and rights benefits contains policy that is concerned with the distribution of resources and access to freedoms and rights. This division is divided further into three sub-categories: safety-net benefits or welfare support for those who are not gainfully employed, access to opportunity for remunerative employment, and conferral of more general rights to participate in civic, economic, and community life.

Dimension 2. The vertical axis of Table 1 contains two divisions, interior- and exterior-focused policy, each responding to its particular explanatory approach to disability. From a simple and linear standpoint, we would expect that the policies that fall under the division of interior-focused, on the basis of explaining legitimate disability as an embodied condition, would guide treatment or responses to bona fide category members. Similarly, exterior policies accept external disability explanations as legitimate and would be expected to address the barriers that exclude disabled groups from participation and rights. However, the divisions are not as simple as they might be.

Dimension 3. Since our last publication about policy, we have expanded our thinking. This dimension, detailed above, reflects that disability policy is not always explicit or exclusive to disability determination and response. We therefore have categorized disability policies as exclusive, embedded, and implicit as described above.

To understand Table 1, we now look at the policy exemplars through the lens of Explanatory Legitimacy. We suggest that, different from analyzing disability policy through its explicit content, intended outcomes, and language usage, policy is much more complex than its verbiage. Using the framework of Explanatory Legitimacy, disability policy is a value-based purposive response to explanations of atypical human characteristics and thus can be understood and changed by laying bare its value and pragmatic stance. Moreover, there are commonalities that unite disability-exclusive policy and distinguish it from disability-embedded and implicit policy that we present in Table 2.

Table 2

Heuristics of disability policy using Explanatory Legitimacy Theory

1. Values and context mediate logic and thus exclusive, embedded and implicit disability policy is not logical
2. All disability-exclusive policies, even if guiding exterior action, emerge from an interior causal explanation of disability.
3. Unlike disability-exclusive policy, disability-embedded and implicit policy, because they expand their scope beyond medicalized interior criteria, may posit disability as exterior and without inherent interior explanations.
4. Interior policies are organized along a value hierarchy of medical interior explanations and not all explanations are acceptable.
5. Disability-exclusive policy is based on nomothetic assumptions about a group that does not necessarily share commonalities.
6. Disability-exclusive and some disability-embedded policy have distributive foundations.
7. Disability-exclusive policy, while temporarily needed, may have long term consequences of segregation and inequality.

As we see by the heuristics, Explanatory Legitimacy suggests that because values and context mediate logic, disability policy is not linear and cannot be understood through rational policy-analysis approaches. This observation is consistent with non-rational models of policy analysis (Stone, 2001). Second, although some exclusive policies as shown in Table 1 are targeted at changing the environment, legitimacy for coverage under these policies is restricted to interior explanations of disability. This disjuncture (DePoy & Gilson, 2008) becomes problematic in trying to understand the link between the articulated problem that the policy is designed to remediate and the causal assumption. Third, atypical embodied characteristics that are observable and assumed to be caused by conditions beyond the control of the individual are often more legitimate for disability category membership than those which are not directly ascertainable and/or considered to be caused by factors over which individuals have control. Fourth, disability theory and policies are frequently based on assumptions about the commonalities of a group, which may or may not be accurate. And fifth, in a global economic context, disability-exclusive, embedded and implicit policies, similar to all federal policy, directly or indirectly address resources. Finally, we discuss the last heuristic, #6, toward the conclusion of the paper.

Policies That Support Prenatal Testing

Policies that support prenatal testing for interior genetic or corporeal compositions create provisions for screening in the service of termination or correction of fetal viability under certain circumstances. We use the term fetal viability to clarify that this discussion is not about the ethics of termination of life, genetic manipulation, or women’s rights to choose. Rather, we have included and classified these policies as disability-embedded because they stipulate conditions, such as Down Syndrome, a genetic condition that is considered to be disabling, under which termination of pregnancy is legalized and supported by policy. Other conditions, such as spina bifida, can be corrected by genetic or medical intervention. In either case, opponents of this policy genre argue that it devalues genetic diversity and eliminates it through killing or medical correction. We have located these policies as interior explanations and under the category of legitimacy as worthy of life, on the basis of assumptions about lack of desirability and thus acceptability of preventing a life with specific atypical interior genetic composition. As noted by Scully (2008), prenatal testing and its potential consequences not only foreground devaluation of certain genetic compositions but reify them as pathology and disability. Conversely, in concert with heuristic #6, utilitarian arguments are often made in favor of these policies, given that it is assumed that genetic interior explanations for disability will be costly in resources and time.

