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When is a Public Policy Labeled as Discrimination? An Empirical Study of Morality and Justifiability in Policy Judgment

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Abstract   This study examines how individuals determine whether public policies are perceived as discriminatory. An online survey of 422 participants recruited through Amazon Mechanical Turk evaluated 20 sample policies across domains of income, ethnicity, gender, marriage, and employment. For each policy, participants rated its morality, justifiability, and personal importance, and then judged whether it constituted discrimination. Results revealed limited consensus: disagreement on individual policies ranged from a 51–49% split to an 83–17% majority. Judgments of discrimination were strongly associated with views of morality and justifiability (average $\varphi = 0.47$ and $\varphi = 0.50$, respectively), but not with perceived importance. Participants who judged a policy as both immoral and unjustified were 6.1 times more likely to label it as discriminatory than those who judged it moral and justified. Further, judgments varied depending on the group affected, and on the complexity of policy wording. These findings suggest that subjective moral judgments, group sympathy, and linguistic framing significantly shape public perceptions of discrimination, raising important considerations for policymakers and legal practitioners when drafting and evaluating policies.

Keywords   discrimination, policy evaluation, public opinion, social psychology, governance

When is a Public Policy Labeled as Discrimination?

Policies in education, business, and legislation are scrutinized for any discrimination they may create directly or indirectly. For example, the U.S. Equal Employment Opportunity Commission received 99,412 total charges of discrimination in 2012 (U.S. Equal Employment Opportunity Commission, 2014). Once a policy is labeled as discrimination, a series of social ramifications may take effect, including changes to the policy, social pressure on the organization, boycotts, fines, or other rectifying actions to offset the discrimination. For example, in 2013 Merrill Lynch agreed to pay $160 million to plaintiffs as penalty for policies that contributed to a discriminatory workplace for black brokers (Weise, 2013). The decision included the creation of a committee of black brokers to oversee procedural changes to how Merrill Lynch distributes accounts and a research team to study team selection bias among broker teams. However, Merrill Lynch was not accused of intentional discrimination. Instead, plaintiffs alleged the system of broker teams indirectly inhibited career development for black brokers. The case was determined by convincing the courts of a definition for discrimination that included the plaintiffs' experiences.

Identifying discrimination is not always straightforward. A Gallup poll reported that 73% of black respondents believed the investigation of Trayvon Martin's shooting by police was initially handled with discrimination (Newport, 2012). However, only 35% of white respondents believed discrimination influenced the police's decisions. Weitzer and Tuch (2002) found that more black participants than white participants believed racial profiling is common among police. Differing definitions and subjective evaluations make it problematic to clearly identify examples of discrimination.

The following are examples in which the discriminatory nature of a policy is not straightforward. Employers may not discriminate in hiring based upon national origin (Civil Rights Act of 1964, 1964). Yet foreign born US citizens are banned from presidential office (Kanovitz, 2012). Racial quotas in college admission have been deemed unconstitutional. Yet, a majority of Supreme Court justices deemed race an acceptable plus factor when determining admissions (Jeffries, 2001). The U.S. Supreme court decided in Faragher v. Boca Raton (1998) that discrimination by a supervisor should be evaluated using different standards than discrimination by a co-worker. Finally, the United States has a long history of discriminatory policies that were originally upheld by federal and state supreme courts, then years later declared as discriminatory violations of personal liberty. Examples include slavery, racial segregation in education, prohibition on gay marriage, and the Japanese internment of World War II (*Brown v. Board of Education*, 1954; *Civil Liberties Act of 1988*, 1988; *Dred Scott v. Sandford*, 1857; *Hirabayashi v. United States*, 1943; *Obergefell v. Hodges*, 2015; *Plessy v. Ferguson*, 1896; *Singer v. Hara*, 1974; *The Civil Rights Act of 1866*, 1866). Each of these policies were upheld in court when first challenged. The courts later re-evaluated the same policies and came to different conclusions. This demonstrates that even among the highest legal minds, defining what is discriminatory is not always clear. This judgment can be a subjective and imprecise task.

