Fairness Issues in Law and Mental Health: Directions for Future Social Work Research

Jose B. Ashford
Arizona State University

Jane Holschuh
Humboldt State University

Recommended Citation

Fairness Issues in Law and Mental Health: Directions for Future Social Work Research

José B. Ashford

School of Social Work
Arizona State University

Jane Holschuh

Department of Social Work
Humboldt State University

Concepts from the procedural justice literature in social psychology are examined that offer useful guidance for social work researchers with interests in investigating informal adjudications, speciality treatment courts, and other areas of the administrative process previously neglected in mental health services research. These theoretical concepts are offered as an alternative to the therapeutic jurisprudence framework being adopted by some social workers in the field of law and mental health. The issues outlined in this paper also draw on the health services and psychotherapy literature to highlight issues involving process and procedure as social justice and their significance for advancing a new role for social work researchers in the field of law and mental health research.

This paper examines issues of fairness and justice in the field of law and mental health. Justice is one of the many moral standards employed by philosophers and ethicists to evaluate

the social institutions of any society (Folger & Cropanzano, 1998; Cohen, 1989). Justice has become a major area of study in the social and the behavioral sciences (Bierhoff, Cohen & Greenberg, 1986; Deutsch, 1985; Folger, 1984; Lerner & Lerner, 1981; Mikula, 1980; Wakefield, 1988a; Wakefield, 1988b). In addition, there is a burgeoning body of research derived from classic works in social psychology on procedural (Deutsch, 1975; Lind & Tyler, 1988; Thibault & Walker, 1975) and distributive (Greenberg & Cohen, 1982; Walster, Walster, & Berscheid, 1978) issues of justice.

Although social work as a profession has had a long-standing commitment to values of social and economic justice (CSWE, 1994; NASW, 1999), social work researchers have contributed minimally to our understanding of the role of justice in the field of law and mental health. Psychologists, psychiatrists, and lawyers have dominated most advances in this field of scientific inquiry. Yet these professionals do not possess the same avowed commitments to social justice as the profession of social work.

In the field of law and mental health, therapeutic jurisprudence has gained prominence as a useful framework for examining issues of law and policy (Tomkins & Carson, 1999). Therapeutic jurisprudence (TJ) directs researchers to concentrate on the law as a therapeutic agent by examining the therapeutic consequences of the law (Madden & Wayne, 2003). This approach to social legal inquiry focuses on whether the legal rule or practice contributes to the psychological and physical well-being of a person who is subject to legal proceedings (Rottman & Casey, 1999). For this reason, some social workers are also looking to this framework as an important guide to research and practice in the field of law and mental health (Madden & Wayne, 2003).

While this framework is consistent with values that are important to social workers, it does not take into account issues of fairness involving procedures and interpersonal processes that influence how consumers evaluate the fairness of their mental health services. Indeed TJ helps us focus on effective outcomes, but does not specify or give explicit theoretical guidance as to how the law should promote the achievement of therapeutic effects in any area of mental health law (Carson,

2003; Kress, 1999; LaFond, 1999; Sales & Shulman, 1996). This lack of theoretical guidance is one of the important reasons why social workers should be open to integrating other useful conceptual frameworks into their research of issues involving the interface of law and mental health.

The purpose of this paper is to examine how evolving theoretical conceptions of fairness in social psychology can assist social workers in advancing research in the field of law and mental health. Wakefield (1988a; 1988b) established the utility of employing distributive justice as a framework for guiding social work practice and the conceptual links between psychotherapy and justice. In this paper, we argue that social workers also need to adopt procedural justice as a framework for investigating social justice concerns in the field of law and mental health not covered by concepts in the distributive justice framework.

The paper begins with a brief overview of traditional legal assumptions about the exclusion of extra-legal factors, such as science and justice, in law and in law-like decision-making processes. To set the background, we also examine how the architects of therapeutic jurisprudence have offered useful insights about the role of science in law that can be exploited by social work researchers to realize some of their own social justice aims. Following this, we review the literature in social psychology on procedural justice to clarify how decision-making procedures and interpersonal processes are linked with social justice concerns involving issues of fairness. In examining this social science literature, we also identity concepts that can guide the research and the evaluation of services in the field of law and mental health. We conclude with a review of developments in law and mental health procedures and in interpersonal processes that can benefit from research by social workers with interest in procedural and interpersonal justice matters.

Background of the Problem

Scholars and advocates in mental health have a long history of appealing to justice in evaluating and in defending their standards of care. However, these appeals are rarely uniform

since they do not involve a claim to a distinctive principle of justice. Throughout the course of human history, a diverse array of meanings, values, and interpretations has been applied to the concept of justice. Aristotle, for instance, assumed that equality and lawfulness were two key characteristics of justice. At other points in history, different dimensions of the concept of justice have gained prominence such as fairness (Rawls, 1971), liberty (Nozick, 1974), fundamental human rights (Dworkin, 1977), impartiality (Barry, 1996), caring (Gilligan, 1977; 1982), needs (Deutsch,1985), and social utility (Pound, 1951). Policy makers, administrators, and jurists confront the perennial task of having to strike a balance between these competing moral principles. Yet, the role of social science in this selection and ranking process has not been clarified.

