

JUVENILE JUSTICE RESEARCH TO POLICY AND THE CASE OF FINES

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If the twentieth century marked key turning points in legal theory, research, and opinion surrounding juvenile justice, juvenile justice in the early twenty-first century has been equally marked by critical legal decisions and groundbreaking research that has not only informed juvenile justice thinking, but has also led to significant policy developments and changes with respect to the philosophies underlying adolescent development, juvenile offending, juvenile rehabilitation, and juvenile punishment.

In the late 1990s, the MacArthur Foundation formed a research network on Adolescent Development and Juvenile Justice (“Network”) that was chaired by one the world’s most accomplished developmental psychologists, Laurence Steinberg.¹ In concert with a group of scholars from various fields and key juvenile justice practitioners,² the Network outlined a research agenda that focused on three broad themes regarding juvenile justice: competence, culpability, and adolescents’ potential for change.³ Although space constraints preclude a detailed overview of the many activities and products that emerged from the dec-

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¹ *Research Network on Adolescent Development & Juvenile Justice*, MACARTHUR FOUND., <https://www.macfound.org/networks/research-network-on-adolescent-development-juvenile/details> [<https://perma.cc/U46E-4H2U>] (last visited Feb. 14, 2017).

² In full disclosure, I was a member of the Network. And like Feld’s life-changing moment when *Gault* was handed down as he was studying for final exams after his first year of law school, I joined the Network after my first year as a new faculty member in the Department of Criminal Justice at Temple University. I had heard from a colleague that Larry Steinberg in the Psychology Department, also at Temple University, was leading this Network. I called him out of the blue and we met in his office at Weiss Hall. I had no realization then that not only would my involvement in the Network be significant in my professional career, perhaps more important I gained a mentor and friend in Larry who has always served as a role model in many ways, save for his love of the Philadelphia Eagles. It was fortuitous at our initial meeting that I did not tell him that I was a die-hard Dallas Cowboys fan.

³ *Research Network on Adolescent Development & Juvenile Justice*, *supra* note 1.

ade-long Network, a few key contributions are worth highlighting here—especially as they relate to juvenile justice policy—and all of which surround a juvenile justice philosophy and system that is developmentally sensitive and informed by the empirical research.⁴

First, many adolescents, especially under age fifteen, do not have a full understanding nor appreciation of how the juvenile justice system works.⁵ Broadly speaking, many adolescent offenders simply do not have the legal competence to understand the system, the actors, the legal process, and their place in it.⁶ Relatedly, research findings showed that many juvenile offenders lack feelings of criminal responsibility, and thus can be considered less blameworthy and culpable, and, it would follow, should be punished less severely.⁷ On this score, research produced by the Network, as well as other social and medical scientists in the larger academic community, have found that many juvenile offenders do not have a full appreciation of the consequences of their actions, are more susceptible to peer pressure, and are still undergoing growth and development in the regions and systems of the brain that are involved in decision-making and long-term planning.⁸ In short, adolescent offenders are not yet fully functioning adults who can truly appreciate the long-term consequences of their actions.

Second, the Network launched a longitudinal study of over 1,300 serious adolescent offenders in Philadelphia, Pennsylvania and Phoenix, Arizona where it followed the offenders from mid-adolescence into early adulthood.⁹ Referred to as the Pathways to Desistance Study,¹⁰ there have been more than one hundred publications on various aspects of adolescent development, patterns of offending, treatment and services, and punishment experiences regarding the lives of these adolescents as they transition into early adulthood. Perhaps one of the most important findings to emerge from the Study was the large variability among “serious adolescent offenders.” In particular, many of the youth tracked in the seven-year investigation actually were well on a pathway to desistance by early

⁴ See MACARTHUR FOUND. RESEARCH NETWORK ON ADOLESCENT DEV. & JUVENILE JUSTICE, BRINGING RESEARCH TO POLICY AND PRACTICE IN JUVENILE JUSTICE 2, http://www.adjj.org/downloads/552network_overview.pdf [<https://perma.cc/55FQ-6U9T>] (last visited Feb. 14, 2017).

⁵ Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 LAW & HUM. BEHAV. 333, 333–63 (2003).

⁶ *Id.* at 357.

⁷ See Kathryn Monahan et al., *Juvenile Justice Policy and Practice: A Developmental Perspective*, 44 CRIME & JUST. 577, 604 (2015).

