A critical analysis of transinstitutionalization：The social needs of justice-involved people with mental illness and the role of government

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Abstract

   The criminalization hypothesis is often described in relation to transinstitutionalization, a phenomenon that shows a shifting of a large number of persons and funding from one institution, state hospitals, to another large institution, jails and prisons. Some researchers state that jails and prisons became the country's de facto treatment facilities for people with mental illness. Although many studies have been conducted, the study findings do not fully explain the reason of the interaction between the mental health and criminal justice service systems well. This paper addresses the issues that make it difficult for justice-involved people with mental illness to access mental health services in the community by focusing on the role of government. Relevant social, economic, and political theories by seven theorists（Herbert Spencer, Emile Durkheim, Erving Goffman, Milton Friedman, Richard Titmuss, Edmund Burke, and Jean-Jacques Rousseau）were applied to critically analyze the above-mentioned issues. Each theory has uniquely contributed to explain the issues and suggested how to remedy them.

Keywords：justice-involved people, mental illness, transinstitutionalization, reentry

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The United States has more people caught up in the criminal justice system than any other country in the world. Approximately 7 million people are currently under the control of the criminal justice system, of which over 3.6 million are on probation and almost 2.3 million are in correctional facilities in the United States（Prison Policy Initiative, 2020）. There are several arguments how "prison America" was built（Murakawa, 2014）, but the criminal justice system was always influenced by the pendulum shift of philosophical and political policy, from rehabilitation to punishment, or vice versa.

In the 1970s, for example, a study done by Robert Martinson（1974）had a significant impact on the shift of criminal justice policy at that time, in which he claimed that "with few and isolated exceptions, the rehabilitative efforts that have been reported so far have had no appreciable effect on recidivism"（p. 25）. Likewise, and mainly guided by the labeling theory, juvenile justice systems were reformed from the 1960s to 1970s and the policy shift occurred in the form of the "4D revolution"; decriminalization, diversion, due process, and deinstitutionalization（Empey, 1979; Walsh & Ellis, 2006）.

Although the number has been slowly declining from its peak in 2009, a significant number of people are still confined in federal, state, county and municipal, and other facilities such as juvenile and immigration detention facilities and military prisons（Prison Policy Initiative, 2020）. It is said that correctional facilities have become treatment facilities for people with mental illness and that prisons in the United States are now the new psychiatric hospitals（Slate, Buffington-Vollum, & Johnson, 2013; Torry et al., 2010）.

This is considered a negative legacy of deinstitutionalization and a major problem for the community mental health system. As such many studies have conducted which indicated that the ratio of inmates with symptoms of mental illness in correctional facilities is significantly high （Blandford & Osher, 2013; Bronson & Berzofsky, 2017; James & Glaze, 2006; Slate et al., 2013）. For example, a research by the Department of Justice reveals that the percentage of inmates with symptoms of mental illness is reported to be as high as 40% in federal prisons, 49% in state prisons, and 61% in jails（James & Glaze, 2006）.

By reviewing the historical trajectory, Johnson（2011）brought up three movements to deinstitutionalize the institution of control and punishment in the United States. The first movement emerged with the development of parole and probation in the late 1800s and because of the condemnation of treatment undertaken in the asylums. In those days, mental hospitals functioned as places where psychiatrists, family members, and the courts sent people who did not conform to the social norms or broke the law（Parsons, 2018）. The second movement, what is known as deinstitutionalization took place from the 1950-70s. The third movement has been occurring mainly due to the ongoing fiscal constraints in both correctional and mental health facilities. Focusing on the second to the third movement, I would like to briefly review the background of the transition from deinstitutionalization to transinstitutionalization.

From Deinstitutionalization to Transinstitutionalization

Deinstitutionalization movement was an unparalleled collaboration between social reformers and fiscal conservatives that transcended ideological differences in order to reintegrate people with mental illness into the community (Bachrach, 1983). Contrary to the hope for community-based care for people with mental health needs, the consequences of deinstitutionalization were not promising. Some patients that were discharged from state hospitals started new lives, whereas many others faced serious problems in their communities. For instance, deinstitutionalization contributed in highlighting the homelessness problem, "with at least 50 percent of homeless being people with severe mental illness by the late 1980s" (Karger & Stoesz, 2002, p. 367).