Traditional scholarship in justice studies has relied primarily on normative and legal methods of inquiry. As a consequence, justice issues were considered a fundamental province of the disciplines of moral philosophy and law (Faden & Beauchamp, 1986). In moral philosophy, the objective is to provide a defense or justification for theories and principles that serve as "action-guides" in social relationships (Faden & Beauchamp, 1986). For example, the prominent theories of Rawls (1971) and Nozick (1974) on social justice have stimulated substantial debate in academic and in policy circles about appropriate principles for allocating social benefits. The aims of each of these treatises on justice are different from the pragmatic aims found in traditional legal scholarship that has been challenged by the developer of TJ (Wexler, 1993). In traditional methods of legal inquiry, issues of justice arise from the specific relief sought in legal disputes (Redlich, 1981). That is, justice problems do not arise from a study of philosophical theory or from trying to resolve a general problem of justice (Cahn, 1944). In the world of Anglo-American law, justice is considered a prescriptive guide to action that is extracted from established legal precedents deemed relevant for remedying a specific legal dispute (Wexler, 1993). This doctrinal approach to justice relies on the law for guidance and not on morality, science, or principles of justice.

Although these fundamental differences between philosophy and law exist, justice is a principle that can play an

important role in law. Indeed, there are a number of prominent works in jurisprudence (Cahn, 1955; Petrazycki, 1955; Dworkin, 1977) that confront the relationship between law and morality. This relationship is often denied, however, by positivists such as Austin (1885) and Hart (1961) who assert "the absence of any connection between law and morals" (Loh, 1984, p. 640). Under a positivist theory of law, laws do not have to be morally justified to be considered valid. To some extent, this perspective has influenced the development of what Fox (1993) has termed "ambivalence" toward the legitimacy of principles of equity or justice in legal decision making. In fact, common law traditions have a long history of limiting the role of principles of equity or justice in law (Fox, 1993). Although this subordinate role is widely recognized in many traditions of law, it is astonishing that there has been such limited systematic study of the law as an agent of justice in many areas of law, including the field of mental health policy and law.

In mental health law, studies have focused on the impact of law on reforms designed to improve quality of care (Bagby, 1987; Bagby & Atkinson,1988; Miller, & Fiddleman, 1983). However, principles of justice are rarely the focal areas of concern or the primary unit of analysis. Most inquiry in this area of study has focused on the implementation of civil commitment criteria, or on whether and how court decisions have been implemented by clinical personnel or legal authorities (Peters, Miller, Schmidt, & Meeter, 1987; Reed & Lewis, 1990). Some attention (Rubin, 1996) has been devoted to evaluating the economic efficiency of the changes mandated by the courts. But, the principles of justice underlying these mandated legal changes are either implied or taken for granted. The process involved in selecting valid principles for allocating scarce resources is rarely subjected to social science methods of inquiry. This oversight is due in part to many unchallenged assumptions in traditional legal scholarship about the role of social science in assessing issues of fairness and justice. However, these unchallenged assumptions about science in law are not limited to issues of distributive justice. They also involve important procedural issues of justice.

For instance, fairness emerged as a pivotal area of concern in the field of administrative law following the landmark

decision of *Goldberg v. Kelly,* (1970). This case ushered in a veritable revolution in procedural due process in the United States in the field of social welfare (Verkuil, 1976). Verkuil (1976) pointed out that the reasoning in the Goldberg decision relied on three fundamental principles in its evaluation of the procedures due in terminating Goldberg's welfare benefits: fairness, efficiency and satisfaction. In a footnote to his article in the *University of Chicago Law Review,* he said " Two of these criteria, satisfaction and efficiency, are the province of the social sciences (sociology, psychology and economics), while the third, fairness, is primarily the province of the law" (Verkuil, 1976; p. 739). This assumption about issues of fairness, although consistent with the institutional culture of the law, severely restricts the potential role of scientific methods in evaluating issues of fairness. It also ignores the important role social science can play in designing procedures that comport with principles of fairness (Ashford, 1996).

Fairness claims are likely to increase in mental health given recent developments in the organization and in the administration of mental health services in the United States (Mechanic, 1999). Managed care is one of these developments that includes a number of decision situations involving the termination and the reduction of treatment benefits. For instance, many consumers are incensed when health care providers terminate their access to high cost medications from which they have already derived some perceived benefit. These situations confront challenging procedural issues of fairness. What level of procedural safeguards are these individuals due? How do these procedures strike an appropriate balance between the competing principles of fairness, efficiency, and satisfaction?

As Verkuil observed, "Few would disagree with the proposition that all government decision making should employ procedures that produce fair and accurate results, that are seen as doing this by those subjected to the process, and that do so at the lowest cost to the system" (1976 p., 741). Although administrative entities in mental health services have developed procedures to maximize each of these goals, researchers have devoted minimal attention to studying the relationship between these established procedures and recognized principles of justice. For instance, what impact will the level

of due process in proceedings involving termination and re-
duction of benefits have on principles of perceived fairness by
mental health consumers?

Clearly, the consequences of most procedural mechanisms
employed in informal adjudications of mental health care have
not been subjected to appropriate forms of empirical scruti-
ny. Yet procedural and distributive issues of justice are con-
fronted at each and every phase of the mental health service
system. However, as Schopp (1993) points out, the majority
of the developments in legal doctrine and in traditional legal
scholarship in mental health law are directed toward establish-
ing rules and procedures to protect issues of individual liberty.
In his view, this emphasis "sometimes constrains the manner
in which the mental health system can pursue its therapeutic
mission..." In our view, it also constrains the system's capac-
ity to serve the ends of justice in distributing desirable treat-
ment benefits. For this reason, we are proposing that there is a
need to establish a special research agenda for social workers
in mental health law and services research that targets proce-
dural and distributive issues of justice. However, this paper
is focusing only on examining the contributions of procedural
issues of justice to illustrate the utility of a specific body of
theory in the social science literature that can help social work
researchers structure investigations of justice in the field of law
and mental health.