Academics have presented a variety of views on what constitutes discrimination. Allport (1954) stated any prejudice must contain a favorable or unfavorable attitude, based on an overgeneralized belief about a group. Sue believes discrimination occurs whenever individuals are treated differently based on their group membership Sue (2003). The origins of prejudice and discrimination are broadly studied from three perspectives: social learning, cognitive and emotional processes, and attitude formation. The social learning perspective includes learning prejudiced views through direct teaching (Peters & Elliott, 1970), observational learning (Rodríguez-García & Wagner, 2009), and social norms (Crandall, Eshleman, & O'Brien, 2002). The cognitive and emotional perspective includes cognitive mechanisms that result in prejudiced views such as attentional bias (Sherman et al., 2009), confirmation bias (Koriat, Lichtenstein, & Fischhoff, 1980), and the availability heuristic (Rothbart, Fulero, Jensen, Howard, & Birrell, 1978). The attitude formation perspective of prejudice includes the authoritarian personality (Adorno, Frenkel-Brunswik, Levinson, & Sanford, 1950), realistic conflict theory (Sherif, 1966), and the ultimate attribution error (Pettigrew, 1979).

More recent work has expanded on these foundational theories. For example, research on discrimination perception has shown that judgments vary with group status and cultural context (Norton et al., 2006; Wilkins et al., 2015; Salter & Adams, 2016). Similarly, framing effects in the policy domain have been elaborated by political communication research (Druckman, 2001; Chong & Druckman, 2007; Lecheler & de Vreese, 2019). Finally, moral judgment research has developed the social intuitionist model and moral foundations theory to show how political ideology shapes moral evaluation (Haidt, 2001; Graham et al., 2009; Cushman, 2020)."

In the following study I tested how judgments on discrimination are influenced by personal opinion. The study measured opinions on morality, justifiability, and importance in relation to discrimination for a variety of

organizational policies. The hypothesis was that participants will be more likely to label a policy as discrimination if they find it important and either immoral or unjustified. Identifying how lay individuals, not only courts or academics, define discrimination is imperative. Juries, corporate executive boards, human resource departments, and voters are all populations composed of lay individuals. Their opinions about discrimination impact legal decisions, public acceptance of government policies, and everyday practices.

Method

Participants

I conducted an online survey during September 2014 to investigate the relationship between morality, justifiability, feelings of importance, and judgments on discrimination. The survey included a total of 2,110 responses from 422 participants. Participants ranged from age 18 to 75, with 236 males and 186 females.

Table 1. Participant Demographics.

Gender			Age Range		
Male	236	56%	18–29	190	45%
Female	186	44%	30–44	151	36%
Total	422	100%	45–60	63	15%
			61–75	18	4%

Participants were recruited through Amazon Mechanical Turk and paid $0.10 per survey. While this compensation is modest, it is comparable to many psychology studies that recruit undergraduate subject pools where participants typically receive only course credit. Importantly, a validation question was included to ensure that participants fully read all questions and did not respond randomly. Responses from participants who failed this validation check were discarded. Although Mechanical Turk samples have been shown to be reasonably representative of the U.S. population (Berinsky, Huber, & Lenz, 2012), they nonetheless reflect a self-selected group, and the cultural context of U.S.-based respondents may limit the generalizability of findings to other populations. The study protocol was approved by the Institutional Review Board of The American School of Professional Psychology, and all participants provided informed consent prior to completing the survey.

Procedure

The survey consisted of 20 policies, each of which treats individuals differently based on their group membership. This makes each policy inherently discriminatory according to their logical form. Example policies include, "Women are not allowed to join the U.S. Navy SEALs.", "A soup kitchen in France purposely serves bacon and pig ear soup to discourage Muslim and Jewish attendees.", and "Same-sex marriage is currently illegal in 31 U.S. states." Some of the policies are not in effect at this time, but were accurate at the time of the survey.

Policies were drawn from a range of contemporary issues debated in U.S. public discourse (e.g., healthcare, education, law enforcement). Selection was guided by the goal of representing diverse policy domains while avoiding obscure or technical proposals. Although the items were not formally pilot tested, they were reviewed by fellow researchers to ensure clarity and neutrality of wording.