Similarly, Johnson (1990) noted that the deinstitutionalization of the people with mental illness "undoubtedly added to serious social problems that would certainly have emerged without it — homelessness and overcrowded correctional facilities" (p. 110). According to a study carried out in the mid-1990s that examined where individuals with schizophrenia lived, 34% of them lived independently, 25% lived with family, 18% in custodial and supervised housing, 8% in nursing homes, 6% in correctional facilities, 5% in psychiatric hospitals, and 5% in shelters or on the streets (Torry, 2001).

Deinstitutionalization then began a process that involved the transition of the types of institutions and alternative facilities used to accommodate groups such as the elderly, children, people with mental illness or developmental disabilities, the homeless, and offenders. This societal shift is often referred to as transinstitutionalization (Montross, 2020 ; Segal & Jacobs, 2013). Did deinstitutionalization increase accessibility to mental health services? The consequences of deinstitutionalization were mixed.

The criminalization hypothesis has come to mean that people with mental illness, who prior to deinstitutionalization would have been in mental hospitals, are now entering the criminal justice system. Although many studies have been conducted, the results of the studies present a variety of complex situations. Due to the lack of longitudinal data, the immediate connection between deinstitutionalization and criminalization cannot be tested and conclusive evidence does not exist for the causal relationship (Corrigan, Mueser, Bond, Drake, & Solomon, 2008 ; Primeau et al., 2013 ; Prins, 2011 ; Slate et al., 2013). The criminalization hypothesis is also related to the aforementioned phenomenon described as transinstitutionalization. That is the movement of a large number of persons and funding from one institution – state hospitals, to other large institutions – jails and prisons. However, few studies have demonstrated whether deinstitutionalization directly connects with the criminalization (Barrenger & Canda, 2014 ; Bonfine, Wilson, & Munetz, 2020 ; Corrigan et al., 2008 ; Machanic, McAlpine, & Rochefort, 2014).

Why are many people with mental illness more likely to be treated in social institutions such as state mental hospitals or jails and prisons? In other words, what are the issues that make it difficult for offenders with mental illness to access mental health services in the community? In

this paper, I will address the problem by focusing on the role of government regarding the above-mentioned issue. The main question in the paper is as follows：

Should the federal government and the states assume a central role to provide services for offenders with mental illness in their reentry to the community?

I will critically analyze the problem by applying the relevant social, economic, and political theories by seven theorists（Spencer, Durkheim, Goffman, Friedman, Titmuss, Burke, and Rousseau）to this problem. These theorists were selected because the ideas, concepts and theories that were advanced by the social, economic, and political theorists would better help the social work profession understand the role of governments and their policies. These policies have greatly impacted the clients' lives that social workers have served, and they will adequately be able to address the issues surrounding their clients when they utilize the macro practice approaches.

For example, Goffman's research, observations, and findings published in *Asylums*（1961）revolutionized the way we thought about institutional care for people with mental illness. His labeling theory, especially through his work *Stigma*（1963）, also contributed to social work theory and practice. In the empowerment approach in social work, it is clearly stated that the focus of practice is on members of the marginalized and stigmatized groups such as justice-involved people with mental illness. As such, it may reveal that mental health and criminal justice policy have been shaped by a set of social, economic, and political choices. Finally, I will summarize the results of the analysis in the conclusion.

Application of Social Theories

Herbert Spencer

Spencer coined the phrase "survival of the fittest," expressing the view that an individual's adaptation to the social function develops best when his/her relations to society are not artificially interfered with（Humphreys, 2011）. Spencer stated that the human species would be improved through competition and then only the fittest would survive. He was an advocate for a laissez-faire economy in which government should be restrained and individuals should have the freedom to pursue their interests, as long as they do not infringe on the rights of others（D'Angelo, 2011）. However, Spencer（1863）emphasized that "when, by murder, theft, assault, or minor aggression, he has broken through these limits, the community is warranted alike by absolute and by relative expediency in putting him under restraint"（p. 266）. He acknowledged the function of government to protect citizens from crimes, but he questioned both the penal system and rehabilitation of offenders：

For the present, the position we have to defend is, that these systems are bad..... But the question is not solely, how many prisoners are prevented from again committing crime? A further question is, how many of them have become self-supporting members of society? （Spencer, 1863, p. 265）

