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The Socio-Legal Construction Of Adolescent Criminality: Examining Race, Community, And Contextual Factors Through The Lens Of Focal Concerns

Patrick Glen Lowery
University of South Carolina

THE SOCIO-LEGAL CONSTRUCTION OF ADOLESCENT CRIMINALITY: EXAMINING RACE, COMMUNITY, AND CONTEXTUAL FACTORS THROUGH THE LENS OF FOCAL CONCERNS

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Patrick Glen Lowery

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University of Wisconsin – Milwaukee, 2010

Master of Science
University of Wisconsin – Milwaukee, 2012

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Accepted by:

John D. Burrow, Major Professor

Tia S. Andersen, Committee Member

Robert W. Brame, Committee Member

Jennifer H. Peck, Committee Member

Lacy Ford, Senior Vice Provost and Dean of Graduate Studies

DEDICATION

This is dedicated to everyone I have met in my twenty-eight years of being alive: Thank you. This is dedicated to you. A special dedication is owed to those no longer with us; those who left way before they should have: Samuel Glavin, Andrew Bond, Antonio Dragotta, and Trudie Trott.

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In my free time, I sometimes peruse through the dissertations of scholars whose work I truly enjoy to get a sense of where they were at when they were in my shoes. While their scholarly endeavors are always impressive, one acknowledgment section has always struck me as outstanding and something I wanted to mimic: that of one of my favorite public sociologists, Chris Uggen's. Professor Uggen offered perhaps the most meaningful and sincere acknowledgement section I have come across, spanning three full single spaced pages. So, with that in mind, the acknowledgement section ahead serves as a sincerely and heartfelt token of my gratitude for those who have helped me get to this point. If I have neglected to thank somebody, that is a fault of my own and not me trying to be a "hater." Know that I am still beyond grateful for your help along the way.

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amazing mentor and person. I truly cannot thank him enough for that – know that you are beyond appreciated by me.

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mistakes without meddling, or just sitting back and having a conversation about the Brewers or Packers, my Mom and Dad were always happily there, a privilege not everybody has. When my brother Jay was not serving as a scholarly role model, he was sneaking me out after my bedtime to watch episodes of *The Simpsons*. This trend continues today, minus the bedtime and plus beer. Similarly, my sister Steph does some quite amazing work with young women with substance abuse issues, and it is quite admirable. Thanks are also due to their amazing respective spouses, Linsey and Dave, and their amazing respective children, Eloise and Liam. So to should I provide an acknowledgment to my in-laws: Tom, Kathy, Steven and David. I'm very grateful to have you all along.

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ABSTRACT

The first American juvenile court opened in 1899, with the understanding that children and adults are fundamentally different, and as such, should be treated differently by the law. Less than 50 years later, every state within the United States had developed a separate juvenile justice system, along with the adoption of many significant statutes that made the juvenile court markedly different from the adult criminal court. Over time, however, dissatisfaction with numerous inadequacies in the juvenile court led to the "due process revolution" of the 1960's and 1970's. The legal and philosophical changes made during this time were not long lasting as they were in turn followed by an increasing public concern about serious and violent juvenile crime in the 1980's and early 1990s. A new "get tough" era emerged and it increasingly blurred lines between the juvenile and adult criminal court.

From the conceptualization of childhood in the 16th century, to the creation of the juvenile justice system and up until the present day, shifting social forces in society and juvenile justice system reforms have created paradigm shifts in how adolescents are viewed with regards to their competence and culpability. These juvenile justice system reforms have also reshaped how punishment systems for juveniles operate. Despite these changes, we still do not know the extent to which it has succeeded in reducing violent crime among juveniles, much less how we tease out what juveniles are and are not capable of being "saved."

Similarly, there is a paucity of literature with regards to how culpability and competence are constructed across different types of adolescents. Importantly, we still have a number of questions about how culpability and competence is constructed for juveniles. Moreover, concerns regarding how we should compare and contrast different types of juveniles, including how serious and violent juvenile offenders are offered different sentencing options have not yet been resolved. While the extant literature with regards to the juvenile court and youthful offending is broad and rich, there is still a need to connect juvenile and community characteristics for this group of offenders and their sentencing outcomes. Thus, in light of the gaps in the literature, the present study seeks to accomplish two objective: 1) to investigate and compare the social and legal forces that inform our construction of culpability for juvenile offenders and 2) to investigate how individual-level factors, community-level factors, and focal concerns affect dispositional decisions for serious and violent juvenile offenders.

Overall, results indicated support for the postulates of focal concerns. In particular, race was found to influence more punitive dispositions. This finding was sometimes influenced by the interaction of community context, which often times also lent themselves towards different dispositions when not interacting with race. However, various different community make-up variables (e.g., percent single mothers, percent black population) also influenced adjudication decisions independently. The makeup of a judicial bench, in other words benches with minorities and females present, also influenced the direction of adjudication decisions; size of the circuit also played an important role in adjudication decision. There was also evidence suggesting that age and concentrated disadvantage mattered in adjudication decisions. These findings, what they

mean for race and public policy, as well as the future direction and limitations of this research are discussed.

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LIST OF ABBREVIATIONS

AL ……. Adolescent Limited

CSC ……. Criminal Sexual Conduct

DJJ …….. Department of Juvenile Justice

DMC ……..… Disproportionate Minority Contact

HLM ……..……. Hierarchical Linear Model

LCP ……... Life Course Persistent

NAACP ……. National Association for the Advancement of Colored People

NACWC/NAWC ……... National Association of Colored Women's Clubs

SC …… South Carolina

"*Nothing is impossible, not if you can imagine it! That's what being a scientist is all about!*" – Professor Hubert J. Farnsworth.

CHAPTER ONE

INTRODUCTION

The first juvenile court in the United States opened its' doors in Chicago on July 1st, 1899, with the intention of treating juvenile offenders as neglected children to be guided and cared for by the state (Mack, 1910). This separate court for juveniles came from a growing understanding and recognition that juveniles are markedly different from adults and as a result, they deserve to be treated differently (Mennel, 1973; Platt, 1969). Since the creation of the juvenile court in Chicago, every state has formally adopted its own juvenile court system to differentiate youthful offenders from their adult counterparts (Feld, 1999; Mennel, 1973; Rosenheim, Zimring, Tananhaus & Dohrn, 2002). These emerging juvenile courts remained relatively constant and unchanged until the 1960's when concerns about the constitutional rights of juvenile offenders began to arise (Feld, 1987; Feld, 1999; Holland & Mlyniec, 1995).

Indeed, optimism about the juvenile court had begun to wane and the Supreme Court issued a host of decisions that provided due process rights to juveniles. Justice Warren in particular was concerned about civil liberties, human rights issues, searches and seizures, as well as issues related to self-incrimination (Feld, 1999; Snyder & Sickmund, 2006). These concerns were reflected in a number of Supreme Court cases decided during the 60's and 70's, many of which had significant effects on how the courts handled juveniles.

Perhaps the biggest concern of many juvenile court observers was that juveniles were receiving the "worst of both worlds;" they were being punished and denied due process protections while simultaneously being denied treatment (Krisberg & Austin, 1993; Feld 1987, 1991, 1999). For example, the informal nature of the juvenile court proceedings, some contended, provided a lack of fair due process. On the other hand, a lack of due process and an imposed sentence did not allow for a juvenile to have autonomy in his or her case. Therefore, taken together, juveniles saw mostly "negative" protections, an idea born from the Warren Court's belief that the juvenile justice system inadequately addressed constitutional rights.

In the 1980's and 1990's, the general public called for a "get tough" movement for juveniles, which resulted in many states changing their juveniles codes and mission statements in order to make them more comparable to the adult criminal court (Butts & Travis 2002; Feld, 1987). For example, in Wisconsin in the early 1990's, the minimum age for a discretionary waiver was lowered to age 14 and additional punitive legislation such as "Once An Adult, Always An Adult" was enacted which mandated that a waived juvenile would always tried as an adult if he/she was previously waived (see: Wis. Statutes Sec. 938.18, 938.183). The "get tough" movement was in part a reaction to the perception that the juvenile justice system was soft and ineffective, as well as in need of an approach focused on moral culpability (Melli, 1996). Though the pendulum has now swung back towards more of a treatment-oriented approach in contemporary times, the effects of the legislation that emerged during this period remain (Bernard & Kurlychek, 2010; Snyder & Sickmund, 2006).

Given the relatively nascent nature of the juvenile court and its evolution since 1910, it is important to understand how these changes have affected the outcomes of those whom the system is charged with managing: children and adolescents. Our social and legal expectations since the construction of the juvenile court have frequently changed as time has passed (Settersten, Furstenburg, & Rumbaut, 2005). Subsequently, the juvenile justice system and the legal definition of juvenile offenders have changed as well (Cohen & Casey, 2014; Fabian, 2011; Steinburg & Scott, 2003; Grisso, Steinberg, Woolard, Cauffman, Scott, Graham & Schwartz, 2003).

Notwithstanding this fact, there continues to be resistance to the construction of what is a juvenile offender. This point can be observed in literature at the social level (Cauffman, Woolard & Reppucci, 1998; Ghetti & Redlich, 2001; Tang & Nunez, 2003) as well as at the legal level by examining the divergent sentiments espoused in *Roper v. Simmons* (2005) by Justices Kennedy and Scalia. To briefly summarize[1], Justice Kennedy approaches juveniles with the understanding that they should be protected, respected and guided, while Scalia's originalist approach is guided by the common law understanding of culpability.

If there are truly differences with regards to how we assign culpability and competence to juvenile offenders, then we could certainly expect to see differences in how they are punished. If there are not significant differences, the reasons behind handing out significantly different sentences for significantly similar offenses deserves to be examined. We may consider the importance of this issue by looking at youthful offenders are sentenced in both the juvenile court and adult court. For example, by sending young offenders to adult court, some contend that we may be "setting them up

[1] These differences will be elaborated upon in the second chapter.

for failure" (Podkopacz & Feld, 1996; Bishop, Frazier, Lanza-Kaduce, & Winner, 1996). This suggests that the state may be prematurely ending ones' childhood when a young offender is sentenced as an adult. By declaring ones' childhood over, a person under the age of 18 is now faced with societal barriers and cumulative consequences that they may be unprepared to face and also unable to surmount (Sampson & Laub, 1997).

Similarly, there is some evidence that the punitive approach adopted in the 80's and 90's may disproportionately impact minority youth (Bishop, 2000; Bishop, Leiber & Johnson, 2008, 2010). This should be concerning for those who value justice and equality. Additionally, there are questions concerning the disparate outcomes for minority youth who commit offenses similar to their white counterparts yet they receive more severe punishments. To this point, a consistent body of literature exists which suggests that when all things are equal, black juveniles face stronger sanctions than their white counterparts (Bishop & Frazier, 1996; Burrow & Lowery, 2014; Fagan, 1996; Freiburger & Jordan, 2011, Kurlychek & Johnson, 2004; Leiber, Peck & Rodriguez, 2013). Certainly, this are grounds to consider where decisions about competence and culpability as it relates to the construction of black versus white criminality.

As we consider the disagreements about the competence and culpability of juveniles, the present study seeks to examine the nexus between serious and violent juvenile offenders who have pled down and the characteristics that are used to construct their "guilt" and punishment. While these issues have been explored separately in the research literature, there remains a need to further explore the empirical reality of sentencing disparities for serious and violent juvenile offenders (Kurlychek & Johnson 2004; Mears, Cochran, Stults, Greenman, Bhati & Greenwald, 2014), much less those

who have pled down. It is only through an investigation of how juvenile courts construct culpability for black and white juvenile offenders that we can fill in some of the gaps in the literature with regards to why the outcomes for these two groups are so markedly different.

The purpose of this research is to explore the extent to which differences in age, offense, and extra-legal factors impact our construction of the competence and culpability of juvenile offenders. Furthermore, the research seeks to understand how the socio-legal construction of adolescence informs the decision making of juvenile courts. Chapter two provides an overview of the literature with a particular emphasis on the history, trends, sociological and legal construction of adolescence. Notably, this chapter will provide an overview of childhood, innocence and culpability beginning with the work of Phillipe Aries (1962) and competing arguments from his contemporaries as well as our current understanding of this issue. Finally, this chapter will provide a discussion of the state of the law with regards to juveniles and the empirical research on juvenile sentencing outcomes.

Chapter three will present the methodology used in this research. This chapter will, in part, focus on the conceptualization and operationalization of juvenile offenders, culpability, and how it may vary across different racial groups. Chapter four will present the statistical analyses of the results. Finally, Chapter five will offer a summary of the results from this research along with a discussion of the strengths and limitations of the research. Finally, this chapter will discuss the future directions and the policy implications for this research.

CHAPTER TWO

A REVIEW OF THE LITERATURE AND HISTORY

2.1 Earliest Origins

In order to more fully understand the contemporary shifts and trends in how the juvenile justice system treats adolescents, one must first begin with a discussion of our earliest conceptions of childhood. Importantly, it should be noted that in medieval society, the idea of childhood did not exist in the same manner as understood today (Aries, 1962; Wilson, 1980). Some argue that childhood, adolescence, and the family structure were not truly conceptualized up until about the 16th century (Aries, 1962), while others argue that Aries (1962) takes a "present-centered" approach that relies on a sentimental view of the past (Vann, 1982). Thus, it is not implied that medieval families did not value their children or that the family unit did not exist, but rather the value placed on childhood as a distinct and special part of the human experience was an unrecognized notion (Ozment, 2001).

Our contemporary understanding of childhood and adolescence has varied throughout history, but similarities with its medieval counterpart may still be in evidence today, such as the familial unit (Wilson, 1980). Aries (1962) however, rejects these notions, and suggests the private, domestic family is a relatively new construct, as was the "discovery" of childhood. The crux of Aries (1962) arguments is predicated on

paintings, poetry and other forms of art suggesting that the family and childhood were not widely recognized legal and social constructs until fairly recently. In fact, he argued the roles of parents at the time were merely to make children available to others to educate, employ and socialize (Aries, 1962).

Some scholars have criticized the arguments of Aries (1962) and his conception of the modern family, particularly with regards to chronological inconsistency (Vann, 1982), as well as a nostalgic view of the medieval times; insofar as the family and childhood are not universal or natural constructs; but rather, it is an ever-changing idea (Wilson, 1980). Farber (1972), for example, points to the decline of apprenticeships and the rise of childhood, but he also rejects Aries' (1962) arguments of childhood and family as a 16th century discovery. Notwithstanding these arguments, Aries' (1962) beliefs about childhood may be given some legitimacy to the extent that the idea of childhood and adolescence criminal culpability were emerging in English Common Law. By examining some of these ideas that were embedded in the common law, we may bridge the gap between the disagreements of Aries, Wilson, Vann and Farber and better understand the construction of childhood, "childhood innocence," and the role of the family.