Process and Procedure As Social Justice

A very basic characteristic of human existence is that we
live our lives in relationships with other human beings. From
its earliest beginnings, the profession of social work recognized
the importance of these human relationships and "attempted
to employ the concept of relationship in a conscious and de-
liberate way for the benefit of the people served" (Macht &
Ashford, 1991, p. 47). Indeed, concepts of process and relation-
ship were focal concerns in many of the early writings of social
work (Compton and Galloway, 1975 Hamilton, 1951; Perlman,
1964). Yet, in recent years, process and relationship issues have
taken a back seat to consideration of outcomes following shifts
in administrative priorities from issues of quality of care to

issues of costs.

Although relationships have been established between the therapeutic alliance and improved outcomes in psychothera-py research (Hovarth & Greenberg, 1994), there is a paucity of studies examining the role of relationships in case man-agement services for persons with serious mental disorders and their role in improving outcomes. (Draine & Solomon, 1996; Howgego, Yellowlees, Owen, Meldrum, & Dark, 2003; Solomon, Draine & Delaney, 1995). Some services research-ers (Howgego et al. 2003) have argued that relationships have been neglected in the case management literature because of a lack of appropriate concepts for studying relationships or al-liances between the case managers and their consumers. We believe that the social psychology literature on procedural justice offers excellent concepts for guiding investigations of dimensions of relationships in case management and other areas of mental health services delivery that are neglected by the concept of a working alliance and other conceptualizations of therapeutic relationships.

In the psychology of justice literature, process and relation-ships emerged as central units of analysis in the second wave of justice research (Ashford & Faith, 2004). The first wave of research concentrated on understanding how people reacted to the outcomes of resource allocation decisions (Adams, 1965; Deutsch, 1985). Researchers wanted to know the conditions under which equity, equality, and need served as appropriate standards for evaluating issues of fairness (Brockner & Siegel, 1996; Folger & Cropanzano, 1998). They examined how people judged the fairness of the outcomes associated with resource allocation decisions (Brockner & Siegel, 1996; p. 390). This ap-proach to the study of justice focused on describing and under-standing the perceptions of people. Unlike in philosophy, this scientific approach to the study of justice assumes that" justice is defined phenomenologically. That is, an act is 'just' because someone thinks it is just and responds accordingly" (Folger & Cropanzano, 1998, pp.xiv).

The second wave of research in the justice literature con-centrated on examining the contributions of procedures to per-ceptions of fairness. This line of research was initiated by the seminal work of Thibaut and Walker (1975). These scholars

investigated how adversarial and inquisitorial approaches to legal disputes influenced judgments of fairness. Their research specifically looked at the relative contributions of control over the decision and control over the process in explaining judgments of fairness. The findings of their initial investigations indicated that disputants were willing to forgo decision control if they were given appropriate control over the process. These findings about the independent contributions of process control to perceptions of fairness launched an area of inquiry in psychology and the social sciences that continues to this day (Folger & Cropanzano, 1998).

Thibaut and Walker's (1975) conceptual formulation of procedural justice adopts a social exchange approach to the procedural effects observed in their research on dispute processes (Tyler & Blader, 2000). In their conceptualization of procedural justice, it is assumed that people seek to maximize their outcomes in situations where they lack control over the decisions by substituting their direct control over the outcomes with a form of indirect control over how evidence is presented in dispute processes. Their focus on the structural aspects of procedures is consistent with conceptions of fairness in formal legal theory that equate fairness with notions of due process of law. Lind and Tyler (1988) have proposed, however, an alternative model of procedural justice that explains many observed procedural effects in legal and other organizational settings that are not accounted for by Thibaut and Walker's (1975; 1978) control theory. Their group-value model takes a relational or social approach to investigating how procedures influence judgments of fairness (Tyler & Blader, 2000; Tyler, 1989) that we believe holds significant promise for social work researchers.

Humans depend on other people for meeting many needs. In the social psychology literature, Folger and Crapanzano (1998) have identified two of these broad sets of needs: economic or quasi-economic needs, and socioemotional needs. Economic needs refer to all of the concrete material things that people require in order to exist in society that cannot be fulfilled without social cooperation (e.g., food, shelter, clothing, and money). Many forms of self-interest theory, including social exchange theory, assume that people are "motivated to

maximize their personal outcomes, particularly outcomes that
are concrete, tangible and material" (Brockner & Segal, 1996, p.
399). Moreover, self-interest theory is one of the predominate
explanations that have been examined widely in the psychol-
ogy of justice literature for understanding procedural effects
observed in studies of perceptions of fairness (Tyler & Blader,
2000).

Socioemotional needs, on the other hand, refer to a class of
needs that many social psychologists assume are more closely
aligned with a person's social nature (Folger & Crapanzano,
1998). As Lind and Tyler (1988) point out, people engage and
cooperate in groups for psychological and social reasons that
are not related simply to material needs. Their theory takes into
account many of the assumptions derived from social-identity
theory (Tajfel, 1982; Tajfel & Turner, 1979) which contends that
humans also are motivated by their need for being valued and
esteemed by others. In their theory, it is assumed that issues of
identity and social inclusion provide insights into why people
value group membership. In addition, Tyler and Blader (2000)
posit that group identification provides alternative explana-
tions for what people mean when they say that an organization
or a social institution's procedures are fair. Indeed, Lind and
Tyler's (1988) relational approach has demonstrated in studies
across settings and contexts that people evaluate procedures
using the relational information that these procedures convey
in addition to the outcomes that they experience from the pro-
cedures (Lind & Tyler, 1988; Tyler, Boeckmann, Smith & Huo,
1997; Tyler & Smith, 1997).

