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AFFIRMATIVE ACTION PLANS:

A POLICY ANALYSIS[1]

By

Elizabeth Steiner Maccia

1. Introduction

1. My position in this paper is not one of advocacy but one of analysis. There is no need for a philosopher to reinforce the voices of women. Nor am I here in a position of the compleat analyst. There is no need for a philosopher to reinforce the voices of scientists and other non-philosophic analysts. I am here as one whose intellectual loyalty is to the pursuit of logical and moral illumination.

2. In the pursuit of logical illumination, I shall attempt to explicate policy, policy analysis, and affirmative action plans. In the pursuit of moral illumination, I shall discuss the policy of affirmative action relative to the kind of society in which we want to live and the kind of men and women we wish to see nurtured in such a society.

2. The Nature of Policy*

1. Social organizations emerge wherever there are groups of persons. Some of them are informal and some are formal. Formal social organizations are instituted to achieve certain goals. An example of a non-institution would be the family; of an institution, the university. Whether a social organization is formal or informal, it is characterized by structure, i.e.,

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*In clarifying my ideas about policy and policy analysis, of help were the following: S. Ballinger, "The Nature and Function of Educational Policy" (1); H.S. Bhola, "The Design of (Educational) Policy: Directing and Harnessing Social Power for Social Outcomes" (2); A.S. Clayton, "The Organization of the School of Education, Indiana University for Policy Development" (3) and "The Relevance of Philosophy of Education to Questions of Educational Policy" (4); and P.G. Smith, "On Policy" (16).

a "specific relational system of interaction among individuals and collectiv-
ities" (9), and by culture, i.e., "transmitted and created content and patterns
of values, ideas, and other symbolic-meaningful systems" (9). Structure gives
rise to positioning of individuals and collectivities in the group and so to
status, while culture--the shared beliefs and orientations--provides guides
for the conduct of members in the group and so gives rise to role. Status
and role, of course, are not independent of one another, for structure and
culture interact. For instance, an authoritative role leads to a superordi-
nate position, and a superordinate position to an authoritative role. Hence,
the official capacity to exercise control depends upon both structure and
culture. The powerful and produced by culture and are producers of culture.

2. Since institutions are to achieve certain goals, they can by defined
by the constitutive rules for acts taken to embody such achievement. For
instance, just as chess is constituted by the rules which are essential for
one player either capturing or checking another player's king, so a university
is constituted by the rules which are essential for the promotion of learning.
The constitutive rules of an institution, therefore, prescribe its structure
and culture. Such rules create offices and roles, regulate procedures, and
assign rights and duties.

3. "Rule," according to Black* (3), has four main senses: instruction,
regulation, precept, and principle. A rule as an instruction is a direction,
and so expresses a command whose form is S do A where 'S' stands for a sub-
ject and 'A' for an action. There is no modality in the sense of the action
being required, forbidden, or permitted. A rule as regulation is lawlike,
and so expresses a prescription whose form is S to do A. The 'to do' adds
the modal element. A rule as precept is a rule of prudence or of morality,
and so expresses a normative whose form is S ought to do A.

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*It should be noted that my exposition of the four senses of "Rule"
deviates from that of Black.

Even though both the regulation and the precept involve a prescription, in the case of the precept neither is there a sense of enforcing, rescinding, or reinstating the rule nor does the rule have a history. Finally, a rule as principle is a covering rule for either instructions or regulations or precepts. The fourth sense of rule, therefore, is a sense of rule that is a more general sense relative to one of the other three senses. It is patent that constitutive rules which define institutions are regulations not instructions; constitutive rules are instituted, and so have authorship and law-likeness. Whether constitutive rules are also precepts depends upon whether institutions have intrinsic and instrumental worth. A good and effective constitutive rule is more than a regulation; it is also a precept.

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4. Institutions, of course, can be further organized. That is to say, social organizations can arise in which institutions are the collectivities that are related within a context of shared beliefs. Such supra-institutions also are defined through constitutive rules. Government is an obvious example of a supra-institution. Those institutions taken to be in the public sector are the collectivities related in government.

5. Although 'policy' relates to the term 'political' and thereby brings to mind governmental constitutive rules, I shall use 'policy' in a wider sense than public policy. I shall use 'policy' also for the constitutive rules of other societal institutions whether they be supra-institutions or not. The justification of so using 'policy' is lack of logical difference between constitutive rules of government and other societal institutions.

Contemporary usage of 'policy' as in 'educational policy' and 'Marietta College's Faculty Hiring Policy', and ancient usage of 'polis', the Greek etymon of 'policy' which extended affairs of state beyond the governmental, also do not restrict one's use to public policy.

