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Rob Neff

University of Hawaii, Manoa

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Achieving Justice in Child Protection

ROB NEFF

School of Social Work
University of Hawaii-Manoa

As formal systems for the protection of children have evolved in this country, certain barriers to achieving justice within the child protection system have emerged concomitantly. Specifically, these barriers involve ambiguous definitions of abuse and the appearance of social inequality and bias within the child protection system. One means of surmounting these barriers to justice is family group conferencing (FGC). Support for this assertion comes from the integration of the restorative justice model and procedural justice theory. When applied to the practice of FGCs in child protection, the integration of these theoretical perspectives provides a strong rationale for the use of FGC and a theoretical framework from which the outcomes and causal mechanisms of FGCs may be evaluated.

Key words: family group conferencing, procedural justice, restorative justice, child protection, child abuse, child neglect

Introduction

Much of the research on Family Group Conferencing (FGC) in child protection has been descriptive in nature. Many of these program evaluations have emphasized aspects of program fidelity and somewhat superficial outcomes, such as levels of participation, duration of conferences, rates of accepted plans, and participants' satisfaction. Although this kind of research is useful for describing FGC, it falls short of explaining how the model works to transform the child welfare culture or how it achieves greater safety and stability for children and families. In this paper I will provide a conceptual integration of two models of justice: restorative justice and procedural justice. In so doing, I will provide theoretical support for the use of FGC as a means of achieving

justice and improving outcomes in field of child protection. The integration of these two paradigms also establishes a framework from which FGCs may be evaluated.

Restorative Justice

FGC is one of several conflict resolution models founded on the values of the restorative justice movement (McCold, 1999). Restorative justice seeks to redress wrong-doing through the inclusion and open dialogue of those parties affected by a particular offense. Models based on restorative justice values offer an alternative to prevalent models of justice emphasizing retribution and rehabilitation (Braithwaite, 2002). The aim of restorative justice is to solve problems in a manner that elicits and integrates the perceptions and desires of those affected by the problem, thus, promoting active responsibility for solving problems. "Active responsibility is the virtue of taking responsibility for putting things right." (Braithwaite, 2002, p. 129). Thus, central to all restorative justice practice is the idea that direct contact between offender and victims under the protective cover of the community is essential (Cohen, 2001).

Retributive justice, on the other hand, is more concerned with punishing an offender than it is solving the problems associated with an offense. As Braithwaite argues, restorative justice places the focus of interested parties on the problem rather on the person. "Through blaming the other, we declare ourselves blameless as we abrogate the possibility of us taking active responsibility for righting the wrong." (Braithwaite, 2002, p. 129). Restorative justice models place the centrality of concern on understanding and solving problems as opposed to blaming and punishing offenders. Placing the focus on problems as opposed to persons encourages parsimonious solutions, because the extraneous influences of retribution are omitted from the process (Braithwaite, 2000).

Responsive Regulation

Using a restorative approach towards child protection, the state operates on a course that is congruent with the needs and abilities of its citizenry. Braithwaite (2002, p. 29) describes this as "responsive regulation", where government is responsive to the conduct of those they seek to regulate. According to Braithwaite's

model of responsive regulation, the responsibility for regulation is first and foremost a function of those being regulated.

It is important to note that, in the case of child protection, the application of Braithwaite's model of responsive regulation is not based on interventions; rather, it is based on decision control. Interventions in child protection may appear to be retributive, but they are quite simply resources designed to help families. For example, out-of-home placement may be an intervention that is actively sought by a family, and as long as it is the family that has made that decision, the regulatory process is responsive. Similarly, if a family is incapable of resolving protection issues and CPS decides unilaterally to place a child in an out-of-home setting, the same intervention, out-of-home placement, will fall at a different point on the regulatory pyramid, but the process is still responsive. This is because the decision-making power is placed first with the family, and only as a last resort does the state's authority supercede the family's authority.