Tyler and Lind (1992) have extended their group-value
thesis to examining the deference of people to the decisions of
authorities. In this expanded version of group-value theory,
they have continued to focus on the important role that pro-
cedures play in conveying relational information. The dis-
tinct relational variables examined in their expanded model
are: standing or status recognition, trust in the intentions or
the motives of authorities; and neutrality (Tyler, 1998; Tyler &
Degoey, 1996). Some scholars (Beis, 1987) consider the quality
of treatment that people receive from authorities as represent-
ing a third type of justice---interactional justice. "Interactional
justice was introduced as an independent, third type of

fairness contrasted with both procedural and distributive justice" (Folger & Cropanzano, 1998 p. xxiv). However, other scholars consider interactional justice as representing a variant of procedural justice. That is, this approach to procedural justice focuses less on the structure of procedures and more on the interpersonal treatment received by people in decision making processes, including interpersonal sensitivity (treating people respectfully and with dignity) and appropriate explanations (clearly and adequately explaining decisions to participants in dispute processes) (Brockner & Siegel, 1996, p. 391). Appropriate explanations are considered a component of interactional justice primarily because the kinds of explanations provided by decision makers convey information to the recipients about the motivations of the decision maker and about the participant's social standing (Ashford & Faith, 2004; Beis, 1987; Blader & Tyler, 2003).

This brief review of the procedural justice literature indicates that procedural and interactional justice are related topics that hold significant promise for treating aspects of legal and administrative processes (including interpersonal interactions) as a form of social justice. Although progress in services research is unlikely without a focus on outcomes, services research also cannot ignore the pivotal role played by relationships in the implementation of mental health interventions (Howgego et al., 2003). Early psychotherapy research devoted substantial attention to examining relational considerations in therapeutic contexts (Carkhuff & Truax, 1965; Truax& Carkhuff, 1964). More recently, research on relational considerations has adopted the concept of the working alliance to examine bonds in psychotherapeutic contexts (Hovarth & Greenberg, 1994), and in a few isolated instances, some social work researchers have extended this concept to examining relationships in the provision of case management services (Draine & Solomon, 1996; Solomon, Draine, & Delaney, 1995).

The President's New Freedom Commission Report, *Achieving the Promise: Transforming Mental Care in America* (2003) identified hope, trust, and other relational concerns as keys to achieving individual recovery for persons with serious mental disorders. The Institute of Medicine's *Crossing the Quality Chasm: A New Health System for the 21st Century* also

emphasized the importance of health care that is built upon continuously healing relationships. Despite such advocacy for the principle of respectful care in health-care relationships, there is a paucity of research that extends concepts from the social and behavioral sciences to the study of the role of therapeutic relationships in the respectful treatment of persons under various forms of legal coercion. For instance, while the efficacy of using court-ordered, community-based treatment for the seriously mentally-ill in civil commitment legal procedures is unproved (Lidz, 1998; Monahan, Swartz, & Bonnie, 2003; Parrish, 1993), the use of coercion in the treatment of substance-abusing offenders has demonstrated that clients referred by the criminal justice system for treatment are retained longer than persons not subject to the same coercive sanctions (Collins & Allison, 1983; Delong, 1988; Leukefeld & Tims, 1988; Simpson & Friend, 1988). Nonetheless, we do not know how these coercive legal strategies influence perceptions of fairness and whether these perceptions play an influential role in treatment retention and completion issues.

In addition, health services research has explicated and examined the role of social interactions in help-seeking, service utilization, and compliance with treatment regimes. This work has focused on the role of social processes (specifically, social network interactions and the social dynamics within networks) to understand how decisions about seeking services or complying with treatment are based on or influenced by these rather than by people thinking in an entirely rational, and individual, manner to choose their options and course of action. The point is that the social context of networks is the arena in which influence occurs and these decisions are made (Pescosolido, 1991, 1992, 1996). Nevertheless, there is a dearth of research in the current mental health and social work literature on how relationships and procedures influence consumer perceptions of fairness, especially in recent developments in mental health policy and law involving treatment courts and new administrative processes. However, this requires changes in conceptions of law that allow for social science to play a more important role in our legal institution. It also requires researchers in social work to adopt procedural conceptions of justice in examining various types of

therapeutic relationships.

Procedural Developments and the Promise of Investigating Issues of Procedural Justice

Since the 1980s, there has been unprecedented experimentation in state and in local courts with the integration of substance abuse and mental health treatment in the adjudication process–popularly referred to as specialty treatment courts, problem-solving courts, drug courts, mental health courts, and so forth (Casey & Rottman, 2000; Cooper & Trotter, Jr., 1994; Goldkamp, 2000; Nolan, Jr., 2001; Rottman & Casey, 1999). The growing numbers of persons with substance abuse and mental health problems entering the justice system are challenging the courts to explore alternative ways of supervising and providing mandated treatment services (Ashford, in press; Berman & Feinblatt, 2005). Some of the early research on drug courts found that having a judge in the role of case manager contributed to noted differences in treatment engagement and retention rates from that achieved by social workers, probation officers, and other more traditional case managers (Ashford, 2004; Belenko, 2001). However, none of these studies has identified the procedural mechanisms or aspects of the relationships between judges and offenders that contribute to these and other desired outcomes.

