Facts and Norms in Policy Scholarship

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Policy debates are fundamentally debates about what to *do* and so require both factual and normative premises. Empirical policy researchers, especially when engaged in investigations that do not issue explicit policy recommendations, might prefer to think that their analyses avoid normative commitments, at least controversial ones. Ethicists and social philosophers who pass judgment on social policies may believe that their analyses rely on only noncontroversial empirical premises. Both parties are mistaken. Policy scholars often depend on tacit normative commitments that are problematic. Philosophers often help themselves to empirical premises which are more matters of faith than confirmed fact. The former point, to which I turn briefly, is the more familiar, but the latter raises important questions less often discussed.

Concealed Norms

Consider the debate over tracking. In *The Tracking Wars*, Tom Loveless briefly summarizes the literature on the effects of tracking under two headings—the effect of tracking (and untracking) on student achievement and on equity. Equity is defined as "tracking's impact on the distribution of achievement."[1] Loveless is here simply summarizing the work of other empirical researchers, but surely academic achievement is not the only thing that changes when students are grouped together in one way rather than another.

As philosopher Kenneth Howe points out, the exclusive focus on academic achievement scores reflects a narrow view of the purposes of schooling, "Tracking ought to be viewed from a broader perspective, one more attuned to the demands of democracy and justice."[2] Or, take John Witte's evaluation of the Milwaukee voucher experiment. His dependent variables include scores on the Iowa test of Basic Skills and measures of parental involvement in their children's education and parental satisfaction, all important outcomes, but surely not the *only* ones that are significant.[3] For example, the voucher children—compared to their controlled counterparts in the public schools—may be more (or less) likely to develop a commitment to learning, to make friends with those from other social backgrounds or neighborhoods, to feel a sense of efficacy or community. Many, including Witte, I am sure, would deem these consequences of fundamental importance, yet they play no role in the evaluation, probably because they cannot be reliably measured. Nor, I might add, has Witte inquired into changes in the attitudes of teachers or citizens toward their students or toward public or private schooling.

Not only do empirical researchers often focus on a limited number of potentially significant consequences, those they do select, for all their seeming obviousness, may be more contentious than is sometimes realized. Start with academic achievement, itself. How is it to be assessed? Typically the assessments need to be comparable across all schools and they need to be amenable to quantitative treatment if researchers like Witte are to be in a position to say that voucher school kids or their

public school counterparts achieve (on the average) so many percentage points or grade equivalents higher. Hence the focus on tests like the Iowa test. What this means is that any private school with a distinctive view of the contribution it wishes to make to students' intellectual development or with a nontraditional view of when to teach reading would be forced to measure itself by a measuring rod ill-suited to its program and underlying philosophy.

Take parental satisfaction with children's schooling, another of the principal variables considered by investigators of school choice. Is it significant regardless of the reason why? Parents might be more satisfied because their kids are happier though not learning any more, because they, themselves, have made new friends, or because the new school is more convenient for them. To many, these reasons would be illegitimate. But, it will be argued, if parents are those legally entrusted with educating their children, should not their opinion always carry great weight? Not necessarily, as the following illustration shows.

As part of the massive resistance to racial integration in the South following the *Brown* decision in 1954, a number of school districts adopted "freedom of choice" programs, giving all parents a choice of schools, but actually preventing black parents from exercising that choice. Imagine that an empirical study of this arrangement had been conducted with the same results—parents in districts that offered "freedom of choice plans" were more satisfied than those from districts that initiated more coercive measures. Should these results carry similar weight? The answer will, I think, vary with the normative perspective of the researcher, a point I will return to below.

The argument so far, and it is not especially novel, is that the identification of a small set of consequences as key indicators of success and failure presupposes normative commitments. When reported in the press, their results feed back into the public arena and play a role in shaping the public's perceptions, not simply of which policies are superior, but of which *consequences are worthy of attention*.[4] I daresay that this may be the most durable consequence of mainstream empirical research on vouchers and charter schools.

Dubious Facts

What is less studied or even noticed is that the normative arguments provided by philosophers which endorse or challenge existing educational policies and practices are dependent on "facts," some of which, though critical to the conclusions are rarely questioned. I will focus on three illustrations: an argument against tracking, one favoring affirmative action, and a broader argument for justice in education.