6. Schema 1 presents a partial summary of this section of the paper on the nature of policy. The relation between the kinds of rules and the kinds of policy is presented.

3. Policy Analysis

1. Policy can be analyzed from many perspectives. The analysis in section 2 above was a logical one. The nature of policy was presented through a discussion of its order, i.e., its form, content, and function. It was found that policy is the regulations that define an institution by prescribing its structure and culture. This, of course, is a general analysis of policy.* One also could specify the form, content, and function of different institutions' policies. In the course of such specification, policy that is implicit would be made explicit. If comparisons were made between policies, then comparative as well as descriptive analysis would take place. Not only would institutions be described, but they would also be compared.
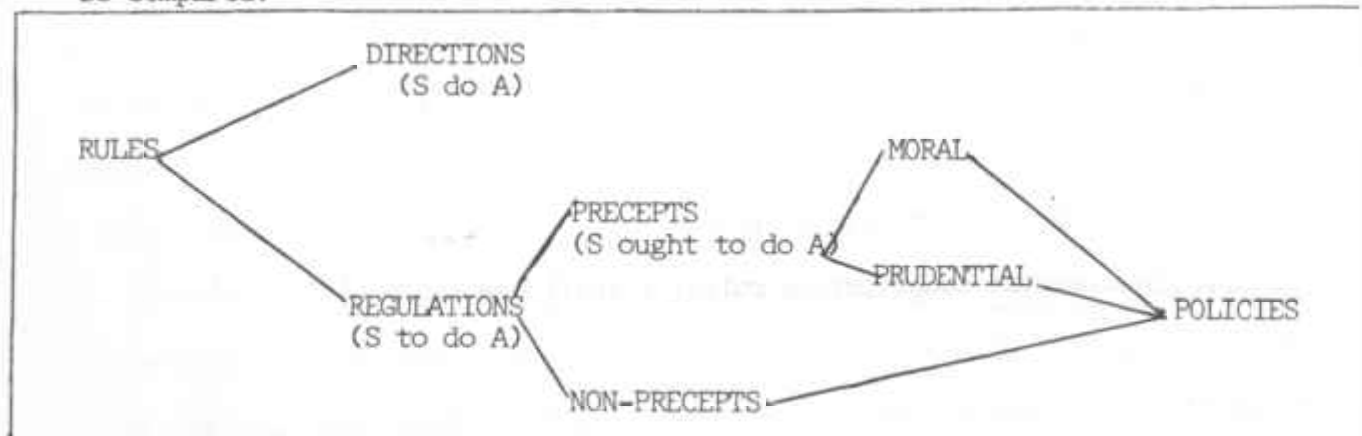
Schema 1: Kinds of Rules Related to Kinds of Policy

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*To be more precise, a logical analysis is a meta-analysis.

2. Since policy is instituted, policy is formulated (not always explicitly) and sometimes implemented (not all policy is operative). There are many aspects of policy formulation and implementation to be analyzed by the behavioral scientist. One aspect of interest to psychologists and sociologists is conflict within the process. Different persons and collectivities within an institution can disagree. Moreover, institutions within institutions can. Obviously the decision-making aspect of the instituting of policy is of interest to the political scientist. Power distribution and execution are there to be analyzed.*

3. Besides logical, descriptive, comparative, and behavioral scientific analysis of policy, there is normative analysis of policy. This kind of analysis consits in determining whether the constitutive rules defining an institution are more than regulations. As stated in 2.3, regulations also may be precepts. Because precepts may be either rules of morality or rules of prudence, both philosophical and praxiological analyses are required. Philosophical analysis directs itself to questions of morality relative to policy. Questions as to the justness of an institution which are questions as to the justness of its policy are such questions. On the other hand, praxiological analysis** directs itself to questions of prudence relative to policy. Questions as to the effectiveness of institutional regulations to bring about institutional ends are such questions.

4. The historical perspective is yet another one from which to analyze policy. Institutions do have histories, and so one can attempt to explain changes in their constitutive rules.

*A perspective that permits unification of psychological, sociological and political analyses of institutions is general systems theory. See E.S. Maccia and G.S. Maccia, "Use of SIGGS Theory Model to Characterize Educational Systems as Social Systems." (10)

**Praxiology is the science of practices, i.e., of means-ends relationship. See James E. Perry's dissertation, On the Significance of Praxiology for the Study of Education for a more comprehensive account of praxiology (12).