In most drug courts, judges attempt to "reinforce progress, sanctioning 'slippage' in a nonpunitive manner designed to enhance the defendant's assumption of responsibility for his or her rehabilitation, and to augment treatment services" (Copper & Trotter, 1994, p. 93). A key component of many drug courts, the use of graduated sanctions is based on the untested assumption that defendants are motivated to maximize their gains and minimize their losses by shaping their actions to be consistent with program contingencies (Ashford, Wong, & Sternbach, 2005). However, it is unclear whether the sanctioning structure is what contributes to desired outcomes or whether it is something about the nature and quality of the interpersonal treatment between judge and defendant that leads to increased levels of compliance with and engagement in treatment. Issues of this nature are fruitful areas for social

workers to apply theories of procedural justice to test competing hypotheses about treatment engagement and retention.

In civil commitment proceedings, persons with mental illness can be court-ordered to outpatient as well as inpatient treatment. Persons receiving outpatient treatment on court-ordered status often do not receive their prescribed treatments. In some cases, this problem is due to the system's failure to fulfill its legal duties as the designated mental health authority. Because of these and other forms of administrative noncompliance, some jurisdictions have begun to experiment with having increased judicial involvement in the administrative process. In these jurisdictions, judges hold report-and-review hearings to monitor whether mental health authorities are fulfilling their legal duties. Judges perform similar roles in other areas of law, including child welfare law. Yet, the literature in mental health has been virtually silent on these procedural changes, as well as general report and review processes in other areas of therapeutic law. Because social workers are actively involved in many of these legal processes, they are uniquely positioned to raise relevant empirical questions for further study about procedural innovations, including the testing of alternative procedural mechanisms deemed appropriate for such administrative processes.

Procedural justice issues are not limited to the study of mental health services only in courtroom-based contexts. Issues of identity and fairness addressed in relational theories of justice (Blader & Tyler, 2003; Tyler & Blader, 2000) also can contribute to improving our understanding of the success, or lack thereof, of other mental health interventions, including interventions designed for persons with serious and persistent mental disorders. Although services research has documented the significance of identity issues (Corrigan, 1998; Jackson, 2001; Dickerson, Sommerville, Origoni, Ringel, & Parente, 2002; Markowitz, 2001; Wright, Gronfein, & Owens, 2000), this work has not examined the independent contributions of relational issues of justice to treatment engagement and compliance issues. Program structure and interpersonal treatment by staff can contribute to feelings of stigma and/or other identity relevant attributions (Corrigan, River, Lundin, Penn, Uphoff-Wasowski, Campion, et al., 2001) that could supersede

the therapeutic benefits of treatments in motivating compliance with treatment regimens. For this reason, social workers can make a distinct contribution to services research by specifying obstacles and barriers to treatment engagement and compliance that result from procedural factors–either structural or interpersonal in nature. To this end, we recommend that members of the professional social work community give due diligence to the investigation of procedural justice effects in various areas of mental health services research. Moreover, we contend that social work is positioned uniquely among the mental health professions to play a pivotal role in examining how cultural values about cooperating with treatment authorities in legal proceedings can vary across ethnic groups and how these variations contribute to treatment engagement and compliance. In summary, theoretical developments in the social psychology of procedural and interpersonal justice offer social work researchers useful concepts for testing many service relevant hypotheses that are consistent with our profession's sanctioned commitment to issues of social justice.

Conclusions

Social work educators (Pelton, 2001; Longres & Scanlon, 2001) have again acknowledged the significance of social justice in our profession's mission. But, as Longres and Scanlon (2001) point out, the profession has not clarified how it defines social justice and how its definition can inform research and teaching activities. These educators surveyed instructors of research courses to identify topics specific to justice-oriented research and to identify theoretical frameworks or perspectives that might be in keeping with a social justice orientation. Their findings indicated that most of the instructors they surveyed could not identify appropriate theoretical frameworks or perspectives for guiding justice-oriented research. For this reason, the concept of procedural justice reviewed in this paper not only can contribute to establishing a specific research agenda in the field of law and mental health for social workers, but also holds significant promise for informing other areas of social work research involving decision-making procedures and interpersonal processes.

In the organizational psychology literature, conceptualizing process and procedure as social justice topics has contributed already to many reforms in methods of employee compensation and other areas of organizational management. These theoretical frameworks also can contribute to reforms in informal adjudication processes, speciality treatment courts, and other components of court ordered treatment. But, before social workers can integrate these concepts into their research on mental health services, they must devote increased attention to exploring the knowledge base on procedural justice in the social psychology and the social science literature. By targeting topics of fairness that are relevant to theories of justice, members of the social work profession will be better positioned to avoid the concerns raised by Longres and Scanlon (2001). Indeed, the social sciences do have an important contribution to make in dealing with issues of fairness in mental health policy and law previously neglected by traditional scholarship in law and in social work.

References

Adams, J. S. (1965). Inequity in social exchange. In L. Berkowitz (Ed.), *Advances in experimental social psychology*. (Vol. 2, 267-299). New York: Academic Press.

Ashford, J. B. (1996). Protecting the interests of juveniles on aftercare/parole. *Children and Youth Services Review. 18*, 637-654.

Ashford, J.B., & Faith, R. L. (2004). Testing models of justice and trust: A study of mediation in child dependency disputes. *Social Work Research. 28*, 18-27.

Ashford, J. B. (2004). Treating substance-abusing parents: A study of the Pima County family drug court approach. *Juvenile and Family Court Journal. 55*, 27-37.

Ashford, J.B., Wong, K., & Sternbach, K. (January, 2005). *Monterey County mentally Ill offender crime reduction evaluation report*. Sacramento CA: California Board of Corrections.