Spencer's theory of social Darwinism explains that the role of government should be limited to keep safety for the fittest in society, but should not be expanded to provide any social services for the most unfit, in other words, those who committed crime. Instead, Spencer would be tolerant that private charities that assumed a role in the rehabilitation of offenders. Moreover, Spencer might have suggested to remedy the penal system and advocated for the privatization of prisons. Spencer (1861/1911) noted that :

The only successful reformatories are those privately-established ones which approximate their regime to the method of Nature—which do little more than administer the natural consequence of criminal conduct : diminishing the criminal's liberty of action as much as is needful for the safety of society, and requiring him to maintain himself while living under this restraint. (p. 72)

Spencer's theory also had a significant influence on the birth of eugenics. According to Oakley (1991), the term eugenics was introduced by Francis Galton in his Herbert Spencer lecture delivered at the University of Oxford in 1907. Some of the reformers in the Progressive Era acted as proponents of the eugenics movement. They supported the thought that the human race could be improved by selective breeding. They argued that mental patients often suffered from hereditary deficiencies and that generational patterns of mental impairment should be eliminated by sterilization.

In the 1930s, the proponents of natural selection in the Unites States convinced legislators to pass legislation allowing for the involuntary sterilization of people with mental illness. According to Karger and Stoesz (2002), thirty states passed laws authorizing involuntary sterilization, and by 1935 approximately 20,000 patients had been sterilized. By the mid-1950s "more than 58,000 mental patients and convicts had been forcibly sterilized" (Karger & Stoesz, 2002, p. 394). Pray (1949) criticized the movement that "Either as a factor in the control or prevention of crime, or as a eugenic measure, whatever its ultimate potentials may be, sterilization is not now operating with substantial results anywhere in this country" (p. 143).

For Spencer, noninterference was an essential principle when applying his theory to social issues and problems. Although Spencer himself experienced serious mental health problems, he would not support the mental health and criminal justice policy in which government and states play a role to provide social services for justice-involved people with mental illness in the community.

Emile Durkheim

Durkheim defined sociology as the science of social facts and of social institutions (Humphreys, 2011). He also saw crime and deviance as social facts and argued that crime is normal and that punishment performs the important function of spotlighting societal rules and values. Durkheim defined crime as an act that is met with punishment by society (Charter, 2011). Clear, Cole, and Reisig (2006) address Durkheim's interpretation of crime and deviance and note that "As people unite against the offender, they feel a sense of mutuality or community. Punishing those who violate the law makes people more alert to shared interests and values" (p. 6). Erikson (1967) also

mentions Durkheim's influence on the theory of crime and deviance and notes that "deviance can play an important role in keeping the social order intact" (p. 297).

Durkheim's functionalist theory sees crime and deviance resulting from structural tensions and a lack of moral regulation within society. He regarded both crime and deviance as inevitable and necessary elements in modern society (Giddens, Duneier, & Appelbaum, 2007). In the functionalist theory, crime and deviance have an adaptive function and they help shift society. Functionalist theory explains that society needs criminal behavior to function properly and offenders or people with mental illness are the innovative force to the society. For functionalists, crime and deviance are not threats to the social order, but instead they bring about change. Functionalist theory sees the implications of mental health and criminal justice policy as social fact rather than attributing to the cause of individual offenses. In *The Division of Labor in Society* (1893/1933), Durkheim observes that：

> Thus, the nature of collective sentiments accounts for punishments, and, consequently, for crime. Moreover, we see anew that the power of reaction which is given over to governmental functionaries, once they have made their appearance, is only an emanation of that which has been diffuse in society since its birth. (p. 104)

The functionalist theory would neither remedy the mental health and criminal justice policy nor suggest government and states play a role to provide social services for offenders with mental illness in the community. Instead, it stresses "how social facts, while on the surface may seem harmful, may actually help a society to function" (Charter, 2011, p. 6).

Erving Goffman

Goffman's perspective has contributed in very substantial ways to the advent of post-modern thinking and theories of social construction (Humphreys, 2011). Particularly, the introduction of the notion of total institution in *Asylums* (1961) had a significant impact on mental health policy in the United States. Goffman (1961) defined total institution as "a place of residence and work where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead and enclosed, formally administered round of life" (p. xiii).

