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What is policy and where do we look for it when we want to research it?

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ABSTRACT

Public health researchers are increasingly concerned with achieving 'upstream' change to achieve reductions in the global burden of disease and health inequalities. Consequently, understanding policy and how to change it has become a central goal of public health. Yet conceptualisation of what constitutes policy and where it can be found is very limited within this field. Our glossary demonstrates that policy is many headed. It is located in a vast array of documents, discussions dialogues and actions which can be captured variously by formal and informal forms of documentation and observation. Effectively understanding policy and its relevance for public health requires an awareness of the full range of places and contexts in which policy work happens and policy documents are produced.

INTRODUCTION

Public health researchers are increasingly concerned with achieving 'upstream' change to achieve reductions in the global burden of disease and health inequalities.[1 2] Consequently, understanding policy and how to change it has become a central goal of public health.[3]

This turn to policy in public health has spawned many new research areas. One has been to examine closely the political process itself, emphasising its value-laden nature and the contested role of scientific evidence in policymaking.[4–7] Another has been to investigate the existing policies for their public health consequences.[8] A third is to quantify healthy policy by counting the 'healthy' policies in a jurisdiction.[9–12] Across this work on policy attention is given predominantly to the subject matter of policy with rarely any consideration of what policy is, particularly with respect to its form.[10] This is despite an extensive literature in political science and public policy on the nature of the policy process[13–17] and the utility of evidence-based policy.[18–20] Nonetheless, the specifics of policy in the public health literature have been described as 'somewhat elusive', with the process of turning proposals into law treated as being 'best left to politicians'.[8]

Policy work can be found in diverse places under diverse titles—beyond official policy documentations.[21] It is worth noting that these exist in a hierarchical relationship, but operate together in a way akin to what public health would term an 'ecological' perspective.[22] This metaphor helps to understand that many levels of policy must combine in order to achieve even relatively straightforward outcomes. The current state of tobacco control in countries such as Australia is an excellent example of how policy change has occurred at all available levels in support of a single public health aim.[23]

In this glossary, we provide a summary of the different types of policy, noting the ways they are relevant to public health. We comprehensively outline different forms of 'policy' from their most concrete and far reaching (ie, constitutions), through to the more elusive and discursive forms policy can take (ie, policy as discourse or narrative). In so doing, we hope to assist future public health policy research by showing that policy, far from being best left to politicians, can be fruitfully mastered by public health practitioners and researchers.

THE CONSTITUTION

For many countries, the Constitution is the founding piece of policy.[24] Constitutions set out the powers of government (often separated into different branches), along with the processes of law making.[25] Constitutions are formed when new political orders emerge: either when new nations are brought into being, recent examples are Kosovo and South Sudan; or when old governments are overthrown and replaced, as has happened in Tunisia and Egypt. The terms of a new Constitution are often controversial, not only because they allocate power but also because once in place they are deliberately difficult to change.[26]

For public health, constitutions play two relevant roles. Where the Constitution includes a Bill of Rights, those rights may have a bearing on important health issues. The South African Constitution, for example, includes a right to health in its list of fundamental human rights. In 2002, the Constitutional Court held that inadequate HIV-treatment availability was a breach of South Africans' human rights,[27] forcing the South African government to make antiretroviral medications widely available.[28]

The right to life, originally interpreted as a freedom from extrajudicial execution, is commonly included in constitutional bills of rights and has also been invoked in the health services context. Uganda is currently debating whether the right to life includes a right to access maternal health services. The families of two women who died in childbirth have petitioned the Ugandan Constitutional Court, arguing that the lack of maternal health services available in Uganda violates the constitutionally enshrined right to life. This case remains before the Constitutional Court with the Ugandan Supreme Court ruling in October 2015 that they had the jurisdiction to hear the petition.

A secondary role of Constitutions is to delineate each level of government's powers. In federal systems like India, Australia, Canada and the USA,

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the Constitution divides legislative power between state and federal governments. There is little consistency in how areas are divided between levels of government. In the USA, marriage equality (or inequality) was the province of State legislatures before being over-ruled by the Supreme Court on the basis of a Constitutional provision. In contrast, in Australia, the regulation of marriage is explicitly reserved for the Federal Government and outside the power of the States. Knowing the appropriate level of government is hugely important for public health in identifying existing policy and advocating for policy change.