Ashford, J. (In press). Comparing the effects of judicial versus Child Protective Services relationships on parental attitudes in the juvenile dependency process. *Research on Social Work Practice.*

Austin, J. L. (1885). Lectures on jurisprudence, or the philosophy of

positive law 5th ed. London: J. Murray.

Barry, B. (1996). *Justice as impartiality.* Oxford: Clarendon Press.

Bagby, R. M. (1987). The effects of legislative reform on admission rates to psychiatric units of general hospitals. *International Journal of Law and Psychiatry. 10,* 383-394.

Bagby, R. M., & Atkinson, L. (1988). The effects of legislative reform on civil commitment admission rates: A critical analysis. *Behavioral Science and Law. 6,* 45-61.

Belenko, S. (June, 2001). *Research on drug courts; A Critical Review.* New York: The National Center on Addiction and Substance Abuse at Columbia University. (1-62).

Berman, G., 7 Feinblatt, J. (2005). *Good courts: The case for problem solving justice.* New York: The Free Press.

Bierhoff, H.W., Cohen, R. L., & Greenberg, J. (Eds.) (1986). *Justice in social relations.* New York: Plenum Press.

Blader, S. L., & Tyler, T. R. (2003). What constitutes fairness in work settings? A four-component model of procedural justice. *Human Resources Management Review. 13,* 107-126.

Brockner, J. & Siegel, P. (1996). Understanding the interaction between procedural and distributive justice: The role of trust. In R.M. Kramer& T. R. Tyler (eds). *Trust in organizations: Frontiers of theory and Research.* (390-413). Thousand Oaks: Sage Publications.

Bies, R. J. (1987). The predicament of injustice: The management of moral outrage. In B. M. Staw & L. L. Cummings (Eds.), *Research in organizational behavior.* (Vol. 9, 289-319). Greenwich, CT: JAI.

Cahn, E. (1955). *The moral decision: Right and wrong in the light of law.* Bloomington: Indiana University Press.

Carkhuff, R. R., & Traux, C. B. (1973). Training in counseling and psychotherapy: An evaluation of an integrated didactic and experiential approach. In J. Fischer (Ed.) *Interpersonal helping: Emerging Approaches for Social Work Practice,* (404-411). Springfield, Ill: Charles C. Thomas.

Casey, P., Rottman, D.B. (2000). Therapeutic jurisprudence in the courts. *Behavioral Sciences and the Law. 18,* 445-457.

Carson, D. (2003). Therapeutic jurisprudence and adversarial injustice: Questioning limits. *Western Criminology Review. 4,* 124-133.

Cohen, R. L. (1989). Fabrications of justice. *Social Justice Research, 3,* 31-46.

Cohen, R. L., & Greenberg, J. (1982). The justice concept in social psychology. In J. Greenberg & R. L. Cohen (Eds.), *Equity and justice in social behavior,* (pp.1-41). New York: Academic Press.

Collins, J. J., & Allison, M. (1993). Legal coercion and retention in drug abuse treatment. *Hospital and Community Psychiatry. 34,* 1145-1149.

Compton, B. & Galaway, B. (1979). *Social Work Processes,* Homewood,

Ill.: Dorsey Press.

Cooper, C. S., & Trotter, Jr. (1994). Recent developments in drug case management: Re-engineering the judicial process. *The Justice System Journal, 16*, 83-98.

Corrigan, P. W. (1998). The impact of stigma on severe mental illness. *Cognitive and Behavioral Practice, 5*, 202-222.

Corrigan, P. W., River, L. P., Lundin, R. K., Penn, D. L., Uphoff-Wasowski, K., Campion, J., et al. (2001). Three strategies for changing attributions about severe mental illness. *Schizophrenia Bulletin, 27*(2), 187-195.

Council on Social Work Education (4th ed.). (1994). Handbook of accreditation standards and procedures. Alexandria, VA: Author.

Delong, E. R. (1988). Legal pressure in theapeutic commmunities: In C. G. Leukenfeld & F. M. Tims (Eds.), (pp. 160-177). Rockville, MD: National Institute of Drug Abuse.

Draine, J., & Solomon, P. (1996). Case management alliance with clients in an older cohort. *Community Mental Health Journal. 32*, 125-134.

Deutsch, M. (1985). Distributive justice: A social psychological analysis. New Haven, CT: Yale University Press.

Dickerson, F. B., Sommerville, J., Origoni, A. E., Ringel, N. B., & Parente, F. (2002), Experiences of stigma among outpatients with schizophrenia. *Schizophrenia Bulletin, 28*(1), 143-155.

Dworkin, R. (1977) *Taking rights seriously*. Cambridge, Mass: Harvard University Press.

Faden, R. R., & Beauchamp, A. (1986). *History and theory of informed consent*. New York: Oxford University Press.

Folger, R. (1984). Perceived injustice, referent cognition, and the concept of comparison level. *Representative Research in Social Psychology, 14*, 88-108.

Folger, R., & Cropanzano, R. (1998). *Organizational justice and human resource management*. Thousand Oaks, CA: Sage Publications.

Fox, D. R. (1993). The autonomy-community balance and the equity-law distinction: Anarchy's task for psychological jurisprudence. *Behavioral Sciences and Law. 11*, 97-109.

Gilligan, C. (1977). In a different voice: Women's conception of self and morality. *Harvard Educational Review, 47*, 481-517.

Gilligan, C. (1982). In a different voice: Psychological theory and women's development. Cambridge, MA: Harvard University Press.

Goldberg v. Kelly, 397 U. S. 254 (1970).