5. The final type of policy analysis to be distinguished is more than analysis. It is analysis directed toward the development of policy. As stated by Y. Dror who has delineated developmental policy analysis:

> One weakness of the term "analysis" is its calculative-logical connotation. In policy analysis a very important part of the job is to invent new alternatives and to engage in creative and imaginative thinking. Nevertheless, I prefer a concept which somewhat understates the role rather than too presumptuous, too "political," and too frightening a term, such as "policy adviser" or "policy consultant." (6)

Such developmental analysis can be framed within the systems analytic paradigm provided the paradigm is extended beyond its usual quantitative limits and it incorporates the political phenomenon of decision-making. (6,11)

6. Schema 2 summarizes the above discussion of policy analysis. The types of policy analysis are set forth in the diagram.
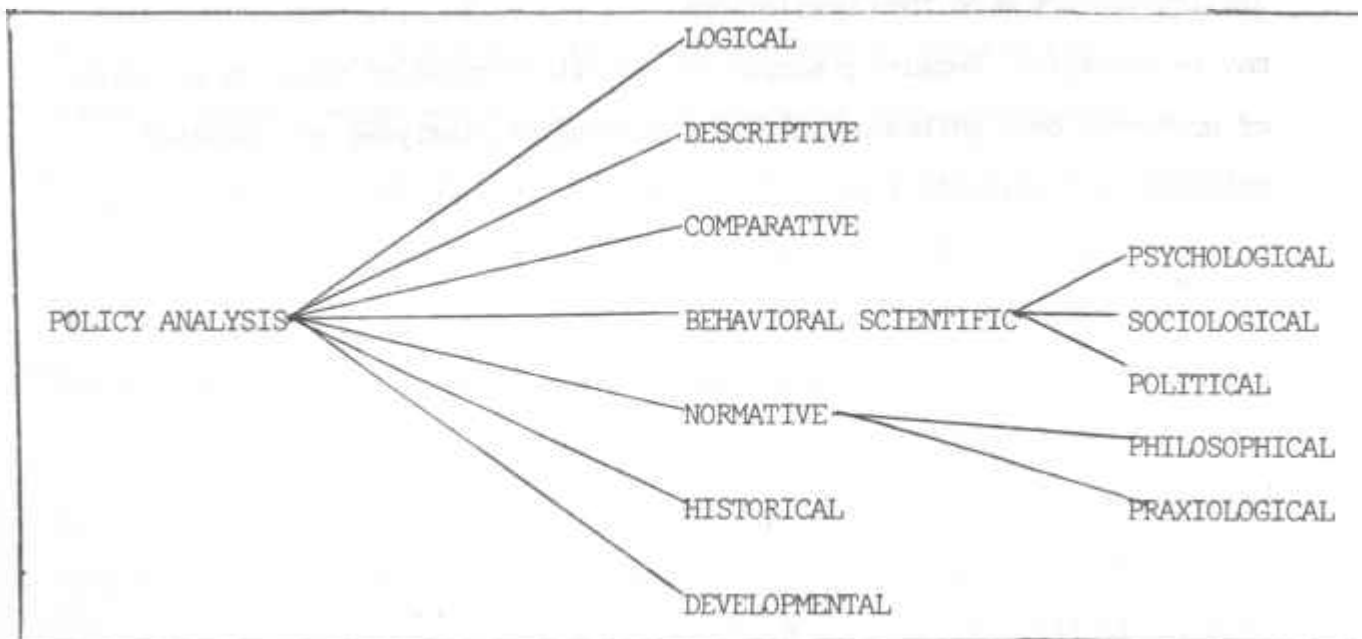
Schema 2: Types of Policy Analysis

4. Logical Analysis of Affirmative Action Plans

1. Executive Order 11246 is directed toward all universities and colleges with Federal contracts or subcontracts and requires of them compliance with that order. Consequently, Higher Education Guidelines--Executive Order 11246 is a written public policy. It consists of regulations which are principles

to be specified further by those universities and colleges that fall within the Federal domain due to their Federal contracts or subcontracts.

2. The function of Executive Order 11246 can be explicated through consideration of its two central concepts: non-discrimination and affirmative action. Non-discrimination requires that "no person may be denied employment or related benefits on grounds of his or her race, color, religion, sex, or national origin." (7) Affirmative action, as the phrase indicates, requires more than a passive stance of non-discrimination; it requires deeds that rectify inequality of opportunity due to discrimination. Employment for groups that traditionally have been discriminated against in higher education, i.e., employment for women and minorities, is called for."Minorities are defined by the Department of Labor as Negroes, Spanish-surnamed, American Indians, and Orientals." (7) As part of its affirmative action requirement, a contractor university or college must "determine whether women and minorities are "underutilized" in its employee work force and, if that is the case, to develop as part of its affirmative action program specific goals and timetables designed to overcome that underutilization.' (7)

3. In order to specify the public policy of non-discrimination and affirmative action, the universities and colleges falling under Executive Order 11246 must set forth a plan which contains more than a statement of commitment to equal employment opportunity and a statement of goals and when they are to be realized. The commitment to equal employment opportunity must be detailed through personnel policies, e.g., policies of recruitment, hiring, assignment, training, promotion, anti-nepotism, etc. The goals and time-tables must be supported through data on the respective university's or college's work force and on the availability of women and minorities for that work force. Not only must affirmative action be planned to increase numbers of women and minorities in the work force, but also to rectify any discrimination within the work force, e.g., discrimination as reflected in salaries.