LEGISLATION

Legislation is a key tool of government policy and refers to laws passed through and approved by a legislature like a Parliament or Congress. The legislature need not be democratically elected for it to have the power to pass legislation. The sorts of transformative change often sought in public health—such as the introduction of universal healthcare, the creation of a disability insurance scheme or the imposition of tax on alcohol/tobacco—typically occur at the level of legislation. For this reason, legislative change is often a central goal of public health advocacy.[29]

Legislation can be a powerful form of governmental policymaking. Once legislation is properly enacted it benefits from the existing legal apparatus for implementation and enforcement. When legislation is passed to ban smoking in restaurants, ban mobile phone use in cars or require helmets be worn when cycling on the road, the entire justice system from police officers to supreme court judges becomes responsible for protecting those aspects of public health.

A popular topic for public health regulation is legislating to reduce the prevalence of obesity.[30 31] Proposals include the introduction of taxes on junk food, prohibiting the marketing of junk food to children and placing 'traffic light' labels on food packaging. Taxes on sugar-sweetened beverages have been successfully legislated in some Pacific Island Nations.[32]

The strength of legislation makes it more overtly political than less visible policy decisions, such as those made by the bureaucracy.[33] Legislation must be debated in Parliament, opening debate to public scrutiny and making possible its coverage in the media. In democratic countries, governments are least likely to enact legislation against public opposition, making legislation a poor choice of tool in situations where public opinion is at odds with public health opinion—as it is with much of the antiobesity regulation being proposed.[34 35]

DELEGATED LEGISLATION

Delegated legislation, also known as secondary legislation or subordinate legislation, is law made by the executive arm of government under power granted in a piece of primary legislation passed by Parliament. Delegated legislation is used to deal with the technical or practical matters of implementation, rather than overarching goals or aims, which are contained in the primary legislation.

Despite its ostensibly limited scope, delegated legislation can be powerful for public health. In occupational health and safety legislation, for example, the primary legislation may require a manager ensure that safety of her workers while the secondary legislation sets out what 'safety' specifically means in the context of different types of hazardous work.[36 37] Similarly primary legislation requires that health authorities be notified when certain infectious diseases are diagnosed whereas the secondary legislation provides the list of infectious diseases.[38 39] In each case, small changes in the regulations—the addition of a necessary safety measure, the inclusion or exclusion of a certain disease—can have a significant impact on public health.

Discussion of delegated legislation is almost entirely absent from the public health literature. Given that delegated legislation can be modified without requiring Parliamentary approval, direct appeals to Ministers and bureaucrats are more likely to be effective at changing delegated legislation than they are of shifting primary legislation. Though delegated legislation is not the appropriate tool for transformational change like introducing junk food taxes, it can be well suited for achieving incremental changes like tightening occupational health controls or monitoring new or emerging diseases.

MUNICIPAL AND LOCAL GOVERNMENT RULES

The roles and powers of municipal governments vary widely across the globe. In unitary states with two levels of government (central and local), the powers of local government tend to be broader than in federal states where some of that power is exercised by state/provincial/bundesländer/canton governments. Common to many local governments is responsibility for the immediate urban environment, with public health implications through active transport, the provision of public space and traffic safety.[40] The most common and perhaps well-known public health responsibility that tends to be the responsibility of local governments is various forms of sanitation such as garbage collection.

In Northern Europe, the power of municipal governments is extensive. In the Netherlands, for example, national legislation requires city councils to develop local health policy with effectively no limitation regarding the topics that can be addressed.[41] Examples of public health projects undertaken by municipal governments include special sports lessons for obese children, restrictions on alcohol in sports clubs and the incorporation of health promotion practices into social work and welfare services.[42]

In some cases, municipal governments can be unusually powerful, as is the case in New York where an amendment to the New York City Health Code banned the use of trans fatty acids in all food outlets required to hold a Health Department Permit.[43] That ban has been successful in markedly reducing the trans-fat content of restaurant food sold in New York.[44]

THE RULES AND POLICIES OF STATUTORY BODIES

In conjunction with the 'small-government' or 'neoliberal' revolution which took place in Anglo-American countries from the late 1970s has been a remarkable increase in reliance on statutory authorities to achieve governmental regulatory aims.[45] The devolution of central bureaucratic powers to agencies with some level of independence from government (often required to oversee newly privatised functions) has created a complicated patchwork of authorities with greatly varying areas of responsibility and powers of enforcement.

At one end of the spectrum are statutory agencies with purely advisory powers, such as the Public Health Agency of Canada and the Australian National Preventive Health Agency. These agencies assist their respective ministers but have no separate policymaking power. At the other end are agencies with entirely independent policymaking and enforcement powers. The Environmental Protection Agency (EPA) in the USA, for example, has vast independent authority to set policy and to enforce it. The EPA's Clean Power Plan Final Rule sets carbon emission targets for American fossil-fuel-based power plants which do not require Congressional approval.[46] Furthermore, its general enforcement powers over all environmental statutes

provides the basis for the EPA to enforce its own policies. The extent of an agency's powers is delineated in the statute which creates them.

