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Analyzing Juvenile Justice Policy: A Critical Review

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ANALYZING JUVENILE JUSTICE POLICY: A CRITICAL REVIEW

*Tonya Aultman-Bettridge**

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I. INTRODUCTION

Since the creation of the first juvenile court in 1899,¹ the juvenile justice system has been the center of frequent and intense controversy. Now, as the system prepares to enter its second century of operation, it is being attacked, quite literally, from all sides. Many claim that the juvenile justice system has failed in its seeming inability to stem the tide of youth violence surging across the country.² Others claim that the juvenile court has lost sight of its original mission to care for the best interests of the child and has simply become a criminal court for children.³ Some argue that young offenders are treated too harshly,⁴ while others claim the court coddles children, even those accused of very serious crimes.⁵ Embedded in these arguments are

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1. See BARRY KRISBERG & JAMES F. AUSTIN, *REINVENTING JUVENILE JUSTICE* 30 (1993).

2. See *id.* at ix.

3. See *id.* at 1.

4. See *id.* at 2.

5. See *id.* at 1.

underlying assumptions of what the juvenile justice system should or should not do, and what it is capable of achieving. Disparate views of the purpose and utility of the juvenile justice system arise from very different interpretations of what constitutes good policy for dealing with youthful offenders.

Policies aimed specifically at offenders labeled as chronic, serious, and/or violent offenders make up a significant portion of recent studies. These offenders, while making up a very small proportion of youth who are processed,⁶ disproportionately account not only for the majority of costs incurred by the system, but also for the far-ranging controversies that have plagued its operation.⁷ The question of how best to respond to chronic, serious, and/or violent youthful offenders creates conflicts between competing social and legal ideologies within the U.S. justice system.⁸ These conflicts range from the competing justice system ideologies of punishment and retribution versus treatment and rehabilitation to social and legal definitions and characteristics of juveniles versus those of adults.⁹ The complexity and intensity of these conflicts have led to a reexamination of the principles, methods, and goals of the juvenile justice system and have further prompted calls for its abolition.¹⁰

A fundamental first step in understanding the characteristics, effectiveness, efficiency, and general impact of juvenile justice policies aimed at chronic, serious, and/or violent offenders is an examination of the various methods by which these phenomena have been measured. As with many social issues, the framework of the analysis itself can produce controversy and debate. Issues regarding fairness and equity, as well as debates regarding effectiveness and efficiency, often lie at the heart of disputes in the treatment of young offenders, particularly when crimes of violence are involved. Further plaguing research endeavors are questions regarding the definitions and characteristics of juveniles that are used in discussions of accountability and amenability to treatment.¹¹ To date, research practitioners and policy-making communities have been unable to reach a consensus regarding the criteria for "chronic," "serious," and "violent" offenses. These discrepancies

6. See Barry C. Feld, *Delinquent Careers and Criminal Policy: Just Deserts and the Waiver Decision*, 21 CRIMINOLOGY 195, 196 (1983).

7. See Jeffrey Fagan, *Social and Legal Policy Dimensions of Violent Juvenile Crime*, 17 CRIM. JUST. & BEHAV. 93, 95 (1990).

8. See Barry C. Feld, *Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform*, 79 MINN. L. REV. 965, 1122 (1995).

9. See KRISBERG & AUSTIN, *supra* note 1, at 30.

10. See Francis Barry McCarthy, *Should Juvenile Delinquency Be Abolished?*, CRIME & DELINQ., Apr. 1977, at 196, 196; Marvin E. Wolfgang, *Abolish the Juvenile Court System*, CAL. LAW., Nov. 1982, at 12, 12.

11. See Wolfgang, *supra* note 10, at 13 (arguing that the "gravity of the offense not the age of the offender" should be determinative).

have impaired research in the area of juvenile justice policy, in part, because of the lack of an integrated framework for understanding these policies *as a whole*.

This article reviews a variety of perspectives that have been applied to the study of the juvenile justice system in more recent years. While not meant as an exhaustive summary of the literature on juvenile justice, this article outlines a number of different frames of reference that have been used in the analysis of policies aimed at chronic, serious and/or violent juvenile offenders, with a particular emphasis on framing the nature of the current controversy and debate. Starting with the social science of the 1970s, which supported the "nothing works" doctrine of juvenile offender treatment,¹² this work reviews and summarizes existing analyses of juvenile justice practices affecting offenders labeled as most problematic to the system. More specifically, this article discusses three general models that traditionally have been applied to the analysis of juvenile justice policy. These models can be classified and described as frameworks and each is built upon one of three primary subjects of analysis: system outputs (and outcomes),¹³ moral, ethical, and legal decision-making,¹⁴ and broader societal perspectives and political impacts.¹⁵

The first model focuses on the outputs of the juvenile justice system, particularly the effectiveness, efficiency, and systems impact of specific programs and policies.¹⁶ This framework relies heavily on critiques of and reactions to past social science research and makes suggestions for improvements within social science methods.¹⁷ Within the second model are studies of the decision-making and the fundamental legal and ethical issues of fairness and equity within the system.¹⁸ The final model includes analyses focusing on definitional issues and social constructions of the chronic, serious and/or violent juvenile offender, including the political impacts of these constructions.¹⁹

These three frameworks are not mutually exclusive and are not inclusive of all examinations of juvenile justice policy. Indeed, specific policy questions are often examined through the lenses of two or even all three of

12. See Fagan, *supra* note 7, at 92.

13. See Rebecca D. Petersen, *Expert Policy in Juvenile Justice: Patterns of Claimsmaking and Issues of Power in a Program Construction*, 23 POL'Y STUD. J. 636, 636 (1995).

14. See DEBORAH STONE, *POLICY PARADOX: THE ART OF POLITICAL DECISION MAKING* 37 (1997).

15. See THOMAS J. BERNARD, *THE CYCLE OF JUVENILE JUSTICE* 4 (1992).

16. See Petersen, *supra* note 13, at 636 (noting that outcomes can be observed, explained, and measured).

17. See *id.* at 647-48.

18. See STONE, *supra* note 14, at 39.

19. See BERNARD, *supra* note 15, at 3 (suggesting that the cycle of juvenile justice is perpetuated by the views of justice officials and the general public).

these models. However, separating studies according to the characteristics of these frameworks provides a general method by which analyses can be categorized, compared, and contrasted. More importantly, the division of research and analysis into these categories highlights the important role that underlying assumptions and the formation of research questions play in the focus and contributions of a study or subset of studies.

In light of earlier observations in this article regarding definitional difficulties with the terms “chronic,” “serious,” and “violent,” this review includes research on policies aimed at these specific offenders, as defined and identified by each analyst. For further clarification, the term “serious violent offense” generally refers to crimes defined as “violent index crimes” by the Federal Bureau of Investigation: murder and nonnegligent homicide, aggravated assault, robbery, and rape.²⁰

This article is organized into four parts, corresponding to the model structure outlined above. Part II begins with a description of the social science research of the 1970s, which lies at the root of many current ideological disagreements regarding juvenile justice policies. This part includes discussion of recent studies that use an outputs-focused framework and have led to debates regarding the appropriate methods for measuring success and efficacy; it also details criticisms of this early research. It then concludes with an examination of the steps taken by the social science community in response to criticisms of earlier research, including the use of a wider range of outcome variables and the inclusion of systems impact analysis in juvenile justice policy research. Part III reviews studies whose reference frames include issues of fairness and equity. Part IV examines alternative methods of policy analysis and includes a more in-depth discussion of the social construction of the chronic, serious, and/or violent juvenile offender and the relationships between politics, public opinion, and public policy. Part V summarizes the current state of juvenile justice policy analysis and makes suggestions for future research.

II. ANALYZING POLICY OUTPUTS

Social scientists of the 1990s have turned their attention to the inherent problems of early policy analysis and have attempted to revisit the basic scientific assumptions of evaluation efforts, more specifically, the role of positivism in juvenile justice policy analysis.²¹ Logical positivism, the notion that “phenomena are observable, explainable, and measurable in

20. See FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES 1996: UNIFORM CRIME REPORTS 10 (1997) [hereinafter 1996 UNIFORM CRIME REPORTS].