⁸ See *id.* at 584. See generally ELIZABETH S. SCOTT & LAURENCE STEINBERG, *RETHINKING JUVENILE JUSTICE* (2008); Grisso et al., *supra* note 5.

⁹ Edward P. Mulvey et al., *Trajectories of Desistance and Continuity in Antisocial Behavior Following Court Adjudication Among Serious Adolescent Offenders*, 22 DEV. & PSYCHOPATHOLOGY 453, 456 (2010).

¹⁰ In full disclosure, I was an investigator on the Pathways to Desistance Study.

adulthood, potentially calling into question what have been rather severe penalties aimed at punishing youthful offenders.¹¹

Third, the Network carried out a telephone survey of U.S. citizens aimed at gauging their preferences for punishing versus rehabilitating adolescent offenders and the extent to which they would be willing to pay for one or the other when dealing with juvenile offenders.¹² Contrary to what many politicians and policy officials had previously believed, findings from the Network's investigation showed that the public was not only willing to pay for crime reduction programs, but in particular they reported being more willing to pay for rehabilitation programs than they were willing to pay for incarceration.¹³

These and other research findings from the Network, in concert with other key advances in the field of adolescent development and criminology, were prominently featured in two important reports published by the National Research Council ("Committee"), both of which were chaired by one of the world's most foremost legal scholars in this area, Richard Bonnie. In the first report, *Reforming Juvenile Justice: A Developmental Approach*, the Committee was tasked with taking stock of the various juvenile justice reforms since the early 2000s within the context of the accruing research knowledge about adolescent development.¹⁴ In outlining a broader framework for juvenile justice reform, the Committee was mindful of issues surrounding recidivism, accountability and fairness, racial/ethnic disparities, and the process by which reform could be achieved. Informed by emerging and novel research findings highlighted above concerning juvenile decision-making processes, the Committee concluded:

[T]he goals, design, and operation of the juvenile justice system should be informed by the growing body of knowledge about adolescent development. If designed and implemented in a developmentally informed way, procedures for holding adolescents accountable for their offending, and the services provided to them, can promote positive legal socialization, reinforce a prosocial identity, and reduce reoffending.¹⁵

¹¹ See, e.g., EDWARD P. MULVEY, U.S. DEP'T OF JUST., OFF. OF JUV. JUST. & DELINQ. PREVENTION, JUVENILE JUSTICE FACT SHEET: HIGHLIGHTS FROM PATHWAYS TO DESISTANCE: A LONGITUDINAL STUDY OF SERIOUS ADOLESCENT OFFENDERS (2011), <https://www.ncjrs.gov/pdffiles1/ojjdp/230971.pdf> [<https://perma.cc/LV9X-E2PD>]; Edward P. Mulvey et al., *supra* note 9, at 472.

¹² Daniel S. Nagin et al., *Public Preferences for Rehabilitation Versus Incarceration of Juvenile Offenders: Evidence from a Contingent Valuation Survey*, 5 CRIMINOLOGY & PUB. POL'Y 627, 632 (2006).

¹³ *Id.* at 636.

¹⁴ Robert L. Johnson & Richard J. Bonnie, *Preface* to REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH, at vii (Richard J. Bonnie et al. eds., 2013).

¹⁵ *Id.* at viii. The Committee also made four broad recommendations: (1) state and tribal governments should create oversight bodies to design, implement, and oversee a long-term process of juvenile justice reform; (2) OJJDP should assume a strengthened federal role, to support juvenile justice system improvement; (3) federal agencies should support research to advance the science of adolescent development and improve understanding of effective responses to delinquency; and (4) OJJDP should guide a data improvement program. The report

One year later, in concert with a newly appointed administrator of the Office of Juvenile Justice and Delinquency Prevention (“OJJDP”), Robert Listenbee, the National Research Council convened a second committee whom was tasked to develop an implementation plan for OJJDP with respect to a developmental approach to juvenile justice (“Second Committee”).¹⁶ In this second report, also chaired by Professor Bonnie, *Implementing Juvenile Justice Reform: The Federal Role*, the Second Committee set forth a detailed, three-year plan for how OJJDP in concert with the federal government could support efforts at all levels to reform the juvenile justice system within the context of a developmental approach.¹⁷ The Second Committee also pointed out seven hallmarks of a developmental approach that would underlie and guide system reform: (1) accountability without criminalization; (2) alternatives to justice system involvement; (3) individualized response based on assessment of needs and risks; (4) confinement only when necessary for public safety; (5) a genuine commitment to fairness; (6) sensitivity to disparate treatment; and (7) family engagement.¹⁸ Finally, and perhaps most importantly, the Second Committee noted that the success of OJJDP taking the lead on reforming juvenile justice in a developmental approach would require the support of the Department of Justice (of which OJJDP is part of) as well as ample resources handed down from the DOJ to OJJDP in order to carry out and be successful with such reform.¹⁹