Although there were several studies that explored the relation between mental health and social structure (Schwartz, 1958 ; Stanton & Schwartz, 1954), Goffman's perspective in *Asylum* was influential in bringing about changes in mental health policy, in particular changes leading to the deinstitutionalization of people with mental illness (Payne, 2005 ; Trevino, 2003).

Similarly, at a later stage, Goffman incorporated the concept of stigma into his work, what he called "spoiled identities," through observations in a state mental hospital. Goffman, along with other theorists, have "described mental illness as a social role created by society for the 'disturbed' person" (Popple & Leighninger, 2005, p. 493) in the development of the labeling theory.

Considering that total institution was employed as the conceptual basis for deinstitutionalization in the 1960s, Goffman's perspective would explain the phenomenon of transinstitutionalization as

well. In addition, the process of stigmatization can be applied to the explanation why it is a large number of people with mental illness are likely to be treated in social institutions such as mental hospitals or prisons instead of receiving social services in the community. Goffman would explain the process that : once an offender with mental illness has a record of having been in both a mental hospital and a prison, the public at large, both formally and informally, considers them to be set apart from the community. In short, they would place a double-stigma on them.

Application of Economic Theories
Milton Friedman

Friedman argued that the only true role for government in relation to the economy was providing a stable framework for a free market economy (Humphreys, 2011). He stressed that the market was self-regulating by an invisible hand and it was government's misguided policies that were the cause of economic crises (Belsito, 2011). In the executive summary of his essay, Friedman states that "The major social problems of the United States—deteriorating education, lawlessness and crime, homelessness, the collapse of family values, the crisis in medical care—have been produced by well-intended actions of government" (Friedman, 1993).

Friedman saw that the increasing prison population was mainly caused by the prohibition of illegal drugs. He regarded those crimes as victimless which should not be crimes. Furthermore, Friedman (1993) emphasized that the wave of homelessness was produced by deinstitutionalization and wrong housing policies :

> .....as has the governmental decision to empty mental facilities and turn people out on the streets and urban renewal and public housing programs, which together have destroyed far more housing units than they have built and let many public housing units become breeding grounds for crime and viciousness. (p. 3)

As a proponent of laissez-faire capitalism, Friedman would explain the phenomenon of transinstitutionalization as the consequence of failure in mental health and criminal justice policy by government. He would oppose all social service expenditures for the rehabilitation of offenders with mental illness by government. Instead of expanding federal and state prisons, he would advocate for the further privatization of prisons as a remedy for the failure by government. Silverstein (2003) notes that in this movement "The private prison upsurge was spawned by post-1980s free market ideological fervor, large budget deficits for the federal and state governments, and the discovery and creation of vast new reserves of 'raw materials'—prisoners" (p. 3).

Richard Titmuss

Titmuss became influential for his advocacy of governmental planning and programming to meet common social needs. He argued that all societies and governments have choices as to the kinds of policies they want for their people (Humphreys, 2011). Instead of creating theory, Titmuss provided three models of social policy ; the residual welfare model, the industrial achievement-

performance model, and the institutional redistributive model （Titmuss, 1974）.

The residual welfare model assumes that the private market and the family are the two 'natural' （or socially given） channels of providing care and insurance. Its theoretical basis can be traced back to the Poor Law, and it was mainly advanced by Spencer and economists like Friedman, Hayek, and the founders and followers of the Institute of Economic Affairs in London. This model suggests that social welfare institutions should come into play only when they break down and it should be temporary. In the residual welfare model, offenders with mental illness would be required to ask their families for help, or to find the necessary services provided by for-profit providers in their reentry to the community.

On the other hand, the institutional redistributive model sees social welfare as a major integrated institution in society, providing universalist services outside the market on the principles of social needs. It is based on theories regarding the multiple effects of social change and the economic system. In addition, it embraces the principles of social equality. In the institutional redistributive model, offenders with mental illness would have access to treatment and the necessary social services in their reentry to the community, regardless of insurance status. The institutional redistributive model would explain that receiving social services "carries none of the 'dole' or of 'charity.' It is seen, instead, as a primary means by which individuals, families, and communities fulfill their social needs" （Gilbert & Terrell, 2005, pp. 13-14）.