The ascendancy in regulatory control by the state is predicated on an explicit failure of the family to resolve problematic situations free of the state's influence. Thus, the state responds to families in accordance with their needs. If a family has the wherewithal to provide adequate care for their children, state intervention is not needed. Conversely, if a family fails to provide adequate care for a child, the state must then partner with the family to establish means by which their complete independence can be restored. Continual failure by families to meet their responsibilities leads to incremental increases in the state's exertion of its regulatory authority. Thus, no matter how invasive interventions may appear, they are not retributive. It is the state's perfunctory denial of a family's right to self-determination that is retributive.

Achieving Justice through Responsive Regulation

The notion that the families should be given the opportunity to self-correct before the state asserts its control over families comes from Braithwaite's (2002) model of responsive regulation, and it provides a critical theoretical underpinning for understanding the redistribution of power that FGC inspires among families and state authorities. The family retains its autonomy

hence, decision-making power, to the extent that it is able to act responsibly. As state agencies become more responsive to the needs of the families *vis-à-vis* FGC, their involvement will be legitimated concomitantly. This, in turn, strengthens those agencies rather than weakening them.

Under an FGC model, although child protection workers continue to retain the authority vested in them by the state, the exercise of that authority is largely determined through the collaborative efforts of the state and family rather than by single entities. FGC allows for negotiated exchanges between the state and the family to occur. More importantly, these exchanges are likely to be perceived as fair by the participants, because the distribution of power between the state, the family, and the victim are brought into balance through the FGC process. This balance is achieved by affording FGC participants greater power in the form of decision-making control.

In his seminal book, *Restorative Justice and Responsive Regulation*, Braithwaite (2002) identifies procedural justice theory, among a host of other theories, as a means of explaining why restorative justice models may reduce reoffending and enhance restoration. However, very little effort has been made to test Braithwaite's assertion. The concept of procedural justice is rarely mentioned in the restorative justice literature, but whenever research has examined procedural justice, it has been found that people always make procedural justice judgements, and that those judgements are always important (Lind & Tyler, 1988, p. 141). There is universal appeal to being treated fairly, and procedural justice is important to people regardless of their cultural affiliations (Lind, Tyler, & Huo, 1997), or their gender (Martinez-Tur, Ramos, and Peiro, and Garcia-Buades, 2001). As I will illustrate in subsequent sections, procedural justice theory is highly relevant to restorative justice practices, particularly in relation to the practice of FGC as applied to child protection.

Since a central function of FGC is to place the responsibility, hence greater control, with families themselves, it follows that FGC participation will result in higher appraisals of procedural fairness and increases in satisfaction among participants in a decision-making process (Braithwaite, 2002, p. 79). Furthermore, to the extent that the family maintains control over the procedures

and outcomes, dissatisfaction, resentment and other maladaptive responses towards CPS interventions will be minimized. Legitimacy has a procedural justice basis; therefore, "legal authorities can deliver unfavorable outcomes to citizens without harming their legitimacy if those outcomes are delivered through procedures people view as fair" (Tyler, 1990a, p. 175).

Procedural Justice

Procedural justice theory emerged from earlier formulations of social exchange theory (Blau, 1964; Homans, 1974; Thibaut and Kelley, 1967) and equity theory (Adams, 1963). Early formulations of social exchange theory emphasized the outcomes of social exchanges and evaluations of fairness of those outcomes (distributive justice). Social exchange theorists and equity theorists assumed that individuals judged the fairness of an exchange solely on the merit principle, which dictates that fairness exists when rewards are proportional to contributions (Adams, 1963; Homans, 1974). Procedural justice theorists, on the other hand, suggested that evaluations of fairness were more complex than the unidimensional concept of fairness suggested by equity theory, and that the merit principle was but one aspect of individuals' appraisals of justice (Leventhal, 1980).