In medieval England, a child could legally establish a lack of culpability and therefore immunity from prosecution through a defense of infancy commonly known as *doli incapax* (Feld, 1999). Generally, *doli incapax* applied to a child under the age of seven and granted them complete immunity from criminal prosecution, give the presumption that they lacked the mental capacity to appreciate the wrongfulness of their actions, much less develop the mental state required to commit a criminal offense (Blackstone, 1979; Feld, 1999). The rationale behind this philosophy was to remove

responsibility from a non-culpable child. However, throughout the history of common law infancy and despite parents being largely responsible for the moral upbringing of their child during a time where the “traditional” family structure was becoming more important, parents were often abrogated of any responsibility for a child's actions, placing the onus of responsibility on the child (DiMatteo, 1994).

For children who were between the ages of seven and thirteen, the issue of culpability was legally understood by *prima facie*; in other words, at face value, a sufficient understanding of culpability does not exist unless a reasonable rebuttal existed (Blackstone, 1979; Kaban & Orlando, 2007; Walkover, 1984). In other words, the burden of proof would exist in the hands of the court to prove culpability. For those fourteen and older, *prima facie* was legally understood as the inverse; one was assumed to be culpable for their offense, although this presumption may be rebuttable; for example, reasonably using evidence of mental illness as *prima facie* evidence as mitigation or negation (Freedman, 1993; Blackstone, 1979).

This was generally understood through the maxim of *malitia supplet ætatem*-- malice supplies age -- however, this principle could only be established where the proof offered was strong and clear, beyond doubt, and contradiction (Blackstone, 1979). Thus, under this rebuttable presumption that a child did not possess the capacity to commit a crime, the rationale for this defense was rooted in common law though the ages at which the defense could be used was "murky" at best. This “murkiness” is still present today insofar as the fact that some offenders may not be as criminally culpable as their adult counterparts while others may be more worldly and sophisticated (Walkover, 1984).

This common law infancy doctrine and concern over diminished culpability would later be adopted in the United States. For example, in Illinois in 1845, children first benefited from legislation that increased the age of immunity from criminal prosecution from seven to ten (Fox, 1970), while the "infancy defense," which stated that children between the ages of seven and fourteen are presumed to be incapable of committing crimes if it was determined they had a defect of understanding, required an individual assessment of the child. (Blackstone, 1979). Alongside many other legal provisions drawn from common law, these concepts about infancy and innocence concepts were a part of the crucible that spoke to a need for a separate system for juveniles, and helped to lay the initial groundwork for a shift in the societal understanding of children and adolescents (Aichhorn & Freud, 1965). Though this shift in the perceptions of juvenile culpability was small and imperceptible to many, the United States did eventually create a formal system to assist parents who were unable to punish and control their children (Mennel, 1973). During the 19th century, “progressive reformers” (Mennel, 1973, Fox, 1969) helped to change the conversation that the country was now having regarding children, poverty, and parental and state control.

These reformers created the term “juvenile delinquency,” and stressed the importance of factors relating to cultural, economic and social determinants of juvenile delinquency (Mears, Hay, Gertz & Mancini, 2007; Aichhorn & Freud, 1965). The efforts to change how society viewed adolescents were juxtaposed against broader societal concerns about the parenting practices of lower class parents, especially immigrant parents who were frequently working outside of the home thereby allowing their children to engage in a number of unsupervised delinquent activities (Allen, 1974; Feld, 1999;

Mennel, 1973). The proposed solution for poor and delinquent youth was to place them in facilities known as "Houses of Refuge" wherein poor and "at risk" youth whose parents could not exercise adequate control would receive the supervision and the protection that they were lacking at home (Fox, 1969). From a broader analysis of the social context, however, it was not necessarily that immigrant and poor children were delinquent. Rather, it was more likely that this group had different mechanisms and means (given their lack of economic stability) of governing family relations that differed from the accepted practices of the status quo (Thomas & Znaniecki, 1918).

Because these values, cultures and institutions clashed with that of the dominant culture, society felt as though there needed to be formal mechanisms to control what they viewed as threats (Snedden, 1907; Thomas & Znaniecki, 1918). Specifically addressing the issue as it relates to children, in 1825 in New York, the first House of Refuge was established in order to guide criminal, immigrant, poor and neglected youth (Shelden & Osborne, 1989). Other cities, such as Boston and Philadelphia, followed suit, buying into the promise of successfully battling problem youth (Mennel, 1973). However, concerns began to rise about the benefits of placing delinquents and poor children in what many viewed as "miniature prisons," as well as mounting concerns about the infringement of the state on the rights of parents and children (Snedden, 1907). Therefore, and arguably as a "quick fix," many Houses of Refuge were renamed reform schools (Snedden, 1907). Changes occurring from this "re-branding" were made by emphasizing that delinquent and poor children would gain a formal education, the idea of punishments was removed, and the transformation of children was emphasized (Pickett, 1969; Platt, 1969a). To accomplish these goals, children were promised: employment skills to encourage

ingenuity and industry, school for necessary communication and job skills, religious obligations and treatment to correct those with violent or criminal inclinations (Mennel, 1973; Snedden, 1907).

Notably, some of these institutions were founded and championed by the Society of Friends, commonly known as Quakers (Bernard & Kurlychek, 2010). Particularly, Thomas Eddy and John Griscom of the Society for the Prevention of Pauperism were interested in the causes of and remedies to pauperism and thus, commissioned a committee to find the answers that they were seeking (Mennel, 1973). It was argued by many members of this committee that the poor let their children run amok, they were deceitful and rude, wasteful, unwilling to work and they were likely to be found drunk and passed out in a gutter, among many other things (Mennel, 1973; Pickett, 1969). Generally speaking, it was concluded that the poor were vice-ridden and corrupt, and thus, this understanding of poverty led to the guiding philosophy of the Houses of Refuge (Handler, 1972). As Eddy and Griscom were associated with the prevention of pauperism, they sought to have new institutions to address juvenile delinquency that would be focused on reform, not punishment; thus the first House of Refuge opened in New York City on New Year's Day 1825 (Snedden, 1907).

Alongside the changes to the practices within the Houses of Refuge came the system of "placing-out," wherein philanthropic organizations took delinquent and/or poor, largely urban/immigrant children away from crowded reform schools and sent them to work on a farm with a new family, usually Protestants (Mennel, 1945). Proponents of the placing-out system viewed this as a way to get children who were about to leave

reform school into the workforce and simultaneously remove them from the temptation of vice and crime in urban communities (Aichorn & Freud, 1965).

While intuitively the idea of sending a delinquent child off to work as a matter of developing self-efficacy and values that align with mainstream society sounds acceptable, there were a number of issues associated with the placing-out system. Often times, the parents of the children would never hear from them again, much less have an idea of where they were being sent (Hadley, 1990). Second, often times the new and rural parents had little stake in child's well-being, primarily seeing the child as free labor, abusing them and/or never fully accepting them as members of the new family (Block & Hale, 1991; Mennel, 1973). Third, others argued that the juveniles placed out simply displaced their delinquency to rural, western areas as well as "corrupted" the local children (Shelden & Osborne (1989).

During this Quaker influenced period, arguments raised about crime aligned more with the notion that societal conditions were the cause of juvenile delinquency rather than ones' status as poor or an immigrant (Fox, 1970; Platt, 1969b). As this new paradigm emerged, many people began to subscribe to the idea that the juvenile crime pandemic could be solved by addressing additional issues that spanned a range of political and social concerns. For example, Ward (2012) contended that the reform schools of Philadelphia, New York, Boston and other northern cities practiced a pattern of "Up South" racial exclusion and were left to their own devices, a pattern that has seemingly persisted through time, which Ward calls "Jim Crow Juvenile Justice." For example, while there seemed to be universal support for bringing this treatment to native Christian children, there were intense debates over the merit of education African American

children (Krisberg, 1990; Ward, 2012). A "present-centered" approach, an approach which ignores historical context, would suggest this is very problematic to ignore the needs of African American children, in addition to being one of many criticisms espoused during this time period (Krisberg, 1990, Krisberg, 1993; Ward, 2012).

Other concerns were raised over how the reform schools operated. For example, some scholars have suggested that children at these schools lost their individuality, they did not learn to become responsible, they did not learn practical employment skills and in fact, good character was not developed; instead, corrupted children were often created (Minton, 1893). Thus, those in charge of the social and moral welfare of these children not only failed them, but also exploited them through the use of a "contract system" for employment (Bremner, 1971; Sanders, 1970). On the other end of the spectrum, reform schools were criticized as unfair because they allowed some adolescents to attend "free" boarding schools, thus allowing parents to dodge the responsibility of parenthood, in addition to creating a dependent class looking to the public for support (Bremner, 1971; Sanders, 1970).

Throughout the 1800's, practices and responses to juvenile delinquency were guided by the understanding that children needed guidance and care. Banking off of these myriad concerns, it seemed as though a paradigm shift was imminent. The reform schools, as many understood it, failed in their goals. The notable, and public, failures of reform schools helped to usher in the era of the juvenile court. This movement was built on the backs of "Child Savers[2]," a loose coupling of class-conscious individuals who

[2] Of course, the child saver movement was active prior to this time. However, Platt (1969a), (1969b) contends the child saving movement was largely a women's movement. He contends that the activity of the child saver movement coincided with women's emancipation, thus, making more sense that the child saver movement would gain more traction as time passed.

recognized the need for political, economic, and social reforms (Platt, 1969a). Prior to and throughout the opening of the juvenile court system, the Child Savers movement played a central part in its development as well as the construction of a number of myriad supplementary organizations. However, as will be discussed in Section 2.2, the Child Savers movement suffered from several flaws that some may argue simply made this system of social control more efficient (Platt, 1969a).

2.2 The Creation of the Juvenile Court

Perhaps at the height of the progressive era, the formation of the first juvenile court in Chicago occurred. Notwithstanding the criticisms associated with reform schools and the placing-out system, debates over the root causes of crime aligned more with the notion that societal conditions were the cause of juvenile delinquency rather than one's status as poor or an immigrant (Platt, 1969b). In other words, the failure to address the underlying conditions that are inexplicably tied to juvenile delinquency, such as a lack of a positive role model/guardian, meant juvenile delinquency would remain unabated in society (Bakan, 1971; Hart, 1910).

As this new paradigm geared towards understanding adolescence emerged, a number of people came to believe that the juvenile crime pandemic may be solved by addressing its "root causes." Through the 1899 Illinois Act, which initially formalized our initial understanding that children have important legal distinctions that differentiate them from adults, the stage was all but set for wide scale "reform"[3] (Fox, 1970; Feld, 1999; Mennel, 1973; Platt, 1969a).

[3] While a critical analysis will follow later, Fox (1970) notes that these reforms 1.) returned us to the method coercive predictions for juveniles' life outcomes, 2.) continued 1800's inspired summary trials for

Thus, the first publicly funded detention center working in conjunction with the juvenile court opened in 1907 and every state adopted a juvenile court system by 1945 (Mennel, 1945; Rosenheim, Zimring, Tananhaus & Dohrn, 2002). This new juvenile court system was founded on the idea that a juvenile who has broken a law was to be taken in hand by the state; not as an enemy, but as their protector and "ultimate guardian", guided by a judge and probation officer who were to serve as the voice of reason and sympathy (Mack, 1909; Rosenheim et al., 2002). This sentiment of children requiring formal protections and different treatments than adults was also echoed in society at large, with many reforms to child welfare and labor laws occurring during the formation of this first juvenile court (Grossberg, 2002). Under this system, the legal basis for granting the state of Illinois (and other states in the future) control over juvenile was the doctrine of *parens patriae,* a legal/common-law doctrine that has often taken center stage in discussions about how to best "deal with" delinquent children.

By creating a specialized court to address the needs and delinquent behaviors of children, many conceptual differences intended to separate the juvenile court from adult criminal court emerged. First, different courtroom terminology was created for use in the juvenile court, with the intention of removing, or at least minimalizing, shame, stigma, punishment, and guilt (Feld, 1999; Mack, 1909). Second, the court was organized to act in the "best interests" of the children (Bakan, 1971). Third, the juvenile court was intended to be not a "miniature court," given the negative association with Houses of Refuge/reform as "miniature prisons," but rather it was to serve as a social welfare

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children about whom said predictions were to be made, 3.) made no improvements in the long time criticized institutional care within which juveniles resided (4) codified in law the belief that institutions should, even without truly needed financial assistance from legislature, closely replicate family life, and that foster homes should be founded for "pre-delinquents" and (5) revived the private sectarian interests in juvenile delinquency.

agency working in conjunction with private charities (Mack, 1909; Feld, 1991; Feld, 1999). Additionally, the juvenile court would not only deal with juvenile delinquents but also "special needs" children (Mack, 1909; Feld, 1991; Feld, 1999). Fourth, the juvenile court was intended to give broad discretion to courtroom actors, via vaguely worded laws, in order for the juvenile court the discretion to address any given child's unique nature and circumstance (Mack, 1909; Mennel, 1973; Platt, 1969a).

The juvenile court, as it was conceived, also had a number of unique functions different from the adult court (Clapp, 1998). Instead of being brought before a judge for a crime, a child would be petitioned as a matter of state assistance for their crime, delinquency, or concern over a juvenile's well-being (Clapp, 1998; Kobrin, 1959; Salerno, 1991). Thus, juveniles were not met with the formal standards of the adult court. Rather than using a jury trial or plea bargain as methods to achieve a sentence, a judge possessed the power to determine the legitimacy of facts in a petition and then decide how to address the issues raised (Hart, 1910; Bernard & Kurlychek, 2010; Feld, 1999). If the facts of the petition were found to be valid and true, the state would assume responsibility over the child's welfare via a judge's ruling (Eliot, 2010). Accordingly, the judge would make a determination about what should be done in the child's "best interests" (Hart, 1910; Mears et al., 2007).

These courts were conceived under the notions of "truth, love, and understanding," which may partially explain the informal nature of the courts and the optimistic and humanitarian approaches to juvenile delinquency; perhaps because the founders of the juvenile court believed the state can provide a remedy for juvenile delinquency (Mennel, 1973). Coined as the "rehabilitative era," this shift in court

practices and its approach to children became entrenched shortly after the creation of the juvenile court. During this time period, many other significant changes were occurring within American society, including industrialization, increased immigration, labor movements and demands from the working class for changes in social and economic conditions that ultimately helped to shape the juvenile court (Feld, 1999; Platt, 1969a).

The Child Savers movement, on board with many of these new societal demands, believed that delinquent children could be treated, so long as their adolescence was not taken for granted and their treatment had its' roots in compassion and education that created ambition, self-help and independence (Clapp, 1998; Platt, 1969a; Platt, 1969b). This movement played a role in many philanthropic causes, such as campaigning for safer jail conditions for children, special institutions for children that would separate them from adults, creating the juvenile protective agency, and donating money towards child welfare causes (Platt, 1969a).

While well intentioned, the Child Savers movement succumbed to a number of tragic flaws. Their maternalism, love, and compassion were accompanied by unmitigated threats of force, seen perhaps in their role as defenders of the traditional society and families (Platt, 1969a; Matza, 1964). They assumed familial dependence while ignoring cultural differences that may have existed between first generation immigrants or those who belonged to the non-dominant group (Wines, 1968). Furthermore, the Child Savers arguably promoted long terms of imprisonment supplemented with long hours of hard labor when juveniles rebelled, arguably expediting punitive policies that emerged in the later 20th century (Krisberg & Austin, 1993; Platt, 1969a; Wines, 1968). While many of the child savers played a large role in children's advocacy, their prognosis for treatment

was incorrect; in fact, the movement arguably just facilitated the efficiency of the established system (Clapp, 1998; Platt, 1969a). Furthermore, Platt (1969a) argued this movement was a round-about way of imposing social control on the immigrant and poor class; that is, they tended to impose their own "middle class values" on a different group with different values and economic stability. Perhaps this was not done consciously; many associated with the movement seemed to care deeply for the welfare of children, as well hold sincere beliefs with regards to new forms of education, autonomy, treatment, and reform (Clapp, 1998; Platt, 1969a).