The institutional redistributive model asks questions about the basic assumptions of the residual welfare model （Titmuss, 1968）. For example, the residual welfare model assumes that private markets in welfare can solve the problems of discrimination and stigma, whereas the institutional redistributive model asks "How does the private market in education, social security, industrial injuries insurance, rehabilitation, mental health services and medical care, operating on the basis of ability to pay and profitability, treat poor minority groups?" （p. 142）.

The institutional redistributive model would remedy the phenomenon of transinstitutionalization in a way that justice-involved people with mental illness have access to the necessary services without experiencing stigmatization. In addition to providing the framework of social divisions of welfare, the model would advocate for eliminating barriers to access social services. In particular, it would focus on the problem of stigma："of felt and experienced discrimination and disapproval on grounds of poverty, ethnic group, class, mental fitness and other criteria on 'bad risks' in all the complex processes of selection-rejection in our societies" （Titmuss, 1968, p. 142）.

Application of Political Theories
Edmund Burke

Burke is regarded by most political experts as the father of modern conservatism especially in the Western world, although he never employed the term "conservative" in his life. Burke's idea stressed that government was not a science with exact and precise methods and conclusions, but

rather government was an art, practiced by artists skilled in prudence scaffolds on political and economic thought of conservatives. Burke rejected the outright idea of egalitarianism. He also emphasized that governments must deal with people as they are, not as they wish they were or could be（Humphreys, 2011）. In *Reflection on the Revolution in France*, Burke noted that：

> A brave people will certainly prefer liberty accompanied with a virtuous poverty to a depraved and wealthy servitude. But before the price of comfort and opulence is paid, one ought to be pretty sure it is real liberty which is purchased, and that she is to be purchased at no other price. I shall always, however, consider that liberty as very equivocal in her appearance which has not wisdom and justice for her companions and does not lead prosperity and plenty in her train.（Burke, 1790/1955, p. 154）

Although Burke's skepticism is supposed to be different from the contemporary American conservatism which deeply commits to laissez-faire capitalism, he emphasizes that bad laws by the government are the worst sort of tyranny. Burke would see the phenomenon of transinstitutionalization which is occurring among offenders with mental illness as existing social reality. He would not recommend remedying it in a revolutionary way, instead, for Burke, incremental change was the only way for society to survive and grow（Humphreys, 2011）.

Jean-Jacques Rousseau

Rousseau introduced the notion of "general will." He emphasized that human society is a collective being with a will different from the sum of individual wills. General will is a perception of what is best for society as a whole to which all must conform（Humphreys, 2011）. He also stressed that the general will exists to protect individuals against the mass. According to Eggers（2011）, there are three maxims in the general will：（1）follow the general will in every action,（2）ensure that every particular will is in accordance with the general will, and（3）public needs must be satisfied. In relation to general will, Rousseau（1762/2004）defined government as follows：

> What then is government? An intermediate body set up between the subjects and the Sovereign, to secure their mutual correspondence, charged with the execution of the laws and the maintenance of liberty, both civil and political.（p. 36）

Rousseau stated that the government consists of magistrates who implement and enforce the general will. He understood that the role of the government is to ensure the equality of the whole. Furthermore, he explained how government can exist to support the equality of all members of society（Eggers, 2011）. Rousseau would address the issue of transinstitutionalization from the view point of what is the best solution for society as a whole. His basic assumption to the implementation of mental health and criminal justice policy would be："Man is naturally good, loving of justice and order"（Humphreys, 2011）.

Rousseau would not pay special attention to the individual needs of offenders with mental illness in their reentry to the community. Instead, he would urge the government to maximize the equality and welfare as a whole while guarding his ideas against conservative critics who would

contend his philosophy as romantic idealism or metaphysical speculations.

Summary and Conclusion

In this paper, the issue of transinstitutionalization was addressed through focusing on the role of government. The main question in this paper was : *Should the federal government and the states assume a central role to provide services for offenders with mental illness in their reentry to the community?* In analyzing the problem, relevant social, economic, and political theories by seven theorists were applied.

Spencer's theory of social Darwinism would explain that the role of government should be limited to keep safety for the fittest in society, but should not be expanded to provide any social services for the most unfit. Instead, he would be tolerant of private charities assuming a role for offenders' rehabilitation. Durkheim's functionalist theory would explain that society needs criminal behavior to function properly and offenders or people with mental illness are the innovative force for society. Goffman's perspective, especially, the process of stigmatization can be applied to the explanation as to why a large number of people with mental illness are likely to be treated in social institutions such as mental hospitals or prisons, instead of receiving social services in the community.