Within the legal context, it is important to underscore that, as a collective, the studies carried out by the Network, the various research efforts undertaken throughout the academic community, and the two National Academies reports all served to inform the arguments and decisions in three seminal Supreme Court cases dealing with juvenile justice issues in the mid-2000s. In the first case, *Roper v. Simmons*,²⁰ decided in 2005, the Court decided that the death penalty for a crime committed by a juvenile violated the Eighth Amendment. In the second case, *Graham v. Florida*,²¹ decided in 2010, the Court noted that juvenile offenders who committed a non-homicide offense could not be sentenced to life imprisonment without parole. And in the third case, *Miller v. Alabama*,²² decided in 2012, the Court deemed that a mandatory sentence of life without parole for children convicted of homicide was unconstitutional. The common theme noted by the justices who wrote the main opinion was the Court’s use of developmental

emphasized that laws, policies, and practices at every stage within the system should align with the evolving knowledge of adolescent development. *Id.* at 10–14.

¹⁶ Richard J. Bonnie, *Preface* to IMPLEMENTING JUVENILE JUSTICE REFORM: THE FEDERAL ROLE vii (2014).

¹⁷ *Id.*

¹⁸ COMM. ON PRIORITIZED PLAN TO IMPLEMENT DEV’L APPROACH IN JUV. JUST. REF., IMPLEMENTING JUVENILE JUSTICE REFORM 2 (2014).

¹⁹ *Id.* at 3.

²⁰ *Roper v. Simmons*, 543 U.S. 551, 568 (2005).

²¹ *Graham v. Florida*, 560 U.S. 48, 82 (2010).

²² *Miller v. Alabama*, 132 S. Ct. 2455, 2475 (2012).

psychology and neuroscience research supporting the view that kids are different.²³

Undoubtedly, many strides have been made on both the research and policy front with respect to juvenile justice. Still, as is the case in every policy arena, there are many questions that inform both theory and policy within a juvenile justice context that are in need of attention. In the remainder of this essay, I focus on one of the most under-studied, yet potentially serious of such issues: the monetary penalties given to juveniles.

I. MONETARY PENALTIES AND JUVENILE OFFENDERS

In a recent groundbreaking report produced by the Juvenile Law Center, *Debtors' Prisons for Kids: The High Cost of Fines and Fees in the Juvenile Justice System*, Jessica Feierman and her colleagues undertook a comprehensive analysis of states' experiences and variability associated with how they impose monetary costs and penalties on juvenile offenders, cataloged the legal consequences for failure to pay (e.g., further justice involvement including incarceration), the financial stress imposed on youth and their families, as well as the potential racial/ethnic disparities in financial penalties that lead to additional disparities in juvenile justice system involvement.²⁴ Aside from their own documentation, the authors also conducted a national survey of 183 lawyers and persons with prior juvenile justice experiences—including monetary penalties—regarding local practices.²⁵ Additionally, the authors focused on eight different types of costs: (1) probation/supervision; (2) informal adjustment/diversion; (3) evaluation/testing; (4) cost of care; (5) court costs; (6) fines; (7) expungement costs; and (8) restitution, considered how states imposed such costs by statutes, and highlighted how often such costs were used.²⁶ And after noting the various potential harms that fees and costs may impose on youth in general, and youth in poverty in particular, the authors identified some potential solutions, promising practices, legislative remedies, and identified some jurisdictions that have ceased imposing court costs, fees, and fines.²⁷ A number of key findings emerged from their study.

First, in most states, youth and families are likely to pay at least one type of cost for juvenile court involvement, which may include one or more of the following: fines, cost of GPS monitoring, probation supervision fees and costs, fees and costs for participation in diversion programs, and/or treatment costs.²⁸ Se-

²³ REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH, *supra* note 14, at 44.