Goldkamp, J. S. (April, 2000). *Emerging judicial strategies for the mentally ill in the criminal justice caseload: Mental health courts in Fort Lauderdale, Seattle, San Bernardino, and Anchorage.* Washington, DC: U.S. Department of Justice, Office of Justice programs.

Hamilton, G. (1951). *Theory and Practice of Social Case work.* (2nd

edition, revised). New York Columbia University Press.

Hart, H. L. A. (1961). *The concept of law.* Oxford: Clarendon Press.

Horvath, A.O., Greenberg, L.S. (Eds.) (1994). *The working alliance: Theory, research, and practice.* New York: John Wiley & Sons, Inc.

Howgego, I. M., Yellowlees, P., Owen, C., Meldrum, L. Dark, F. (2003). The therapeutic alliance: The key to effective patient outcome? A descriptive review of the evidence in community mental health case management. *Australian and New Zealand Journal of Psychiatry. 37,* 169-183.

Institute of Medicine (2001). Crossing the quality chasm: A new health system for the 21st century. Washington, DC: Institute of Medicine.

Jackson, R. L. (2001). *The clubhouse model: Empowering applications of theory to generalist practice.* Belmont: Brooks Cole/Thomson Learning.

Kress, K. (1999). Therapeutic jurisprudence and the resolution of value conflicts: What we can realistically expect in practice from theory. *Behavioral Sciences and the Law. 17,* 555-588.

Kramer, R. M., & Tyler, T. R. (1996). *Trust in organizations: Frontiers of theory and Research.* Thousand Oaks: Sage Publications.

Lafond, J. Q. (1999). Therapeutic jurisprudence: Can TJ be normatively neutral? Sexual Predators Laws: Their impact on participants and policy. *Arizona Law Review. 41,* 375-415.

Lerner, M. J., & Lerner, S. C. (Eds.) (1981). *The justice motive in social behavior: adapting to times of scarcity and change,* New York: Plenum Press.

Lidz, C. (1998). Coercion in psychiatric care: What have we learned form research? *Journal of the Academy of Psychiatry and Law. 265,* 631-637.

Lind, E. A., & Tyler, T. R. (1988). *The social psychology of procedural justice.* New York: Plenum.

Loh, W. (1984). *Social research in the judicial process: Cases, readings, and text.* New York: Russell Sage Foundation.

Longres, J.F., & Scanlon, E. (2001). Social justice and research curriculum. *Journal of Social Work Education. 37,* 447-463.

Leukefeld, C. G. & Tims, F. M. (1988). Compulsory treatment: A review of findings. In C. G. Leukefeld and F. M. Tims (Eds.) *Compulsory treatment of drug abuse: Research and clinical practice (NIDA Research Monograph 86, 236-251.* Rockville MD: National Institute of Drug Abuse.

Macht, M. W., & Ashford, J. B. (1991). *Introduction to Social Work and Social Welfare,* (2nd ed.). New York: Merrill.

Madden, R. G., & Wayne, R. H. (2003). Social work and the law: A therapeutic jurisprudence perspective. *Social Work. 48,* 338-347.

Markowitz, F. E. (2001). Modeling processes in recovery from mental

illness: Relationships between symptom, life satisfaction and self-concept. *Journal of Health and Social Behavior. 42*, 64-79.

Mechanic, D. (1999). *Mental health and social policy: The emergence of managed care (4 ed.)*. Needham Heights: MA. Allyn & Bacon.

Mikula, G. (Ed.) (1980). *Justice and social interaction: experimental and theoretical contributions from psychological research.* New York: Springer-Verlag.

Miller, R. D., & Fiddleman, P.B. (1983). Changes in North Carolina commitment statute: Impact on attorneys. *Bulletin of the American Academy of Psychiatry and Law. 11*, 43-50.

Monahan, J., Swartz, M. & Bonnie, R. J. (2003). Mandated treatment in the community for people with mental disorders. *Health Affairs. 22, 5*, 28-38.

National Association of Social Workers (NASW) (1999). *Code of ethics of the National Association of Social Workers.* Washington, DC: Author.

Nolan, Jr., J. L. (2001). *Reinventing justice: The American drug court movement.* Princeton: Princeton University Press.

Nozick, R (1974). *Anarchy, state and utopia.* New York: Basic Books.

Pelton, L. H. (2001). Social justice and social work. *Journal of Social Work Education. 37*, 433-439.

Perlman, H.H. (1965). Social work method: A review of the past decade. *Social Work. 10*, 166-179.

Pescosolido, B. A. (1991). Illness careers and network ties: A conceptual model of utilization and compliance. In G. Albrecht & J. Levy (Eds.), *Advances in Medical Sociology* (Vol. 2, 161-184). Greenwich, CT: JAI.

Pescosolido, B. A. (1992). Beyond rational choice: The social dynamics of how people seek help. *American Journal of Sociology, 97*(4), 1096-1138.

Pescosolido, B. A. (1996). Bringing the "community" into utilization models: How social networks link individuals to changing systems of care. In J. J. Kronenfeld (Ed.), *Research in the sociology of health care* (171-198). Greenwich, CT: JAI.

Peters, R., Miller, K. S., Schmidt, W., & Meeter, D. (1987). The effects of statutory change on the civil commitment of the mentally ill. *Law and Human Behavior. 11*, 73-99.

Petrazycki, L. J. (1955). *Law and morality.* (H.W. Babb, Trans.), Cambridge, MA: Harvard University Press (Original published 1904-1910).