The policies covered 5 categories: income, ethnicity, gender, marriage and employment. However, these category names were not displayed to the participants. The question bank contained 4 to 6 possible policies in each of the first four categories. Each participant answered one, randomly selected policy from each of the four categories. The employment category contained only one policy and was shown to all participants. A total of five policies, one from each category, was shown to every participant. The full list of policies is included in Appendix A. For each item, participants were asked, "The policy is…"

- discrimination / not discrimination
- justified / not justified
- important to me / unimportant to me

- morally acceptable / morally unacceptable

The dependent variable was discrimination. The three independent variables were morality, justifiability, and importance. Morality captured a participant's principle-based judgment of whether the policy was right or wrong, independent of feasibility or law. Justifiability captured whether the policy should be allowed or continued in society now (e.g., given current law, fairness norms, evidence, or pragmatic considerations), even if the participant's personal morality differed. A policy could be deemed immoral but justified. Personal importance captured the salience or priority of the issue to the participant, which can vary independently of both morality and justifiability. The definitions presented to participants during the survey are provided in Appendix A. The survey endeavored to answer if a participant's moral view of a policy, opinion if it is justified, or feeling of importance for the issue affects judgments on policy discrimination.

Results

Divergent Judgments on Discrimination

Participants did not agree if the policies were discriminatory or not. On average 67% of participants disagreed with the remaining 33%. The normalized agreement measurement disregards the specific direction of the judgment. For example, if 100% of participants judged policy A as discrimination and 100% of participants judged policy B as not discrimination, agreement was 100% for both A and B. Averaging the raw data would erroneously return 50% agreement. This value would not account for agreement within each policy. Disagreement on individual policies ranged from a 51%-49% split to an 83%-17% majority. Figure 1 displays the normalized agreement across all questions.
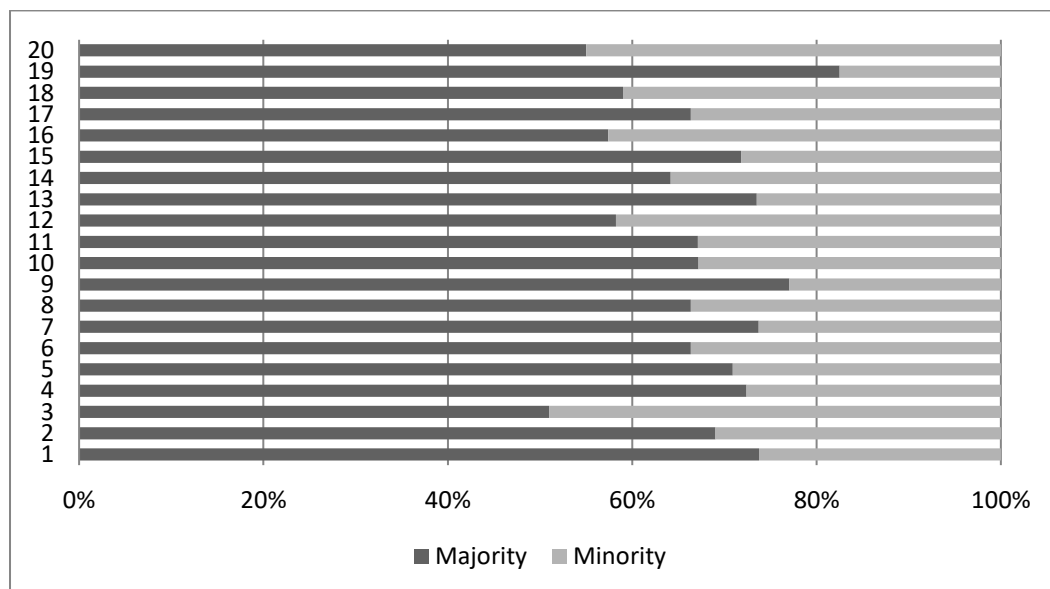

Figure 1. Normalized agreement levels for judgments on discrimination.

This variance indicates that judgments on policy discrimination are not clear. They vary from person to person, often with no consensus. This variance may explain the disagreement often observed when individuals, groups, or lawmakers debate the discriminatory nature of a policy. The raw data response distribution is in Table 2.

Table 2. Response Distribution.

Judgment Type	Category	n	%
Morality	Moral	1,028	48.7
	Not Moral	1,082	51.3
Justifiability	Justified	964	45.7

	Not Justified	1,146	54.3
Discrimination	Discrimination	1,248	59.1
	Not Discrimination	862	40.9

Opinions of Morality and Justifiability

A correlation was observed between views of morality, justifiability, and discrimination. Participants who viewed a policy as immoral were more likely to label it discrimination. Participants who viewed the same policy as moral were more likely to label it as not discrimination. The same policy was viewed as discrimination or not in association with the individual's view of its morality, $\chi^2(1, N = 2,110) = 463.69$, $p < .001$, $\phi = .47$, 95% CI [0.43, 0.50]. A similar relationship was observed between views of justifiability and discrimination, $\chi^2(1, N = 2,110) = 526.86$, $p < .001$, $\phi = .50$, 95% CI [0.47, 0.53]. No relationship was seen between policy importance and judgments on discrimination.