Thibaut and Walker (1975) argued that judgments of fairness were determined by both process control (procedural justice) and outcome control (distributive justice). This argument has been supported by a series of experiments which have consistently demonstrated that how one perceives the fairness of a procedure is largely a function of the amount of control that he or she has over the process and is an important determinant of satisfaction with the outcome of a procedure (Musante, Gilbert, Thibaut, 1983; Thibaut and Walker; 1975).

The Construct of Procedural Justice

In a critique of equity theory, Leventhal (1980) expanded Thibaut and Walker's work by suggesting that procedural justice may be evaluated by examining one or more of the following seven procedural elements: selection of agents, setting ground rules, gathering information, decision structure, appeals, safeguards, and process change mechanisms. Leventhal (1980,

p. 39–46) further speculated that each of the seven procedural elements may be evaluated according to six “procedural justice rules”: consistency, bias suppression, accuracy, correctability, representativeness, and the ethicality. The *consistency rule* dictates that allocative procedures should be consistent across persons and stable over time. The *bias suppression* rule dictates that self-interest and bias should be prevented throughout the allocative process. The *accuracy rule* dictates that the allocative process must be based on as much good information and opinion as possible and that information should be applied to the procedure with minimal error. The *correctability rule* dictates that opportunities must exist to modify or reverse decisions made throughout the allocative process. The *representativeness* rule dictates that all phases of the allocative process must reflect the basic concerns, values, and outlook of important subgroups in the population of individuals affected by the allocative process. The representativeness rule is analogous to Thibaut and Walker’s (1975) conception of process and outcome control; however, Leventhal does not explicitly differentiate the two kinds of control. The *ethicality rule* dictates that procedures must be compatible with fundamental moral and ethical values of the individuals involved. Leventhal’s conception of procedural justice has been used extensively as a guide for assessing procedural justice in the social psychology literature, and significant support for Leventhal’s rules of procedural justice have been established in applied and experimental research (Jackson & Fondacaro, 1999; Lind & Tyler, 1988; Makkai & Braithwaite, 1996; Tyler, 1988).

Tyler (1988) empirically tested the theoretical criteria used to assess procedural justice. Combining and extending the criteria suggested by Thibaut and Walker (1975) and Leventhal (1980), Tyler examined the importance of each criterion to citizens’ assessments of procedural justice. Using a sample of 652 Chicago residents whom had experiences with the court or police in the previous year to explore individuals conceptions of procedural justice, Tyler (1988) found that when people evaluate fairness, procedural justice was more important than distributive justice was. In terms of the relative importance of the criteria used to assess procedural justice, Tyler found that there were seven aspects of procedural justice that made independent contributions to assessments of fairness: efforts of authorities to be fair; whether

their behavior was consistent with ethical standards; whether opportunities for representation were given; the quality of the decisions being made; whether there were opportunities to appeal decisions; and whether authorities showed bias. Factor analysis revealed that there are two underlying factors of procedural justice assessments. The first factor concerns the qualities of the experience itself: representation, impartiality, and accuracy of decisions. The second factor concerned external referents: consistency, as compared to past experiences or the experiences of others; and ethicality, which compares the experience to external standards. Tyler noted that the efforts made by authorities to be fair was a key overall factor in assessing procedural justice, suggesting that trust constitutes a distinct criterion for evaluating procedural justice.

Tyler (1988) demonstrated that there are common criteria for the evaluation of procedural justice that may vary in their relative importance depending on the nature of the experience, a finding consistent with Leventhal's (1980) theory. Tyler also discovered that in a given situation, there was little variation in the relative importance of procedural justice criteria among individuals. These findings led to Lind & Tyler's (1988) group-value theory of procedural justice. According to this theory of procedural justice, group membership mediates concern with justice and the influences the evaluation of procedural justice. Specifically, group-value theory posits that procedural justice standards arise from two sources: "(1) the groups overall social values; and (2) the interest of the individual being treated as a full fledged, full-status member of the group" (Lind & Earley, 1992, p. 232). Tyler and Lind (1990) found that group standing influenced concerns about justice. Socially marginal group members were found to care the least about justice, while those who were central to groups cared the most about justice. Tyler and Lind's findings make sense when considered in light of the tendency for those deprived of power in social exchanges to adapt to deprivation accordingly (Thibaut & Kelley, 1967).