Howe, as I have already mentioned, contends that the conventional way of thinking about tracking is too narrow. A serious focus on transmitting the norms and the understanding required for democratic citizenship will, he claims, have implications for grouping students:

> [It] creates a strong presumption against school segregation in all its forms, for it is unlikely that students segregated into tracks can still learn to afford recognition to those quite different from themselves, particularly in light of the status differences that such segregation creates.[5]

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I doubt that Howe intends the first sentence literally, for that would mean abolishing segregation by age as well, something he does not appear to advocate. Note that Howe appears to claim that students differing in academic ability are "quite different" from each other. On what does he base this claim? He also appears to believe that detracking would facilitate students of varying abilities coming to understand and appreciate each other. Might it not do the reverse, that is confirm the more able students' sense of superiority and entitlement and the less able students' sense of inadequacy and resentment? Here is the view of a teacher in a selective private school, Beit Rabban, interviewed by Daniel Pekarsky,

> Gifted children who attend regular schools constantly find themselves knowing answers that other children don't. Without any effort at all, they're ahead of the pack, bored out of their minds….It's simply not true that rubbing shoulders day in day out with less able children gives rise to egalitarian sentiments, any more than spending time in a racially mixed classroom necessarily gives rise to racial tolerance and respect. Too often, the opposite is the result: they learn less than they might, while developing an inflated view of themselves and a disparaging view of their peers.[6]

No doubt Howe is especially sensitive to the fact that tracking by academic ability amounts in certain contexts to segregation by social class and by race. In schools with substantial white and black populations, for example, whites often predominate in the higher tracks, blacks, in the lower. Does Howe have any evidence that the experience of the Beit Rabban teacher is anomalous? Even if interclass or interracial tensions are Howe's primary concern, what relevance does this have for major metropolitan areas where schools are almost entirely racially segregated? Would Howe claim that even here students in different tracks are "quite different" from each other? My point here is not so much to claim that Howe's conjectures are false but that they are unsubstantiated.

Philosophers have assailed as well as defended racial preferences in admissions and hiring. Consider Walter Feinberg's powerful brief for affirmative action for African Americans.[7] Feinberg argues that the moral case for affirmative action rests on the notion of a debt owed to victims of injustice, the slaves, a debt that can now be repaid only to their descendants. Feinberg emphasizes the difference in legal and moral status between the slave and even the poorest immigrant. In defending race-based affirmative action, Feinberg asserts that it connects to important principles accepted by both conservatives and liberals, among them the principle "that where inequities have developed and continue because of a group stigma, steps must be taken to remove the stigma from individual members of the group."[8]

Now I have no wish to quarrel with Feinberg's normative claim about the debt owed to the slaves, but note an empirical assumption on which his policy to repay the debt through affirmative action programs (among other remedies) rests—that race-based affirmative action *actually* helps "remove" the stigma from individual African Americans. But does it? This is, to say the least, debatable. Consider Glenn Loury's analysis of preferential admissions policies.[9] Loury neither denies the existence of a historic injustice nor the existence of racial discrimination in the present, yet he challenges racial preferences in admissions and hiring decisions. Loury points out that if the bar of entry to a job or school is lowered for blacks, those blacks who fail to be admitted will be perceived by outsiders to be *very* unqualified

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while those whites who are admitted will be perceived to be *very* qualified. This means that "the outside reputations of most blacks will be *lowered*, and that of most whites *enhanced*."[10]

Loury continues,

> The political discourse over affirmative action harbors a paradoxical subtext: Middle-class blacks seek equality of status with whites by calling attention to their own limited achievements, thereby establishing the need for preferential policies. At the same time, sympathetic white elites, by granting black demands, thereby acknowledge that, without their patronage, blacks' penetration of the upper reaches of American society would be impossible. The paradox is that, although equality is the goal of the enterprise, this manifestly is not an exchange among equals, and it never can be.…It is morally unjustified—and to this African American, humiliating—that preferential treatment based on race should become institutionalized for those of us now enjoying all the advantages of middle-class life. The thought that my sons would come to see themselves as presumptively disadvantaged because of their race is unbearable to me.[11]

I do not claim that Loury is necessarily right, only that Feinberg's policy proposal is based on a contestable empirical premise, one which he sees no need to consider.