To ensure that policies will not remain inoperative, plans must include evaluative mechanisms as well as disseminative ones.

4. Before turning to an analysis of the moral legitimacy of affirmative action plans, it should be pointed out that, even though it be granted that goals are quotas, public policy does not demand hiring of non-qualified personnel by institutions of higher learning. J. Stanley Pottinger, former Director of the Office of Civil Rights, argued that goals were not quotas.

> Quotas, on the one hand, imply a numerical level of employment that must be met. If quotas were required, they would be rigid requirements, and their effects would be to compel employment decisions to fulfill them, regardless of the compromising effect fulfillment might have on legitimate qualifications and standards, regardless of the good faith effort made to fulfill them, and regardless of the fact that quotas might have been set by arbitrary standards unrelated to the availability of capable applicants and the potential of the contractor to recruit them.
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> Goals, on the other hand, signify a different concept and a different employment process. They are projected levels of achievement resulting from an analysis by a contractor of his deficiencies, and of what he believes he can do about them. Establishing goals signifies both that the contractor has made such an analysis, and that he has committed himself to good faith to meet them. (13)

Sidney Hook, however, argues that goals are quotas.

> What is the logical or cognitive difference between saying (1) "You are to aim at a quota of 20% redheads for your staff within two years," and (2) "You are to set as your goal re=cruitment of 20% redheads for your staff within two years?" Quotas are numerical goals. A "quota of 20%" is equivalent to "a numerical goal of 20%." The expressions are interchangeable. The cognitive meaning of neither sentence is altered if we substitute one expression for the other. (8)

He goes on to place his argument in the context of remarks such as Pottinger's.

> Spokesmen of HEW seek to absolve themselves of the guilt of seeking to impose a quota system by insisting on a distinction that makes no difference in fact or practice. "We don't demand," they plead, "that the numerical goals we set down actually be achieved. We ask only that a good faith effort be made to achieve it." How does this differ from saying, "We don't demand that the quotas actually be filled or reached, only that you honestly try?" (8)

Stated this way, goals and quotas do not differ. But there is a difference between demanding compliance and calling for an honest try.

To call for an honest try is to give the necessary leeway for not hiring women and minorities who are not capable of functioning in a university, i.e., functioning to promote learning. While it might be, as Hook states it, "natural...to reduce standards in order to establish good faith in the quest for numerical goals or quotas" (8), it is not demanded by public policy. Even its naturalness or what happens in practice is open to question. An answer depends upon praxiological, behavioral scientific, and descriptive analyses of affirmative action plans. Perhaps the Indian experience in using quotas to achieve social justice can shed some light upon the matter. Paul Seabury asserts that this experience shows that quotas and preferences lead to extremes of absurdity. Some absurdities noted by him are:

> So-called "backward classes" proliferated to the point where it became necessary to be designated as "backward" in order to become privileged. And, indeed, in 1964, a "Backwardness Commission" recommended in the state of Mysore that every group except two (the Brahmins and the Lingayats) be officially designated as backward! (15)

> In Kanpur, recently, the son of a wealthy Jat family applied for admission to the Indian Institute of Technology and was rejected on objective criteria; then he reapplied as a member of an ethnically-scheduled caste, and on this basis was admitted. (15)

5. Philosophical Analysis of Affirmative Action Plans

1. All would admit that we want to live in a just society. But all do not agree as to what a just society is. Some would hold utilitarianism and take the just society to be one in which its institutions maximize the net balance of satisfaction summed over all the individuals belonging to the group. But surely each individual has an inviolability that cannot be overridden by the welfare of the group. Also some would hold that all individuals should be treated equally. But surely there are differences in individuals. By accepting a Kantian position on justice, such as Rawls' (14), both inviolability and differences need not be set aside and communality is possible.