Social Security Disability Insurance (SSDI), Medicaid, Medicare, Ticket to Work, IDEA, and Golden Passport

If we analyze Social Security Disability Insurance (SSDI) we see that, ostensibly, it is a disability-exclusive policy intended to provide income and benefit support for individuals who, because of a long term or permanent medical explanation, are unable to work (Berkowitz, 1989). Yet, in order to legitimately qualify, an individual must not only meet the internally located definition of disability advanced by the Social Security Administration in the U.S., but also must have previously contributed to social security, which one cannot do without working.

Because disability status and response under SSDI are internally situated, the process for legitimacy under SSDI places a medical or human service professional in the gate-keeping role. In order to be deemed legitimately disabled, a physician (or other specified professional depending on the explanatory diagnosis for not working) and several other evaluators determine one’s fit with the legitimacy criteria. In order to qualify for benefits, an individual must prove disability legitimacy, which is not assured even if one meets the descriptive eligibility criteria. Explanations such as alcohol dependence, obesity, and chemical sensitivity (which in other policy arenas are explained as medical but often considered to be under one’s personal control, or to be personally excessive, or even to be hypochondriacal) are not acceptable explanations for legitimate disability status under SSDI policy even though these explanatory conditions may be consistent with the descriptive outcome of long term or permanent impairment advanced under the policy guidelines. This hierarchy of acceptable conditions has been referred to as a disability pedigree to illustrate ranking of worth (DePoy & Gilson, 2004).

A careful examination of acceptable and unacceptable pedigree reveals SSDI policy values rooted in notions of personal responsibility, economic contribution, and charity. That is to say, an individual is legitimate only if he or she is not responsible for his or her inability to contribute to the economy. The meager income benefits hearken back to the historical charity model of disability in which disabled individuals were pitied enough for some altruism, but not sufficiently valued for support necessary to fully participate in their communities.

While supported on SSDI, individuals can receive Medicaid, which we have classified as embedded and explained by exterior circumstance (U.S. Department of Health and Human Services, 2006a), and in some cases Medicare, which we have coded as embedded and interiorly explained (U.S. Department of Health and Human Services, 2006b). Because Medicaid is the health insurance program for those in poverty it is not exclusive to disability but rather disability is embedded within it. We coded Medicaid as exterior because it locates poverty, not interior medical condition, as explanatory. Similarly, Medicare, health insurance for elders, is coded as embedded because it specifies disability within larger populations of elders. However, unlike Medicaid, the explanatory locus is interior, explained as embodied phenomena of advanced age or medical deviance.

Note that Medicare provides more substantial coverage than Medicaid, revealing the value hierarchy which favors assumed need on the basis of an uncontrollable circumstance. Until the passage of the Ticket to Work and Work Incentives Improvement Act in 1999 (TWIIA) (Wehman, 2000), an individual who returned to work would lose all benefits including health insurance. With this newly crafted legislation, health benefits and some income can continue as people attempt to return to work. We therefore located Ticket to Work under exterior explanations since policy rather than medical condition created the backdrop for this benefit. In any case, recipients of these safety net benefits are likely to be poor further splaying open the value foundation on remunerative work as policy driver in the U.S.

We also draw your attention to another issue related to health and income support benefits, regardless of their coding or explanatory stance. While benefits are most important for recipients of service, health insurance also pays providers for their work. Insurance also pays for the processes through which disabled individuals are qualified as legitimate and then afforded services under safety net policies. This activity comprises a large segment of the labor industry in the U.S. Thus, SSDI policy, while benefiting legitimate individuals who cannot earn, are purposive and valued payment systems for those who do earn. The economic value not only for direct policy beneficiaries but also for the labor market is a critically important element to consider in policy analysis and change (DePoy & Gilson, 2008). The Ticket to Work and Work Incentives Improvement Act of 1999 policy illustrates this point.