Take, finally, a look at Kenneth Strike's powerful application of a Rawlsian conception of justice to society and education. Strike concludes his intricate analysis in this way:

> Society has the obligation to overcome inequalities of opportunity which result from membership in a socially relevant group.…But this obligation does not extend to eliminating the effects on opportunity of social contingencies not linked to membership in a socially relevant group.[12]

This is vague guidance without a definition of "socially relevant group" and in a footnote, Strike provides a such a definition as "one constituted by an illegitimate or irrelevant criterion for classification, such as race or SES."[13] Strike acknowledges that schools may have limited power to eliminate SES inequalities and so he countenances substantial redistributive measures beyond the school. Indeed he views his own normative doctrine as "potentially a very radical one,"[14] for "Variance in wealth must…be narrowed to the point where social advantage ceases to be inherited."[15] But is Strike aware of just how radical this policy is? I do not think so. He supposes that narrowing or perhaps eliminating the wealth gap would also eliminate any advantages of high SES children had over their low SES counterparts. This would indeed be the case were one of Strike's empirical premises true: "I assume that there is strict equality of capacity between relevant social groups. Whatever differences in capacity which may exist between individuals are proportionately distributed among relevant groups."[16]

Suppose, however, we assume with scholars such as Arthur Jensen or Charles Murray and Richard Herrnstein that class differences *result* from variations in *heritable cognitive ability*.[17] On their reading, the failure of compensatory education programs to substantially alter the educational trajectory of lower class children is one of the pieces of evidence which supports the conclusion that group differences in capacity *do* exist. If these scholars are right, eliminating the wealth gap might be insufficient. The wealthy would have to be impoverished and vice-versa, and even this might fail to yield the desired result. (On the Rawlsian view, reducing the

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opportunities of the advantaged would continue until the opportunities of the disadvantaged began to also be reduced.) I doubt that Strike would be comfortable with these extreme measures.

The position of Jensen and Murray and Herrnstein stressing the influence of heredity is admittedly a minority view, but my main point again is not that these authors are correct, only that Strike's normative position rests on an empirical claim that is, at the very least, contested.

But surely, it will be said, we do not and should not expect normative ethicists and social philosophers to limit themselves to facts about individuals or society that are beyond dispute—that would be tantamount to issuing them a cease and desist order—for it is fair to say that none of these contested empirical claims is likely to be confirmed or refuted beyond a reasonable doubt. Besides, the objection will continue, normative theorists cannot be expected to provide the cost-benefit analyses that depend on detailed empirical evidence pertinent to specific policies. Their task in the intellectual division of labor is to formulate broad principles with enough built-in flexibility to be applicable to diverse factual situations. At times, normative theorists may make tacit, if not explicit empirical assumptions about people and societies, but these do not need to be accurately nailed down, merely plausible.

Although this position is, itself, plausible, I do not think it is correct if the philosopher means to instruct us on what we ought to *do*, for if she is wrong about the particular facts she is counting on, the policy she is advocating may, if enacted, prove not simply marginally less successful than anticipated but disastrous. Suppose that Howe's faith in the beneficial consequences of integration is, in fact, misplaced; then Howe's philosophically motivated detracking proposal will actually exacerbate the problem of interclass respect. Suppose that Loury is right? Then affirmative action in admissions will work to *reinforce* the stigma the policy is designed to eliminate. Suppose that Murray is right; then Strike's normative policy, if enacted, would require a degree of social disruption far beyond anything he contemplated. Just as the empirical researcher's blindness to consequences that do not show up on her radar screen may yield policies with myriad untoward effects, so the normative theorist's mistaken empirical premises may yield disastrous policies.

Background Facts and Norms

I have so far argued that there is a symmetry between the normative and empirical premises that ground a policy analysis, but there are two, less direct ways norms undergird discussion of policy even if they do not explicitly enter the analysis.

One, consider the policies we have discussed: detracking, affirmative action, and redistribution of resources. Now ask, what motivates these policies? The immediate answer is an undisputed *fact*: the gap between the economic fortunes of more and less advantaged groups. But why should this gap trouble some so intensely, yet leave others relatively undisturbed? The answer is that the same facts take on different meanings depending on the *normative* lens through which they are seen. To some the income and wealth gap between classes represents a mildly unfortunate but predictable working out of the natural distribution of talents and energies; to others it is a prime indicator of an unjust society.

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To see this more clearly consider the way in which local control of public education affects the distribution of financial resources. Due to local control, the children of wealthy parents have more spent on their public school education than the children of poor parents. No one denies this fact, but it may be viewed differently by different normative theorists. To some conservative theorists, it is entirely appropriate; why should parents be prevented from buying the best education they can for their children and why should they be forced to subsidize the education of other people's children? To a theorist who follows Amy Gutmann, the disparity in educational spending is permissible so long as the poor children receive an education that reaches a threshold sufficient for citizenship.[18] To a theorist who agrees with Harry Brighouse, local control is *unjust* on its face so long as neighborhoods are stratified by income. He reasons that in a competitive society unequal rewards must be deserved and "For inequalities of income to be deserved, educational inequalities must not be due to family background circumstances or family choices."[19] The same facts can be given very different readings depending on the author's normative framework; therefore, an underlying normative orientation grounds policy scholarship.