21. See Petersen, *supra* note 13, at 636.

quantitative terms,” continues to play a dominant role in the analysis of juvenile justice policy.²² The majority of current research shares a common bond in that it tends to focus on outputs of juvenile justice policies.²³ These outputs can be described as observable phenomena that occur as a result of the implementation of a specific policy or program.²⁴ Outputs, for example, can include changes in an individual offender’s behavior, changes or stabilization in crime rates, levels of imprisonment, and costs incurred by a program.²⁵ These studies conceptualize the utility and benefits of a given policy in terms of the policy’s effectiveness, economic costs, and systems impact.²⁶

A. *Analysis of Efficacy*

Studies focusing on policy effectiveness are generally concerned with whether the implementation of a given policy or program has the intended effect on crime and criminals.²⁷ In the case of policies directed at chronic, serious, and/or violent juvenile offenders, these outcomes are traditionally measured through examination of (1) an individual’s subsequent violent criminal activity after participation in a treatment or rehabilitation program or after a period of incarceration, probation, or other sentence, (2) the overall levels of violent juvenile crime in a geographical area affected by the policy, or (3) both.²⁸

Measuring the effects of a given policy often entails the isolation of the population expected to be affected by the policy. For example, a juvenile rehabilitation program can only be expected to affect juveniles who participate in that specific program. However, broadly based and far-ranging policies, such as a political “tough on crime” stance or a state law reducing the minimum age at which a juvenile offender may be tried in criminal court, would be expected to have effects on a larger population than would the individual rehabilitation program. It then follows that the effectiveness of these broad policies is best measured by overall rates of juvenile crime and violence. It certainly can be assumed that much of the public’s opinion on policy effectiveness is based upon perceptions of the general levels of crime.²⁹ However, this method requires the assumption that there is a direct, causal relationship between the implementation of a given policy and

22. *Id.*

23. *See id.* at 643.

24. *See id.*

25. *See id.*

26. *See id.*

27. *See id.*

28. *See id.* at 643-44.

29. *See Fagan, supra* note 7, at 94.

rates of crime and violence.³⁰

Jenson and Howard outline two perspectives on the relationship between public policy and youth crime.³¹ From the first perspective, youth crime rates fluctuate mostly, and sometimes completely, independent of changes in public policy.³² This view contends that juvenile crime rates have remained relatively unchanged over time because policymakers have not addressed underlying social problems such as poverty and limited educational and employment opportunities.³³ The second perspective claims that there is a causal relationship between juvenile offending and public policy and that “[y]outh crime rates rise or fall . . . depending on the effectiveness of prevailing juvenile justice policy in preventing and controlling delinquency.”³⁴ In an effort to examine more closely the relationship between policy and youth crime rates, Jenson and Howard compared national trends in juvenile arrest rates and self-reported youth offenses with general changes in juvenile justice policy between 1973 and 1995.³⁵ Using Bernard’s theory that reaction to youth crime cycles between harsher and more lenient treatments of juvenile offenders,³⁶ the researchers compared offending trends to shifts between decriminalization or deinstitutionalization policies and more punitive practices.³⁷ The comparison suggested that overall youth offending declined following the adoption of decriminalization and deinstitutionalization policies³⁸ and that violent crime rates increased concurrently with the introduction of punishment-oriented reforms.³⁹

Singer and McDowall employed a more narrowly focused and interrupted time series experiment⁴⁰ to analyze the impact of the New York Juvenile Offender Law of 1978, which allowed youths as young as thirteen years of age to be tried directly in criminal court, depending on the offense.⁴¹ They compared monthly juvenile arrest rates before implementation of the new law (January 1974 to August 1978) to rates after the law’s implementation

30. See Petersen, *supra* note 13, at 643.

31. See Jeffrey M. Jenson & Matthew O. Howard, *Youth Crime, Public Policy, and Practice in the Juvenile Justice System: Recent Trends and Needed Reforms*, 43 SOC. WORK 324, 324-34 (1998).

32. See *id.* at 328.

33. See *id.*

34. *Id.*

35. See *id.*

36. See BERNARD, *supra* note 15, at 3 (explaining the cycle).

37. See Jenson & Howard, *supra* note 31, at 327.

38. See *id.* at 330.

39. See *id.* at 330-31.

40. See Simon I. Singer & David McDowall, *Criminalizing Delinquency: The Deterrent Effects of the New York Juvenile Offender Law*, 22 L. & SOC’Y REV. 521, 526 (1988).

41. See *id.* at 521.

(September 1978 to December 1984).⁴² The FBI's Uniform Crime Reports provided arrest data for juveniles aged thirteen to fifteen for homicide, rape, robbery, assault, and arson.⁴³ Both control groups and statistical methods to account for natural rate variation were used to isolate the effects of the law.⁴⁴ The results indicated no support for the effectiveness of the New York law.⁴⁵ Trends in juvenile arrests for the affected age groups did not differ after implementation of the new law relative to the control groups.⁴⁶

Tests of deterrence theory in the 1960s and 1970s used similar measures to compare the severity and certainty of penalties with overall crime rates.⁴⁷ These studies yielded mixed results on the ability of deterrent penalties to reduce levels of crime.⁴⁸ McCord, however, points to limitations in the design of these studies.⁴⁹ She argues that while this research has, to a small degree, informed debate over deterrence theory, studies of individual offenders are required to answer crucial questions about the correlation between an individual's perception of sanctions and his or her decision to commit a crime.⁵⁰

Time series models attempting to compare changes in violent crime and delinquency rates with specific policy events vary greatly in the rigor of the methods used, as illustrated above.⁵¹ Regardless of other methodological considerations, however, the general structure of these studies makes the interpretation of findings difficult.⁵² Jenson and Howard note the inherent difficulties in this kind of research and vigorously caution that multiple problems make it difficult to conclude that specific policy changes actually caused the shift in offending rates in their analysis.⁵³ First, because juvenile justice policies are often created and implemented at the state and local levels, aggregated offending statistics, such as those used here, do not account for differences in policy characteristics and timing on the state or local level.⁵⁴ Second, there are possible periods of "lag time" between the creation and implementation of policies that cannot be accounted for by this

42. *See id.* at 526.

43. *See id.* (citing 1996 UNIFORM CRIME REPORTS, *supra* note 20).

44. *See id.* at 527.

45. *See id.* at 530-31.

46. *See id.* at 531.

47. *See* Joan McCord, *Deterrence and the Light Touch of the Law*, in REACTIONS TO CRIME: THE PUBLIC, THE POLICE, COURTS, AND PRISONS 73, 73-78 (D.P. Farrington & J. Gunn eds., 1985) (reviewing studies of deterrence theory conducted in the 1960s and 1970s).

48. *See id.* at 77.

49. *See id.* at 73-78.

50. *See id.* at 75.

51. *See id.* at 73-78.

52. *See id.*

53. *See* Jenson & Howard, *supra* note 31, at 331.

54. *See id.*

research.⁵⁵ Finally, underlying social, demographic, economic, and political changes occurring during those lag times could affect juvenile crime rates.⁵⁶ Therefore, the effects of a single policy cannot be isolated as the cause of rate changes.⁵⁷

The Singer and McDowall New York study addresses the problems in the first design.⁵⁸ By using control groups, they were able to isolate the effects of a specific policy.⁵⁹ However, their research offers multiple explanations for the failure of the New York law, including poor implementation practices and flaws in the theory that punishment will deter crime.⁶⁰ While the New York study used what was probably one of the most scientifically defensible designs under the given conditions,⁶¹ it lacks the ability to adequately explain the law's failure to reduce levels of juvenile crime. Explanations given by the authors are theoretical at best.⁶²

Problems with these research designs raise the question of how well a law or other form of policy can be measured using a broad variable like juvenile arrests, even if the arrests are disaggregated by age group, offense type, and so forth. Related to this is whether overall measures of arrest rates are the best indicators of a policy's success. Singer and McDowall state: "It is possible that the law failed to reduce crime because it did not sufficiently increase the risks of punishment. If this explanation is accepted, however, it leaves open the question of how high the risks of punishment must be to affect juvenile crime appreciably."⁶³

As indicated by Singer and McDowell, the study results could be interpreted as follows: (1) New York's law was too weak to have a deterrent effect, (2) the law was not enforced or implemented properly, or (3) the threat of punishment, in general, failed to reduce overall levels of crime.⁶⁴ Of course, these study results could also be due to a combination of the above mentioned factors. Ultimately, this research is useful because it demonstrates that the law did not have the desired effect.⁶⁵ However, the study's utility ends with its inability to provide more information that might inform future laws or policy.