Still, while seemingly benevolent and humanitarian on the surface, and the notion of humanitarianism certainly holds weight, it has been argued that the "progressive narrative" was slightly misleading (Platt, 1969a). Certainly, the well-intentioned reformers envisioned a system within which juvenile delinquents would be treated for their anti-social behaviors in a loving manner; a rehabilitative model that seemed to thrive at the time of the court's conception (Platt, 1969a; Scott & Steinburg, 2002). While the conception of the juvenile court intended to build upon the idea of treating anti-social juveniles separate from anti-social adults, given the differences between children and adults, the actual operation led to a lack of due process protections for delinquent children who were brought before the juvenile court.

Arguably, the "good intentions and poor results" of the Child Savers was nothing new insofar as how juveniles, and children more broadly, were treated in the courts. For example, we can trace these good intentions back even before the juvenile courts' creation in *Ex parte Crouse, 4 Wharton 9,* (1838), which held that juveniles are not guaranteed due process rights, given that the state is "helping" rather than punishing

them. The Crouse decision was premised on two important things: first, while parental rights are natural, they are not inalienable and second, society has a big stake in the virtue, knowledge and guidance of its members. This ruling ostensibly was one of the most important juvenile justice cases, as it made clear there was a legal distinction between adults and children and it formalized the concept of parens patriae.

Furthermore, consider *Commonwealth v. Fisher* (1905), which held that sentencing a juvenile to a long sentence may be in the best interests of everyone involved, further broadened the court's discretion under the aegis of a child's best interests. More specifically, the court held that the commonwealth is "vitally interested in rescuing and saving its children, wherever rescue, care and a substitute for parental control are required" (*Commonwealth v. Fisher* (1905), p. 228), further cementing the concept of parens patriae. Crouse and Fisher therefore stand for the proposition that society has a stake in our members, and because of that, it is in not only the child's, but everyone's best interests for the court to make a decision about the fate of a child. While the state is intervening when the parent cannot control a child, such intervention does beg the question of just when and how deeply the court should get involved with a child for their best interests, especially in light of the past instances of children being sent to Houses of Refuge or those who were "placed out" for the mere crime of being poor (Mennel, 1973). Though certainly well intentioned, one can nevertheless question if the results truly produce the utilitarian ends it sought to obtain.

Understandably, it would be too critical to place all of the failures on "naïve child savers;" given that private charities and the juvenile justice system often serve the same youth, perhaps blurring the missions, goals, and boundaries between the two (Clapp,

1998; Platt, 1969a). While the separation was intended to give the child the "best of both worlds," it merely opened the door for youth to fall between the cracks of the legal system and ultimately face failure in both systems (Scrivner, 2002). Given that the doctrine of parens patriae legitimizes the role of government in the private lives of family and children, it was argued that helping children and families would produce "good results." But, without any clear data detailing the methods that were used, drawing such a conclusion is, at best, difficult to ascertain.

Regardless of the history of "good intentions and poor results," it has been argued that the well-intentioned reformers pushed a promising institution to the point of diminishing returns, given that their methods of preventing juvenile delinquency impotently attacked the flames of crime, social inequalities and poverty (Eliot, 2010; Platt, 1969a). Mennel (1973) was cognizant of these criticisms, and noted that as long as the social system continues to reject change, continues to impose "middle class values" on the poor and immigrant class, and as long as the resources needed to reorganize society remained with the elite, the juvenile court would not experience any form of wide-spread success.

2.3 The Rights Revolution

Mennel's (1973) predictions that the failure to address the root causes of juvenile delinquency would lead to an ineffective juvenile court came to fruition. The good intentions that helped to fuel the juvenile court produced poor results and led the public to question the overall purpose and effectiveness of the juvenile court, (Ainsworth, 1990; Feld, 1990; Greene, 2003; Platt, 1969a). Furthermore, these concerns and shortcomings

were chronicled in the literature that examined the effectiveness of juvenile delinquency treatment during the height of the child savers movement in the 1940's and 1960's. This literature, among other things, pointed to several shortcomings of the juvenile court: abyssal organized care, failure to treat juveniles, and the ever present societal concern that juvenile crime was both widespread and on the rise (Colebrook, 1967; Fine; 1955; Richette; 1969, Tappan, 1947). Furthermore, critics of the juvenile court began to raise serious questions about the constitutionality of the juvenile court given that the adjudication process of juveniles seemed to result in sentences indistinguishable from that of adults, as well as concerns that the informal nature of proceedings violated the constitutional rights of juveniles (Ullman, 2000).

In particular, while juvenile courts tended to operate free from the obligation of punishing offenders for violating the criminal law, it often did (Ainsworth, 1990; Feld, 1997). Importantly, a number of issues involving the following fundamental principles of legality emerged: considerations of due process for a juvenile were not mandatory, guilt did not have to be established beyond a reasonable doubt, and acts reported as "juvenile delinquency" such as truancy and associations with immoral persons, could result in an appearance in the juvenile court (Bakan, 1970).

Thus, a convergence of increasing crime (perceived or otherwise), societal dissatisfaction with the rehabilitative model, criticisms of the child savers movement, issues juxtaposing fundamental legal issues with the operation of the court, decreasing public resources and few successful treatment projects prompted a return to the traditional principles of criminal law for juveniles (Feld, 1987; Feld, 1999; Holland & Mlyniec, 1995). Moreover, a number of court observers noted that juveniles were not

being treated in their best interests, but rather, punished (Rothman, 1978). Juveniles were essentially receiving the "worst of both worlds;" they were being punished and denied due process protections while simultaneously they were being denied compassionate treatment (Krisberg & Austin, 1993; Feld 1987, 1991, 1999). These criticisms of the juvenile court eventually coalesced and evolved into the legal and philosophical justifications for the "rights revolution."

A number of Supreme Court decisions during the 1960's and 1970's[4] were made in response to the prevailing sense that the juvenile court failed to achieve its' rehabilitative goals and instead, it punishing youth while simultaneously denying them a number of legal protections. Thus, during this time period, the Supreme Court used a constitutional "domestication" strategy as a vehicle for reforming social welfare and social control agencies, as well as the legal procedures that operated in conjunction with these agencies (Feld, 1999; Marshall & Thomas, 1983). These decisions and how they reflect the new goals of the Supreme Court during this time period may be seen in the following cases: *Kent v. United States (1966), In re: Gault (1967), In re: Winship (1970), McKeiver v. Pennsylvania (1971), Breed v. Jones (1975), Swisher v. Brady (1978)* and *Schall v. Martin (1984)*. These cases will be reviewed in the pages that follow.

Perhaps the watershed moment of the rights revolution was the Court's decision in *Kent v. United States, 383 U.S. 541 (1966).* Sixteen year old Kent was detained and questioned by police in regards to police finding that Kent's fingerprints were found in the apartment of a woman who was raped by an intruder, in addition to the theft of her wallet. After being interrogated, Kent, who was already on probation, admitted to not only being the perpetrator in that, but he also admitted to his involvement in other open

[4] With the exception of Schall v. Martin (1984).

cases. Kent was brought to a juvenile court judge who announced, without consulting with Kent, his parents or his lawyer, and without the benefit of a "full investigation," that he was waiving Kent to the adult criminal court.

The question posed to the United States Supreme Court was whether the juvenile court's waiver of jurisdiction was valid. In a 5-4 decision, the Court was held that juveniles must be afforded certain due process rights if a decision is made to waive them to adult court. Specifically, as outlined in the decision's appendix, a judge must provide a written reason for transferring a juvenile to adult court[5]. Specifically, the majority, led by Justice Abe Fortas noted that parens patriae "is not an invitation to procedural arbitrariness" (Pp. 383 U. S. 554-556), in light of a number of provisions that were not granted to Kent. Given the fact that the procedure used to waive Kent to the adult court was invalid, his waiver to adult court was also invalid. Justice Stewart, who authored a dissenting opinion, indicated that he would have merely vacated the judgment and remanded to the Court of Appeals. Given the brevity of the dissenting opinion, there is no way of knowing whether the Justice Stewart and the other dissenters on the Court may have held any views contrary to those of Justice Fortas and the plurality. While seemingly innocuous at first glance, the Kent decision had enormous implications for the present and future of the juvenile court.

It would seem that in the Kent decision, the Supreme Court was challenging the idea of the state as a figurative parent in the absence of a capable adult, noting that if the court and juvenile were to have a parental relationship, it should not be relationship of procedural arbitrariness (Ketcham, 1996). Second, it was the first Supreme Court ruling

[5] These factors include elaboration on the best interests of the juvenile or public, juvenile amenability to treatment, if the court finds a "good cause," whether or not the juvenile can appreciate the nature of their conduct.

during the "rights revolution" that provided a formal procedural framework wherein a waiver or sentencing decision occurs. Thus, this decision served as the initial effort of the legal systems effort to establish constitutional efforts to provide due process to children who find themselves in the juvenile court (Feld, 1987; 1999; Matza, 1964).

In the aftermath of Kent (1966), a number of states began to amend their juvenile codes to deemphasize rehabilitation in favor of public safety and punishment (Feld, 1984). On the one hand, the Kent ruling seemingly formed the crucible of the "get tough" movement through the revision of juvenile codes. On the other hand, some scholars contend that the Kent decision was the natural consequence of the progressive juvenile court failing to meet its therapeutic purpose (Podkopacz & Feld, 1996). While the progressive founders envisioned a system that maintained a high level of discretion, the consequences of Kent arguably led to a system where due process was heavily favored over discretion. However, today most legislatures have adopted some method to transfer juvenile offenders to adult courts on a discretionary basis based on ones' amenability to treatment, perceived dangerousness and a number of other individualized factors that seem to fall outside the realm of a due process model (Feld, 1987).

One year later, *In re Gault, 387 U.S. 1 (1967)* came before the Supreme Court. Fifteen year old Gerald Gault was taken into custody by the police because he made a "prank" phone call, a technical violation against the terms of his probation. The arresting officers never told his parents where he was; it was only until a neighbor informed Gault's parents of what happened that they were aware that he was being detained. Gault was eventually sentenced to confinement until he turned 21 years old. Interestingly, if Gault were an adult, the maximum penalty for his crime would be two months of

incarceration or a fine between $5 and $50. Having made its way to the Supreme Court, the question was presented of whether the methods used to send Gault to confinement until he was 21 were constitutionally permissible under the Due Process Clause of the Fourteenth Amendment (In re Gault, 387 U.S. 1 1967, p. 2).

In an 8-1 decision authored by Justice Fortas, the Court expanded upon its previous Kent ruling, holding that "hearings must measure up to the essentials of due process and fair treatment (In re Gault, 387 U.S. 1 1967, p. 2). The majority also held that the juvenility of an offender does not constitute running a "kangaroo court" which disregards or selectively picks the principles of law and justice to be applied (In re Gault, 387 U.S. 1 1967, p. 28); the Fourteenth Amendment's due process clause and procedural safeguards cannot be ignored regardless of the age of the defendant (In re Gault, 387 U.S. 1 1967, p. 29). To further solidify its decision, the Court held that the state must provide the following protections: well written notification of charges to both the juvenile and their parent or legal guardian, the assistance of counsel, the privilege against self-incrimination, and the opportunity to confront and cross examine witnesses at hearings. All of these protections were not present during the hearings that resulted in Gault being sent to state training school (In re Gault, 387 U.S. 1 1967, Pp. 31-33). Thus, like Kent, the ruling in Gault sought to embed juveniles' rights on the Fourteenth Amendment's due process clause.

Also important for juveniles, Justice Fortas ruled that "the state was not deemed to have authority to accord them fewer procedural rights than adults." (p. 16) and that self-incrimination is an important consideration for juveniles, given "the privilege against self-incrimination was not observed" (p. 42). Although this decision made concrete the

privilege against self-incrimination, it did not address subtle and inherently coercive situations that juvenile inevitably confront in court. While the Gault decision seeks to balance reliability with the voluntariness of a confession, juvenile court proceedings will always be adversarial and thus the reliability of a confession is always questionable at best (Feld, 1984; McCarthy, 1980).

Progressive reformers, on the other hand, argued that the Gault decision interposed an adversarial relationship between juveniles and the state, further eroding the original juvenile court vision of treatment and sowing the seeds for a miniature adult court (Archard, 1993, Feld, 1999). Regardless, Gault had quite the impact, given few juvenile courts at the time appointed lawyers for offenders who appeared before them (McCarthy, 1980). If we accept that Kent (1966) closed the door on the broad discretion in the juvenile court, then Gault (1967) served as the lock and bolt on that door. As seen in both decisions, the Court was very concerned with the discretion of juvenile court actors, and it sought to put an end to what they perceived as unnecessary procedural arbitrariness.

Following Kent (1966) and Gault (1967), the Supreme Court further elaborated on the rights of juvenile during court proceedings. In *In re Winship*, 397 U.S. 358 (1970), twelve year old Winship was arrested a charged as a youthful offender for stealing money from a pocketbook. Winship was charged and convicted, despite the fact that the judge even acknowledged that the proof offered did not establish his guilt beyond a reasonable doubt, and ultimately rejected Winship's argument that guilt beyond a reasonable doubt was required by the Fourteenth Amendment. Thus, Winship was convicted under the lower burden of proof: preponderance of evidence. Winship appealed his conviction on

the grounds that the prosecution must establish crime by the adult criminal standard of "proof beyond a reasonable doubt" rather than the lower, civil standard of proof present in the juvenile court, the "preponderance of evidence" (p. 397).

The question presented to the U.S. Supreme Court was whether juvenile convictions that rely on the preponderance of evidence burden of proof rather than proof beyond a reasonable doubt violate the Fourteenth Amendment's due process clause. In a 5-3 decision authored by Justice Brennan, the court held the highest standard of proof for convicting juveniles is necessary to provide due process protections to children. In so doing, Justice Brennan emphasized that through the highest standard of proof that they sought to reduce the risk of unwarranted convictions due to factual errors, and also further placed constraints on overreaching by the state. Justice Brennan also wrote that "reasonable doubt standard plays a vital role in the American scheme of criminal procedure" (p. 367). Noting his language, it seems even the more liberal members of the Supreme Court took little issue with transforming the juvenile court into a miniature criminal court.

Justice Burger, on the other hand, was very much against the transformation of the juvenile court which seemed to be taking place arguing that what the "juvenile court system needs is not more, but less, of the trappings of legal procedure and judicial formalism" (p. 376). Justice Burger, was more concerned with the issue of exposing juveniles to the trauma of criminal courts. In fact, he was cognizant of the slow transformation taking place, lamenting that we are in fact, seeing a manifestation of a miniature adult court that far from the benevolent creation of the early 1900s. Justice Black, on the other hand, saw this decision as giving "due process of law" an unjustified

broad interpretation (p. 397), pointing out that the boilerplate of the Constitution would best provide fair treatment, rather than the changing day-to-day standards of what is fair to individual judges (p. 399).