The second way in which normative theories enter policy discussions has already been suggested earlier in connection with my claim that parental satisfaction with their children's education may not always be legitimate. I suggested that some might claim that the satisfaction of white parents resisting the desegregation order not be counted as providing support for the "freedom of choice" policy. This is but one illustration of a broader point.

The consequences of a policy are always relevant to its evaluation and principal among those consequences are the satisfactions and dissatisfactions of those they impact, but the investigator's *normative theory* will determine whether a given satisfaction is *worthy* of consideration. Whether the satisfactions of *all* of those impacted by a policy should count in evaluating that policy depends on a normative theory. So, if the issue is school vouchers, some, like libertarian Loren Lomasky would say that parental satisfaction with their children's education is always significant because parents have a *right* to educate their children as they see fit.[20] Others who, like James Dwyer, believe that no one, not even parents, have rights over their children, might restrict the class of those whose satisfactions deserve to be counted to those who are demonstrably committed to their children's healthy psychological and educational development.[21] Similarly, he as well as others would argue that the normative status of the institutional background counts—for example, the dissatisfactions of parents who are the beneficiaries of unjust educational provisions ought not to be counted against a policy designed to remedy the injustice. The point here is that it is the normative theory which determines which satisfactions are *admissible* to the analysis. In both these ways, then, normative considerations appear to be decisive: in determining the admissibility of facts and in providing a lens through which these facts are filtered.

There is, however, another side to the story, one that implicates certain kinds of *facts* at the heart of the normative theories themselves, (not merely in the events and states of affairs that undergird the judgment that a particular situation is, for

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example, legitimate or unfair). Consider the arguments of Howe, Feinberg, Strike, and Brighouse; they are all attempts to respond to differential economic and political outcomes between classes and racial groups that they consider not simply regrettable but the result of *unfair* advantages and disadvantages. Each of these theorists would, I think, endorse an argument for equality of opportunity that is put forward most clearly by Brighouse. I cite the first three (out of six) premises of the argument though my interest focuses exclusively on the second:

> 1. Where social institutions license unequal rewards, the competition for them must be designed to ensure that the individuals who benefit from the rewards, *deserve* to in some sense.
> 2. Unequal rewards are only *deserved* if the candidates can reasonably be held responsible for their level of success in the competition for them.
> 3. Where someone's level of success in the labor market is due *to some extent* to their family background circumstances, or their family's choices, it is unreasonable to hold the competitor responsible for that level of success *to that extent*.[22]

In commenting on the second premise, Brighouse claims that it is relatively noncontroversial; "it is part of the idea of desert that people deserve what they *are* responsible for and do not deserve what they *are not* responsible for."[23] Now note a subtle shift between premise two, which speaks of *holding* people responsible and the supporting claim that speaks of *being* responsible. I take Brighouse here to be not merely stating a tautology, that people deserve what they deserve. I take him to be drawing on the fundamental distinction between what individuals have control over and what they do not and making the normative claim that people should be held responsible only for the former.

What I want to point out is that the claim that people *are* responsible for some things but not others is a substantive empirical claim about humans, a very general one to be sure, indeed a fundamental axiom of common-sense morality. But it becomes controversial as soon as the theorist tries to identify *what* it is that we are responsible for. To illustrate, consider sisters who work for the same computer company: June, a highly paid software designer and Jan who earns minimum wage cleaning the company offices. Are their hugely disparate rewards deserved? Suppose that June, always an ambitious, highly focused student, has an advanced degree in computer science, while Jan, flitting from one activity to another during her youth, dropped out after her freshman year of college. Now Brighouse (and other followers of John Rawls) will argue that since June's success flows from her talent, which is largely the result of her genetic constitution, which is not the result of any effort or choice of hers, the disparity is undeserved since a person has no more control over the genes she inherits than for the social background of her parents. Others, like John Kekes, to take one example, would argue that talent is not something that simply grows like hair nor something whose nurture depends primarily on circumstances; it depends on what someone *chooses* to make of the circumstances she is born into, her *decisions* to develop the capacities she has and to persevere in that development even when more attractive pursuits present themselves.[24] Since both sisters had the same opportunities to develop whatever capacities they inherited but only June *chose to exercise* those opportunities, the disparity of social reward that results from those choices *is* deserved.