JUDICIAL DECISIONS

The strength of judicial policymaking for public health is wholly contingent on the legal system in which it operates. Judicial policymaking has certain limitations. Judges are limited first by the cases that come before them, and there is no independent policymaking power.[47] Legal action must also satisfy a number of requirements. Relevant to public health are the requirements that action be based on existing legal provisions, that the plaintiff have appropriate standing and that there is a responsible adversary.

To initiate legal action, a plaintiff public health advocate must show that she has standing.[48] This generally means that the plaintiff must have suffered specific damage—the plaintiff taking action against a junk food company must show that she has become unhealthily obese as a result of their actions.[49 50] This is rarely the case and typically test cases of appropriate plaintiffs are sought instead.

The need for an adversary who is responsible for the plaintiff's damage means that there must be a specific culprit. In tobacco control, there has been some success in holding tobacco companies responsible for smoking-related disease;[51] and there has been considerable success in holding companies responsible for mesothelioma caused by exposure to asbestos.[52] In the case of obesity, identifying the specific contribution of one defendant junk food company has proven extremely difficult.[49]

The final limitation is that actions must be based on existing legal provisions. Courts in most countries do not have a generalised jurisdiction to hear public symptoms and set new regulation. Thus a public health advocate seeking new regulation cannot petition the court. The most famous exception to this rule is the Supreme Court in India which, in a process termed 'public interest litigation', accepts direct public symptoms and has made rulings to improve educational facilities,[53] reduce automobile pollution[54] and address workplace harassment of women.[55] Where there are Constitutionally entrenched individual rights, plaintiffs can challenge legislative and executive government policy in the courts for being unconstitutional.

REGULATORY REVIEW

Regulatory review refers to a process of cost–benefit analyses conducted by the bureaucracy on new proposals for primary and/or delegated legislation. The use of regulatory review to promote evidence-based policymaking has been championed by the Organisation for Economic Co-operation and Development (OECD) and today all OECD countries perform some type of regulatory review.[56] Regulatory review processes are typically carried out by a centrally placed office, often with the aim of reducing regulatory burdens on business.

Though regulatory review is designed to increase the use of evidence in policymaking, it can also serve as a chill on innovative policy for promoting public health. A study in Australia found that policy changes to reduce obesity were not promoted by health authorities because it was thought they would not pass regulatory review.[30] The long timeframes for change and the small impact of individual policy changes (as opposed to the cumulative successful effect seen in antitobacco policy) make each antiobesity policy appear to have greater costs than the measurable benefits.

CORPORATE POLICY AND SELF-REGULATION

Some corporations hold sufficient power that their own internal policies can have a huge public consequence. In the health arena, this is most apparent with private health insurance companies. In the USA, private health insurers make their own policy decisions regarding treatment coverage with decisions often at odds with those made by Medicare.[57] In Africa and Asia, there is evidence that uneven corporate regulation is responsible for inequitable access to services and lower service quality overall.[58 59]

Advertising standards are another example of corporate self-regulation, typically sitting halfway between effective regulation and none at all. In Australia, the industry code on advertising to children requires that advertising not promote excessive consumption of a product, nor should it 'promote an inactive lifestyle or unhealthy eating or drinking habits'.[60] This standard falls far short of that sought by public health advocates.[61 62]

TREATIES

Treaties are pieces of international law agreed on by two or more countries. Most international law lacks any formal enforcement mechanism and instead relies on treaty obligations being 'transformed' into domestic law—that is, to have practical effect most treaties need to be converted into one of the other types of policy discussed so far.[63]

At present, there is only one global treaty dedicated to public health, the Framework Convention on Tobacco Control (FCTC).[64] The FCTC has been ratified by 180 member states and requires members to ban tobacco advertising, place health warnings on cigarette packets and raise tobacco taxes.[65]

Many other treaties have the potential to effect public health, particularly those on international trade relations. There has long been public health concern that freer international trade will result in reduced health protections in the arenas of junk food, sugar-sweetened beverages and access to pharmaceuticals.[66 67] Recently, public health advocates have spoken out against the Trans-pacific partnership on the grounds that it strengthens industry involvement in policy by offering new avenues for appeal which, in turn, could curb government ability to pass health promoting legislation.[68]

ADDITIONAL PARLIAMENTARY POLICY

There are many policy processes which operate around the main legal instruments. Parliamentary Committees occupy a central role in drafting, revising and overseeing the implementation of legislation.[69] Increasing considerably in power since the 1970s today some parliamentary committees exercise considerable power over the shape of government policy, making them important points of policy research.