The highest degree of correlation was seen for the policy "During the NYPD stop-question-and-frisk program 87% of those stopped were African-American or Latino."(morality and discrimination $\chi^2(1, N = 99) = 32.64$, $p < .001$, $\phi = .57$, 95% CI [0.42, 0.69]; justifiability and discrimination $\chi^2(1, N = 99) = 53.54$, $p < .001$, $\phi = .74$, 95% CI [0.63, 0.81]) Those who felt the policy was justified overwhelmingly viewed it as not discrimination while those who believed the same policy was not justified described it as discrimination. These measurements do not simply measure if discriminatory policies are unjust. The measurement demonstrates how the same policy is judged as discrimination or not in correlation with each individual's subjective judgment of its morality and justifiability.

Strong Opinions Drive Judgments on Discrimination

Strong opinions were defined as views on morality and justification that coincide; i.e., viewing a policy as both morally unacceptable and unjustified, or morally acceptable and justified. Weak opinions describe responses in which these judgments were in conflict, i.e., viewing a policy as morally unacceptable but justified, or morally acceptable but unjustified. When participants showed a strong opinion regarding a policy, the average correlation with discrimination judgments was magnified, χ^2 $(1, N = 1,814) = 576.98$, $p < .001$, $\phi = .56$, 95% CI [0.53, 0.59]. Participants who judged a policy as both immoral and unjustified were 6.1 times more likely to label it as discriminatory than those who judged it moral and justified.

In contrast, when participants had a weak opinion, the correlation between morality, justifiability, and discrimination was eliminated, χ^2 $(1, N = 296) = 4.73$, $p = .030$, $\phi = .13$, 95% CI [0.01, 0.24]. This demonstrates that opinions wholeheartedly in favor or against a policy are more likely to correlate with judgments on discrimination. A majority of respondents, 86%, displayed a strong opinion in which their judgments on both morality and justifiability for a policy coincided.

Impact of the Specific Populations Involved

Judgments on discrimination are not always based on a general rule or principle. Instead, opinions of morality and justifiability were affected by who the policy impacted. For example, the following two policies are identical in form.

1. A private school offers free tuition. Students are only admitted from families making **less** than $100,000/year.
2. A private school offers free tuition. Students are only admitted from families making **more** than $100,000/year.

The first policy offers free tuition to students making lower income. The second policy offers free tuition to wealthy students. However, the rule of limiting school admission based on income is identical. A majority of participants felt excluding rich students from a free school was both moral and justified (71%) but excluding poor students was immoral and unjustified (73%). Judgments on discrimination were also impacted by who the policy affected. Excluding rich students was viewed as discrimination by only 31% of participants, but excluding poor students was viewed as discrimination by 74% of participants.

It is possible the amount of sympathy a participant feels for those impacted by a policy influences judgments on morality, justifiability, and discrimination. The more sympathy a participant has for those adversely impacted by a policy, the more likely an unfavorable opinion of the policy. There is precedence for this explanation. Prior studies

have shown the degree of likeability for a group can impact prejudice against them (Batson et al., 1997; Stephan & Finlay, 1999).

Impact of Policy Wording

Judgments on discrimination appear to be impacted by the complexity of policy wording. Equivalency frames describe a policy using different terminology, but carrying the same meaning (Tversky & Kahneman, 1981). Altering specific terms, without changing the overall meaning, has been found to influence the decisions and conclusions participants make (Sher & McKenzie, 2008; Smith, 1987; Tversky & Kahneman, 1981). My survey included two policies that followed a similar logic and affected a similar population. However, they differed in wording complexity. The following two policies both describe school admission policies that offer free tuition to low-income students.

1. A private school offers free tuition. Students are only admitted from families making **less** than $100,000/year.
2. The Milton Hershey K-12 private school is free, but does not accept students from a family of 4 with income over $47,700.