2. Kant's categorical imperative stated as the principle of universality:

> Act only on the maxim whereby thou canst at the same time will
> that it should become a universal law

sets forth that subjective choosing ought to be objective. Thus, this
principle is a normalcy one for rational beings. It is a requirement for
being rational. The stating of the categorical imperative as the principle
of autonomy:

> So act that the will could at the same time regard itself as
> giving in its maxims universal laws

makes clear that subjective choosing which is objective is also a will con-
ditioning itself or a good will. Thus, this principle establishes liberty.
It is a requirement for freedom. Finally, the stating of the categorical
imperative as the principle of humanity:

> So act that in your own person as well as in the person of every
> other you are treating mankind also as an end, never merely as
> a means

makes subjective choosing which is objective respect for the self. Thus,
this principle establishes inviolability. It is a requirement for communality.
All together these principles are the categorical imperative which is the
basis for rational conference and agreement, i.e., for fairness.

    3. Rawls sets forth two principles of social justice that he takes to
be chosen by human beings who are rational.

> First: each person is to have equal right to the most extensive
> basic liberty compatible with a similar liberty for others.
>
> Second: social and economic inequalities are to be arranged so
> that they are both (a) reasonably expected to be to everyone's
> advantage, and (b) attached to positions and offices open to all. (14)

Rawls restates the second principle to clarify that a difference principle
operates as well as a principle of equality of opportunity:

> Social and economic inequalities are to be arranged so that
> they are both (a) to the greatest benefit of the least advan-
> taged and (b) attached to offices and positions open to all
> under conditions of fair equality of opportunity. (14)

These two principles set forth the policy for society's assignment of rights
and duties and for the distribution of social and economic advantages.

This policy is not simply regulative but is also moral precept. Consequently, Rawls' two principles are a basis for philosophical analysis of policy.

4. Since affirmative action plans specify policy about the distribution of social and economic advantages, philosophical analysis will be in terms of rawls' second principle. This principle is not one of redress in the sense of requiring society to try to compensate for inequalities so that everyone on a fair basis could compete with everyone else. However, the second principle does demand recognition that the advantaged are not to gain because of their native assets or social circumstances but because of benefiting the disadvantaged. The advantaged are not deserving of greater social and economic rewards than the disadvantaged, inequalities of birth or station are not merited. Hence, no one should gain or lose from one's arbitrary place in the distribution of natural assets or social circumstances without gaining or receiving compensatory advantages in return. In other words, the second principle is an agreement to share in the benefits of the distribution of natural talents whatever it might be. Rationality, therefore, is non-supportive of either a meritocracy or a technocracy. These are unjust social arrangements. Still, the second principle does not perpetuate the status quo. Earlier generations owe to later generations the implementation of policies, including eugenic ones, which will, if it can be done, move the society toward equal talent.

5. Patently, the affirmative action plans constitute policy that is moral as well as regulative. The second principle of justice is embodied in the two basic concepts of affirmative action plans, non-discrimination and affirmative action. Non-discrimination relates to the principle of equal opportunity, while affirmative action relates to the principle of difference. By not discriminating on the basis of characteristics non-qualifying for promoting learning, equal opportunity for employment within universities and colleges is possible.

By actually hiring women and minorities qualified to promote learning, talents formerly unavailable result in benefit for all.

6. Sidney Hook has called affirmative action plans immoral on the grounds that the affirmative action part of the plans is discriminatory.

> For some purposes--trade, immigration policy, rationing of scarce commodities, etc.-- a quota system may be legitimate. But when we are seeking the best qualified person or persons' for a position it is never morally legitimate, particularly when we are on record as being opposed in principle to discrimination on grounds of race, religion, sex or national origin except when these are justifiably among the qualifications, e.g., sex for certain kinds of dancers or officers for women's detention centers, religion for service in house worship, etc. (8)

Obviously, Hook is mistaken. Affirmative action does not make sex or race or national origin qualifications for promoting learning. Women and minorities are scheduled to be hired to demonstrate that being a non-minority and male are not qualifications. But what if qualified non-minority men are not hired? For example, the Female and Minority Program at the University of Minnesota was discontinued due to complaints of reverse discrimination which were made to the state human rights commission. The F & M Program opened higher paying administrative and professional jobs first to women and minorities. In one year and a half, 133 F & M jobs were filled, and only 43 of them finally by white males. (17) Again the problem is not with affirmative action. Rather the problem is one of allocating resources to hire non-minority men as well as women and minorities.

7. Given the budgetary crunch in higher education, firing not hiring, whether it be affirmative action hiring or not, faces us. If a society cannot give opportunity to its members, then that society must be reordered for justice's sake. Public policy relative to resource reallocation is required. Resources must be reallocated from that which is destructive of human spirit to that which is not. Only in the context of such public policy can affirmative action plans further the just society.

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