A few years after the Winship (1970) ruling, McKeiver v. Pennsylvania (1971, 403 U.S. 528) was decided. This case addressed whether juveniles were entitled to jury trials. Fifteen year old McKeiver and sixteen year old Terry were charged with a number of crimes, including robbery, assault and theft. Both requested a jury trial but they were denied their respective requests, as the juvenile court of Philadelphia argued that there was no constitutional right for juveniles to receive a jury trial. As the case reached the U.S. Supreme Court, the question to be answered focused on whether the Sixth Amendment grants juveniles a right to trial by jury as a matter of the Due Process clause of the Fourteenth Amendment.

In a 6-3 plurality opinion written by Justice Blackmun, it was held that the refusal to grant juveniles a jury trial did not violate the Sixth or Fourteenth Amendment. Although individual states can write legislation that gives juveniles a right to trial, it is not a constitutional safeguard. Prior holdings with regards to the right to an attorney, cross examination and other courtroom methods were used as a matter of fact finding. Justice Blackmun, and the plurality, noted that a jury trial was not a necessary part of accurate fact finding. Furthermore, because juvenile prosecution is outside of both civil and criminal court and in the unique juvenile court, neither Amendment applies to offenders going through the juvenile court. Importantly, Justice Blackmun acknowledged there are flaws in the juvenile justice system, however, “imposing jury trial on the

juvenile court system would not remedy the system's defects, and would not greatly strengthen the fact-finding function" (p. 547, 403 U.S. 528).

Justice Douglas, joined by Justice Marshall and Black wrote a dissenting opinion. Justice Douglas took issue with the fact that if the state uses mechanisms to confine a child for a period of time, and McKeiver was facing this daunting prospect, then the juvenile "is entitled to the same procedural protection as an adult" (p. 559, 403 U.S. 528). Justice Douglas also pointed out the issue of trauma. Specifically, Justice Douglas wrote that since the juvenile court is already a traumatic experience resembling an adult court, it would not add any significant amount of additional trauma if the juvenile's case would be observed by twelve objective citizens rather than a single judge. Arguably, the insights provided by the dissent about the juvenile court process were correct. If the plurality were truly concerned with trauma, they are remiss in ignoring all of the other traumas associated with the juvenile court processes, such as arrest, as well as a trauma of being incarcerated without basic rights such as due process via a jury trial.

The court moved in a different direction from its previous holdings which were predicated on accuracy of facts, serving justice and minimizing state oppression. Justice Brennan was cognizant of this fact as he wrote in his dissent that a jury trial for juveniles is not necessary "so long as some other aspect of the process adequately protects the interests that Sixth Amendment jury trials are intended to serve" (p. 529). However, as Feld (1987) observed, the Court provided a response arguing that in the juvenile court, having a jury would likely produce biased results due to the "close nature" of the juvenile court. Therefore, it would be disruptive to justice. Similarly, it may also be argued that the McKeiver decision further transformed the juvenile proceedings into criminal

prosecutions, shifting even further away from the "real needs" of the child originally emphasized by the progressive founders. Regardless, there appears to be a disparity between the direction in which the Court was moving insofar as according more rights to juveniles and the ruling that came in the McKeiver case.

Years later, the Supreme Court took up the case of *Breed v. Jones* (1975), wherein seventeen year old Jones was placed in a juvenile detention center for armed robbery with a deadly weapon. The petition against Jones was found to be true, making him a ward of the state. After being declared "unfit for treatment as a juvenile" (p. 523, 421 U.S. 519), the court ordered that Jones be tried as an adult notwithstanding the fact that he had already been tried for in the juvenile court for the same offense. Jones argued that being declared a ward of the state and then being tried (and later convicted) as an adult for the exact same offense violated his Fifth Amendment rights against double jeopardy.

In a 9-0 decision written by Justice Burger, the United State Supreme Court held that because Breed "never faced the risk of more than one punishment" they "cannot agree with petitioner that the trial of respondent in Superior Court on an information charging the same offense as that for which he had been tried in Juvenile Court violated none of the policies of the Double Jeopardy Clause" (p. 428, 421 U.S. 532). Furthermore, the Supreme Court described the function of the juvenile court as largely a function equivalent of the adult court, noting increased burden and caseloads, a hearing marked by anxiety and insecurity, among other general elements of adult criminal prosecution, as well as the importance of juvenile transfer laws (Feld, 1987). Interestingly, in all of the previous cases, the court has in fact recognized that there are numerous different objectives sought by the juvenile court which hypothetically should distinguish it from

the adult criminal court. Yet, ostensibly Breed (1975) and the prior cases stifled the informal, unique and flexible nature of the juvenile court system, and began to blur the lines between it and the adult court.

Swisher v. Brady (1978) examined a question similar to the procedural issues raised in *Breed v. Jones* (1975). Brady and eight other juveniles argued that having a "master" or "referee" conduct adjudicatory hearings (Rule 911) violated their Fifth Amendment protections against double jeopardy, given that these cases would be later tried by a judge or magistrate; moreover, in an adult court, only a judge or magistrate may be in charge of criminal proceedings. The narrow question under consideration was whether the double jeopardy clause prohibits the state from using the findings of a master or referees in a later court proceeding. In a 6-3 opinion written by Justice Burger, the Court held that there was no Fifth Amendment violation had occurred. Similar to the Breed ruling, the majority noted that a juvenile had not yet faced a formal trial, nor acquittal or conviction. Specifically, Justice Burger held that filing these exceptions does not require a juvenile to be tried, but rather Rule 911 exists as a system "which an accused juvenile is subjected to a single proceeding which begins with a master's hearing and culminates with an adjudication by a judge" (p. 214, 438 U.S. 204).

Justice Marshall, joined by Justices Brennan and Powell, filed a dissenting opinion. Particularly noteworthy, Justice Marshall suggests that Rule 911is akin to "as if an adult defendant, after acquittal in a trial court, were convicted on appeal" (p. 199). It raises due process questions that do not harmonize with the Breed decision, as Justice Marshall points out. Perhaps this is why Justice Brennan could not co-sign the plurality opinion: Justice Brennan was very particular about noting a lack of a jury trial is

acceptable as long as there are other adequate protections. It seems as though Justice Brennan knew this would be a step in the wrong direction.

Finally, as the rights revolution came to its' end, and the "get tough" movement began to emerge, *Schall v. Martin* (1984) was decided. Fourteen year old Martin was arrested for robbery and assault and he was detained pre-trial under the New York preventative detention statute, which Martin argued violated his due process rights. The Supreme Court, in a 6-3 decision written by Justice Rehnquist, addressed whether Martin's detention violated his Fourteenth Amendment protections (p. 263, 467 U.S. 253). The Court ruled, in part, that there is an assumption of parens patriae in "preserving and promoting the welfare of the child" and given that the child has committed a delinquent act, the parents have failed to exercise adequate control and therefore, the state may take custody/control of a juvenile to serve not only the juveniles' best interests as it relates to the "welfare and development of the child" (p. 273), but also the states. Furthermore, Justice Rehnquist wrote that pre-trial detention is not a form of punishment, and therefore, it was not a denial of due process protections Ultimately, the rationale behind the Schall decision seemed to be cloaked in the idea of protecting the juvenile and not "technically" punishing them, not unlike the holdings of Crouse and Fisher many years prior.

Justice Marshall, in a dissent joined by Justices Brennan and Stevens, highlighted two things. First, he indicated that the approach adopted by the juvenile court of New York was not adequately meeting the concept of "fundamental fairness." Second, he believed that pre-trial detention for juveniles was used not because it served a purpose but because it was a habitual shortcut that served some other end. As such, Justice Marshall

contended, “only very important government interest can justify deprivation of liberty in this basic sense” (p. 288). The detention of Martin, in his view, did not meet this test.

These myriad cases provide a framework through which we can examine the Supreme Court’s jurisprudence as it relates to children’s rights. Ostensibly, the Court vacillated between the idea that youth are vulnerable and dependent, yet responsible and autonomous; granting liberty yet protecting the child’s “best interests” (Feld, 1999; Minow, 1990). One needs only to examine some of the Court’s rulings and odd juxtapositions of rights outside of the juvenile justice system. For example, the Court has variously held that children have no expectation of privacy at school (*New Jersey v. T.L.O*, 1985), yet only a few years later the Court recognized that rules within schools are often arbitrary and exert “indirect and subtle coercion” (*Lee v. Weisman*, 1992). Parents cannot arbitrarily decide that their daughters may not receive an abortion (*Bellotti v. Baird*, 1979), yet it is permissible to use involuntary commitment to a mental hospital for treatment with no judicial review, because the state has a legitimate interest in ”fostering parental authority” and involvement (Bellotti v. Baird, 443 U.S. 622, 1979, Pp. 443 U. S. 639-642).

However, if we accept the premise of the rights revolution as providing more due process protections to juvenile comparable to that of adults (ignoring the spillover effects of the argument), there were numerous instances where arguably the Court denied constitutional protections to juveniles. Similarly, while *Kent, Gault,* and *Winship* provided “positive” protections and rights comparable to adult justice, *McKeiver, Breed, Swisher* and *Schall* provided “negative” protections and rights and represented a failure to fully bridge all of the protections formally provided to adults (Krisberg & Austin, 1993).

In practical terms, the juvenile justice system was fundamentally altered. The Supreme Court, while possibly never intending to create a miniature adult court, effectively did so (Feld, 1999). The tension underlying the newly altered relationship between the state and juveniles is best exemplified during the post-Due Process Revolution when practically all of the states began to either pass new legislation or modify existing laws to promote the transfer of youth offenders to the criminal court (Fagan, 2008). While some scholars note that transfer has always been an option for serious juvenile offenders (Kupchik, 2006), the number of adolescents prosecuted in the adult criminal court and/or incarcerated in adult prisons has steadily increased since the end of the rights revolution in the early 1980's. Thus, the logical conclusion of the due process movement and growing public concern about crime led courts and state legislatures to "get tough" on juvenile crime (Feld, 1994).

2.4 Getting Tough on Crime

Given the argument that children and adolescents are markedly different from adults, many advocates have proposed that adults and juveniles should be subject to different rules in both the criminal justice and legal arenas (Scott, 2002). At the same time, others have argued in favor of the constitutional and statutory "right to treatment" in that if the state were to place a child in an institution for rehabilitation, then the child must be provided with the tools for effective treatment (Holland & Mlyniec, 1995).

Though few court opinions resulted from legal challenges with regards to the right to treatment (c.f., Kent v. United States (1966); Nelson v. Heyne (1973); Youngberg v. Romeo (1982)), the right to treatment argument certainly had validity (Holland &

Mlyniec, 1995). Although the principles espoused by those who supported the right to treatment has wide acceptance, judges oftentimes become frustrated with the lack of available and cost-effective treatment options for juveniles, perhaps, given their constraints, pushing them more towards a system of punishment rather than treatment (Hafemeister, 2004). Thus, a failure to treat and a concern over due process opened the doors to a movement that sought to get tough on crime.

As the "rights revolution" came to an end in the 1980's and early 1990's the United States experienced a surge in crime, especially juvenile crime (Zimring & Rushin, 2013). In fact, juvenile arrests for violent crimes increased by 50% nationally between 1988 and 1994 and juvenile arrests for murder rose 158% between 1985 and 1994, according to the Office of Juvenile Justice and Delinquency Prevention (Washburn et al., 2015)[6]. By the early to mid-1990's, this spike in crime, specifically juvenile crime, captured the nation's attention.

Perhaps this spike was enhanced by the county being in a throes of a crack epidemic, the ease of availability of guns, a stagnating economy and a miniature demographic bubble with more of society entering the crime prone years of adolescence (Feld, 1991; Giroux, 2012; Inciardi, Horowitz & Pottieger, 1993; Podkopacz & Feld, 2001) The general public perceived the juvenile justice system as soft and ineffective, leading some to indulge the fevered imaginings of a moral panic regarding so-called "juvenile super predators" who would explode a "demographic crime bomb" that would greatly threaten the entire nation (Bennett, Dilulio, & Walters, 1996; Dilulio, 1995).

[6] Note that these are merely estimates/approximations, not the definitive, true number within the population.

Despite adults being responsible for 74% of the increase in violent crime rates, most of the attention given to the crime "epidemic" by politicians and the media alike focused on juveniles, according for the National Center for Juvenile Justice 1997 update (Sickmund, Snyder & Poe-Yamagata, 1997)[7]. The juveniles who garnered much of the national attention were referred to as "super predators," the most menacing, dangerous and violent juvenile criminals who were regarded as having no sense of morality and no regard for the rule of law (DiIulio, 1995). The public, becoming increasingly wary of youth violence, pressured local and state legislatures to "do something" about the juvenile crime problem (Scott & Steinberg, 2010).

As a response, legislators nationwide enacted numerous new laws that shifted the priorities of juvenile justice; steps that coincidentally further blurred the lines between the juvenile and adult courts (Scott & Steinburg, 2002; Zimring, 2000). During this reprioritization, a major shift in the philosophy of the juvenile court occurred. Since the inception of the juvenile court, it operated under the ideals of a civil court guided by parens patriae, with an emphasis on doing what was in the best interests of the child (Feld, 1999; Mennel, 1973; Platt, 1969a). However, given the public concern over youth crime and pressure for legislation to address the coming super predators, states moved towards providing justice to the victim and community safety rather than addressing juveniles in a compassionate way (Feld, 1988). A number of changes occurred in the juvenile justice system during this time period, including changes to the courtroom process, changes from a rehabilitative framework to an accountability framework, more transparency and less privacy for juvenile offenders, and the creation of new sanctions

[7] See footnote 6; the same is true for other percentage estimates within this dissertation.

(Fagan, 1996; Torbet, Gable, Hurst, Montgomery, Szymanski & Thomas, 1996; Zimring, 2000).

Perhaps the most important discussion in these changes stems from the overall change to the structure of the juvenile court. The shifts in juvenile justice were not localized or regional trends. Many states began to reject the idea of compassion and rehabilitation for juveniles, and began to accept punishment and personal responsibility as well as victim and community protection as the primary method of addressing juvenile delinquency (Dawson, 1990; Feld, 1988). For example, the Illinois Juvenile Court Act of 1987 (705 ILCS 405/1-5) permitted some information regarding an adjudicated delinquent to be made publicly available; a notion that was previously never entertained in Illinois (or in any other state). This new provision, among others, effectively paved the way for a "criminalized" juvenile court that no longer held onto the traditional notions of rehabilitation of the original juvenile court (Singer, 1996).

A number of states explicitly stated that the purpose of the juvenile court is for punishment. For example, in 1996, the Arizona legislature made it clear the juvenile court reflected a just desserts philosophy, stating that "punishment is the only thing that changes human behavior" (Butts & Harrell, 1998, p. 8). This point may be further driven home by examining a North Carolina law (N.C. Gen Stat. §§ 7B- 2200, 2203) that automatically treats 16 and 17 year old offenders as adults, and then denies them any appeal to be tried in the juvenile court (Birckhead, 2008). So too can a New York law (N.Y. Crim. Proc. Law, §§ 720.10) which ends juvenile court jurisdiction at age 16.