Achieving Procedural Justice through FGC

Concerns about procedural justice are particularly salient in child protection practice. The creation of a group that includes all those with an interest in protecting an individual child and

assures that their voices are heard is, itself, an important contribution to achieving justice and improving the functioning of child protection agencies. People tend to be less concerned with justice when dealing with others outside of their social or ethnic group (Tyler, Lind, Ohbuchi, Sugawara & Huo, 1998). This may be particularly true when group differences are accompanied by power imbalances that give advantages to one party at the expense of another.

The FGC model expands the boundaries of the system for protecting children, which, according to the group-value theory of procedural justice, encourages legitimization of the state's authority and diminishes individual concerns in favor of group needs (Smith & Tyler, 1996, p. 175). Tyler (2000, p. 120) argues that "procedural justice is central to creating and maintaining internal values that support voluntary cooperative behavior on the part of members of groups." Hence, collectivism overrides individual concerns in favor of group needs (Lind & Earley, 1992). Although the importance of creating egalitarian groups with a common purpose is a significant factor for achieving justice through FGC, the actions of the participants and coordinators of the group clearly contribute to the overall achievement of justice as well.

Applying the aforementioned rules of procedural justice to the FGC model illustrates the potential that FGC has for achieving justice in child protection practices. The values and principles of FGC are highly attuned to a variety of aspects of procedural justice.

Consistency. Consistency is achieved through the application responsive regulatory practices, providing opportunities for equal input for FGC participants and fidelity to the FGC model in repeated conferences. Families are informed of the conditions required to maintain autonomy, thus reducing perceptions that the actions of child abuse agencies are arbitrary.

Representativeness. Compliance with the representativeness rule of procedural justice is perhaps the most important aspect of FGCs. Thibaut and Walker (1975, p. 121) argue that in relation to procedural models, the distribution of control appears to be the best predictor of fairness and thus, satisfaction with the outcome of the procedure. Lind, Kanfer & Earley (1990) found that having

a voice in a given procedure corresponds with a greater sense of fairness. The importance of voice was significant whether it influenced the outcome or not. Hunton, Hall and Price (1998) have replicated these findings; they determined that perceptions of fairness, control, and satisfaction were more positive as the magnitude of voice increased.

Representativeness is achieved by giving deference to the families' wishes and decisions throughout the FGC process. Although not specifically differentiated in Leventhal's (1980) model of procedural justice, instrumental and expressive forms of control are both important factors in the assessment of procedural justice. Research has demonstrated that perceived control in relation to decision processes corresponds with greater satisfaction with procedures and outcomes (Lind & Tyler, 1988) and encourages compliance with authorities (Makkai & Braithwaite, 1996). The FGC model provides opportunities for family participants to assert a greater degree of control over both the decision-making process and the ultimate outcome.

With regard to the procedure, families have control over whether to hold a conference, who to invite to the conference, and are free to provide input regarding the problem, its effects, and the means of resolving the problem. Moreover, families are afforded control over the ultimate outcome of the procedure—the case plan. Although limitations may be applied to those decisions, such as the need for out-of-home placement or drug abuse treatment, families typically have a great deal of latitude in deciding how problems are to be addressed within the boundaries imposed by state agencies.

Bias Suppression. Leventhal (1980) identifies two potential sources of bias. First, procedures are unfair if a decision-maker has a vested interest in achieving a specific decision. Second, procedures are unfair if they are based on doctrine to the extent that other points of view are not considered. The suppression of bias is achieved in FGC by expanding the decision-making circle to include all those affected by the problem, and encouraging them to contribute to the decision-making process. The inclusiveness of FGC and its explicit emphasis on resolving problems as opposed to blaming and punishing offenders, breaks down

social barriers among participants and creates a common group identity with the central goal of protecting a child. The vested interest of all parties is the protection of the child and welfare of the family. Furthermore, the encouragement of creative solutions to child maltreatment reduces the reliance on doctrinal solutions typically employed by child protection agencies. Creative solutions brought about by combining the technical knowledge of professionals and the idiosyncratic knowledge of families enables solutions to be derived that do not rely solely on child protection doctrine.

