



Module 2- Legal Infrastructure

Part 3- Legal Infrastructure at Work - Insights from Current Evidence.MP4

Media Duration: 21:11

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Our final part looks at legal infrastructure at work. We looked at a bunch of studies that tell us about one, our place in public health practice. It gives some insights for people going out in the world to do this work. Now, there's actually a lot that we know about law and public health practice, but it's equally important to recognize that there's going to be a lot that we don't know. I'll be skating along that line in this presentation hoping that where we can't give you an answer you'll go out and find it. We're going to use the causal diagram introduced in the last section as a way to talk through these stories to make some points. So you'll be seeing that repeated. So, here's an example, the question of the Board of Health Structure and Authority and how it influences outcomes. So, the law here, really two types of provisions. Whether the law requires a local health agency to have a Board of Health, yes or no, and if yes is it a policy making Board of Health or a non-policy making Board of Health. So what does that mean? Well first of all, what does the Board of Health do? Let's make sure we're clear on that. So ideal of Board of Health goes back to the early 19th Century in the United States. It was initially a body of people, to put it mildly, but it simply who would kind of promise to stay around until there's an epidemic instead of fleeing like everybody else did who could. And to manage the problems of dealing with severe health crises.

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But as the sort of day to day business the Board of Health became this body usually comprised of both political and health leaders who would make the key decisions about policy and practice for a health agency. Over time we've had two different kinds of Boards of Health evolve. One that is simply advisory, kind of body of experts who can be a resource for the health agency, and a board that actually still has regulatory authority. They can pass rules; they can make administrative law at least, or can recommend policies for laws to a law making body like a City Counsel. Of course we also have lots of health departments that don't have a Board of Health anymore, that's been deemed superfluous. So this study was trying to look well alright, does it help to have a Board of Health? Or (?) to have a Board of Health and if we do have a Board of Health what about the kind? Is



it better to have a policy making Board of Health or a non-policy making Board of Health. Now this is a really important question for us in Public Health Law right, because if the (?) is right and law, legal authority, legal structure does matter to health agency performance, then something like this should have an impact. We should see that difference. So what did this study find? Well it looked at essentially the ten essential health services, right, and it asked well does it help to have a Board of Health and protect you from health hazards, doing health education, engaging in community, helping people receive health services. And, surprisingly enough that would be a negative where it means having a local Board of Health hurts performance.

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Look at that, the study found that agencies with a local Board of Health do a poorer job protecting from health hazard, doing health education, engaging in community and problem solving; that's unexpected. On the other hand if they had a policy making Board of Health they did better in health education, engaging in community and helping people get health services. The story continued in this sort of paradoxical way in terms of functions like monitoring health status, maintaining a confident workforce, evaluating/improving programs and contributing to the evidence base; having a local Board of Health was negative for a couple of those factors, but positive for others. If it was a policy making Board of Health. Finally the area of developing health policies and plans and enforcing public health laws and regulations, agencies that had a Board of Health were poorer, but if they had a policy making Board of Health they were better. Well this is really great interesting research on a complicated problem. It of course points out the fact that just looking at the law on one side and the outputs on the other doesn't really explain these kinds of paradoxical findings. I mean it could be that the policy making Board of Health just is because it has power becomes more engaged, draws more effective people, helps lead an agency more effectively than a Board of Health of health that's kind of sitting passively and offering it's opinions but not doing much else. But to really understand this e would have to do more research that looks at the differences in legal capacity, how these differences and the differences in authority might influence the structure of the organization in its other capacities and what happens to implementation.