Other important trends began to emerge as well. During the mid-1990's, 47 states passed laws making the juvenile court system more punitive. More specifically, 45 states

enacted transfer laws, 31 states enacted enhanced sentencing authority, 22 states enacted enhanced victim roles in sentencing, and 47 states removed traditional confidentiality provisions (Lawrence & Hemmens, 2008; Snyder & Sickmund, 1999). Considering the conception and founding ideas of the juvenile court, one may surmise that the shift from compassion to "getting tough" was becoming more and more entrenched in the states.

The roles of the probation officer, judge, prosecutor, and defense attorney also changed (Tannenhaus, 2000). For example, if we consider the role of the probation officer at the inception of the juvenile court, their primary responsibility was to work closely with the judge to monitor and guide youth who came before the juvenile court (Mack, 1909; Hart, 1910). However, the role of the probation officer began to change as the rights revolution waned, beginning with their power in the courtroom significantly declining (Sanborn & Salerno, 2005). Formerly working in a "social work-like" role, they began to shift towards more of an adversarial role during the rights revolution and get tough movement (Krisberg, 1990). Today, juvenile probation officers share a role similar to that of their adult counterpart, responsible for the supervision of juvenile offenders, providing restitution to victims and emphasizing retribution for the offense and ownership of breaking the law (Tannenhaus, 2000; Torbet, 1997).

Judges, much like probation officers, traditionally played a very important role within the juvenile court (Mack, 1909; Fox, 1970). While they played the role of a state-sanctioned parent and not an adversary of the juvenile, judges were formerly granted enormous amounts of discretionary power during the pre-rights revolution period (Mack, 1909; Feld, 1991). That former role changed in that they now act as a neutral arbiter as opposed to a benevolent figure. While judges continue to possess a degree of discretion

in deciding issues related to amenability to treatment or whether an offender should be waived, their traditional role of a parent has been fundamentally transformed into that of largely a neutral observer (Tannenhaus, 2000).

Unlike judges and probation officers, the defense attorney and prosecutor were largely non-existent prior to the rights revolution decisions (Sanborn & Salerno, 2005; Torbet et al., 1996). Prior to the Gault (1967) decision, defense attorneys were not viewed as necessary to the process, but given the number of procedural changes that occurred during the rights revolution, they came to play a far more important role in the juvenile court (Sanborn & Salerno, 2005). Defense attorneys, arguably, slipped into the role left vacant by the probation officer, but instead of assuming the mantel of advocates for the well-being of juveniles, they often work in collaboration with the court in order to secure what they perceive as the best interests of the child (Sanborn, 1994). However, defense attorneys, at least under the original juvenile court model, should serve as advocates for their clients, yet advocacy is discouraged and instead a "best-interests" model is encouraged (Puritz & Majd, 2007). Many defense attorneys remain confused about their role in the court, and substitute their own judgment for that of the child they represent (Shephard & Volenik, 1987). Those who do recognize their "proper role" are often weakened by the pressure to cooperate and succumb to the demands of the adversarial process of the court (Feld, 1999).

Prosecutors, much like defense attorneys, emerged as pivotal figures in the juvenile court as a response to the changing structure of the juvenile court (Rubin, 1980). Their role was further expanded during the get tough movement, wherein they were granted discretion in their power to determine whether or not a case should be waived up

to the adult court and increased power to make, if not, coerce plea bargains (Bishop et al., 1989; Devers, 2011). Within this new framework, no hearing was required, giving prosecutors the power to waive offenders with little, at best, possibility for judicial review of the decision (Griffin, 2008). Ostensibly, these changes in the roles of these courtroom actors reflect an evolution of the juvenile court process.

Despite the very real changes ushered in by the Due Process revolution, there are some spillover effects from the movement that are less clear and perhaps unintended. Since the Court's decision in Kent v. United States (1966), a number of states amended their juvenile codes that made it easier for juvenile offenders to be transferred to adult criminal courts (Feld, 1987). While many juvenile code revisions were cloaked in the due process revolution's philosophy of reducing crime, these changes were not informed by the available empirical research (Bishop et al., 1996). Perhaps most famous of these waiver provisions was the "direct file" provisions in Florida which was aimed at preventing future crime by addressing "hardcore" offenders who were not amendable to treatment by sending them to the adult system. Importantly, prosecutors in Florida were permitted to transfer any juvenile over the age of 16 to adult court for a second degree felony or higher (Bishop & Frazier, 1988; 1990; Frazier, Bishop, Lanza-Kaduce & Marvast, 1998; Winner, Lanza-Kaduce & Bishop, 1997).

In Florida, transfer filings increased from 1.3% in 1979 to 9.6% in 1993, according to Frazier and colleagues (1998). Also during this time period, about forty-one states created waiver and transfer provisions making it easier for juvenile offenders to be tried as adults (Frazier et al., 1998). Though these laws presumably spoke to the "worst of the worst" offenders, there was little evidence that prosecutors were truly selecting the

worst offenders, nor was there much evidence that either specific or general deterrence was being achieved (Bishop, 2000; Jordan & Myers, 2011). For example, Bishop, Frazier, and Henretta (1989) as well as Champion (1989) found that waiver was being increasingly used for less serious property offenses. Furthermore, the juveniles were less likely to be reversed waived back to the juvenile court and the sentences that waived juveniles received were all too often much longer than what they would have received in the juvenile court. Further, they were exposed to a host of traumatizing experiences that occurred in the adult prisons, such as physical and sexual victimization, fear, and anxiety (Bishop, 2000; Feld, 1999, Frazier et al, 1998).

With regards to recidivism, Bishop et al. (1996), as well as other scholars, noted that those transferred were likely to recidivate faster than their non-waived counterparts (Winner, Lanza-Kaduce, Bishop & Frazier, 1997). In contrast to these findings, however, Frazier, Bishop, and Lanza-Kaduce (1999) noted that waiver use actually decreased when states combined options for secure confinement for serious juvenile offenders and also offered a variety of treatment options. Fagan (1991) reported similar findings, in that juvenile offenders who were tried as adults had higher recidivism rates than those who remained within the juvenile court. Myers & Kiehls (2001) also reported findings which suggested that negative outcomes increased for waived juveniles. In the end, waived juveniles often face a "juvenile penalty" in adult court that results in negative impacts on bail as well as sentencing (Johnson & Kurlychek, 2012; Kurlychek, 2010; Kurlychek & Johnson, 2004; Steiner, 2009).

These trends are unlikely to be a result of conflation or long-standing practices that have been ignored. As noted by Bishop & Frazier (1990), rehabilitative treatment

and protective supervision have traditionally been the preferred response to delinquent juvenile behavior. While Frazier et al. (1998) note the increase in Florida transfers in the 1990's and states adopting transfer laws, Bishop & Frazier (1990) compared those rates and noted trends have heading towards transferring greater numbers of juveniles charged with non-violent felonies and misdemeanors to adult courts. Thus, Bishop & Frazier (1990) concluded that the trends analyzed are likely to reflect changes in law rather than be circumstantial trends or trends that were simply just previously ignored.

Furthermore, some research has suggested that if the ability to easily waive a juvenile to adult court is there, he or she will be waived; thus, the juvenile court continues to distance itself from the traditional rehabilitative model (Bishop, Frazier & Henretta, 1989; Jordan & Myers, 2011; Leiber, 2003). In light of this, questions also may be raised about the special needs of younger offenders, such as their diminished culpability and development of their personality, some contend that juveniles in adult prisons will be treated like an adult criminal (Bishop, 2000; Gordon, 1999). This may be a difficult thing to reconcile given most acknowledge the differences between adolescents and adults, as well as the need to separate criminal youth from criminal adults (Bishop 2000). Second, others note that waiver offers a great amount of discretion when sentencing juveniles, which ignores the longstanding practice of discretion within the juvenile court (Gordon, 1999).

Bishop, Frazier, Lanza-Kaduce & Winner (1996) also note that juveniles who are transferred to adult court are more likely to recidivate. Additionally, Winner, Lanza-Kaduce, Bishop and Frazier (1997) noted that transferred children are more likely to be arrested in the future more quickly and with more frequency. Myers (2003) noted very

similar findings about transferred youth and recidivism. DeJong & Merrill (2000) arrived at the conclusion that transfer had no effect on decreasing recidivism, while Johnson, Lanza-Kaduce & Woolard (2009) note that transfer rates actually increase rates of recidivism, perhaps due to the previously mentioned exposure to adult facilities. Thus, it can be maintained that transfer laws have created a more punitive environment for juvenile delinquents where one is set up for failure (Podkopacz & Feld, 1996; Bishop, Leiber & Johnson, 2010).

Today, there is an array of different waiver mechanisms at the disposal of criminal justice and juvenile court actors. They include judicial/discretionary (judges have the discretion to waive jurisdiction in individual cases), mandatory (transfer wherein it is mandatory to be sent to adult court if a juvenile meets a certain age, offense or other specified criteria), presumptive (wherein a certain category of cases are assumed to be appropriate to be waived to adult court), statutory (certain, usually serious offenses, exclude an offender from being tried in juvenile court) and prosecutorial waivers (wherein prosecutors decide whether or not to begin proceedings in juvenile or adult court). However, it should be noted a juvenile can be waived back down to the juvenile court via a reverse waiver (Bishop et al., 1989; Feld, 2000).

However, given the empirical scholarship, it could be argued that waiver to adult court is oftentimes nothing more than another punitive tool akin to the earliest practices of social control in the juvenile court (Feld, 2003). Others, however, argue that waiver to adult court ensures that the "worst of the worst" juvenile offenders do not get lenient treatment, that rehabilitation has failed, and deterrence and punishment should instead be the goals of the juvenile court (Fritsch & Hemmens, 1995). Regardless, two things may

be reasonably ascertained from the research. First, waiver aligns more with punishment more than rehabilitation. Second, the use of waiver, while once rare, is now used with some (Bishop, 2000).

While creating a punitive environment where we view juveniles as criminals rather than children or adolescents, the issue of privacy for juveniles has also been eroded. Prior to the 1990's, there was a major emphasis on keeping juvenile records confidential, as a matter of protection from stigma and labels (Petersilia, 1981; Sanborn, 1998). This is no longer the case. While the origins of the juvenile court were intended to be private, by 2004, 35 states allowed open hearings, with 14 of those states requiring delinquency hearings to be open to the public (Horne, 2006). For example, in 1988 in Michigan, the legislature enacted laws that permitted public access to juvenile court hearings and some court records (Horne, 2006). Given this turn of events, it would seem that things have come full circle. For example, Mack (1909) argued that we needed to move away from treating children as criminals and keep their wrongdoings from the scrutiny of the general public. However, the wholesale changes that have been made to how the juvenile court operates today inherently conflicts with the views of the court's founding fathers.

Outside of the courtroom, sharing the name of the juvenile has become commonplace. Historically, when a juvenile was arrested, he/she would not have their fingerprints or photographs taken (Horne, 2006). As time passed, and accelerating in the 1990's, this practice was no longer commonplace. In fact, for juveniles meeting certain state requirements (generally age and offense seriousness), the practice of taking photographs and fingerprints is required (Leiber, 2003). Other legislation passed during

the height of the punitive changes in the juvenile court allowed for the release of a juveniles name to the public. In fact, as of 2009, 48 states require the name of the juvenile to be made public under certain circumstances (Fabelo & Center, 2011). There have also been laws passed that have created difficulty in getting a juvenile's records expunged. In 28 states, legislation has been passed that requires increased length in the amount of time juvenile records are to remain open for those convicted of serious felonies (Mears et al., 2007).

As it now stands, there has been a wholesale erosion of privacy and an increase in punitive actions in the juvenile court. However, a number of arguments have been made in support of these changes. For example, it is argued that some juveniles are a serious threat to the public and need to be contained via sentencing in adult court (Bishop, 2000; Minow, 1990).[8] Second, there are issues related to the well-being of the victim (Snyder & Sickmund, 1999). For example, about two-thirds of the states enacted legislation that provided certain rights to victims of juvenile crime during the 1990's (Torbet & Szymanski, 1998). Importantly, with the disclosure of information about the victim, it is argued that victim's rights may be associated with making sure that a juvenile take more ownership over the crime (Lawrence & Hemmens, 2008). Others argue that the issue of confidentiality is largely "talked up" to be more than it really is. In other words, juvenile confidentiality has not been eroded as much as the public thinks. Rather, juvenile delinquency is given more public attention today than in years past as a result of access to and advances in technology (Marrus, 1997).

[8] However, this is not exactly a new phenomenon. Slaten (2003) notes that as early as the 1920's, judges were waiving especially serious and older juveniles to the adult court.

Furthermore, a "balanced" approach to sentencing has become more popular. This approach has been adopted in a number of states and it seeks to simultaneously punish and treat juvenile delinquents (Bazemore, 1996). Certainly punishment and rehabilitation are not mutually exclusive, and this approach emphasizes that, providing a middle ground between the two options. The reality, however, does not reflect the rhetoric with regards to the "balanced" approach to the extent that punishment is emphasized rather than rehabilitation. For example, evidence of this can be found in "blended sentencing," where a juvenile receives both a juvenile and adult sentence, which some argue is akin to "throwing the book" at a juvenile (Podkopacz & Feld, 2001). Other evidence of this punitive shift may be seen in mandatory minimum sentences for juveniles, such as "Once An Adult, Always An Adult" laws, wherein a youth who has been waived to adult court must be tried as an adult for all future offenses regardless of the severity of the offense (Griffin, 2008; Slaten, 2003). This is a tool is currently used in 34 states (Griffin, 2008; Slaten, 2003).

Proponents of blended sentencing maintain that there is greater flexibility for sentencing decisions for both juvenile and adult court judges who are tasked with sentencing waived juveniles (Slaten, 2003). The most common form of blended sentencing, found in 16 states, is a suspended sentence (Snyder & Sickmund, 2006). The function of this blended method is to ensure that a juvenile completes the terms of their juvenile disposition, and if not, they must fulfill the criminal sentence that has been stayed (Podkopacz & Feld, 2001). There are other forms of suspended sentences as well. Some states have provisions that impose both criminal and adults sentences and sentences that extend past the state's age of juvenile jurisdiction (Snyder & Sickmund, 2006). For

example, in Wisconsin, a juvenile may be initially committed to a juvenile facility, but then transferred to an adult correctional facility on his or her 18th birthday (Snyder & Sickmund, 2006). Finally, 17 states have criminal blended sentencing laws that allow a juvenile to be sentenced as an adult, but with added provisions that are usually exclusive to the juvenile court and not allowed for in adult court (Griffin, 2008).