²⁴ See JESSICA FEIERMAN ET AL., *DEBTORS' PRISON FOR KIDS? THE HIGH COST OF FINES AND FEES IN THE JUVENILE JUSTICE SYSTEM* (2016).

²⁵ *Id.* at ii–iii.

²⁶ *Id.* at iii.

²⁷ *Id.* at 25.

²⁸ *Id.* at 11, 13, 19.

cond, they found that in many cases, juveniles cannot afford to pay for (excessive) costs, fines, and fees and as a result the financial burdens often shift to juveniles' parents or legal guardians.²⁹ Moreover, for already financially stressed families, these costs may exacerbate their financial difficulties and in some cases failure to pay could result in criminal contempt, civil judgments, probation violations and even incarceration—which can undermine the rehabilitative mission of the juvenile justice system.³⁰ Third, every state in their survey had a provision on restitution, typically afforded to the victims.³¹ And in some cases, restitution obligations can also be placed on the youth's family in addition to the youth themselves.³²

Finally, the authors reported that some jurisdictions had already stopped imposing fees and costs.³³ One locale in particular, Alameda County, California, was barely recovering their own expenses for imposing financial penalties and decided on March 29, 2016 to place a moratorium on juvenile probation fees.³⁴ Just a few months later, the county Board of Supervisors voted to repeal administrative court fees permanently.³⁵ As well, the state of Washington passed the Year Act in 2015, which eliminated juvenile diversion fees, court and appellate costs, collection fees for juvenile financial obligations, adjudication fees, and certain other fees.³⁶ Additionally, the Year Act contains a provision that allows “youth to petition the court for [various forms of] modification or relief from legal financial obligations and [also] directs the court to consider such factors as [the youth's] ability to pay.”³⁷ In short, their documentation of costs and fees imposed on juvenile offenders throughout the United States provides an important contribution to the juvenile justice policy literature, especially because all of the previous research on financial penalties has been conducted among adult offenders in the criminal justice system.³⁸

In a companion empirical analysis, Piquero and Jennings undertook the first rigorous analysis of adolescent offenders' experiences with various financial fines, fees, and/or restitution.³⁹ Specifically, the authors used data from over

²⁹ *Id.* at 10.

³⁰ *Id.* at 23.

³¹ *Id.* at 21.

³² *Id.*

³³ *Id.* at 9.

³⁴ Press Release, East Bay Comty. Law Ctr., Alameda County Halts Juvenile Probation Fees (Apr. 7, 2016), <https://ebclc.org/in-the-news/alameda-county-halts-juvenile-probation-fees/> [<https://perma.cc/4WC7-X2UH>] (last visited Feb. 14, 2017).

³⁵ FEIERMAN ET AL., *supra* note 24, at 9.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *See, e.g.*, ALEXES HARRIS, A POUND OF FLESH: MONETARY SANCTIONS AS PUNISHMENT FOR THE POOR (2016).

³⁹ Alex R. Piquero & Wesley G. Jennings, *Research Note: Justice System—Imposed Financial Penalties Increase the Likelihood of Recidivism in a Sample of Adolescent Offenders*, YOUTH VIOLENCE & JUV. JUST. 1 (forthcoming 2017) (online unpublished manuscript), <http://journals.sagepub.com/doi/pdf/10.1177/1541204016669213> [<https://perma.cc/98U2-VCT6>].

1,000 adolescent offenders from Alleghany County, Pennsylvania in order to investigate two specific questions.⁴⁰ First, how do demographics and case characteristics relate to financial penalties, including fines, fees, and/or restitution imposed by the juvenile justice system, and second, how do the various financial penalties relate to recidivism (e.g., subsequent adjudication for a new delinquent offense and/or convicted in adult criminal court for a felony or misdemeanor offense in the two years since the end date of their current supervision offense) using two years of follow-up information.⁴¹ A few key findings emerged from their study.⁴²

