

## ***Preliminary Thoughts on Measuring Justice in Socio-legal Research***

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### **Introduction and Background:**

Following the Conceptualizing Justice Workshop at the National Science Foundation, we reviewed 15 submitted concept papers while keeping the justice framework or bundle of ideas generated in the first workshop in front of us (see framework below). This short paper is meant to offer a starting point for the larger group's discussion about measuring justice in the social and behavioral sciences at the upcoming NSF-sponsored Workshop at George Mason University. The original 15 concept papers submitted for the first workshop, as well as our individual reviews of these concept papers are located on the workshop website: <http://www.american.edu/spa/wipar/projects.cfm>

### *Justice Framework:*

While there was no definitive agreement on what constituted a framework of justice during the December workshop, the following ideas continued to surface:

Justice is:

- A relational process focusing on asymmetries of power and struggles about power differentials (may or may not have to implicate the state)
- A normative idea or ideal used as a benchmark for assessing change in processes and outcomes of human action
- Situated politically, historically, socially, organizationally, culturally and ideationally
- Unachievable, while individuals, communities, movements and societal institutions may continually strive for it and redefine its parameters (justice is fluid, temporally changing, and contextually framed)
- Easiest to identify in articulations, individually and/or collectively, of its opposite (injustice, unfairness, domination, oppression, misdistribution)

We agreed to review the 15 concept papers inductively, expose our reflections to the bundle of ideas generated at the first workshop, and each write a short paper outlining what we surmise about the measurement of justice from this exercise. After exchanging our individual papers, we devised a series of cross-cutting themes and offer an agenda for our discussion of measurement in the May meeting.

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## Measurement Themes:

Five main themes emerged from our exercise:

**First**, we point in the direction of empirical inquiry grounded in textual (e.g., soldiers' correspondence), situational (e.g., protests over worker conditions), organizational (e.g., processing social welfare benefits), and spatial (e.g., suburban mall policing) contexts where justice is in play as a salient feature of human thinking about justice and/or practices to achieve justice. We recognize there are discrete measures in circulation for assessing the justice climate (locally to globally), determining the legitimacy of institutional processes (law enforcement to corporate), and benchmarking the perceptions of justice decisional outcomes (judicial, legislative and market policies). However, we want to open up the possibility of more discovery related to the human dimensions of justice rather than putting forward an agenda that is limited to articulating how existing measures can be refined or put to more uses. Still, as you will see below, part of our task in the workshop, is to outline an arch of relationships between contextual and discrete measurement of justice. Moreover, we recognize that a renewed effort to measure justice must come to terms with normative conceptualizations of justice and broad truth claims about justice. We see the empirical approach outlined here as having potential to engage in inquiry and grounded normative theorizing about the significance of transcendent notions of justice to social meaning and action.

**Second**, we identify a series of internal tensile dimensions to the construct of justice as well as tensions between justice and other social constructs as starting points for empirical inquiry to promote discovery. These include:

### *Internal Tensile Dimensions:*

1. Process and outcome: this refers to the conventional procedural/substantive distinction whereby justice is understood to either inherent in a set of procedures for making decisions or inherent in the quality of the decisions themselves. These two facets of justice are not necessarily antithetical, but neither are they logically or empirically connected. For example, innocent persons are convicted as a result of procedurally just processes and guilty ones are set free.
2. Means-end: This tension is different from the process-outcome one (although it sounds similar to it) in that it references the degree to which justice (as *either* process or outcome) promotes some state of affairs that exists apart from justice itself. A number of papers, for instance, wrote about justice as that which enhances "order" --either by increasing perceptions of legitimacy and presumably compliance, or by exercising state power to reduce crime. By contrast, other papers refer to justice as an end in itself, something to achieve regardless of its role in promoting other values or goods.
3. Individual-collective: In the context of this distinction, justice is that which protects the individual from the group (in particular, the state or other powerful actors) or it is that

which produces collective goods (by bringing about social change in institutions, or policies that benefit the group).