With both juvenile waiver and blended sentencing provisions, some research has indicated that there is no marked difference in perceptions of increased culpability for those transferred to adult court (Warling & Peterson-Badali, 2003). Moreover, additional research suggests that the mere availability of adult court sanctions leads some individuals to judge a juvenile more harshly than they would of an adult convicted of a similar crime (Levine, Williams, Sixt & Valenti, 2001; Vidmar, 2003). Regardless of the mixed empirical findings, there is little argument that the juvenile court has fundamentally changed from its inception up until the conclusion of the rights revolution and get tough movement (Kurlychek & Johnson, 2004; Jordan 2014; Mears et al., 2014). Given this present reality, it may be an uphill battle for juvenile court advocates in returning to a rehabilitative framework. However, there does seem to be some movement in this area as evidenced by a number of recent Supreme Court rulings.

2.5 The Pendulum Swings Back

Some scholars argue that the current juvenile court is too extreme or argue that the system is broken and it provides no "victories" for youth. Other claim that it is a second-rate criminal court that has deviated far enough from the original juvenile court that is has been rendered unrecognizable from its' original form (Dawson, 1990; Feld,

1999, 1997). Thus, given its' unfixable nature, it is argued, the juvenile court should be abolished (Crippen, 1999; Feld, 2006). Yet others contend that the era of getting tough on crime is declining and we are likely to see a shift back towards rehabilitative ideals (Scott & Steinberg, 2009). Despite this optimism, Feld (2006) notes that the punitive changes from many states that were passed during the height of the get tough era remain in effect in a number of states.

In fact, there have been a number of important court "victories" during this era which recognize that the most extreme sentences for juveniles are unconstitutional, such as the execution of those who committed an offense while under the age of 18. Similarly, empirical research conducted by the MacArthur Foundation's Network for Adolescent Development and Juvenile Justice have shifted our current understanding of competence and culpability. Thus, a new and nuanced understanding of juveniles has begun to take root. These changes in our understanding of juveniles, and adolescents more broadly, may be seen as early as *Atkins v. Virginia* (2002) where the Court held that executing an 18 year old mentally handicapped offender Daryl Atkins for the crime of murder was unconstitutional. The court argued that the mentally handicapped individuals, much less young mentally handicapped individuals, are less sophisticated in their communication and less likely to appear remorseful for their crime.

In a 6-3 decision authored by Justice Stevens, the Court held that the execution of Atkins would be considered cruel and unusual punishment. Justice Stevens reasoned that the underpinning of the death penalty, retribution and deterrence, would not be understood or appreciated by somebody who did not have the capacity to understand their crime was wrong. Furthermore, Stevens believed that a national consensus had developed

with regards to executing the mentally handicapped and thus, it would constitute cruel and unusual punishment and violate the principles underpinning Trop and evolving standards of decency (see: Weems v. United States, 217 U. S. 349,1910 and Trop v. Dulles, 1954, 356 U.S. 86). Moreover, Justice Rehnquist acknowledged in his dissent that being mentally handicapped and thus childlike suggests a diminished understanding. Thus, it would be unfair to measure the blameworthiness of someone who is mentally handicapped in court; it would be far too difficult of a task.

Furthermore, this decision partially reversed the Court's holding in *Penry v. Lynaugh* (1989), a decision that was handed down during the height of the get tough movement which held that the execution of the mentally handicapped was not cruel and unusual punishment. Interestingly, Justice Stevens articulated in his partial dissent that his issue was with the retroactivity of the rule, not the cruel and unusual punishment which he considered a given, suggesting our standards have evolved since the "get tough" era of the 1980's where Justice Stevens articulated in Penry (1989) that he did not consider the execution of mentally ill cruel and unusual. In Atkins (2002), however, Justice Stevens alluded to the unconstitutionality of this punishment in referencing the Brief for American Association on Mental Retardation et al. as Amici Curiae, ante (p. 336-337).

A few years following the Atkins ruling, the Court again addressed the issue of competence and blameworthiness in *Roper v. Simmons* (2005) which challenged the constitutionality of executing juveniles. The question before the Court was whether executing 17 year old Simmons for burglary, kidnapping and murder was cruel and unusual punishment. In a 5-4 opinion delivered by Justice Kennedy, it was held that not

only was there a consensus among the state legislatures that the execution of minors was cruel and unusual, but this view was also the opinion of the international community.

Justice Kennedy made several important observations in his opinion. First, he rejected the "super predator" argument in noting that "only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood" (p. 487). Second, he invoked the language of the Eighth Amendment's proportionality doctrine and concluded that the death penalty could not be imposed on an individual under the age of 18 because the State "cannot extinguish his life and his potential to attain a mature understanding of his own humanity" (p. 493). Third, Justice Kennedy rejected the ruling in *Stanford v. Kentucky* (1989) where he previously joined with Justice Scalia in holding that executing offenders under the age of 18 was not a disproportionate sentence. Accordingly, Justice Kennedy's opinion effectively removed executions for offenders under the age of 18 from the table.

Furthermore, the Roper decision expressly drew upon the same language used in Atkins with regards to the role of culpability. Arguably, this ruling was cloaked in the original ideals of the juvenile court to the extent that there are clear differences between adolescent and adult offenders. Moreover, there is a clear acknowledgement of the nexus between the law, neuroscience, and culpability (Fabian, 2011). Importantly, Justice Kennedy drew upon the research from the MacArthur Foundation's Network for Adolescent Development and Juvenile Justice which found that juveniles are less likely to have control over their environment and experiences, less likely to extricate themselves from settings of crime and thus, they are less culpable than their adult counterparts (Steinberg & Scott, 2003). Steinberg & Scott (2003) note that in a highly

politicized climate and debate over juvenile justice, policy should be written with the traditional concepts of harm and blameworthiness in mind, which serves to mitigate the crimes of immature juveniles.

Justice Anthony Kennedy constructs the rights and responsibilities of juveniles in terms of negative adolescence. Among other things, Justice Kennedy notes that the state isolates children, leaving them to feel self-conscious and alone (Lee v. Weisman, 1992, 505 U.S. 577). Justice Kennedy argued isolation plays to the biggest weakness of children: their need for acceptance and their susceptibility to conformity. Additionally, children are often used as political bargaining chips to the extent that juveniles have little to no control over their environment (Steinberg & Scott, 2003; Parents Involved in Community Schools v. Seattle School District No. 1, 2007, 551 U.S. 701). Children, in Justice Kennedy's view, acquiesce very quickly to direct and even subtle coercion, making them very susceptible to the various social forces around them. Ultimately, Justice Kennedy believed that children possess the potential to attain a mature understanding of their own humanity through positive guidance but "condemning" them would place their understanding of their own humanity in a permanent state of "arrested development" (Gordon, 2007). This view shed some much needed light on the rehabilitative path that had been ignored by the courts and it opened the door for the Court to continue further down this path in its decision making.

Not surprisingly, Justice Kennedy and the Supreme Court did continue along this path: with a number of decisions that reaffirmed his vision and understanding of adolescents. Five years after Roper (2005), the Court decided *Graham v. Florida* (2010) relying once again on the MacArthur Foundation's research. Prior to this decision, 41

states allowed juveniles who were prosecuted as adults to be sentenced to life without parole, with about a third of those states requiring a mandatory sentence for certain offenses (Barbee, 2011). Graham forced the Court to address the question of whether sentencing juvenile offenders to prison for life without parole for multiple, violent, but non-homicide offenses, was cruel and unusual punishment.

In a 6-3 decision again authored by Justice Kennedy, it was held that this type of punishment for these types of offenses has seen worldwide rejection and condemnation and they are grossly disproportionate sentences akin to those argued in *Harmelin v. Michigan* (1991, 501 U.S. 957), *Rummel v. Estelle* (1980, 445 U.S. 263), and *Hutto v. Davis* (1982, 454 U.S. 370). Justice Kennedy cited a number of research articles (Grisso, Steinberg, Woolard, Cauffman, Scott, Graham & Schwartz, 2003; Fagan, 2000), which suggested that juveniles are far less able to understand the courtroom process or have a grounded, cognitive understanding of the long-term effects of the decisions they make. Particularly important, Justice Kennedy argued that juveniles have "difficulty in weighing long-term consequences; a corresponding impulsiveness; and reluctance to trust defense counsel seen as part of the adult world a rebellious youth rejects" (560 U.S. 08-7412, p. 392). Thus, the Court believed that juvenile life without parole for non-homicide offenses constituted cruel and unusual punishment in violation of the Eighth Amendment.

Two years after Graham (2010), the Court decided *Miller v. Alabama* (2012, 567 U.S. ___), a case dealing with mandatory life without parole for juveniles. Miller, age 14, killed a neighbor and set his trailer on fire after buying drugs from him. In a companion case, the Court also considered *Jackson v. Hobbs* (2012) wherein Jackson, age 14, killed a video store clerk during a robbery. Miller raised the issue of whether life without parole

for children convicted of murder was cruel and unusual punishment. In a 5-4 ruling authored by Justice Kagan, the Supreme Court held that a mandatory sentence life without parole for juveniles was in fact unconstitutional in violation of the cruel and unusual clause of the Eighth Amendment. Importantly, Justice Kagan believed that Roper and Graham, decisions written by Justice Kennedy, had established that children were fundamentally and constitutionally different from adults for the purpose of sentencing. Because proportionality was the underpinning of those decisions, Justice Kagan found that a life without parole sentencing was a disproportionate punishment for a juvenile offender[9].

The aftermath of this decision was quite swift; 29 states with mandatory sentencing statutes were invalidated as a result of the Miller ruling (Cohen & Casey, 2014). Additionally, *Jackson v. Hobbs* (2012, 10-9647) affirmed that mandatory life without parole for juveniles convicted of homicide was unconstitutional. Once again, in these cases the Supreme Court seemed to be cognizant that offenders' age and impaired cognitive function was an important consideration especially if society believes in the merit of allowing them to gain an intimate understanding of their own humanity (Cohen & Casey, 2014; Gordon, 2007).

This nuanced approached to adolescence sharply diverges from the "old" approach to juveniles favored through the procedural, due process and negative rights approach that was commonplace during the time of the Warren Court. Thus, it seems that over the past decade our legal construction of childhood has integrated and focused on the developmental sciences rather than adopt a view that is concerned largely with due

[9] Retroactivity of this ruling is left up to the states, although the Supreme Court clarified in Montgomery v. Louisiana, 577 U.S. ___ (2016) held that juveniles convicted of murder should have their sentences applied retroactively.

process and punishment (Gordon, 2007; Steinberg et al., 2009). Justice Kennedy, in particular, spearheaded this shift in how the Court addresses children, concluding that they lack the well-formed character and maturity necessary to possess a developed sense of responsibility; a point of view that ultimately questions the purpose and effectiveness of "getting tough" (Gordon, 2007). As made clear in the recent Court's decisions, there is now an increased interest in the psycho-legal construction of adolescence and developmental sciences, as well as concern about whether our current methods are appropriate, given the violent crime rates has continued to decrease since 1994 (Butts & Travis, 2002; Cohen & Casey 2014; Grisso et al., 2003). This new approach makes sense in light of Justice Kennedy's belief that children remain immature as they struggle to become adults (Gordon, 2007).

The legal implications of the available research are important to consider. At some minimal age, it could be argued, the risk of incompetence of a juvenile is very high. Many states have set the bar very low for adult prosecution of juveniles (Grisso et al., 2003). Again, consider that the Graham ruling was seemingly cloaked in the ideals of the original juvenile court. Such a decision would indicate that juveniles are different from adults, insofar as juveniles still have not fully matured and they are still defining their individual identities and personas (Steinberg, Cauffman, Woolard, Graham & Banich 2009). Steinberg et al. (2009) note that by age 16, juveniles are likely to make decisions comparable to adults, but their treatment and culpability must be determined by their ability for logical reasoning and basic information processing. However, it should be made clear that juveniles reach adult levels of cognitive maturity before they reach psychosocial maturity (Grisso et al., 2003, Steinberg et al., 2009). This is especially true

of mid-adolescence when there is a higher likelihood that juveniles will engage in reckless and risky behavior (Steinburg, 2008). At the very least, the legal treatment of adolescents needs to be informed by the scientific evidence on psychological development to best serve the ends of the law and justice (Steinberg et al., 2009).

Seemingly, the recent court decisions, as well as an increased interest in the developmental concept of adolescence has provided some optimism that the juvenile justice system may be swinging back towards the idea that juveniles are markedly different from their adult counterparts. Perhaps most striking were the rulings of Jackson (2012) and Miller (2012), which stated that juveniles should never spend life in prison without the possibility of parole, regardless of the offense. Many of these recent decisions are revisit concepts of amenability and guidance espoused in the early days of the juvenile court by Julian Mack but have since laid dormant given the social and political climate of the get-tough era (1909) and Ben Lindsey (1906).

Notwithstanding the optimism engendered by the Court's recent decisions, Feld (1999) contends that due process for juveniles today is essentially "kicking the can down the road," to the extent that the courts are providing hypocritical protections in a broken system. Given this fact, Feld proposes that the juvenile court should be abolished. However, if we accept Holland & Mlyniec's (1995) argument, there is a constitutional and statutory right to treatment[10] that is being overlooked as a matter of expedience. In other words, the right and availability of treatment is very closely related to the original ideals of the juvenile court.

[10] This argument states if children find themselves in state institutions, they have a statutory and constitutional right to be guided towards a pro-social future. For juvenile justice, the state has an obligation towards the care of delinquent children,

In summation, the juvenile court and our understanding of adolescents from a socio/psycho-legal perspective continues to vacillate and change in light of legal reforms, new research, and voices from the public at large. Children were once primarily thought of as sources of cheap labor (Vann, 1982). During the early stages of the country's development, however, there was more emphasis placed on the nuclear family (Wilson, 1980). This formal nuclear, largely middle class families had a particular set of values and those who deviated from these now entrenched values often were considered delinquent (Snedden, 1907; Vann, 1982).

Many of these concerns, at least for delinquent children, were addressed through the House of Refuge/reform schools and/or a placing out system (Fox, 1969). Over time, the state did come to realize that the conditions in these institutions were not adequate, and with support from the "Child Savers," the juvenile court came into existence in early 20th century America (Clapp; 1998; Platt, 1969a). However, societal discontent and contempt for the "failings" of the juvenile court could no longer be ignored and it paved the way for the rights revolution and the get tough movement (Feld, 1999). However, a series of Supreme Court rulings and advances in the empirical research have help to arrest the conservative trend of punishment and soften attitudes regarding the rehabilitative ideal (Wright & Cullen, 2000; Nagin, Piquero, Scott & Steinburg, 2006; Scott & Steinburg, 2008).

Notwithstanding this trend, a majority of these arguments fail to address one important factor that may skew our true understanding of juveniles: race. While these concepts of childhood and adolescence have gradually changed in one direction or the other for white youth, this was not the reality for African-American youth in the United

States, who were often considered a commodity and property long after the understanding that children and the nuclear, biological family were important considerations (King, 2011; Ward, 2012).Thus, the following section attempts to "fill in the blanks" on a relatively ignored historical aspect of juvenile justice and its' modern day implications.

2.6 The Exclusion of Race

The idea of childhood and adolescence has been historically racialized in this country (Omi & Winant, 2014). While numerous historical accounts provide an interesting and clearly important component of the American history of juvenile justice, they generally fail to differentiate how the idea of childhood manifested in relation to other racial and ethnic groups. While a significant body of scholarship on juveniles has been devoted to the issue of sex (Chesney-Lind & Sheldon, 2011; Schlossman & Wallach, 1978; Scott, 2001) and class (Clark, 1962; Thornberry, 1973; Platt, 1969), fewer examples exist regarding the socio-legal construction of minority childhood and adolescence, particularly for black Americans.