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You know it may be just the local Boards of Health that have policy making authority are better at implementing the same kinds of rules that other agencies are doing. It's more a matter of personal style, or it could be that you have different levels of institutional compensey in law, for example, Or more effective use of your capacity, or better capacities. We don't know that. But the point is we do see in this study that this basic question of legal authority does have a difference, does make a difference in the performance of the health



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agency. Take another example, Model Law-making. You know, when the is to the medicine said the law matters, the legal authority matters. Our statutes governing health agencies are often outdated and inappropriate. One thing that people decided was well; you know we should change those laws, that would be a worthwhile public health law project. So in a number of instances, model laws were drafted as a way to deal with that problem of outdated legal authority. But of course it also was meant to deal with some other things. And a study conducted by several public health law researchers tried to see what things, among drafting a model law, would do. They were aware that law making process... what could we learn about that law making process and it affected outputs. So the theory of the model law was that it was going to do at least three things. You should expect to see three kinds of outcomes if the model law is working. One was that the model law and the process of drafting it and promoting it is a way to engage the community. I mean it's setting the agenda. Law making attracts attention that you don't otherwise get. It focuses people on a particular set of questions and issues.

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It gets people to talk to each other and to their elected officials. So even if nothing else happens, if you get people talking about public health and what we need in public health, that model law might have a good effect. Now in fact that they found that the model law process really did do that. That in the several states they looked at, you got a really good level of community engagement and attention to public health through the model law process. Now the next question was, could you take that enthusiasm, and particularly with working within a health agency, could you get a good draft of the final model legislation created. In other words, could you develop health policies and plans to put in, in terms of the output? And here the story is a little more ambiguous. In some states you did get a good start. You got community mobilization, but the process kind of broke down when it came to agreeing upon final terms of the statute and drafting a piece of legislation to take to the legislator. But in other place it in fact moved smoothly right into agreement on legislation to submit. So the final question is, well do you actually get the law passed? We do all this work and get some good mobilization, raise some consciousness, and get some good legal text. Does that law go into practice? And there too, some states yes, some states no. Getting laws passed is always a chancey activity. But the bottom line here for understanding model law in public health is that it ends up, at least as far as the research tells us, being much more about a process of discussion of public health and law, than about needs and community and problems with legal authority than it does as an intervention to really change what health agencies are doing.

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Now maybe doing that, but we don't have documentation if that happens. Another big area in the last ten years since Nine Eleven and Anthrax attacks has been emergency preparedness. And legal preparedness has been a part of this, the Law of Preparedness; this is the table from a paper that just covers some of the elements of what we mean when we talk about legal preparedness. Before we go on with the example. One question is do you actually have all the authority to take action in an emergency? Does your agency have emergency powers? If it has those powers can it use them effectively? And since agencies exist in that complicated picture of many other agencies, and in a regional emergency there may also be different cities and different states involved. A big question is whether all this authority can be coordinated across agencies and across jurisdictions. You know ultimately to, sort of an information piece as part of competency and consciousness. Do we actually have, in some sense, all the information environments set up so that all participants know who's doing what and who has the authority. So Jacobson and Colleagues did a study of how that preparedness story was playing out in terms of the law. So they were really interested in how state and federal preparedness law on the books was translating into the actual life of health agencies and their effective output of the essential services. They used a concept they called perceptions of law.

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Because it started from the proposition that the first thing you had to have in order for law to work in health agencies was people in health agencies who knew what the law was. We would put this now into a sort of more nuanced set of concerns, right. So you might say knowing what the law is a part of legal competency, but whether you think what the law says really matters. Or whether you just understand like, yeah it's there but I have to do my job the way I think best, has to do with legal consciousness and institutional legal culture. You know, in an emergency is jurisdiction going to work to rules? The first thing it's going to do is get out the checklist of legal issues, or are they going to figure well we basically know what we're doing, it's basically legal. We're not going to bother with the details. Those are key questions in terms of how the law is going to play out. We have to understand the differences and what Jacobson and his colleagues found.

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Slide 9 [[00:13:29]] What Jacobson and his colleagues found was rather a mixed picture, and I'm going to read a couple of quotations from their study. As evidenced in a quote from a local public health official, perceptions rather than actual laws drive behavior. "As long as I perceive that I'm within the objective law, and others perceive that I'm within it, I'm not worried about the law." Legal personnel raised organizational, financial and



ethical issues less frequently than their non-legal counterparts; probably because they perceive that these issues fall outside the scope of their day to day concerns.