55. *See id.*

56. *See id.*

57. *See id.*

58. *See Singer & McDowall, supra* note 40, at 527-28.

59. *See id.* at 527.

60. *See id.* at 532-33.

61. *See id.* at 526-27.

62. *See id.* at 532-33.

63. *See id.* at 532.

64. *See id.* at 532-33.

65. *See id.* at 532.

B. *Analyzing Individual Program Efficacy*

An alternative to examining the impact of broader policy orientations on overall rates of juvenile violent offending is the analysis of the effects of a specific program or practice on an individual's violent behavior. In general, such analyses take place within the context of the particular policy orientation of a specific program or practice, for example, treatment programs versus incarceration or other criminal sanctions. Measures of recidivism make up the largest portion of variables used to assess program efficacy for chronic and serious violent juvenile offenders. Recently, however, researchers have shifted to the use of a broader set of measures, in reaction, in part, to problems identified with the social science research of the 1970s.

Martinson's review of evaluations on the efficacy of treatment programs for juvenile offenders was one of the most comprehensive and influential works in this area during the 1970s.⁶⁶ The conclusion of this research was Martinson's own pronouncement that "almost nothing works."⁶⁷ His review of more than 200 juvenile treatment program studies measured program success through a single measure of recidivism — that is, whether or not the juvenile receiving the treatment committed another offense after leaving the program.⁶⁸ This view defined "program success" in narrow, rigorous terms.⁶⁹ Ultimately, either the program reduced recidivism and was therefore deemed successful, or it did not and was labeled unsuccessful.⁷⁰ In a later discussion of these findings, Martinson defended this stance by explaining that treatments could not be partially effective, comparing the notion "to a partly pregnant girlfriend."⁷¹ Based on these findings, Martinson concluded that the rehabilitation of chronic, serious, and/or violent offenders was a fruitless endeavor and advocated a greater use of deterrence and incapacitation.⁷² Additional reviews conducted during this period and results of later 1979 studies reached similar conclusions: either treatment

66. See Barry Krisberg et al., *Graduated Sanctions for Serious, Violent, and Chronic Juvenile Offenders*, in A SOURCEBOOK: SERIOUS, VIOLENT AND CHRONIC JUVENILE OFFENDERS 142, 145 (James C. Howell et al. eds., 1995) [hereinafter A SOURCEBOOK]; Fagan, *supra* note 7, at 96. Martinson published his review in 1974. See generally Robert Martinson, *What Works? Questions and Answers About Prison Reform*, 36 PUB. INTEREST 22-45 (1974).

67. See Fagan, *supra* note 7, at 96-100 (quoting Martinson, *supra* note 66, at 96 (discussing the "almost nothing works" doctrine)).

68. See CHARLES H. SHIREMAN & FREDERIC G. REAMER, *REHABILITATING JUVENILE JUSTICE* 84-85 (1986).

69. See *id.*

70. See *id.*

71. *Id.* at 86 (quoting Robert Martinson, *Evaluation in Crisis — A Postscript*, in *REHABILITATION, RECIDIVISM, AND RESEARCH* (Nat'l Council on Crime & Delinq. ed., 1976)).

72. See Krisberg et al., *supra* note 66, at 145.

programs did not work or evaluation findings were too inconclusive to support the notion that treatment programs were effective for juvenile offenders.⁷³

More recently, researchers have taken issue with the interpretation of these findings, cautioning that a failure to prove a program's effectiveness is not equal to proof that efforts are ineffective.⁷⁴ Martinson's broad statement that "nothing works," in reality, was a claim that his review did not identify a general type of program that consistently was proven effective.⁷⁵ In a later reanalysis of Martinson's data, Palmer noted that some of the programs in the study did have promising and positive results.⁷⁶ In a separate review of correctional programs aimed at juvenile offenders, Riedel and Thornberry cautioned that their own findings, as well as those of Martinson and his colleague, Lipton, were vulnerable to many research design flaws.⁷⁷

Although this research suggests that the evaluated projects were failures, that conclusion does not lead ineluctably to the disavowal of the rehabilitative ideal. For one thing, this conclusion is based on a finite number of studies. Indeed, given the flexible criteria and the scope of the literature search in the study by Lipton [and Martinson], et al., it is surprising that they uncovered only 231 studies to evaluate — an average of only 11.5 studies per year for their study period. Moreover, many of these studies . . . are methodologically flawed, resulting in a small number of conclusive studies. To repudiate the rehabilitative ideal on such scant evidence would merely throw the criminal justice system into a fruitless search for a solution to the crime problem.⁷⁸

Despite the problems with Martinson's original research and warnings from other analysts about these problems, the "nothing works" doctrine was readily accepted both by the general public and many policymakers within juvenile justice.⁷⁹ More recent research seems to refute the conclusion that no form of rehabilitative treatment is effective with chronic, serious, and/or violent juvenile offenders and the only way to protect society is to effectively

73. See Fagan, *supra* note 7, at 97 (listing various studies).

74. See *id.* at 97-100.

75. See SHIREMAN & REAMER, *supra* note 68, at 87-88.

76. See *id.* at 85 (citing Ted Palmer, *Abstract: Martinson Revisited*, 22 CRIME & DELINQ. 178 (1976)).

77. See Marc Riedel & Terence P. Thornberry, *The Effectiveness of Correctional Programs: An Assessment of the Field*, in THE CHILDREN OF ISHMAEL: CRITICAL PERSPECTIVES ON JUVENILE JUSTICE 418, 430 (B. Krisberg & J. Austin eds., 1978).

78. *Id.* (footnote omitted).

79. See Fagan, *supra* note 7, at 96-97.

incapacitate them.⁸⁰

Following Martinson's initial work, a review of juvenile diversion program evaluations recorded by Sandhu and Heasley yielded mixed results.⁸¹ The majority of the evaluations listed in this work showed that juveniles who participated in juvenile diversion programs had lower recidivism rates than control groups, as measured by subsequent arrest records.⁸² Some evaluations, however, found no difference in these rates, and one program evaluation found that diversion program youths exhibited higher rates of recidivism.⁸³ Two recent surveys of community-based alternatives to incarceration have reported somewhat more positive results.⁸⁴ Jones and Krisberg document the results of multiple reviews of correctional programs aimed at the treatment of chronic, serious, and/or violent juvenile offenders.⁸⁵ They found "substantial evidence" that community programs that featured a highly structured environment could effectively manage and supervise chronic juvenile offenders.⁸⁶ They conclude that "[o]n balance, the existing research indicates that highly structured community programs produce recidivism outcomes comparable or better than those of training schools."⁸⁷

In a 1995 survey of program evaluations conducted since the 1960s, Krisberg and his colleagues found considerable support for the conclusion that community-based programs are at least as effective as traditional youth correctional programs.⁸⁸ This review included results from a 1979 study conducted by Murray and Cox of the Unified Delinquency Intervention Services programs in Chicago.⁸⁹ Their research was the first to employ the "suppression effect" as an outcome measure in the study of program efficacy.⁹⁰ Murray and Cox defined the suppression effect as a reduction in *frequency* of reoffending, as opposed to simple recidivism.⁹¹ The research found that the Chicago intervention program had a significant

80. See *id.* at 100-02; Krisberg et al., *supra* note 66, at 145.

81. See HARJIT S. SANDHU & C. WAYNE HEASLEY, IMPROVING JUVENILE JUSTICE: POWER ADVOCACY, DIVERSION, DECRIMINALIZATION, DEINSTITUTIONALIZATION, AND DUE PROCESS 108-12 (1981).