Black childhood may be traced back to the days of slavery, wherein ideas of "growing up" were shaped by the institution of chattel slavery (Bernard, 2011). Unlike non-native and white children, black children lived primarily in the south and were met with a blend of traditional childhood ideals coupled with their subordinate status (Omi & Winant, 2014; Ward, 2012). For example, Bernard & Kurlychek (2010) noted that as slaves aged, they still retained the status of "boy" or "girl," despite growing out of an acceptable age wherein one would be referred to as a term appropriate for children. While

at first glance this suggests slave owners were ignorant of black childhood, King (2011) contends this was far from the case to the extent that black children, with proper moral guidance, could fit the "good" role defined by the social order that was in place at that time. Similarly, slaves were classified as quarter, half and full hands to provide slave owners and buyers an understanding of their abilities as well as how to facilitate their proper socialization (King, 2011). As such, these race-based conceptions of black childhood would shape how childhood operated separately for black and white children within American society and these ideas would also form the basis for how black delinquents were conceptualized and the appropriate social/legal responses to them (Bonilla-Silva, 1997).

It is unsurprising that the optimism that surrounded the newly opened Houses of Refuge and Reform Schools during the 1800's did not apply equally to white and black juveniles (Omi & Winant, 2014). For example, In Philadelphia, black children were excluded based on the argument that it would be degrading for white children to associate with black children in the Houses of Refuge (Mennel, 1974). Elsewhere in Mississippi, when steps were taken to try to alleviate a lack of access to reform schools for black juveniles, legislators quickly and unanimously declared it would be pointless to attempt to reform what they perceived as incorrigible black youth (Oshinsky, 1997). Similarly in Maryland, legislation was passed which stipulated that freed blacks were subject to enslavement upon their release from confinement (Young, 1993).

Regardless, the delinquent acts by children who were not white males reached a point in society where it could not be ignored. White females were soon allowed into these Houses of Refuge, however, they were often tasked with "traditional" female

chores (Clement, 1993). Black children, on the other hand, still were not allowed into the Houses of Refuge due to the continued fear of white and black children co-mingling (Mennel, 1974). However, in 1834, the New York reformatory opened its' doors to black youth, with Philadelphia following suit in 1849 through the creation of a "colored wing" (Frey, 1981; Oshinsky, 1997). Prior to this development, black delinquents were often sent to the most "convenient" places such as workhouses or to places of secure confinement (Frey, 1981; Krisberg & Austin, 1993). While on the surface it appeared that there was a shift towards granting "equality" to black delinquent children, they continued to face a number of problems. For example, these youths remained in the Houses of Refuge for longer periods than their white counterparts because they had difficulty finding apprenticeships through the placing out system (Clement, 1993; Frey, 1981).

The differences in how white and black youths were treated were also on display in the South. While northern cities made earlier attempts to control white youths and later, black youths, through Houses of Refuge, southern states saw little value in creating institutions for criminal and delinquent social control (Adamson, 1983). For white children, they were pardoned if they were believed to be from a respectable household. Alternatively, if they were not pardoned then they would likely face forced apprenticeships, or less likely, imprisonment (Mennel, 1974). For black children, and even adults, offenses were dealt with by owners of the plantation or local sheriffs, as imprisoning blacks would not be beneficial due to the loss of labor (Adamson, 1983; Sheldon, 1979). Of course, the South was not entirely against the use of confinement for delinquent youths, as Louisiana opened a House of Refuge in New Orleans (Young,

1993). However, it did little to differentiate between younger and older offenders and it was only open to white juveniles. For the most part in the Pre-Civil War era of the South, slavery, forced apprenticeships, other informal institutions and confinement with adults were the methods used to address black juvenile delinquency (Clement, 1993).

These practices largely came to an end during the aftermath of the Civil War. Given that many of these formal, and informal, mechanisms controlled not only black youth, but black Americans in general, a system of "Black Codes" were established in order to provide legal methods to remove or weaken their rights gained following the signing of the Emancipation Proclamation (Adamson, 1983; Oshinsky, 1997). Many southern states, faced with political and economic destruction from the war and the presence of millions of freed black men, women and children, turned to Black Codes and the use of imprisonment (Ayers, 1984). While some laws had the appearance of being "color blind" or "race neutral," the were issues of poverty associated with many newly freedom black Americans (Ayers, 1984). Therefore, these measures would disproportionately affect them. So too would many criminal laws put into place would effectively serve as a method of social control designed to produce new a group of cheap laborers, indentured to the prison landscape (Litwack, 1998).

Black children were not totally ignored during the Post-Civil War period. For example, in one Louisiana prison in 1868, it was noted that there was a mostly black inmate population and a significant number of the inmates housed there were under the age of twenty five (Sanders, 1933). In 1910, a government report on the penitentiary population of Tennessee found that 83% of those in confinement under the age of 18 were black. Such numbers were comparable to other findings for black youths

incarcerated throughout the South (Shelden, 1979; Cahalan & Parsons, 1986). These youth were frequently subject to sexual and physical assault by older inmates, along other unimaginable suffering (Litwack, 1998). Children were also subject to lease systems wherein largely black youth were leased out to private interests such as mills (Ayers, 1984; Clement, 1993). Unlike the system of slavery, these private interests did not own their labor and thus they had very little investment in taking care of the children leased to them. Not surprisingly, viewing these children as expendable cogs led to a significant amount of deaths (Mancini, 1996; Litwack, 1998).

Of course, Houses of Refuge did later come to be established in the South. Most states, Northern or Southern, tended to established schools for white boys, then white girls, followed by black boys and then black girls[11] (Adamson, 1983; Frey, 1981). Though Houses of Refuge were eventually adopted in the South, they did little to change the social and moral standing of black children (Bell, 1991; Ward, 2012). It was the goal of "colored" reformatories to create a class of servants and laborers, neutralize the impacts of the black emancipation and continue the subordination of black children who would not push for social equality (Young, 1993). Unfortunately, little is known about the specific objectives of these Houses of Refuge for black children, so one may argue that Young's (1993) argument may be, in part, mere conjecture.

However, what is clear is that a massive social, political, and economic reorganization occurred following the Civil War. Black Americans, by and large, were viewed as the source, as well as the solution to this problem (White, 1999). This resulted in black disenfranchisement, hangings, burnings, lynchings, and a general, overly

[11] While many note that black boys faced deprivation from rehabilitative resources. Young (1993) and White (1999) notes this was especially true of black girls. Many states did not establish resources for black girls until the 1940s.

retributive movement to quell and even reverse the wide scale social and racial changes that followed the emancipation of African Americans (Adamson, 1983). As the 1800's came to an end, a redemption campaign was undertaken by radical Republicans in reconstruction states in the form of Black Codes, "Pig Laws,[12]" the control of black labor, and white supremacy through the passage of legislation that would exclude blacks from a host of governmental jobs (Colvin, 1997).

Black interests would be quietly eroded through the end of the 19th century. Jim Crow laws, following the Black Codes, emerged throughout the South. During this Jim Crow era, for example, the Supreme Court repealed the Civil Rights Act of 1875 (18 Stat. 335–337). Thus, previous gains that included the prohibition of segregation of public accommodations, restaurants, bars and public transportation were erased by the Civil Rights Cases, 109 U.S. 3 (1883)[13].

Furthermore, during the time period following post-emancipation, laws that would bar many recently elected African Americans from office and create "separate but equal" public institutions emerged (Alexander, 2012; Bell, 2004). Additionally, this period saw the emergence of poll taxes, literacy tests, and grandfather clauses to disenfranchise African Americans (Alexander, 2012). Thus, the promise of an equal society following the end of the antebellum south, it seemed, failed (Alexander, 2012; Bell, 1989a; Ward, 2012).

[12] Pig Laws: Anybody found guilty of stealing a farm animal or any other piece of property worth more than $10 could be charged with grand larceny and sentenced to up to five years in prison. While this appeared "colorblind," it disproportionately affected newly freed, poor slaves.

[13] To further the point about it being a long time until things "got better," The Civil Rights Cases (1883) would be ruled against by cases such as Brown v. Board of Education of Topeka, 347 U.S. 483 (1954), Browder v. Gayle, 142 F. Supp. 707 (1956), Heart of Atlanta Motel Inc. v. United States, 379 U.S. 241 (1964) and Civil Rights Act of 1964 (Pub.L. 88–352, 78 Stat. 241).

Indeed, it seemed that for every post-emancipation right that was gained, one would be squashed. Moreover, it would be a long time before conditions would be improved for most black juvenile delinquents. As the color divide in society grew, racial disparities in the justice system followed suit. For example, the dawn of the twentieth century brought about several efforts to improve American lives including the creation of the juvenile court, efforts to regulate child labor, and promote public education (Clapp, 1998). In theory, African Americans should have been granted access to the same promising developments that were occurring during the social reorganization of society and the justice system. However, in retrospect, these promising "turn of the century" reforms quite frequently overlooked African Americans.

Research on the history of the juvenile court suggests that the court was largely geared towards those of European ethnicities. Black children and adolescents were almost completely excluded from the history of juvenile justice, with the creation of the juvenile court being no exception (Platt, 1969, 1977, Rothman, 1971; Schlossman & Wittman, 1977, Mennel, 1973, Sutton, 1988)[14]. Given the history of African Americans in this country, black children had a lot to gain from the state acting as a loving parent and "ultimate guardian." Of course, that very same history should have been viewed with skepticism (Platt, 1969a).

In a study of the first juvenile court in Chicago, Moses (1936) noted that black children were largely unrepresented in Chicago's juvenile court, accounting for less than 2% of the caseload in 1904. This is hardly surprising. However, by 1927 the black population of Chicago grew by nearly 7%, yet represented 22% of the caseload. Despite the growing presence in Chicago, these youth were not as likely as their white

[14] Young (1993), however, does provide a critique to this claim of exclusion.

counterparts to benefit from parens patriae ideals in that they were less likely to be committed to the various social agencies and institutions (Moses, 1936). While some argue this may be a result of black communities having fewer resources comparable to their white counterparts, the end result was that black delinquents were kept in secure detention facilities longer than their white counterparts for comparable crimes (Shaw & McKay, 1932). Furthermore, when institutional commitments were made, dependent and delinquent black youth were all sent to one institution intended for serious juvenile offenders[15] (Shaw & McKay, 1932).

These trends continued as the juvenile court system continued to evolve in the United States. In North Carolina, Sanders (1933) gathered evidence aimed at exploring the experiences of black children in North Carolina's juvenile courts and child welfare system from 1919 to 1929. He found, for example, that some judges felt as though the juvenile court movement was merely a method of letting criminal youth go free (Sanders, 1993). He was also found that in rural jurisdictions, record keeping, juvenile court operations, and case processing models that should have differentiated the juvenile court from the adult court often were non-existent oftentimes due to financial constraints.

Sanders (1933) surmised that the experiences of black and white youth coming into the court were different, but offered the explanation that because the judges were all white men, and occasionally an African American would serve as a "subservient" probation officer, there may be different methods that judges use to deal with black and white youth. Evidence of these disparities are seen more clearly in that black boys were

[15] Again, for black girls, Hill (1927) citing the *Annual Report of the Chief Probation Officer of the Cook County Juvenile Court, 1915*, notes virtually no services were available for them in 1920's Chicago, while Moses (1936) and Chesney-Lind & Sheldon (2013) note that this provides a difficult task to analyze because juvenile justice history has failed to differentiate white and non-white girls, perhaps due to a historically patriarchal bias.

more likely to be hired out to private interests, sentenced to country jails, and more likely to be subject to official whippings. Sanders (1933) argued that "… there is no difference in the seriousness of offenses of whites as compared with Negro children," and concluded that "the difference in length of sentences of the two races is due apparently to race prejudice." (p. 263).

Meanwhile, the color divide for adults continued in the criminal justice system. Despite a "progressive" movement occurring in American society, chain gangs emerged during this time period. It was understood that a convict was the "property" of the state and as such they could and should be used to profit the state via road work, farm work, and other unskilled labor that racist logic assumed African Americans were best suited (Lichtenstein, 1996). While it would be impossible to determine just how many black children and adolescents were subjected to chain gangs, given that black youth during this time were sent to adult prisons with some frequency (Litwack, 1998), it is hard to imagine that a fair amount of black youth did not find themselves toiling in the reprehensible conditions of the chain gangs (Ward, 2012).

There is mounting evidence to suggest that black children did not benefit from the same positive protections that came from Houses of Refuge, apprenticeships, or the juvenile court. They largely only saw exclusion or negative consequences attributable to exclusionary laws (Mennel, 1973; Platt, 1969a; Ward, 2012). As a response to these laws there emerged the "black child savers." Originally formed in the mid to late 1800's and represented by African American women of relatively privileged backgrounds, the black child savers faced limited opposition by the 1930's (Gaines, 1996; Ward, 2012). These

women were helpful in providing reformatories for black boys and girls, apprenticeships for black delinquents, and other initiatives offered to white youth (Wesley, 1984).

However, unlike the mainstream child savers, the name "black child savers" proved to be inadequate. Because the black middle and upper middle class were still not considered equal or "as good" as the white middle and upper class during this time period and because they faced their own unique adversities, a direct comparison between them and white child savers would be incongruent (Clapp, 1997; Gaines, 1996; Platt, 1969a). As some scholars argued, the black child savers, while not cut from the same bourgeois cloth as the mainstream child savers, held racial uplift as a form of self-help. This attitude effectively obfuscated history and arguably blamed African Americans for their treatment and predicament in society. During this time period, the National Association of Colored Women's Clubs (NACWC – formerly NACW) also emerged to work against social justice, women's' suffrage, and other civil rights issues through the racial uplift ideology (Ward, 2012; Ward & Marable, 2003; White, 1999).

While women and especially women of color lacked political power, in 1920, women were granted suffrage via the adoption of the 19th Amendment. Following the lead of the NAACP, women of color began to push back against the racial uplift ideology and they were able to influence politics and policies adopted by states and the federal government (White, 1999). Reformation efforts allowed women of color to create and direct agency programs for African Americans, including fight against racial inequities as well as the fight for juvenile justice (Robinson, 1983).

As the black child savers, via the NACWC, continued their work and involvement in civil rights, the first black, female judge, Jane Bolin, was appointed to a juvenile court

in New York City in 1939 (Smith, 2000). During her time in the Family Court, Bolin fought for a range of issues for children and she was particularly successful in overturning segregationist policies that were deeply rooted in the system such as skin color-based assessments by probation officers (Smith, 2000). Not many years later after the appointment of Jane Bolin, the winds of change helped to usher in additional advancements such as the decision in Brown v. Board of Education (1954, 347 U.S. 483) which held that de jure racial segregation violated the Equal Protection Clause of the 14th Amendment, ostensibly marking the end of separate but equal (Robinson, 1983).