Ethicality. Respecting family and cultural traditions and integrating those basic values into the decisions achieve ethicality. Providing families opportunities to make contributions to the decision-making process that are largely unfettered by influences from state authorities helps to ensure that their families' own world views are congruent with final outcome of the conference.

Accuracy. Sharing information in a public space and allowing input from diverse sources helps to achieve accuracy. The FGC model specifically sets aside time to share information about the problem. Information from multiple viewpoints is solicited and participants are given opportunities to clarify or confirm the perceptions of the other participants. The importance of accuracy is illustrated by Pruitt, Pierce, McGillicuddy, Welton, & Castrianno (1993, p.327), who found that compliance with mediated agreements was significantly related to the extent that the information presented in mediation allowed "all the problems to come out."

Correctability. Correctability is achieved by responsive regulatory practices, which is an inherent aspect of the FGC model. The decisions made in FGC are subject to correction and modification based on adherence to plans and the continued relevance of plans. Subsequent FGCs serve to examine and modify earlier decisions. Additionally, participation in an FGC does not negate a family's right to seek judicial intervention.

The values and practice principles that comprise the FGC model foster procedural fairness in multiple ways, which will, theoretically, lead to greater satisfaction and compliance with the safety and treatment plans designed to reunify families. Table I

Table I
Integration of FGC Principles and Procedural Justice Rules

<i>FGC Principles</i>	<i>FGC Practices</i>	<i>Procedural Justice Rules</i>
1. Build broad-based support and cultural competence	By including a wide range of community organizations and public agencies in planning, guiding, resourcing, and evaluating the program, and by partners retaining their distinctive roles and responsibilities	Bias Suppression Representativeness Accuracy Ethicality
2. Enable the coordinators to work with family groups in organizing their conferences	By selecting coordinators who respect families and their communities. By making conference organizing the coordinator's primary role in relationship to the family, and by providing the coordinator with cultural and practice consultation.	Bias Suppression Representativeness Ethicality Accuracy
3. Have the conference belong to the family	By giving reasons for holding the conference that the family group and service providers can agree with. By holding the conference in a place and in a way that fits the family's culture and by inviting more family group members than service providers.	Bias Suppression Representativeness Ethicality
Foster understanding of the family and creativity in planning	By inviting different sides of the family and by broadly defining what is family.	Bias Suppression Representativeness Ethicality Accuracy

(continued)

Table I
(Continued)

<i>FGC Principles</i>	<i>FGC Practices</i>	<i>Procedural Justice Rules</i>
Help the conference participants take part safely and effectively	By preparing family group and service provides, by building in supports and protections, and by arranging transportation, child care, interpretation, etc., as needed	Representativeness Ethicality
Tap into strengths on the family group in making a plan	By asking information providers to share concerns, knowledge, and resources but not to dictate the solutions, and by ensuring that the family group has private time to come up with a plan.	Bias Suppression Representativeness Ethicality Accuracy
Promote carrying out the plan	By providing timely approval of plans regarding safety and resourcing by integrating supports and resources of the family group, community organizations, and public agencies, and by building in monitoring and evaluation of plans and follow-up meetings.	Consistency Correctability
Fulfill the purpose of the plan	By implementing the plans as agreed or revising them as needed, and by supporting the efforts of the family group and service providers.	Bias Suppression Representativeness Consistency Ethicality

Change policies, procedures, and resources among family groups, community organizations, and public agencies	By developing and using integrative and culturally competent approaches, and by using program evaluation as a means of changing practice and policy	Correctability Accuracy Ethicality
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Adopted from "North Carolina Family Group Conferencing Project: Building partnerships with and around families: Report to the North Carolina Division of Social Services, Fiscal year 1998-1999. Raleigh, NC. North Carolina State University, Social Work Program, North Carolina Family Group Conferencing Project," by Pennell, J., with the assistance of J. Hardison & E. Yerkes (1999).

summarizes the relationships between the principles of FGCs and aspects of procedural justice.