4. Ahistorical-historical: There wasn't too much disagreement among the authors on whether justice is transcendent or situational; we all thought that it was situational, dynamic and cultural, possibly due to the social science orientation of the group. Yet lurking behind our agreement is a concept of justice that does not emerge out of situations, but which defines situations (in the sense it exists a priori to them). To the extent this tension was articulated in any form it was in consideration of the consequences of recognizing the historical nature of justice. Do we, in other words, compromise the capacity of justice to trump power when we deny it a transcendent character? As Montesquieu wrote, "Justice is eternal and doesn't depend on human conventions; even if it were to depend on them, this truth would be a terrible one, and we should have to conceal it from ourselves." Are we revealing a terrible truth? Or is it an empowering truth? Or is this situational as well?
5. Concrete-abstract: This distinction overlaps a bit with #4, but warrants its own mention, It raises the issue of *how* justice changes overtime (assuming that it does). Is it an outcome (or process) that emerges only out of a response to the particular circumstances of historical actors in material contexts, relationships etc.? Or is it a result of the application of general principles or moral values to specific cases?
6. Are there additional internal tensile dimensions?

*Constructs Juxtaposed with Justice:*

1. Power-Justice: What is the relationship between power and justice? Does justice stand in opposition to power in order to contain its overreaching? Or does justice harness power to achieve worthy ends (among other things, the redistribution of power)? Power is often discussed in connection to justice, but the exact relationship of the two concepts remains murky.
2. Law-Justice: What is the relationship between law and justice? Does law facilitate justice? Does law always implicate justice? Does law legitimize justice (or vice versa)? As socio-legal scholars we often address law and legal institutions in our work, but what is the extent of the relational between these two concepts?
3. Equity-Justice: Equity itself is a concept that scholars struggle to fully and consistently define. Does equity have to precede justice, or is it the reverse? Can these two concepts exist independently?
4. What are the additional juxtaposed constructs?

**Third**, given the interest in the tensile dimensions of justice and the tensions between justice and other social constructs packed around it, the foci of inquiry appear to be three fold:

1. How do the internal tensile dimensions play themselves out in context to shape meanings of justice and practices to achieve justice? How do they work together to give the construct of justice resiliency and/ how do they pull at each other to undermine the coherence of justice for meaning making and action? How do they combine to add and/or diminish the strength of justice for building social meaning and directing social action?
2. What are the relationships between the concepts in tension? Does justice stand in opposition to power or as an idea structure for harnessing a redistribution of power? Here, the focus is on problematizing rather than pre-supposing these relationships?
3. How do the internal tensile dimensions and the concepts operating in close proximity shape meaning and practices in context?

**Fourth**, based on the importance given to situationally-grounded empirical analysis of justice we have a preference for inductive field methods in justice inquiry. Rather than imposing a definition of justice, many concept papers focused on definitions arising from the discourse of their subjects in the field. However, there was a call for meta-analysis to bring light to research gaps around concepts and understandings of justice and the tensile dimensions of justice. What qualitative methods are most suited for this line of inquiry? How would we define the field of completed studies to conduct a meta-analysis? How can qualitative field inquiry and discrete measurement tools be combined in a mixed-methods of justice inquiry

**Finally**, we suggest that normative claims should follow from and/or be rooted in an empirical agenda of inquiry. How can grounded normative theorizing evolve from this empirical agenda?

#### ***A Justice Research Agenda:***

Themes from the review papers suggest a rich research agenda focused around the tensile dimensions of justice as well as concepts such as power, law and equity juxtaposed to justice. While many of the original papers invoked thick inquiry and suggested extensive fieldwork as a means to understand justice, it was not the exclusive method proposed when taking into account the 15 papers reviewed and the full discussions in the first workshop. Still, in keeping with our preference of situational field inquiry, we identify a number of unresolved issues, including:

- How do we identify appropriate field settings for justice inquiry?
- What should the foci of observations, questions and probes be in justice inquiry?
- How would more positivist methods contribute to justice inquiry, particularly the tensile dimensions of justice?
- How does normative theorizing connect with contextualized inquiry of justice? How might we translate situational and contextual studies of justice into broad academic

conversations around its tensile dimensions and the concepts in juxtaposition with justice?

- How do we make justice inquiry relevant to practitioners and policy makers? What is the proper relationship between empirical inquiry and application?
- What should we prioritize in outlining a research agenda for empirical studies of justice?