Every government has some process for 'pre-policy', or the wealth of documents generated in the development of new policy. Legislation must, for example, be written before it can be voted on and that writing generally includes some process for members of the government (or in some cases even members of the public) to comment on early drafts. In British-style parliaments, this process can be formalised through the use of what are known as Green papers and White papers though there is no requirement that either be generated before legislation is finalised. These can form the basis of analysis for public health researchers seeking to understand government strategy or the potential direction of future policies.

POLICY AS DISCOURSE AND ACTION

Beyond the official forms of formal policy, there exists what we refer to as a policy 'cloud'. The policy cloud encompasses all of the informal influences on policy such as the opinions of think tanks, the pronouncements of media outlets and, often, the interests of powerful corporations as well as public discourse more broadly. As Geertz argued, "some of the most critical decisions concerning the direction of public life are made not in parliaments and presidiums; they are made in the unformalised realms of what Durkheim called 'the collective consciousness'".[70] Below we focus on some often overlooked aspects of the policy cloud.

Policy narratives

Policy narratives or currents are said to sit above policies, acting as a rallying call to those across government and between government and non-government entities, providing directional pointers and broad benchmarks for change.[71] Policy narratives are attempts to unite actors behind a common goal; they are not intended to directly modify behaviour, but rather create shifts in values and the ways in which problems are perceived, which is seen as an important precursor to change.[72] While their purpose is mainly communicative, evidence can be found in agenda setting documents for incoming governments (eg, the Blair Government's Social Exclusion Strategy and the Australian Social Inclusion Agenda).[73]

Think tanks

Think tanks refer to a wide range of not-for-profit, government-funded and private entities which seek to form new policy ideas and influence policy decision-making. Think tanks have been a distinct part of the political and policy process since the 1960s in most industrialised countries.[74 75] The growth of neoliberalism saw an increasing dependence on think tanks, as (ostensibly) external arbiters of good policy advice.[76] For policymakers, think tanks act as mediators between academic and political domains and enable public response to policy options to be tested without directly implicating political parties.[76] Hence, the reports, statements and actions of think tanks can provide clues as to likely policy directions.

Policy as discourse

Constructivist perspectives view policy as an ongoing discourse between a range of actors (or networks) aiming to influence and shape it in various ways.[77 78] Here, policy is viewed as a collective activity and 'policy work' happens in a dispersed way across networks of actors inside and outside of government. Lindquist,[79] for example, draws attention to the importance of actors such as journalists in shaping policy as early as the 1990s.[80]

A key question for researchers is how to gain access to this discourse. Political debate (documented in the Westminister system in the form of the 'Hansard'—a detailed record of all parliamentary sittings) can be a rich source of information, however it does not allow for access to broader discourses which might inform parliamentary political debate. More broadly, these discourses are captured in grey literature created by organisations undertaking 'policy work' (ranging from advocacy groups, non-government organisations or research reports)—all of which enter into, and potentially shape, policy discourse. Increasingly, the media are playing a significant role in shaping policy discourses. Through editorials and reporting, particular issues are established (or further established) as 'policy problems'—cementing or shaping formal policy action through public pressure (which may or may not be real).[79 81] Bacchi's work on problem representation is a useful analytical tool for examining how policy is shaped within public discourse.[81]

Street level bureaucrats

Policy is now understood to be delivered by complex networks of actors who may exist inside or outside of government (eg, located within non-government organisations).[77 78 82 83] Understanding how these networks function has become a central focus of policy studies.[84] In political science and policy studies, the individuals delivering policy (ie, those interacting with citizens at the 'street level') were famously termed 'street level bureaucrats' by Lipsky.[85]

Lipsky's seminal work has long demonstrated that policies are shaped at the local level, by those charged with implementing them.[85] Studies of 'street level bureaucrats' explore how discretionary power can alter the scope and outcomes of policy. This is particularly important given the rise of community-level health service delivery. An important, but currently overlooked, place that public health researchers can 'look' for policies is in the actions those implementing them. This requires a more in-depth qualitative examination at the 'end point' of policy delivery as suggested by Pawson.[18] There are examples of this work to be found in public policy on social inclusion and welfare delivery.[73 86 87]

CONCLUSIONS

Our glossary demonstrates that policy is many headed. It is located in a vast array of documents, discussions dialogues and actions which can be captured variously by formal and informal forms of documentation and observation. Effectively understanding policy and its relevance for public health requires an awareness of the full range of places and contexts in which policy work happens and policy documents are produced.

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