Friedman would explain the phenomenon of transinstitutionalization as the consequence of failure in mental health and the criminal justice policy by the government. He would oppose all social service expenditures for the rehabilitation of offenders with mental illness by the federal and state governments. Instead, he would advocate for the further privatization of prisons as a remedy for failure by the governments. On the contrary, the institutional redistributive model by Titmuss would remedy the phenomenon of transinstitutionalization in a way that justice-involved people with mental illness should have access to the necessary services without experiencing stigmatization. Moreover, the model would advocate for the elimination of barriers to access social services by focusing on the problem of stigma.

Burke would see the phenomenon of transinstitutionalization which is occurring among offenders with mental illness as the existing social reality. He would not recommend remedying it in a revolutionary way but instead suggest incremental change. Rousseau would address the issue of transinstitutionalization from the view point as to what is the best solution for society as a whole. He would not pay special attention to the individual needs of offenders with mental illness in their reentry to the community. Rather, he would urge the government to maximize the equality and welfare as a whole.

The code of ethics of the National Association of Social Workers（2017）demands that all social workers commit to social and political action. It states that : "Social workers should engage in social and political action that seeks to ensure that all people have equal access to the resources, employment, services, and opportunities they require to meet their basic human needs and to

develop fully" (NASW, 2017). The concepts, philosophy, and theories developed by each of the social, economic, and political theorists greatly contributed to help social workers understand the role of governments and their policies, and urge them to become the agents of change for their clients.

It is essential to note that the criminal justice system that values order, control, and punishment has always challenged the value base of social work, such as dignity and worth of the person, client self-determination, and social justice (Gumz, 2004 ; McNeece & Roberts, 2001 ; Ohlin, 1960 ; Toi, 2015). For this reason, contrasting the ideas of these theorists would provide social workers a useful lens to understand the difference between the protective ideology in the criminal justice system and the social work philosophy.

As the issue of transinstitutionalization reveals, mental health and criminal justice policy have been shaped by a set of social, economic, and political choices that reflect the "dominant beliefs, values, ideologies, customs, and traditions of the cultural and political elites recruited mainly from among the more powerful and privileged strata" (Gil, 1981, p. 32). As a non-elitist profession, social work practitioners and researchers should strive to influence the development of social service policies to meet the needs of all people including justice-involved people with mental illness by scrutinizing the strengths and limitations of each social, economic, and political theory.

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Transinstitutionalizationの批判的分析
―刑事司法に巻き込まれた精神障害者の社会的ニーズと政府の役割―

A critical analysis of transinstitutionalization
―The social needs of justice-involved people with mental illness and the role of government―

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要旨

　犯罪化仮説は、transinstitutionalizationという、一つの施設（精神科病院）から、別の大規模施設（刑務所）に大量の人や資金が移っていく現象と関連付けて論じられることが多い。一部の研究者は、刑務所が精神障害者の事実上の治療施設になっていると主張する。多くの研究がなされているものの、その結果は精神保健サービスと刑事司法システムの相互作用の理由を十分に説明しているとは言えない。本稿では、刑事司法システムに巻き込まれた精神障害者が、地域社会において精神保健サービスを利用することを困難にしている問題について、政府の役割に焦点を当てて検討する。7人の理論家（ハーバート・スペンサー、エミール・デュルケーム、アーヴィング・ゴッフマン、ミルトン・フリードマン、リチャード・ティトマス、エドマンド・バーク、ジャン・ジャック・ルソー）による社会、経済、政治理論を適用することにより、この問題の批判的分析を試みた。これらの理論は、その争点を説明し、問題解決に向けた方法を示唆するために固有の役割を果たしている。ソーシャルワークの実践家および研究者は、それぞれの社会、経済、政治理論の強みと限界を精査し、刑事司法システムに巻き込まれた精神障害者を含むすべての人たちの社会的ニーズを満たすための、社会福祉政策の発展に影響を与えるよう努めることが求められる。

キーワード：司法に巻き込まれた人びと　精神障害 transinstitutionalization 社会復帰