Before its passage, SSDI provided a disincentive for its beneficiaries to work since, as we mentioned previously, returning to work eliminated health insurance and income benefits. The value of these benefits often exceeded what a former SSDI recipient could earn in the job market. Thus, rather than enabling individuals to move away from public support, SSDI maintained recipients in the category of public welfare consumer. The Ticket to Work and Work Incentives Improvement Act was enacted to remediate this institutional mistake that rendered SSDI in conflict with its value base of economic self-sufficiency and personal responsibility.

SSDI provides an important exemplar of benefits to disabled non-workers. We contend that policies that establish and support job training and even specialized education fit under the content sub-category of access to opportunity for remunerative employment. Several of these disability-exclusive policies such as Individuals with Disabilities Education Act (IDEA) of 1990, 1997 and IDEA Regulations of 1999 (Pelka, 1997) and the Rehabilitation Act of 1973 (Barnartt & Scotch, 2001; Scotch, 2001) also fit under the category of material rights and benefits in that they provide specialized accommodations and resources on the basis of legitimate disability membership regardless of the accessibility of the employment or educational arena. These policies, based on nomothetic principles of group commonality, do not take into account the category members who may not want or need the resources provided on the basis of category membership alone.

Part of the quagmire in policies that address population categories is that rather than responding to descriptive need, category membership is the mediator and the locus for policy. Consider the disability-exclusive Golden Access Passport policy (National Parks Service, U.S. Department of the Interior, 2005) that allows disabled individuals to access national parks without paying. The policy, which assumes financial need on the basis of disability, is targeted at the broad category of disability. Thus, whether or not category members are financially needy, they obtain the privilege of free entrance, unlike individuals who have financial need but who are not legitimate members of the disability group. IDEA and disability-exclusive job training policies are similar in that they posit legitimacy for benefits on the basis of assumed need because an individual is legitimately qualified in a category, not because need for the resources and services under these policies is verified. On the other hand, given that disability exclusive specialized education and job training resources are not equivalent to those afforded to the typical population, the paradox of too many and too few resources under categorical policies continues (Stein, 2006).

The ADA and ADA Amendment Act of 2009

We now move to the ADA and ADA Amendment Act of 2009, a policy grouping that is designed to assert and advance legitimacy of citizenship, material benefits, and rights. As we address in Heuristic #6, protective disability-exclusive policy such as the ADA is both needed and extremely limited in promoting long-term equality of opportunity.

The Americans with Disabilities Act of 1990 (Scotch, 2001) and the 2009 ADA Amendment Act (together referred to as the ADA) comprise protective legislation that applies exclusively to disabled individuals. Similar to other protective legislation, the ADA prohibits discrimination on the basis of disability and asserts the guarantee of equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications. Note that we locate the ADA in the interior explanations category of disability policy. Similar to policies that we have discussed previously, although the locus of the problem and its resolution are external, eligibility for protection under the ADA is determined by the pedigree of internal explanations for atypical characteristics. Look at the definition of who qualifies as legitimately disabled under the ADA:

“[…An individual who has] a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment” (Americans with Disabilities Act, 1990, Definition section).

Because of its potential not only to provide opportunity where it did not exist, but also to support accommodations and thus special treatment, many groups with interior explanations for atypical function have attempted to seek coverage under the ADA. The court cases and decisions are the evidence of what is referred to as pedigree wars (DePoy & Gilson, 2004), as groups of individuals seek legitimate disability status in order to obtain rights that they may feel that they are otherwise denied. Under the ADA Amendment Act, the content of these cases is likely to shift from who qualifies, to what benefits will be afforded, to who meets the definition of disabled. Moreover, note that we locate the ADA under the policy genre of benefits and privileges for this reason. As we have introduced here, while disability-exclusive and other group-specific protective and non-discrimination policy has been an important method to advance inclusion and civil rights, its use as a long-term solution is problematic.