The President's New Freedom Commission on Mental health (2003). Achieving the promise: Transforming mental health care in America. Final Report.

Pound, R. (1951). *Justice according to law.* London: Yale University Press.

Rawls, J. (1971). *A theory of justice.* Cambridge, MA: Harvard University Press.

Redlich, N. (1981). Foreword. In Cahn, E., *The Moral Decision: Right*

and Wrong in the light of American Law. Bloomington: Indiana University Press.

Rottman, D., Casey, P. (July, 1999). Therapeutic jurisprudence and the emergence of problem-solving courts. *National Institute of Justice Journal*. 12-19.

Rubin, J. (1996). Legal influences on the financing of mental health care. In B.D. Sales and D. W. Shuman, (Eds.) *Law, Mental Health, and Mental Disorder*, (122-147) Pacific Grove, CA: Brooks/Cole Publishing.

Sales, B. D., & Shuman,D.W. (1996). Foundations for law, mental health, and mental disorder interactions. In B.D. Sales and D.W. Shuman (Eds.) *Law, Mental Health, and Mental Disorder*, (2-14) Pacific Grove, CA: Brooks/Cole Publishing.

Schopp, R. F. (1993). Therapeutic jurisprudence and conflicts among values in mental health law. *Behavioral Sciences and Law*. *11*, 31-45.

Simpson, D. D., & friend, H. J. (1988). Legal status and long-term outcomes for addicts in the DARP follow-up project. In C. G. Leukefeld & F. M. Tims (Eds.). *Compulsory treatment of drug abuse: Research and clinical practice*. NIDA Research Monograph, Number 86.

Small, M.A. (1991). Obstacles and advocacy in children's mental health services: Managing the Medicaid maze. *Behavioral Sciences & the Law*. *9*, 179-188.

Solomon, A. (2001). *The noonday demon: An Atlas of Depression*. New York: Scribner.

Solomon, P., Draine, J., & Delaney, M.A. (1995). The working alliance and consumer case management. *Journal of Mental Health Administration*. *22*, 126-134.

Tajfel, H. (1982). *Social identity and intergroup relations*. Cambridge, UK: Cambridge University Press.

Tajfel, H., & Turner, J. (1979). An integrative theory of intergroup conflict. In W.G. Austin & S. Worchel (Eds.), *The social psychology of intergroup relations*. (pp. 33-47). Pacific Grove: CA: Brooks/Cole.

Thibaut, J., & Walker, L. (1975). *Procedural justice*. Hillsdale, NJ: Erlbaum.

Thibaut, J. , & Walker, L. (1978). A theory of procedure. *California Law Review*. *66*, 541-566.

Tomkins, A. J., Carson, D. (1999). Introduction to international perspectives on therapeutic jurisprudence. *Behavioral Sciences & the Law*. *17*, 553-554.

Traux, C. B., & Carhuff, R. R. (1973). The old and the new theory and research in counseling and psychotherapy. In J. Fischer (Ed.) *Interpersonal Helping: Emerging approaches for social work practice*, (pp. 392-403). Springfield: Charles C. Thomas.

Tyler, T. R. (1989). The psychology of procedural justice: A test of the

group value-model. *Journal of Personality and Social Psychology*, *57*, 830-838.

Tyler, T. R. (1998). Trust and democratic governance. In V. Braithwaite and M. Levi (Eds.) *Trust in governance*. (pp. 269-294). New York: Russell Sage Foundation

Tyler, T. R., & Lind E. A. (1992). A relational model of authority in groups. *Advances in Experimental Social Psychology. 25*,115-191.

Tyler, T. R., Boeckmann, R. J., Smith, H. J., & Huo, Y. J. (1997). *Social justice in a diverse society*. Boulder, CO: Westview Press.

Tyler, T. R., & Degoey, P. (1996). Trust in organizational authorities: The influence of motive attributions on willingness to accept decision. In R. M. Kramer and T. R. Tyler (Eds.) *Trust in organizations: Frontiers of theory and research*, (pp. 331-356). Thousand Oaks, CA: Sage Publications.

Tyler, T. R., & Smith, H. J. (1997). Social justice and social movements. In D. Gilbert, S. Fiske, & G. Lindzey (Eds.), *Handbook of social psychology*. (4th ed. Vol. 2, pp. 595-629).

Tyler, T. R., & Blader, S. L. (2000). *Cooperation in groups: Procedural justice, social identity, and behavioral engagement*. Philadelphia: Psychology Press.

Verkuil, P. (1976). A study of informal adjudication procedures. *University of Chicago Law Review. 43*, 655-739.

Wakefield, J. C. (1988a). Psychotherapy, distributive justice, and social work: I. Distributive justice as a conceptual framework for social work. *Social Service Review, 62*, 187-210.

Wakefield, J. C. (1988b). Psychotherapy, distributive justice, and social work: II. Psychotherapy and the pursuit of justice. *Social Service Review, 62*, 353-382.

Walster, E., Walster, G.W., & Berscheid, E. (1978). *Equity: Theory and research*. Boston: Allyn & Bacon.

Wexler, D. B. (1993). New directions in therapeutic jurisprudence: Breaking the bounds of conventional mental health law scholarship. *New York Law School Journal of Human Rights. 10*, 759-776.

Wexler, D. B., & Winick, B. J. (1991). *Essays in therapeutic jurisprudence*. North Carolina, NC: Carolina Academic.

Wright,E.R.Gronfein,W.P.&Owens,T.J.(2000). Deinstitutionalization, social rejection, and the self-esteem of former mental patients. *Journal of Health & Social Behavior. 41*, 68-90.