The second policy better serves underprivileged children since the income cap is $47,700, compared to $100,000 in the first policy. However, the wording of the second policy is significantly more technical. This may have dampened the participants' emotional responses. Consequently, more participants judged the second policy as discrimination (49%) than judged the first (31%). It is possible the technical language in the second policy required more cognitive processing to interpret its meaning. This complexity may have reduced the sympathy felt for the poor students. Therefore, the second policy, which benefits poor students more but is harder to understand, was judged as discrimination more often than the first policy, which was straightforward and easy to understand.

Explanation of the Results

Five results were found during the experiment. First, there is often no consensus among individuals when deciding if a policy is discriminatory. Second, judgments on policy discrimination were correlated with opinions of morality and justifiability. Third, strong opinions on a policy, where judgments of morality and justifiability coincide, magnified the correlation with judgments on discrimination. Fourth, the population impacted by a policy can influence judgments on discrimination, possibly by moderating sympathy. Fifth, complex policy wording can reduce judgments that a policy is discriminatory, possibly by also moderating sympathy.

These results demonstrate that judgments on policy discrimination may not be made using a general rule. Instead, each individual relies on personal, subjective opinions about the policy when deciding if it is discriminatory. Cognitive dissonance may offer an explanation for this judgment mechanism. Cognitive dissonance describes the psychological discomfort caused when an individual's behavior conflicts with his or her beliefs (Festinger, 1962). Individuals try to reduce this discomfort by adjusting their beliefs. For example, when a job applicant is rejected for a position, a conflict arises between wanting the job and not getting it. To alleviate this emotional discomfort, the applicant may begin to believe the job was the wrong fit anyway.

Discrimination is generally viewed as inherently wrong. This sentiment is conveyed by the position statement of the National Association of School Psychologists (2012), "[The National Association of School Psychologists] believes that racism, prejudice, and discrimination harm all children and youth, and has a profoundly negative effect on school achievement, self-efficacy, and social–emotional growth." Since discrimination is associated with undesirable behavior, an individual who strongly favors a policy may feel dissonance when judging the same policy as discrimination. The individual's internal voice asks, "How can a policy I agree with be discrimination?" Likewise, participants that are strongly against a policy may feel compelled to label it as discrimination to prevent dissonance from arising.

The pressure to reduce cognitive dissonance is relative to the dissonance strength. The stronger the dissonance, the more an individual will wish to alleviate it (Festinger, 1962). This explains why judgments on discrimination were highly correlated with strong opinions, but not with mixed views. When participants were unsure how they felt about a policy, any dissonance was small enough to ignore. However, strong opinions in favor or against a policy may have created dissonance powerful enough for the mind to take corrective action.

The impact of cognitive dissonance on judgment has precedent. The Trolley Problem moral dilemma asks participants to sacrifice the life of an innocent person to save five others (Bleske-Rechek, Nelson, Baker, Remiker, &

Brandt, 2010). Participants were 40% less likely to save the lives of five people at the expense of one death when the person sacrificed was a two-year-old child. It was theorized that the rationale for saving five lives, while sacrificing one, was in conflict with the emotional discomfort of killing a baby.

Discussion

The Merrill Lynch settlement, mentioned in the introduction, did not involve any clear, specific act of discrimination. Plaintiffs alleged that procedures and policies at Merrill Lynch led to a system that inadvertently prevented black brokers from succeeding. At first, the 7th Circuit Court of Appeals was not convinced. Then, the plaintiff's attorney likened the situation to a prior case, in which female police officers were not chosen for partnerships by experienced officers (Weise, 2013). For the judges to understand the discrimination black brokers faced, they needed to feel the same sympathy they did for women in a similar circumstance. The subjective level of sympathy shown by the judges determined their decision.

These findings suggest that policymakers cannot rely on objective formulations of policy alone. Public judgments of discrimination are shaped not only by the logical structure of a policy or law, but also by its moral framing, the sympathy evoked by the affected groups, and the complexity of its language. The influence of these factors on judgments of discrimination has two important consequences for policy makers.

First, clear communication, balanced framing, and sensitivity to public perceptions are critical to reducing unintended accusations of discrimination. For example, income or education-based policies may be more widely accepted if policymakers explicitly address fairness and transparency in their design and wording.