We acknowledge that many individuals with atypical characteristics, particularly those that are observable, have experienced overt and covert discrimination and oppression. As a disability-exclusive policy response, the ADA has made significant changes in access to the physical environment, the workplace, the communications and transportation systems, and the educational arena for many people who without the ADA would not be able to participate in those domains of daily life. Yet, as a permanent solution, protective policies, which on the surface appear sound, are riddled with value and social action conflicts (DePoy & Gilson, 2008). First, rather than assuring that policy for all citizens governs the rights of disability category members, the presence of the ADA implies that disabled individuals need specialized legislation layered on the policy that should already protect their rights. Second, the ADA stipulates that discriminatory practices such as environmental and telecommunication barriers need to be replaced with accessible structures in instances where cost would not be prohibitive. Thus, we see that the legitimate policy responses to discrimination are mediated by cost considerations that diminish civil rights and equality of opportunity of the very group that the policy is ostensibly designed to protect. Third, exactly who fits under ADA policy and what protections are afforded them are not clear; the policy’s interpretation is thus subject to differential and context-embedded cultural, social, political, and economic values.

A Few Words on Disability-Implicit Policies

As we noted above and illustrated through the provision of examples in Table 1, many policies that do not directly address disability can be analyzed for their valuation or devaluation of descriptive diversity. Consider much of the OSHA legislation guiding workplace safety. While not specific to atypical bodies, this legislation is designed to prevent injury that could result in disability and loss of gainful employment. Note the following excerpt:

“To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.” (Occupational Safety and Health Act of 1970, “An Act” section, para. 1).

Axiologically, this excerpt reveals the positive value on maintenance of employment through enforcing standards that prevent the undesirables of illness, disability, and inability to work. Standards for typical bodily participation and protection include attention to ergonomics, air quality, elimination of conditions that are explained by exposure to toxic chemicals, and so forth.

Similarly, seat belt laws, while not disability-explicit, are designed not only to prevent fatality, but to decrease disability explained by catastrophic injuries such traumatic brain injury, loss of limbs, and so forth. While we are not criticizing the protective nature of these policies and their essential place in civil societies, we bring attention to an alternative meaning for the purposes of policy analysis. As we noted, policies are more than their verbiage. By valuing “healthy lifestyle,” it is not only defined but its opposite can be interpreted as de-valuation of what is “not healthy” and typically functional in our current contextual environments. As example, permanent injury explanations for atypical description as well as the asserted attribution of excessive cost are often decried. These policies speak to prevention through enforcement of built and behavioral standards rather than to response of the inevitability of injury and illness that will occur for some proportion of the population.

Historically, numerous laws in the U.S. have been enacted to deny immigration to individuals with interior explanations that qualify as disability. According to Jaeger and Bowman (2005), these laws, while not explicit, still persist in policies that limit citizen benefits to aliens with “pre-existing conditions.” Once again, the devaluation of atypical bodies and the utilitarian scare of excessive expenditure, depicted as Heuristic #6, are evident in these disability-implicit policies.

Conclusions

Framing disability-exclusive and embedded policy in the U.S. from a population subcategory specific approach has been both a blessing and a curse. Disability policy has provided necessary safety nets, benefits, and efforts for promoting opportunity for participation in work, community life, and the economy. However, the maintenance of population-specific policy has the danger of perpetuating separation and differential treatment in the long term. Disability-implicit policies, while not rhetorically segregated, obfuscate axiological foundations and essentialist assumptions about disability. We suggest that because of its structure and focus on values and purpose as the drivers for policy, Explanatory Legitimacy Theory provides the framework through which necessary policy change can be informed and enacted. As we move into the 21st century, we face the challenges and opportunities of an expansive global and virtual environment. We are met with the juxtaposition of diverse worldviews and experiences while we are gifted with the thinking and action tools to operationalize the values of tolerance and symmetry of opportunity (DePoy & Gilson, 2008). Rethinking disability policy (and other population-categorical policies) on a foundation of celebrating diversity can move us towards policy that creates universal rights, resources, and privileges on the basis of human description and need, rather than on tacit and nomothetic assumptions about individual embodied worth. Our charge is to analyze, rethink, and implement policies that shape our world as one that is welcoming of all.

**Elizabeth DePoy, PhD., and Stephen Gilson, PhD.,** are professors of Interdisciplinary Studies at the Center for Community Inclusion and Disability Studies at the University of Maine. Please contact Dr. DePoy at [edepoy@maine.edu](mailto:edepoy@maine.edu) or Dr. Gilson at [Stephen\_gilson@umit.maine.edu](mailto:Stephen_gilson@umit.maine.edu) if you have any questions related to the article. Both professors may also be contacted via regular mail at Center for Community Inclusion and Disability Studies, University of Maine, 5717 Corbett Hall, Orono, ME 04469.

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