First, the results showed that, compared to whites, non-white (primarily African-American) youth were more likely to still owe costs and restitution upon case closing and also owed a higher amount of costs and restitution upon case closing.⁴³ Importantly, the race differences did not emerge when costs, restitution, and total amount of costs and restitution imposed at disposition were examined.⁴⁴ Second, when the authors considered the extent to which various demographic, case characteristics, and fines, fees, and restitution imposed and owed were related to recidivism in the two year follow-up period, they found that not only were males, non-whites, and youth with a prior disposition at increased risk for recidivism, but also that the likelihood of recidivism was exacerbated among: (1) youth with more total costs and restitution imposed at disposition; (2) youth with total costs and restitution owed upon case closing; and (3) youth who owed costs and/or restitution upon case closing.⁴⁵ In the recidivism analyses, neither costs imposed at disposition nor restitution imposed at disposition were related to the likelihood of recidivism.⁴⁶ When the finding that non-whites were more likely to still owe costs and restitution upon case closing is combined with the finding that non-whites evince a higher likelihood of recidivism, the collective result points to the adverse effect of (excessive) financial costs and fees on non-whites with a real potential for deeper penetration into the juvenile justice system.⁴⁷

Not surprisingly, the findings from the Juvenile Law Center's survey of the imposition of financial obligations on adolescent offenders in the juvenile justice system, coupled with the two findings emerging from Piquero and Jennings's investigation of the imposition of fines, fees, and costs in a sample of adolescent offenders gained immediate and prominent national attention. Soon after the study was released, the *New York Times* published a front-page story regarding the two sets of findings, along with personal stories of youth adversely affected

⁴⁰ *Id.* at 4.

⁴¹ *Id.* at 3.

⁴² *Id.* at 10.

⁴³ *Id.* at 7.

⁴⁴ *Id.* at 6.

⁴⁵ *Id.* at 10.

⁴⁶ *Id.* at 8.

⁴⁷ *Id.* at 10.

by financial obligations that they and/or their families had trouble meeting or could not fulfill at all.⁴⁸ And just a few days later, the paper's own Editorial Board highlighted the study, and after documenting Alameda County's moratorium and subsequent repeal of court fees in juvenile cases, called for counties across the United States "to follow suit."⁴⁹

CONCLUSION

That Professor Feld was studying for his law school exams when the *Gault* decision was reached is, I think, more than mere coincidence. And here we are, fifty years later, revisiting the *Gault* decision and celebrating the important, life-long theoretical, empirical, and policy-relevant work that Professor Feld has contributed to the field of juvenile justice. Again, no mere coincidence. Professor Feld has contributed greatly to the issues that are highlighted throughout this essay, from the fact that kids are different, to their need to be treated separately from adults and with a rehabilitative-first orientation, and that the juvenile justice system has to come to grips with its racial/ethnic disparity problem, which in my view still remains among the most important of all pressing theoretical, empirical, and policy-relevant issues.⁵⁰

Fortunately, several gains have been made throughout the course of Professor Feld's career, and especially over the past dozen years. As he reminds us in his essay, we currently find ourselves in a period where rational and more human juvenile justice policies are possible. Yet, I find myself slightly disagreeing with his dim prospects for real change. Maybe it is my age (or diminished culpability), but the gains made in just these past dozen years have led to a different mode of thinking about juvenile offenders, their treatment, their punishment, and their prospects for change. Although juvenile justice policy may move like a large cruise ship, cruise ships still make turns, ride out (or around!) bad weather, and they eventually return to port. That the field remains committed to continued study of pressing issues, documenting gross injustices, and bringing them to the forefront may be all that we can ask of ourselves to accomplish. But that is one, among several, important goals. Altering miscarriages of juvenile justice and mis-informed practices, like some jurisdictions are doing throughout the country, may be a slow process, but it makes it no less worthwhile. Professor Feld was a pioneer in this field, and I, my colleagues and the many juveniles whose lives he has affected are most grateful.

⁴⁸ See Erik Eckholm, *Court Costs Entrap Nonwhite, Poor Juvenile Offenders*, N.Y. TIMES (Aug. 31, 2016), https://www.nytimes.com/2016/09/01/us/court-costs-entrap-nonwhite-poor-juvenile-offenders.html?_r=0 [https://perma.cc/NJZ3-C49Z].

⁴⁹ Editorial, *The Injustice of Making Kids Pay*, N.Y. TIMES (Sept. 5, 2016), <https://www.nytimes.com/2016/09/05/opinion/the-injustice-of-making-kids-pay.html> [https://perma.cc/DRF5-BHUL].

⁵⁰ See generally Alex R. Piquero, *Disproportionate Minority Contact*, 18 FUTURE OF CHILD. 59-79 (2008).