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Now the Rawlsian will retort that even the ability to focus in a sustained way rather than being scatterbrained is dependent on biological features of the brain which a person is born with. The Kekesian can counter that the Rawlsian's position is tantamount to denying that individuals are responsible for their actions, leading ultimately to an abandonment of morality itself. It is not my intention to try to adjudicate this dispute. My point is simply that debates among normative theorists are, in part, debates, about fundamental questions of fact—what humans *are* capable of controlling and hence what they *ought to* be held responsible for.

I have been arguing that divergent normative positions may result from disputes about fundamental human facts. There is, unfortunately, no reason to think such disputes are resolvable either. What, then, is to be done? Contestable empirical and evaluative premises are unavoidable. The conclusions reached by both normative theorists and empirical researchers with respect to educational policies are much less robust, much more open to challenge, than their practitioners are want to realize. Can anything be done? It is not my role to guide empirical scholars, but I will offer a suggestion to normative theorists who tackle policy issues. What you should do depends on the audience you are trying to reach. Suppose you are trying to reaffirm the convictions of those who already share your conclusions and you are aware that your empirical assumptions are not beyond reasonable doubt—why mention that fact since it is likely to undermine the conclusions you wish to assert? Suppose, on the other hand you are trying to persuade someone who is likely to disagree with your conclusions. Here, instead of assuming that the facts which obtain are those most friendly to your conclusions, assume the facts that your opponents assert. If your policy conclusions still follow, you may be confident that your argument is a powerful one, one that will have to be taken seriously by anyone with a degree of openness to normative argumentation.

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1. Tom Loveless, *The Tracking Wars: State Reform Meets School Policy* (Washington, D.C.: Brookings Institution Press, 1999), 6.

2. Kenneth Howe, *Understanding Equal Educational Opportunity* (New York: Teachers College Press, 1997), 83.

3. John Witte, "The Milwaukee Voucher Experiment," *Educational Evaluation and Policy Analysis* 20, no. 4 (Winter 1998): 229-52. For investigations that include a much richer set of dependent variables, see the forthcoming William Howell, Paul Peterson, Patrick Wolf, and David Campbell, *The Education Gap: Vouchers and Urban Schools* (Washington, DC.: Brookings Institution Press, 2002).

4. For a similar point, see the Appendix, "How Could Ethics Matter to Economics?" in *Economic Analysis and Moral Philosophy*, ed. Daniel Hasuman and Michael McPherson (Cambridge: Cambridge University Press, 1996): 209-20.

5. Howe, *Understanding Equal Educational Opportunity*, 83.

6. Daniel Pekarsky, *Beit Rabban: A Vision-Guided School in Action* (unpublished manuscript, 2000).

7. Walter Feinberg, *On Higher Ground: Education and the Case for Affirmative Action* (New York: Teachers College Press, 1998).

8. Ibid., 72.

9. Glenn C. Loury, "How to Mend Affirmative Action," *The Public Interest* 127 (Spring 1997): 34-43.

10. Ibid., 39, emphasis added.

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11. Ibid., 42.

12. Kenneth A. Strike, *Educational Policy and the Just Society* (Urbana, IL: University of Illinois Press), 239.

13. Ibid., 266.

14. Ibid., 235.

15. Ibid.

16. Ibid., 188-89.

17. See Arthur R. Jensen, *Educability and Group Differences* (New York: Harper and Row, 1973); and Richard J. Herrnstein and Charles Murray, *The Bell Curve: Intelligence and Class Structure in American Life* (New York: The Free Press, 1994).

18. Amy Gutmann, *Democratic Education* (Princeton, NJ: Princeton University Press, 1987), chap. 5.

19. Harry Brighouse, *School Choice and Social Justice* (Oxford: Oxford University Press, 2000), 117.

20. Loren Lomasky, *Persons, Rights, and the Moral Community* (New York: Oxford University Press, 1987), chap. 7.

21. James Dwyer, *Religious Schools v. Children's Rights* (Ithaca: Cornell University Press, 1998), chaps. 3 and 4.

22. Brighouse, *School Choice and Social Justice*, 117.

23. Ibid., 119, emphasis added.

24. John Kekes, *Against Liberalism* (Ithaca: Cornell University Press, 1997), chap. 6.

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