82. See *id.*

83. See *id.*

84. See MICHAEL A. JONES & BARRY KRISBERG, NATIONAL COUNCIL ON CRIME AND DELINQ., IMAGES AND REALITY: JUVENILE CRIME, YOUTH VIOLENCE AND PUBLIC POLICY 36-39 (1994); Krisberg et al., *supra* note 66, at 143-44.

85. See JONES & KRISBERG, *supra* note 84, at 36-39.

86. *Id.* at 37.

87. *Id.*

88. See Krisberg et al., *supra* note 66, at 145-46.

89. See *id.* at 145 (citing CHARLES A. MURRAY & LOUIS A. COX, BEYOND PROBATION (1979)).

90. *Id.*

91. See *id.*

suppression effect, with program participants exhibiting "large" reductions in the incidence (frequency) of their reoffending.⁹²

Over the past twenty-five years, research also has been conducted on state systems that utilized the various individual programs reviewed.⁹³ These efforts have concentrated on the determination of the efficacy of a general movement by states toward more community-based, rehabilitation-oriented models of juvenile justice service delivery.⁹⁴ The most notable of these are studies conducted on the Massachusetts, Maryland, and Utah state reforms of the 1970s.⁹⁵ Initial studies conducted on a sample of youths participating in the Massachusetts reform program, who were released in 1974, found that these youths had higher rates of recidivism than those released in 1968 from juvenile training schools.⁹⁶ Closer analysis of these data, however, indicated that community-based programs were implemented to varying degrees throughout the state, and corresponding recidivism rates differed greatly by jurisdiction.⁹⁷ After the Massachusetts reforms had been in effect for a longer period of time and implementation issues were better resolved, additional evaluations were conducted.⁹⁸ A second study concluded that recidivism rates for youth in community-based programs were equal to or lower than their training school counterparts.⁹⁹ Further analysis showed that juvenile crime rates did not increase after the training schools closed, as was anticipated by many opponents of the new system.¹⁰⁰ Studies conducted on the Utah juvenile justice system had reached similar, positive conclusions regarding community-based programs for youth.¹⁰¹ Another study of community-based programs implemented during statewide reform efforts in Maryland, however, concluded that youths in these programs had higher recidivism rates than those who had been in a training school program, which subsequently shut down.¹⁰² However, it has been noted that this evaluation was conducted very early in the Maryland experiment, shortly after the training school had been closed.¹⁰³

92. *See id.*

93. *See id.* at 146-47.

94. *See id.*

95. *See id.*

96. *See id.* at 146 (citing ROBERT B. COATES ET AL., *DIVERSITY IN A YOUTH CORRECTIONAL SYSTEM* (1978)).

97. *See id.*

98. *See id.*

99. *See id.* (citing BARRY KRISBERG ET AL., *UNLOCKING JUVENILE CORRECTIONS* (1989)).

100. *See id.* at 151.

101. *See id.* at 146 (citing BARRY KRISBERG ET AL., *THE IMPACT OF JUVENILE COURT SANCTIONS* (Nat'l Council on Crime & Delinq. ed., 1988)).

102. *See id.* at 146-47 (citing D.C. GOTTFREDSON & W.H. BARTON, *DEINSTITUTIONALIZATION OF JUVENILE OFFENDERS* (1992)).

103. *See id.*

A study by Schneider and Schram of the State of Washington's movement towards a "justice" or "just deserts" model of juvenile justice yielded less certain results.¹⁰⁴ The Washington model was largely characterized as one that emphasized protection of the public, accountability of juvenile offenders, and uniformity in treatment of juvenile offenders.¹⁰⁵ Analysis of recidivism rates under the new system identified two outcomes.¹⁰⁶ First, recidivism varied greatly by jurisdictions within the state.¹⁰⁷ Second, the recidivism rates for juveniles under the new system increased in two jurisdictions.¹⁰⁸ In this study, however, Schneider and Schram note that these effects could not be separated from possible increases in police activity due to processing changes in the law.¹⁰⁹ Similar research by Kriswell and Howell on correctional programs in Florida found very high rates of recidivism for all offenders in the system.¹¹⁰ However, the lowest rates were reported for those participating in nonresidential programs, while the highest rates of recidivism were documented for those in the most secure facilities.¹¹¹ Krisberg and Howell advise caution when interpreting these results, however, because the study did not control for differing levels of risk for individual offenders.¹¹²

A recent study by Fagan has produced data regarding the recidivism of offenders processed through the juvenile court system, compared to the recidivism of youth sentenced in adult court.¹¹³ Given recent legislative efforts to widen the jurisdiction of the adult criminal court over offenses committed by those under the statutory age of eighteen, it has become increasingly important to examine whether this policy elicits better outcomes on recidivism.¹¹⁴ Fagan compared the deterrent effects of criminal court and juvenile court on a sample of 800 youth in four urban counties.¹¹⁵

104. See Anne Larason Schneider & Donna D. Schram, *The Washington State Juvenile Justice System Reform: A Review of Findings*, 1 CRIM. JUST. POL'Y REV. 211, 233 (1986).

105. See *id.* at 213 fig.1.

106. See *id.* at 231.

107. See *id.*

108. See *id.*

109. See *id.* at 230-31.

110. See Barry Krisberg & James C. Howell, *The Impact of the Juvenile Justice System and Prospects for Graduated Sanctions in a Comprehensive Strategy*, in SERIOUS AND VIOLENT JUVENILE OFFENDERS: RISK FACTORS AND SUCCESSFUL INTERVENTIONS 346, 348 (Rolf Loeber & David P. Farrington eds., 1998) [hereinafter SERIOUS AND VIOLENT JUVENILE OFFENDERS].

111. See *id.*

112. See *id.*

113. See Jeffrey Fagan, *Separating the Men from the Boys: The Competitive Advantage of Juvenile Versus Criminal Court Sanctions on Recidivism Among Adolescent Felony Offenders*, in A SOURCEBOOK, *supra* note 66, at 238, 244-52.

114. See *id.* at 239.

115. See *id.* at 245.

Using the broader measures of recidivism that have come into common use in recent years, Fagan measured the deterrent effects of juvenile and adult court outcomes on rates of recidivism (rearrest), rates of reincarceration, failure rates (the amount of time elapsed to first rearrest), and offending rates (Murray and Cox's "suppression effect").¹¹⁶ The general findings of the study concluded that sentencing in adult court did not ensure lower recidivism rates, compared to the use of juvenile court sanctions.¹¹⁷

Current analysis of individual program successes, as well as reviews of overall statewide reforms, sheds new light on the effectiveness of specific programs or system implementations.¹¹⁸ However, this research, like that of Martinson and his colleagues, thus far has been largely unable to isolate *general types* of interventions as more effective than others.¹¹⁹ The recent application of meta-analysis techniques to the study of programs for juvenile offenders might contribute much to our understanding of which types of intervention strategies hold the most promise.¹²⁰ Meta-analyses calculate a common measure of treatment or an "effect size" that can be applied to all of the studies within an analysis.¹²¹ This "statistical synthesis" allows for both the understanding of how an average individual in a treatment group compares to a counterpart in a control group (based on a percentile score) and the ability to compare effect sizes across a variety of treatment types.¹²² In more recent years, this technique has been used most notably by Mark Lipsey to study treatment programs for juvenile offenders.¹²³

In an early review of treatment programs for juvenile offenders, Roberts and Camasso conducted a meta-analysis of forty-six programs, using recidivism as the primary outcome measure.¹²⁴ This analysis found strong, positive effects for only one treatment type: family counseling programs.¹²⁵ However, it should be noted that of the forty-six studies included in the analysis, many had weak research designs.¹²⁶ Roberts and Camasso noted that a large amount of research done on juvenile offender treatment programs

116. See *id.* at 249-50.

117. See *id.* at 252.

118. See Mark W. Lipsey & David B. Wilson, *Effective Intervention for Serious Juvenile Offenders*, in *SERIOUS AND VIOLENT JUVENILE OFFENDERS*, *supra* note 110, at 313, 330.