Secondly, discriminatory or oppressive practices may be declared as not discrimination when either the majority of society or those in power find them acceptable or necessary, from their own perspective. Groups about whom society has little sympathy may not receive protection from discriminatory policies. This can create a self-reinforcing system of discrimination, in which discriminatory policies continue to disadvantage groups that are looked down upon. Since these groups do not receive sympathy, the policies are judged as non-discriminatory, maintaining the disadvantage. Creative wording may also be used to further conceal the discriminatory nature of a policy or its harm.

Practically, this means that when drafting policies or communicating organizational rules, leaders should: (a) use clear and accessible language to reduce misinterpretation, (b) explicitly articulate the fairness rationale behind policies to strengthen perceptions of justifiability, and (c) consider how different groups will be perceived as impacted, since public sympathy strongly predicts whether a policy is labeled discriminatory. Ignoring these factors risks not only miscommunication but also social backlash, litigation, or loss of trust.

It is also important to recognize that judgments about whether a policy is discriminatory may be shaped by cognitive biases. For example, in-group favoritism may have led participants to judge policies more leniently when those policies benefited groups they identified with, or more harshly when the policies disadvantaged their in-group (Tajfel & Turner, 1979). Likewise, the status quo bias may have predisposed participants to view existing policies as more justified simply because they were already in place, regardless of their moral acceptability (Samuelson & Zeckhauser, 1988). Although our survey design sought to present policies in neutral language, these influences could not be entirely ruled out. Future studies might reduce these effects by explicitly measuring group identity, counterbalancing whether policies were presented as current or hypothetical, or by combining explicit judgments with implicit measures.

Further research is needed to determine if the relationship between morality, justifiability, and discrimination holds in all circumstances. There may be additional factors that mediate this relationship or impact discrimination judgments in other ways. Personal opinions differ from person to person and situation to situation. An individual or society as a whole may hold different opinions over time as perspectives and beliefs change. Justice may not always be served if evaluations of discrimination vary with changes in public opinion.

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Appendix

Full list of 20 policies. One policy from each category was shown per respondent.

1. **Income**

    a. A private school offers free tuition. Students are only admitted from families making more than $100,000/year.

    b. A private school offers free tuition. Students are only admitted from families making less than $100,000/year.

    c. The Milton Hershey K-12 private school is free, but does not accept students from a family of 4 with income over $47,700.

    d. In some locations it is legal to exclude residents from a housing community for having too much income.

    e. In some locations it is legal to exclude residents from a housing community for having too little income.

2. **Ethnicity**

    a. The FBI actively targets Muslim communities for terror investigations.

    b. During the NYPD "stop-question-and-frisk program" 87% of those stopped were African-American or Latino.

    c. Admission to the Kamehameha Schools in Honolulu requires students be of Hawaiian ancestry.

    d. A soup kitchen in France purposely serves bacon and pig ear soup to discourage Muslim and Jewish attendees.

3. **Gender**

    a. Historically women have been charged more for health insurance than men in the U.S.

    b. Historically men have been charged more for car insurance than women in the U.S.

    c. Women are exempt from Selective Service and the military draft in the U.S.

    d. Women are not allowed to join the U.S. Navy SEALs.

    e. Wellesley College does not admit men.

    f. Wabash College does not admit women.

4. **Marriage**

    a. Same-sex marriage is currently illegal in 31 U.S. states.

    b. It is illegal in all 50 U.S. states to have more than one spouse at the same time (polygamy).

    c. The Masterpiece Cakeshop has been ordered by a Colorado judge to make cakes for same-sex marriage ceremonies even though the bakery states it violates their religious beliefs.

    d. The Masterpiece Cakeshop refused to make cakes for same-sex marriages.

5. **Employment**

    a. Many jobs require a college degree even if the applicant has all necessary skills.

    On-Screen definition of terms given during the survey:

    Please use these definitions when answering:

a) Morally acceptable / unacceptable = your own principle-based judgment about whether the policy is right or wrong.
b) Justified / not justified = whether this policy should be allowed or continued in our society today even if your personal morality differs.
c) Important to me / unimportant to me = how much this issue matters to you personally compared to other issues.

Author Biography

Dr. Aman Siddiqi is a licensed clinical psychologist whose research focuses on improving critical thinking, understanding the cognitive and social roots of prejudice, and examining prejudice against men. In his clinical practice, he specializes in male-positive therapy that emphasizes the unique strengths and needs of men and boys.