Outcomes Associated with Just Procedures

Although not extensively studied with regard to child protection decision-making strategies or FGCs in particular, there is a diverse body of literature that supports the assertion that procedural justice is an important aspect of participant's satisfaction with procedures, which leads to greater compliance and increased legitimization of authorities (Tyler, 1990b; Tyler & Folger, 1980; Sunshine & Tyler, 2003).

In a survey of New York residents, Sunshine & Tyler (2003) found that perceptions of procedurally just behavior by police officers was the primary driver of citizens' legitimization of police authority which ultimately leads to greater compliance with the law (Tyler, 1990a; Sunshine & Tyler, 2003). Findings that perceptions of procedural justice lead to greater regulatory compliance have also been observed among healthcare administrators (Makkai & Braithwaite, 1996); and civil court litigants (McEwen & Maiman, 1984).

Perceptions of procedural justice have been consistently linked to greater satisfaction with outcomes in a variety of diverse settings. Martinez-Tur, et al. (2001) found that perceptions of procedural justice positively influenced customers' satisfaction with the outcomes of hotel guests' complaints. Tyler & Folger (1980) found that perceptions of procedural fairness predicted satisfaction with law enforcement officials among individuals stopped by police. Perceptions of procedural justice predicted satisfactions independently of whether an individual was cited or not by the police. Tyler, Rasinski, and McGraw (1985) found that perceptions of procedural justice influenced citizens' evaluations of political leaders regardless of the benefits they received from the government. Consistently, research has indicated that how one is treated is more important than what one receives.

Considering the potential for restorative practice to achieve procedural justice, it comes as no surprise evaluations of FGC programs have repeatedly indicated that they result in the creation of plans that are satisfactory to the courts, protection agencies, and

families (Rasmussen, 2003; Sieppert, Hudson, and Unrau, 2000; LeCroy & Milligan, 2002; Gunderson, Cahn, and Wirth, 2003). Although not directly examined in any published study, there are indications that FGCs do address a variety of procedural justice concerns.

Families participating in FGCs feel that they are afforded a good deal of process and outcome control (LeCroy & Milligan, 2002; Sieppert, et al., 2000). Others have found that FGCs promotes family unity (Pennell & Burford, 2000) and foster a sense of shared responsibility among family members and CPS workers (LeCroy & Milligan, 2002). Ultimately, according to case workers' appraisals, FGCs result in the creation of improved plans compared to those derived using prevailing practices (Rasmussen, 2002). There is also some indication that compliance with plans derived from FGCs is superior to plans derived from traditional decision-making processes (LeCroy & Milligan, 2002; Rodgers, 2000). In an evaluation of FGC in Washington State, Gunderson, et al. (2003) examined 189 FGC cases. In addition to high levels of satisfaction and plan completion, they found that a re-referral rate of 6.8% compared to the state average of 8.1%.

Conclusion

The procedural justice literature is remarkably consistent in its findings that how people are treated during the allocative processes matters. Indeed, evaluations of fairness with regard to processes may, in many circumstances, be more important than the outcomes of those processes. Also, perceptions of just treatment have been consistently associated with greater satisfaction, compliance, and the legitimization of authorities. These findings, coupled with the procedural elements of FGC in child protection provide a compelling argument that FGCs may be a superior approach to decision-making in child protection. Of equal importance, the integration of the procedural and restorative justice paradigms creates a theoretically grounded framework from which hypotheses related to causal mechanisms of FGCs may be derived and tested; thus, the application of this framework may help to elevate research into the FGC model to a higher level of sophistication.

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