119. See *id.* at 335.

120. See *id.* at 335-36.

121. See *id.* at 314.

122. See Albert R. Roberts & Michael J. Camasso, *The Effect of Juvenile Offender Treatment Programs on Recidivism: A Meta-Analysis of 46 Studies*, 5 *NOTRE DAME J.L. ETHICS & PUB. POL'Y* 421, 423 (1991).

123. See Lipsey & Wilson, *supra* note 118, at 314.

124. See Roberts & Camasso, *supra* note 122, at 422-24.

125. See *id.* at 437-38.

126. See *id.* at 437.

is descriptive and anecdotal.¹²⁷ Of the forty-six programs reviewed that did employ a scientific design, sixteen did not use any kind of comparison group and twenty-six analyzed samples that were smaller than 200.¹²⁸ These observations led the authors to cite the primary finding of this study as “research on juvenile offenders is in its early stage of development.”¹²⁹

This meta-analysis and the later work of Mark Lipsey contain reviews of general treatment programs for a wide variety of juvenile offenders.¹³⁰ This research, largely due to a dearth of studies to analyze, did not allow for an examination of interventions directed specifically at chronic, serious, and/or violent juvenile offenders.¹³¹ However, Lipsey and Wilson have since analyzed a subset of the studies included in Lipsey’s earlier work, selecting those that focused on serious offenders, or at least reported on the effects of treatment on that particular group.¹³² This analysis is further unique in that it considered a wide variety of factors that may affect treatment outcomes.¹³³ The study reported effects separately for institutional and noninstitutional treatment interventions and examined effect size in relation to four variables: (1) characteristics of offenders, for example, prior offense, prior violence, gender, and race, (2) general program characteristics, for example, age of the program, type of treatment provider (such as mental health, criminal justice, or other), and penal status of the juveniles during treatment), (3) treatment type, for example, restitution, counseling, or multiple methods, and (4) the amount of treatment, for example, average number of weeks from first to last treatment event and frequency of treatment delivery.¹³⁴

The Lipsey and Wilson review provides much information on a variety of programs aimed at serious offenders, both in institutional and noninstitutional settings.¹³⁵ These programs demonstrated wide variations in success, with some programs producing reductions in recidivism as high as forty percent and others having negligible effects.¹³⁶ However, in light of the claims made by earlier social science researchers that nothing is effective, this study, along with many others of the past decade reviewed in this article, is significant because it provides more promising evidence that effective interventions can be implemented for chronic, serious, and/or violent

127. *See id.*

128. *See id.*

129. *Id.*

130. *See* Lipsey & Wilson, *supra* note 118, at 313-14.

131. *See id.*

132. *See id.*

133. *See id.* at 315-17.

134. *See id.* at 319-20.

135. *See id.* at 333-37.

136. *See id.* at 338.

juvenile offenders.¹³⁷ Although it has been largely refuted in more recent years, through the use of social science methods that, in many cases, are superior to those used in Martinson's original research, the "nothing works" doctrine still might influence the creation and implementation of juvenile justice policy. Research findings that indicate the promise of success in a variety of juvenile offender treatment programs, however, address only one element of the juvenile justice policy debate. In addition to individual program effectiveness, issues of policy and program cost, as well as system-wide impact, play a large role in the discussion of appropriate and successful juvenile justice policy.

C. *Analyzing the Efficiency of Policies and Programs*

A more limited body of research exists regarding cost-benefit analysis of policies aimed at chronic, serious, and/or violent juvenile offenders. This research most often measures the costs of one intervention compared with another — treatment programs versus incarceration, for example.¹³⁸ These costs are then related to rough estimates of the effectiveness of each type of intervention.¹³⁹ Jones and Krisberg, for example, cite past research that estimated the costs for the state to incarcerate one juvenile to be between \$35,000 and \$60,000 per year.¹⁴⁰ These authors also point to data that support the conclusion that an average of thirty-one percent of juveniles currently housed in state facilities could be placed in less secure settings at a lower taxpayer cost.¹⁴¹

Studies of the California Youth Authority (CYA) program of the 1960s concluded that longer juvenile sentences would be bad policy, noting among other issues, that the costs would be substantial and would probably only produce a one to three percent reduction in recidivism.¹⁴² Further, a U.S. Department of Justice evaluation estimated that CYA's growth in the use of probation as an alternative to incarceration saved the state over \$60 million between 1970 and June 1972.¹⁴³ The same study found that there was not any greater risk of recidivism for probationers than for offenders in

137. *See id.*

138. *See* JONES & KRISBERG, *supra* note 84, at 28-29 (finding that 31% of incarcerated juveniles could be placed in less secure settings).

139. *See id.*

140. *See id.* at 29.

141. *See id.* at 28.

142. *See* Krisberg & Howell, *supra* note 110, at 351.

143. *See* CHARLES P. SMITH ET AL., U.S. DEP'T OF JUSTICE, A NATIONAL ASSESSMENT OF SERIOUS JUVENILE CRIME AND THE JUVENILE JUSTICE SYSTEM: THE NEED FOR A RATIONAL RESPONSE, VOLUME III: LEGISLATION, JURISDICTION, PROGRAM INTERVENTIONS, AND CONFIDENTIALITY OF JUVENILE RECORDS 167 (1980).

traditional corrections.¹⁴⁴ A study by RAND Corporation researchers found that through a combination of delinquency prevention and treatment programs, the number of serious crimes, defined as crimes of violence plus burglary, could be reduced to levels comparable to those produced by the "three strikes" law, and at less than one-fifth the cost.¹⁴⁵

One possible explanation for the existence of few comprehensive analyses in the juvenile justice policy literature is the difficulty of assigning costs to constructs such as the protection of society or the rehabilitation of the offender. In a 1980 economic impact report, for example, the U.S. Department of Justice defined a variety of costs that must be measured in order to determine the economic impact of specific juvenile justice policies.¹⁴⁶ The report outlined direct costs of crime, in terms of loss of human life, costs of injury or threatened injury, and costs incurred by witnesses.¹⁴⁷ Indirect costs were defined as increased expenditures for security and insurance, increased annual taxes, diminished quality of life in one's neighborhood, and processing costs for juvenile offenders.¹⁴⁸ The obvious difficulty in quantifying many of these variables is but one of the many criticisms of this kind of approach.¹⁴⁹

An alternative to solely weighting economic factors in analyses of efficiency is to examine broader impacts. Such an analysis would include both the economic and noneconomic impact of a given policy on the juvenile justice system. Much research in the areas of juvenile detention, diversion, and incarceration policies has combined cost factors with other variables, including the quality of policy implementation, adherence to policy, facility overcrowding, and the necessity of restrictive practices.

In a review of national pretrial detention policy, Schwartz and Willis argue that detention rates are skyrocketing in the United States, and with them system costs are increasing dramatically.¹⁵⁰ The authors further argue that detention centers are not being used as intended, that is, to protect the public from youths who are genuinely dangerous to the community, and that research has proven that community-based alternatives to detention would

144. *See id.*

145. *See* PETER W. GREENWOOD ET AL., *DIVERTING CHILDREN FROM A LIFE OF CRIME: MEASURING COSTS AND BENEFITS*, at xiii (1996).

146. *See* CHARLES P. SMITH ET AL., *U.S. DEP'T OF JUSTICE, A NATIONAL ASSESSMENT OF SERIOUS JUVENILE CRIME AND THE NEED FOR A RATIONAL RESPONSE, VOL. IV: ECONOMIC IMPACT*, at xv (1980).

147. *See id.* at 4.

148. *See id.* at 4-5.

149. *See id.*; *see also* DAVIS B. BOBROW & JOHN S. DRYZEK, *POLICY ANALYSIS BY DESIGN* 37 (1987).