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But few legal counsel at the local level showed comprehensive understanding of relevant laws as public health issues rarely crossed their desk. So you could see in these quotes, some interesting points that fit within our framework. The one thing structural capacity influences legal capacity. Lots of places have a part time city solicitor or a part time hired lawyer who give them their legal advice in public health, and so they don't really get that much business. They're not specialists in public health law, so they're not fully aware of the law. And that's really for the organization of function of budgets and organization. On the other hand we also have an example of sort of the legal consciousness. The view of the person (?) is vital. You know, I'm not going to worry too much about the law, I think I understand what I'm supposed to do, and unless somebody tells me I'm doing something wrong, you know it's not my business. So that person doesn't own their legal authority. Legal authority is sort of something on the side, and as long as they don't trip over it, they're happy. Alright, so that's a very different-- It's not bad or good, it's just different from what would happen if somebody says my first question is to go to the law and figure out what it tells me I can do. Unless I see that I can do it, I'm not taking a step. Both those-- People who think those two different ways are going to act differently in an emergency; and understanding that is what we're talking about in studies like this. Another thing that was noted in this study goes back to structural capacity and its relationship to legal capacity; and that is lots and lots of people say well we just don't have good legal advice. So public health agencies don't necessarily get the legal help they need, so they lack legal capacity for structural reasons.

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Across this country we still don't have as good a handle as we should on what the legal needs and legal services availability is for agencies in public health. But that's an area of active research, so we stay tuned on that. Let's talk about tobacco control enforcement, another important study here, looked at how different kinds of legal authority would influence the authority of agencies to make effective-- Effectively enforce their rules when it comes to tobacco. Now, the study I'm thinking of here didn't so much look at general legal capacity. But what it looked at was how attitudes about particular kinds of laws influenced implementation. So this study looked at a couple of dimensions of state and local tobacco control law. First was whether it was focused on kids, youth tobacco control, or whether it was focused on everybody. And secondly whether the official enforcement agency was going to be the state or some kind of local agency. It turned out that this



made a big difference, so that people in health agencies treated youth tobacco control as something that was a high priority for enforcement. It felt they had to go out and implement policies and practices of enforcement that would catch people who were selling cigarettes to kids. When it came to cleaning the air laws and other forms of law banning smoking pipe to the general population by adults, they took a completely different attitude. They generally feel those are going to enforce themselves. We're not going to invest a lot in enforcement, we don't have the resources.

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We think if restaurants post the signs and install the policies, workplaces; it's going to enforce itself. Part of that reflected capacity, and this is why who was enforcing it was also important. State agencies had more resources for enforcement than local agencies, but of course they had less connection to the local scene. Local agencies often felt they didn't have the resources to do heavy enforcement because the rule, the legal authority to control smoking didn't come along with a budget for enforcement. The study was also interested in the extent to which this enforcement process and the process of coming up with the regulations engaged the community. That was the big output that the researchers were interested in. They were interested because they felt that community engagement was important in creating, maintaining and effectuating the legal authority to control smoking. So obviously you need to introduce support for the original tobacco ban, but you also need the community to be engaged in questions like, do you have resources for implementation or not? Is there going to be a budget for enforcement? Is there a demand for enforcement? And is the public out there, in some sense serving as the eyes and ears of the enforcement agency by complaining when there's smoking where there shouldn't be smoking, or if someone is selling tobacco to kids. And what the study learned about this is that it's much easier to get people engaged in the policy process—

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I'm sorry, in the law making process to get the law passed in the first place than it is to get them engaged in the ongoing enforcement and budgetary processes that are mundane and boring, but which have a big effect on whether you're going to successfully implement that legal authority. These are just some examples that show that a small but evolving body of evidence is supporting this claim that law is important in public health. We saw how the process of changing law on the books... And changes in law on the books might have an impact on health agency outputs. We looked at how general legal capacity could influence implementation and output. And we saw how important effective implementation of the law is to translating good laws on the books into effective public health practice. Thank you very much.