150. *See* Ira M. Schwartz & Deborah A. Willis, *National Trends in Juvenile Detention, in REFORMING JUVENILE DETENTION: NO MORE HIDDEN CLOSETS* 13, 16, 19 (Ira M. Schwartz & William H. Barton eds., 1994) [hereinafter *REFORMING JUVENILE DETENTION*].

achieve the desired community protection ends at a much reduced cost.¹⁵¹ Similar research on detention reforms in Broward County, Florida found it possible to reduce the overcrowding in detention centers without increasing risks to public safety and with a possible cost savings, since the need to construct additional detention centers would be eliminated.¹⁵²

The importance of understanding the wide variety of system impacts created by policy implementation and change has led many researchers to call for a definitional broadening of what constitutes good policy in the area of detention. These researchers stress the need to consider population control, facility overcrowding, cost-savings, and public safety within a comprehensive framework in order to make informed judgements regarding policy effects.¹⁵³

D. Summary of Policy Output Analyses

Thus far, this article has rested on an important assumption — that the goal of the juvenile justice system, with respect to chronic, serious, and/or violent offenders, is to reduce levels of juvenile crime in an efficient manner. It is certainly reasonable to assume that this is probably one of the primary goals of juvenile justice. Further, as illustrated, the majority of research falls into this category of analysis. However, as current philosophical debate and political rhetoric indicate, more issues are involved when considering juvenile justice policy implementation. Some policy researchers have criticized the exclusive use of these kinds of social science approaches to policy analysis.¹⁵⁴ These critiques are largely framed in the broader context of attacks on logical positivism in general.¹⁵⁵

“[In the positivistic view], reality consists of a world of objectively-defined facts that can be measured scientifically.”¹⁵⁶ As discussed earlier, applying this kind of objective framework of quantifiable phenomena to an analysis of juvenile justice policy is problematic, at least in part.¹⁵⁷

151. See *id.* at 19-20.

152. See William H. Barton et al., *Reducing the Use of Secure Detention in Broward County, Florida*, in REFORMING JUVENILE DETENTION, *supra* note 150, at 69, 88.

153. See generally James E. Anderson & Robert G. Schwartz, *Secure Detention in Pennsylvania, 1981-1990: The Experience After Coleman v. Stanziani*, in REFORMING JUVENILE DETENTION, *supra* note 150, at 128, 128-46 (stressing the importance of policy and standards in detention); Joseph T. Christy, *Toward a Model Secure Detention Program: Lessons from Shuman Center*, in REFORMING JUVENILE DETENTION, *supra* note 150, at 108, 108-27; Carl V. Sanniti, *Controlling Juvenile Detention Population: Strategies for Reform*, in REFORMING JUVENILE DETENTION, *supra* note 150, at 97, 97-107 (discussing how policy affects detention center population).

154. See Peterson, *supra* note 13, at 636.

155. See *id.*

156. *Id.*

157. See *id.*

Martinson's construction of reoffending as a dichotomous variable has come under attack in recent years.¹⁵⁸ This, along with other research flaws, has led to a reexamination of the role social science might play in the scrutiny of juvenile justice policies.¹⁵⁹ However, even critics of positivist views of policy analysis do not call for their complete eradication.¹⁶⁰ DeLeon, for example, suggests expanding upon and augmenting positivist-based analysis as a way to ameliorate some of the concerns raised by its critics.¹⁶¹

For one, they must face up to a situation in which resolutions are more humanistic and less "scientific" without surrendering the requisite standards. This is less to indicate a reduction of rigor and more toward the variety of ways in which policy tools may be brought to bear for a multitude of conditions.¹⁶²

In more recent years, calls have come for an examination of the impacts of juvenile justice policy that goes beyond results, or outputs. Many analysts have chosen to include the examination of decision-making in juvenile justice, particularly as decision-making pertains to issues of fairness, equity, and rights.

III. ISSUES OF FAIRNESS, EQUITY, AND RIGHTS IN JUVENILE JUSTICE

Deborah Stone's examination of politics and policy formation closely examines issues of equity and rights.¹⁶³ Her analysis of equity, however, is framed entirely on the issue of the equitable distribution of resources.¹⁶⁴ Whether this kind of analysis can be applied to the distribution of punishments has not been addressed in juvenile justice policy analysis. In general, issues of equity have been described more in terms of fairness, that is, are punishments within the juvenile justice system fair and consistent?¹⁶⁵ The general assumption of those analyzing this aspect of juvenile justice is that in order for punishment to be fair, it must treat similar offenses in a similar manner.¹⁶⁶

At the forefront of the debate on fairness in juvenile justice are two issues. First, is there an unequal distribution of punishment that is based on

158. See SHIREMAN & REAMER, *supra* note 68, at 85.

159. See *id.*

160. See PETER DELEON, *DEMOCRACY AND THE POLICY SCIENCES* (1997).

161. See *id.*

162. *Id.* at 10.

163. See STONE, *supra* note 14, at 39.

164. See *id.*

165. See Schneider & Schram, *supra* note 104, at 215.

166. See *id.*

the racial and ethnic characteristics of offenders?¹⁶⁷ Second, are juveniles treated differently than adults based on the same offense?¹⁶⁸ A concept common to these questions is the wide use of subjective decision-making within juvenile justice systems. The degree to which these kinds of decisions result in unfair or inequitable treatment has been the subject of much research.

A. *Minorities in Juvenile Justice*

The overrepresentation of members of ethnic minority groups in confinement within the juvenile justice system is well documented. Research by Feld has reported minority status to be a significant predictor of sentence length among juveniles, even when offense characteristics are controlled.¹⁶⁹ This analysis showed longer sentences for African American, Hispanic, and Native American males than for Caucasian males.¹⁷⁰

An examination of the California juvenile justice system found that African American males are overrepresented, in proportion to their population in the general public, while whites are underrepresented.¹⁷¹ A number of other studies have reached similar conclusions: often, minority groups are more likely to be confined and receive harsher punishment in the juvenile justice system than whites, even when accounting for offense variables.¹⁷² Regardless of whether a policy is effective, this issue of the disparate effects on minority groups is an important consideration when determining what is "good policy." Research thus far indicates that efforts to implement policies that are equitable among all racial and ethnic groups have not been successful.¹⁷³

B. *Juveniles in Criminal Court*

Another issue in juvenile justice policy analysis focuses on how decisions

167. See Barry C. Feld, *The Social Context of Juvenile Justice Administration: Racial Disparities in an Urban Juvenile Court*, in *MINORITIES IN JUVENILE JUSTICE* 66, 69-74 (K.K. Leonard & C.E. Pope eds., 1995).

168. See JONES & KRISBERG, *supra* note 84, at 25 fig.10.

169. See Feld, *supra* note 167, at 73.

170. See *id.*

171. See James Austin, *The Overrepresentation of Minority Youths in the California Juvenile Justice System: Perceptions and Realities*, in *MINORITIES IN JUVENILE JUSTICE*, *supra* note 167, at 153, 155.

172. See Stephen D. Gottfredson & G. Roger Jarjoura, *Race, Gender, and Guidelines-Based Decision Making*, 33 *J. RES. CRIME & DELINQ.* 49, 49-69 (1996) (discussing the causes of disparities in the representation of races in jail and prison populations); Michael J. Leiber & Katherine M. Jamieson, *Race and Decision Making Within Juvenile Justice: The Importance of Context*, 11 *J. QUANTITATIVE CRIMINOLOGY* 363, 363-88 (1995) (discussing the effects of racial stereotyping on the treatment of African American juveniles).

173. See Gottfredson & Jarjoura, *supra* note 172, at 49.

are made regarding the best policies for dealing with chronic, serious, and/or violent juvenile offenders, particularly how youths are waived to adult criminal court.¹⁷⁴ This topic produces two primary issues of debate. The first issue, directly related to notions of fairness and equity, is whether decisions to waive juveniles to criminal court are appropriately made.¹⁷⁵ The second issue is whether the practice of waiving juveniles to adult court has the intended effect of making sanctions more certain and more severe than they would be in juvenile court.¹⁷⁶ Two primary justice system philosophies are at stake here: the “just deserts” model of criminal justice, which generally contends that individuals deserve certain levels of punishments based on their crimes, and the rehabilitative model upon which the foundation of a separate juvenile system rests and which contends that juveniles are less accountable for their crimes than adults.¹⁷⁷ The issue of waiving juveniles to adult court further raises the question of the legal rights enjoyed by juvenile offenders in criminal court.

Fagan argues that beliefs in the ineffectiveness of treatment interventions for juveniles led to increases in juvenile waivers to adult court during the 1980s and 1990s.¹⁷⁸ However, these waivers do not ensure a greater likelihood of sanctions, nor do they produce harsher sanctions than would occur in a juvenile court.¹⁷⁹ Two primary mechanisms for transferring a youth to criminal court have been identified in the literature, judicial waivers and legislative waivers.¹⁸⁰ In the first case, the court judge may decide to waive an offender to criminal court, usually based on perceptions of the offender’s dangerousness or amenability to treatment.¹⁸¹

Feld claims that this process, because it relies solely on the subjective decision of one judge, is inherently unfair to defendants and leads to unequal treatment of offenders.¹⁸² Feld argues that therefore the only objective way to make such crucial decisions is through a legislative waiver process.¹⁸³ In legislative waivers, a youth is automatically transferred to criminal court depending on the youth’s present offense and prior record.¹⁸⁴ Supporters of this kind of waiver suggest that this treats individuals more fairly and is less prone to issues of personal bias or discrimination. “[A] system of justice

174. See Feld, *supra* note 6, at 196.

175. See *id.* at 197.

176. See *id.* at 206.

177. See *id.* at 202-05.

178. See Fagan, *supra* note 7, at 96.

179. See Feld, *supra* note 6, at 206.

180. See *id.* at 197.

181. See *id.* at 198.

182. See *id.* at 208.

183. See *id.*

184. See *id.*

that responds to people on the basis of what they do, rather than on the basis of what someone else believes they need or predicts they will become, can be held accountable by the community.”¹⁸⁵

Osburn and Rode, however, argue that the “objective” legislative waiver does not exist.¹⁸⁶ First, they point out that many states have multiple transfer mechanisms.¹⁸⁷ Therefore, the presence of a legislative standard does not guarantee that only objectively defined youth will be waived to criminal court.¹⁸⁸ Second, Osburn and Rode contend that the “automatic transfer” under legislative waiver merely takes the subjective decision out of the hands of the judge and places it in the hands of the prosecutor.¹⁸⁹ This practice is more unfair, they argue, because it waives youth who, although arrested for a serious violent offense, have no prior records and do not represent a danger sufficient to warrant trial in criminal court.¹⁹⁰ Further, prosecutors may decide to charge a youth with a specific offense based on the prosecutor’s subjective judgment of whether the youth should be tried in juvenile or criminal court.¹⁹¹

C. *The Rights of Juveniles*

Waiver to criminal court represents only one kind of juvenile justice policy that can blur the line between juvenile court and adult criminal court. In fact, many have argued that the two systems have become enough alike that the utility of a separate juvenile system has been lost.¹⁹² Both contributing to and partially as a result of this controversy, the question of the legal rights enjoyed by juveniles has become critical in the past thirty years. Stone discusses two concepts of rights that exist in American thinking.¹⁹³ Positive rights are those guaranteed through the power of the state.¹⁹⁴ Normative rights, on the other hand, are those that come from other sources.¹⁹⁵ Concepts such as natural rights and universal human rights fall into this category.¹⁹⁶ Certainly the rights of persons accused of a crime are positive rights, not only guaranteed by law, but also seen as

185. *Id.* at 210.

186. See Lee Ann Osburn & Peter A. Rode, *Prosecuting Juveniles as Adults: The Quest for “Objective” Decisions*, 22 CRIMINOLOGY 187, 200 (1984).

187. See *id.* at 189.

188. See *id.*

189. See *id.* at 197.

190. See *id.* at 199.

191. See *id.* at 196.

192. See McCarthy, *supra* note 10, at 198; Wolfgang, *supra* note 10, at 12.

193. See STONE, *supra* note 14, at 323.

194. See *id.*

195. See *id.*

196. See *id.* at 324.

crucial enough by this country's founders to be enumerated in the Constitution.¹⁹⁷

The legal rights of juveniles, however, are less clear. Certainly, it would seem reasonable to assume that a juvenile accused of a crime would be in need of the same protections as those afforded to an adult, because in both cases the individual's liberty is at stake. However, the original juvenile court movement, in stressing informality in juvenile court proceedings and the desire for the state to have the power to act in "the best interests of the child," did not address a juvenile's right to due process.¹⁹⁸ Nonetheless, U.S. Supreme Court decisions of the past thirty years have extended many criminal court due process rights to youths in juvenile court and to those being waived to criminal court.¹⁹⁹ Embedded in the issue of juvenile due process rights is the question of differences in the degree of accountability for juvenile offenders and for adult offenders, implied in the rationale for the creation of the juvenile court system. How youthful offenders, even those accused of serious and violent crimes, differ from adults in responsibility and accountability becomes a question of utmost importance in the modern juvenile justice policy debate.

IV. THE SOCIAL CONSTRUCTION OF JUVENILE OFFENDERS: PUBLIC OPINION AND POLICY CONSIDERATIONS

Current criticisms of research methodology and interpretations of findings notwithstanding, the pronouncement in the 1970s that "nothing works" was readily accepted by policymakers as well as by the public as a whole.²⁰⁰ This point illustrates the phenomenon of cycles of ideological belief within the arena of juvenile justice since its inception.²⁰¹ Bernard notes shifts between dominant views of "harsher" treatment for juvenile offenders and views of more "lenient" treatment as the best resolution of the juvenile crime problem.²⁰² These shifts, according to Bernard, represent a cyclical pattern that has been repeating since the creation of a separate mechanism for dealing with these young offenders.²⁰³ Krisberg and Austin compare these shifts to the swinging of an ideological pendulum, noting that social policy views of the 1970s represented a swing back to notions of punishment and incarceration as the best practices where juvenile offenders were con-

197. *See id.*

198. KRISBERG & AUSTIN, *supra* note 1, at 53.

199. *See id.* at 49-50; BERNARD, *supra* note 15, at 108-33 (describing the decisions).

200. SHIREMAN & REAMER, *supra* note 68, at 85.

201. *See* BERNARD, *supra* note 15, at 3.

202. *See id.*

203. *See id.*

cerned.²⁰⁴

Two primary factors have been noted as causes for these shifts. First is public perception of overall juvenile crime rates.²⁰⁵ Second is public perception of the best practices for dealing with criminal offenders, both adult and juvenile.²⁰⁶ A third, largely overlooked, factor that may be more important than the first two, is the way in which juveniles are socially constructed as the target population of juvenile justice policies.²⁰⁷

Bernard argues that the same cycle of juvenile justice policies has repeated three times since 1820.²⁰⁸ The cycle begins when both the general public and policymakers view juvenile crime as a serious problem that has reached levels higher than in the past.²⁰⁹ It then continues with the system responding with harsher sanctions for these offenders.²¹⁰ When these sanctions have little or no effect on the perception of the level of juvenile crime, their harsh nature results in calls for more lenient policies.²¹¹ Finally, juvenile crime persists, leading to a call for harsher sanctions, and the cycle repeats.²¹² One of the limitations in the history of juvenile justice policy has been the absence of a viable "middle ground" for the treatment of youthful offenders. Bernard argues that policy tends to remain stuck in this cycle because policy alternatives are generally perceived as an either-or, punishment-nonpunishment situation.²¹³ Therefore, the political climate tends to continue to oscillate between these two extremes.²¹⁴

This theory of cycles operates independently of actual changes in juvenile crime rates.²¹⁵ Indeed, research shows that these kinds of cycles occur during periods when juvenile crime, and even violent juvenile crime, has remained relatively stable.²¹⁶ Many recent "get tough" policies towards juveniles labeled as chronic, serious, and/or violent offenders seem to have largely followed this kind of cycle, fueled by the 1970s "nothing works" doctrine.²¹⁷ As pointed out, the serious flaws in this research did not seem

204. See SHIREMAN & REAMER, *supra* note 68, at 85.

205. See BERNARD, *supra* note 15, at 4.

206. See *id.* at 4-5.

207. See *id.*

208. See *id.* at 3.

209. See *id.*

210. See *id.*

211. See *id.*

212. See *id.* at 4.

213. See *id.*

214. See *id.*

215. See *id.* at 3-4 (contending that throughout the cycle, juvenile crime always appears high).

216. See Jenson & Howard, *supra* note 31, at 325.

217. See SHIREMAN & REAMER, *supra* note 68, at 84-85.

to dampen the effect of the doctrine on policy.²¹⁸ Some have noted that this research citing the failure of juvenile offender treatment programs occurred at a time when demographic changes resulted in a swell in the juvenile population and coincided with general frustration around the effectiveness of social programs as a whole.²¹⁹ This public frustration further contributed to the belief that harsher sanctions were necessary for young offenders.²²⁰

Analyses of efficacy undertaken by Martinson and by others during the 1960s and 1970s raised many questions regarding the application of social science methods to policy analysis.²²¹ However, the most serious issue raised regards the extent to which state-of-the-art social science methods are able to accurately report the effectiveness of a given policy.²²² That is, are programs themselves failing, or are the reputed failures better characterized as a reflection of limitations in both the assumptions and methods of social science research?²²³ Several years following his "almost nothing works" statement, Martinson himself retracted a large portion of his interpretations, conceding that analysts simply do not know if treatment interventions as a whole work and acknowledging that some programs are beneficial while others have no effects or detrimental effects.²²⁴ The fact that Martinson's work was widely accepted while modern social science evidence to the contrary seems to be gaining ground much more slowly, at least in the eyes of the public and of the politicians,²²⁵ raises another important question. Can social science research influence public opinion and juvenile justice policy decisions in a meaningful way? In other words, can the cycle of juvenile justice described by Bernard be broken, and if so, how?

The notion of juvenile justice policy cycles, as outlined by Bernard, shares many similarities with the concept of "degenerative policy-making" outlined by Schneider and Ingram.²²⁶ Schneider and Ingram state that "degenerative policy-making systems are characterized by an unequal distribution of political power, social constructions that separate the 'deserving' from the 'undeserving,' and an institutional culture that legitimizes strategic, manipulative, and deceptive patterns of communication

218. *See id.* at 87.

219. *See id.* at 85.

220. *See* KRISBERG & AUSTIN, *supra* note 1, at 4.

221. *See* SHIREMAN & REAMER, *supra* note 68, at 94-99 (discussing methodology problems in research projects).

222. *See id.* at 97 (discussing outcome measures).

223. *See id.* at 97-98.

224. *See id.* at 86-87.

225. *See id.* at 87.

226. ANNE LARASON SCHNEIDER & HELEN INGRAM, *POLICY DESIGN FOR DEMOCRACY* 102 (1997).

and uses of political power.”²²⁷

Four types of “policy targets” are identified by this framework: advantaged populations, contenders, dependents, and deviants.²²⁸ Advantaged populations are those who have political power and who are seen as valuable, contributing members of society.²²⁹ These individuals are positively constructed by society. Contenders have political power, but are socially constructed in a negative light, for example, “big business.”²³⁰ Dependent populations are those who, while seen in a positive manner, do not wield political power.²³¹ Deviants also do not possess any political power, but are also negatively socially constructed — that is, they are seen as detrimental to society.²³² Applying this kind of framework to Bernard’s cycle theory demonstrates that the social construction of juveniles might have drastic effects on juvenile justice policy.

Implied in the earlier discussion of juvenile rights is that youth in America have almost no political power. They do not vote and seldom have a voice in political issues. Therefore, whether youthful offenders are positively or negatively constructed in society might have a great deal to do with perceptions of the “best” juvenile justice policy. If juvenile offenders are viewed *by an outside group that does have political power* as needing help and guidance from the government, then they will be constructed as a “dependent” population.²³³ Such was the case in the early juvenile justice movement that looked to the concept of “*parens patrie*” as empowering the court to see to the “best interests of the child.”²³⁴ On the other hand, if youthful offenders are viewed as a danger to society and not amenable to treatment, they will be constructed as “deviants,” and therefore undeserving of government assistance.²³⁵ This latter view seems to be characteristic of current “get tough” stances on juvenile crime that stress the protection of society.²³⁶

Further complicating this issue is the adult “public,” which is certainly an advantaged population, holding both “deserving” status and considerable political power.²³⁷ Therefore, it could be assumed that the way in which this advantaged population decides to socially construct juvenile offenders,

227. *Id.*

228. *Id.*

229. *See id.*

230. *See id.*

231. *See id.*

232. *See id.*

233. *Id.*

234. BERNARD, *supra* note 15, at 88-89.

235. SCHNEIDER & INGRAM, *supra* note 226, at 102.

236. BERNARD, *supra* note 15, at 147-48.

237. SCHNEIDER & INGRAM, *supra* note 226, at 102.

either basing their construction on perceptions of the level and the seriousness of juvenile crime, or some other social indicator, might be the largest factor in the creation and implementation of juvenile justice policies. Whether or not this view can be accurately demonstrated, it certainly warrants further investigation, particularly in light of possible limitations to the role that social science can play in shaping policies toward chronic, serious, and/or violent juvenile offenders.

V. THE FUTURE OF JUVENILE JUSTICE POLICY RESEARCH

Improvements in social science methods used to analyze juvenile justice policy made in the past two decades have done much to further our understanding of the effects of various policy directives on chronic, serious, and/or violent juvenile offenders. However, the continuation of heated debate regarding the future of juvenile justice in the United States indicates the need for additional research in this area. Many policy effects, such as the possible unfair and differential treatment of offenders, certainly need more analysis. Further, past research has shed little light on the role of public opinion and the social construction of offenders in the creation of juvenile justice policy. I would propose that, as the juvenile justice system ends its first century of operation, researchers address these questions, in addition to analyzing efficiency and efficacy, in order to form a more comprehensive understanding of juvenile justice policy.

Research must continue in the area of policy outcomes for individual offenders. An understanding of what works in offender treatment is needed in order to decide which are the best methods of ensuring the protection of society, without resorting to expensive and restrictive methods of incapacitation. A comparison of different treatment options with incarceration methods based on offender outcomes should be done based not only on recidivism, but also on frequency of subsequent offending and the seriousness of subsequent offending. Furthermore, such comparisons need to take into consideration the economic impacts of these programs, as well as other anticipated system impacts such as facility overcrowding. Research results must also be more widely disseminated. In order to break out of current juvenile justice policy cycles, the public, politicians, and justice-system personnel should be educated about possible policy effects so that informed rather than knee-jerk decisions can be made. In addition to considering offender outcomes, policies must be evaluated and judged based on their ability to react to the *actions* of juvenile offenders, and not on system reactions to predictions of offender behavior, or socio-demographic offender characteristics.

Additionally, more analysis is needed in the area of the formation and implementation of specific policies. The role of public opinion and

inaccurate perceptions regarding levels of juvenile crime are a vital component of policy analysis and have yet to be systematically addressed by the literature. Studies of media influence, dissemination of statistical data to the public and practitioners, and analysis of the underlying political issues of juvenile justice policy are still very much lacking. Analysis must include a study of the legal rights of juveniles and the implications for juvenile justice created by changing the interpretation of those rights.

Finally, juvenile justice policy analysis must take into account the diverse populations that have a stake in juvenile justice policy outcomes. These include the general public, politicians, justice-system personnel, legislative decisionmakers, and lobbyists. But more importantly, this analysis must include an examination of crime victims and criminal offenders, including how these populations are viewed by society and a dissection of the social movements that underlie juvenile justice policy change.

This framework is undoubtedly incomplete, as is this review of current perspectives of juvenile justice policy. However, it is vital that this important first step in adding to the existing body of social science research be made. Positivist-driven research has its place and usefulness in modern juvenile justice policy analysis. However, this method alone is insufficient for reaching a comprehensive understanding of how policy is made and how it influences different populations. Much remains unknown about the fate of the juvenile court, and it is clear that the next century will bring many challenges to its survival. Informed debate regarding all aspects of the system must take place if these challenges are to be answered.