Despite this legal victory, a number of institutions remained segregated for many years afterwards (Gaines, 1996; Omi & Winant, 2014). Thus, while the intentions of the black child savers were noble, their efforts may not have achieved their intended effects. Black juveniles were not "saved" and the changes they sought may have benefited the white majority more than the black majority. Moreover, there may be other shortcomings attributed to their efforts including the lack of knowledge about the specific methods that they used or their outcomes, the practical consequences of their protests, the amount of investment from individual black child savers in different areas, or data with respect to recidivism among black delinquents (Alexander, 2012; Bell, 1989b; Feld, 1999, Morris, 1992; Ward; 2012).

Notwithstanding this fact, five additional points should be made about this movement. First, black women were not immune to race-based harassment, de jure control, and they faced constant reminders that they were somehow "different" (Morris, 1992; Ward, 2012). Second, the black child savers shared some similarities to the mainstream child savers, insofar as being relatively privileged. However, given the

constant reminders that they were somehow "different" from mainstream society there were always concerns about group safety and fairness (Alexander, 2012; Robinson, 1983).

Third, this idea of being somehow "different" extended to children as well throughout the child saving period. Perhaps the best way to illustrate these differences may be viewed by noting that black political pressure only went "so far." For example, in 1912, the NAACP was reminded of their secondary status when they failed to dissuade the state of Virginia from executing 16 year old Virginia Christian (Du Bois, 1912). Approximately thirty years later, in 1944, 14 year old George Stinney was executed in the state of South Carolina, and in 1947, 16 year old Willie Francis was executed a second time in the electric chair after the first attempt failed in Louisiana. Fourth, rather than establish a completely separate system, the black child savers attempted to respond to racial disparities that were endemic within the existing juvenile system (Alexander, 2012). Fifth, they sought to provide inclusionary treatment for black juveniles in an effort to shield them away from the cruel and harsh conditions their forefathers witnessed (Ward, 2012). It is within these five areas that some of the failures of the black child savers movement may be understood, and how they coincided with the onset of the rights revolution.

While Brown v. Board of Education (1954) stood for the end of de jure segregation in the eyes of many, Derrick Bell (1980) argued it served as a method to boost the United States as a moral superior to the Soviet Union. In part, Bell (1980) contends that the Brown decision addressed the effect of racial isolation on the perceptions of black children who attended public schools. However, the negative

perceptions of African Americans in the United States as a whole were still present. Moreover, black children who attended public schools or other public institutions were still both racially isolated and inferior (Bell, 1984). Similarly, W. E. B. DuBois (1903) argued that economic and social/political power as isolated components (e.g., economic power without social/political power) could not be effectively marshaled unless those two components were merged. Combined with the understanding that African Americans were still viewed as inferior to whites (DuBois, 1903; Moore, 2015), as well as the arguments of Bell and DuBois, there is some context for understanding how the get tough movement did little to alter the relationship of the juvenile justice system for black youths.

While the rights revolution ostensibly did nothing to black juveniles that they had not already historically faced, the earliest reforms during the rights revolution may not have even benefitted white juveniles. Indeed, the onset of the rights revolution could have possibly served as the basis for reforms that may have benefitted historically disadvantaged African Americans coming to the juvenile court. However, this promise went unfulfilled as the rights revolution shifted to an era of accountability and getting tough on crime. As noted by Krisberg, Schwartz, Fishman, Eisikovits, Guttman & Joe (1987), during the rights revolution era of deinstitutionalization up until 1979, white youth accounted for 75% of the entire decline in youth incarceration. In 1979, a number of states enacted reforms to keep "serious" juvenile offenders behind bars for longer periods of time (Feld, 1999). From 1979 to 1982 when the get tough era began to kick off, non-white juveniles accounted for 93% of the increase in youth incarceration (Krisberg et al., 1987). Thus, the same benign story was being told once again: legislation

was being introduced as a "color-blind" alternative, but unintended racial consequences emerged.

This trend continued on throughout the "get tough" era on juvenile crime. In 1970, 40% of juveniles in secure confinement were minorities, increasing to 43% by 1980, 60% by 1990 and by 1996, some states exceeded 70% (Hamparian & Leiber, 1997; Krisberg et al., 1987; Pope & Leiber, 2010). While it would be unfair to attribute these increases purely as a result of racial discrimination, it should be noted that increasing overrepresentation may likely be a product of both the public and legislatures losing faith in the rehabilitative ideals (Snyder et al., 2001). As noted earlier, a host a new punitive legislation was being adopted by various state legislatures. While some states were already punitive in their approaches to juveniles, it is notable that at the aggregate level, punitive reforms coincided with a minority increase in confinement.

In light of these findings and trends, the United States Department of Justice sought out answers for minority overrepresentation in the juvenile justice system through the implementation of Disproportionate Minority Contact (DMC (Soler & Garry, 2009). Within the context of DMC, it is generally understood that there may be differential involvement, differential selection or a combination of the two (Piquero, 2008). Others have argued that black juveniles face disadvantages at the earliest stages of the system, suggesting that a structural-processual issue may result in cumulative disadvantages for black youth (Engen, Steen & Bridges, 2002; Leiber & Johnson, 2008). Regardless, Piquero (2008) argues, which explanation "matters more" should take a backseat to gathering how both, involvement and selection can best explain and address minority overrepresentation, though Piquero himself fails to take into account the structural-

processual model (Engen et al., 2002; Frazier & Cochran, 1986; Hill, Harris & Miller 1985; Liska & Tausig 1979; McCarthy and Smith 1986).

Regardless of what "matters more," the issues raised by Engen et al. (2002) should be considered. Notions about juvenile justice should be grounded in the historical context of the treatment of African Americans and, at the same time, addressing the structural-processual component is necessary in order to provide a holistic response to the issue of DMC. However, as Wilson (1997) notes, measuring cumulative disadvantage poses many difficulties for researchers. Cumulative disadvantage is important because of its direct and indirect effects on socioeconomic status and a number of other issues (e.g., education, housing, policing practices, disenfranchisement, sentencing) given that its effects can reverberate across ones' life and even across generations.

Finally, while there have been numerous historical accounts of the evolution of the juvenile justice system in America, they often fail to truly understand the different experiences and accessibility that black America has faced. For African-Americans, the rise of a rehabilitative focus stemming from the juvenile court emerged and unfolded in a very different way and the trajectories of juvenility were quite different for black youths. For example: how do life course trajectories and criminal careers vary for whites and blacks? And how have the unequal historical access to treatment affected the life course, sentencing and perceived culpability of black juveniles? While individual sources have addressed these questions, they have never been neatly tied together in a socio-historical and empirical framework.

2.7 Crime and the Life Course

Other important considerations that may shape the making of a juvenile delinquent focus on age, prior records, and the philosophical frameworks within which judges view an adolescent's criminal career. The importance of how these things may shape ones' life and sentencing decisions, especially in adolescence, is not surprising (Levitt, 1997; Torbet et al., 1996; Bishop et al., 1996). Criminologists have become increasingly cognizant of this fact and the life course framework has become firmly integrated into the field (Settersen, 2009). Life course theory originally began with emerged from the works of Sheldon and Eleanor Glueck. Their research spanned a period of time, beginning in the 1930's and ending around the 1970's, wherein they argued that criminal behavior decreased as a result of the maturation process (Glueck & Glueck; 1940; 1945; 1966; 1970). The Glueck's argued that age is not a pre-defined period where criminal behavior stops, but rather, those involved in criminal behavior tend to better understand that committing crime has hit the point of diminishing returns, due to marriage or other "turning points" (Glueck & Glueck, 1966; Sampson & Laub, 1993).

It follows, then, that once an individual begins to be involved in more turning points, they are more likely to desist from criminal behaviors (Glueck & Glueck, 1968). The turning points to desistance may vary from person to person, insofar as the process may happen at different ages, while some may persist with crime throughout their entire life (Glueck & Glueck, 1966). To reach these conclusion, they gathered data between 1939 and 1948 on the children's psychological and biological characteristics, family life, performance in school, delinquent behavior and other life events and they conducted a follow up with the original sample at ages 25 and 32 (Benson, 2012; Sampson & Laub,

1993). In the Glueck's estimation, biological development and social determinants (e.g., environmental conditions, marriage, stable employment), coupled with aging, created stakes in conformity; therefore, making a more mature person who stopped committing crime (Glueck & Glueck, 1968).

The contemporary life course work was born at a time where there were heated debates over the age-crime curve, criminal careers, career criminals, neuropsychological development, delinquency and the overall generality of crime (Akers, 1991; Arseneault, Moffitt, Caspi, Taylor & Silva, 2000; Blumstein, Cohen & Farrington, 1998; Britt, 1996; Gottfredson & Hirschi, 1983;1986; Laub & Sampson, 1991; Rojek & Erickson, 1982; Sampson & Laub, 2003; Sellin, 1987; Shannon, 1982, Wolfgang, Figlio & Sellin, 1972; West & Farrington, 1973; 1977; 1995). Researchers simply could no longer focus on just adolescence or just adulthood for understanding crime and delinquency, nor could they rely on merely sociological or psychological explanations of criminal involvement (Sampson & Laub, 1992). This developing life course or developmental theory forced criminologists to focus on the "criminal career" of offending: onset, continuity, the "age-crime curve" and desistance (Bushway, Piquero, Broidy, Cauffman & Mazerolle, 2001; Sampson & Laub, 2003).

Some scholars dismissed this approach in favor of alternative approaches (Gottfredson & Hirschi, 1986; 1990; Hirschi & Gottfredson, 1995), while others embraced this complex new approach (Blumstein et al., 1988; Brame, Paternoster & Bushway, 2004; Warr, 1998) while some others engaged in research that significantly advanced our understanding of this issue (Moffitt, 1993; Sampson & Laub, 1993). Regardless, the efforts of these many scholars have created a movement to study criminal

behavior over the life course that has enhanced the field both theoretically and methodologically. Still this approach is not without its' criticisms and disagreements from scholars approaching this subject from different angles.

First, Hirschi & Gottfredson (1983) explained that age and desistance require a much deeper explanation that what was currently available. Taking this cue, Dannefer (1984) argued that age should not be treated as a normative variable that does not vary from person to person especially given the evidence that there is an "age-diversity" curve that may vary given different social forces (Nieuwbeerta, Blokland, Arjan, Piquero & Sweeten, 2011). Second, desistance by its' very definition, is not an event. Rather, desistance is the perpetual absence of a certain event; in this case, crime (Laub & Sampson, 2001). Furthermore, desistance can be measured in a number of ways, including self-report surveys through subjective reference and behavioral measures, through arrest and convictions, as well as narratives or interviews (Massoglia & Uggen, 2007).

Third, how should continuity and it's interactions with age and desistance be measured. One major "criminological fact" is that there is a positive association between adolescent and adult criminality, yet, we know that most adolescent offenders do not become adult offenders (Robins, 1978; Sampson & Laub, 2005). Thus a differentiation was made between two theoretical perspectives on the issue: persistent heterogeneity and state dependence (Nagin & Paternoster, 1991; 2000).

Under the persistent heterogeneity perspective, offending is driven by static negative attributes: neurological deficits, low self-control, impulsivity and intelligence (Caspi, Moffitt, Silva, & Stouthamer-Loeber, 1994; Gottfredson & Hirschi; 1986; 1990,

Moffitt, 1993; Wilson & Hernstein, 1985). Because these are fixed traits over the life course after childhood, and vary across demographics and the population, crime may be explained by these fixed traits as one "grows up" (Gottfretson & Hirschi, 1986; 1990; Wilson & Hernstein, 1985). These traits manifest themselves throughout many parts of ones' life. For example, one with low self-control will not be able to resist crime or develop meaningful employment or relationships due to their development as a self-centered and impulsive person.

State dependence, on the other hand, reverberates with events and actions that happen during the life course that hold significance. Onset, desistance and persistence may be explained by the nature of these events. Moffit (1993) argued in her taxonomic theory, there are life course persistent (LCP) and adolescent limited (AL) offenders. LCP's under this framework align with the persistent heterogeneity and AL's fit under state dependence (due to the "maturity gap" and socio/psycho/biological age)[16]. Sampson & Laub (1993; 1997) expanded upon this, but took a more general approach. Sampson & Laub (1993; 1997) presented the idea of "cumulative continuity" a process wherein antisocial behavior at one point leads to antisocial behavior at another point in ones' life. For example, one with low cognitive functioning coupled with poor parenting creates an early cumulative disadvantage in one's life. Of course, determining the causal significance of "states," persistent heterogeneity and their effects on criminal propensity presents another hill of conceptual, theoretical and methodological issues to overcome, which may be aided by the understanding of turning points, trajectories and transitions.

[16] Though note that Nagin & Land (1993) found four different groups of offenders non-offenders, adolescent limited, low chronic and high chronic, differing from Moffitt's (1993) taxonomy.

Turning points refer to events while trajectories refer to stable life pathways and transitions refer to events that occur over brief periods of time (Blumstein et al., 1988; Elder, 1994; Wheaton & Gotlib, 1997). These concepts all converge, as life course may be viewed as interweaving age-graded trajectories defined by transitions and turning points (Simons, Stewart, Gordon, Conger, & Elder, 2002; Wright & Cullen, 2004). This point diverges from the earlier works of the Glueck's who focused largely on turning points.

The life course begins with trajectories, such as work, school, family life or any other institution a youth is involved in with some degree of persistence (Elliot, 1994). Trajectories often overlap, and combined with transitions and turning points, help define the life course perspective (Piquero, Farrington, Nagin & Moffitt, 2010). Transitions help give trajectories meaning; for example, going from the state of adjudicated delinquent from non-offender (transition) from one's high school to adult career (trajectory). Thus, transitions occur over short periods of times, compared to trajectories which occur over longer periods. Thus, transitions in life course theory may be categorized as an important event that defines a trajectory (Wright & Decker, 1997). Turning points, on the other hand, are different. Turning points differ from transitions insofar as they disrupt or change a trajectory that redirects the life course on an alternative path (Laub & Sampson, 1993). Unfortunately, a turning point may only be examined post facto for its' effectiveness, hence the abundance of scholarly literature that has examined employment, marriage, parenthood, community involvement and whether they hold significance as turning points away from crime (Massoglia & Uggen, 2010; Paternoster & Brame, 1997; Sampson & Laub, 2003, though see Sampson & Laub, 2001 for a full review).

These concepts are especially important during the adolescent years because they play a part in the movement from adolescent to adult. If the life course involves trajectories defined by transitions and altered by turning points, we would expect a general course of pro-social life. Of course, there will be those with disruptions who, for example, find themselves in the juvenile court. Social and economic disadvantages may play a part in youths' futures, given the understanding that courtroom actors may be making, at best, educated guessed about an adolescents' future (Steffensmeier, Ulmer & Kramer, 1998). Furthermore, there is evidence to suggest that black defendants, compared to their white counterparts, may experience more severe sanctions for juvenile offenders (Bishop & Frazier, 1996; Fagan, 1996; Kurlychek & Johnson, 2004; Leiber & Johnson, 2008). It follows then, that serious disruptions such as being sentenced to secure incarceration may have repercussions throughout ones' life course (Amato, 2000).

Taking these life course considerations into account, one must wonder if they hold up equally across races. If we accept the previous chapters' assessment, as well as the previously cited empirical evidence that black youth experience different outcomes, it is hardly a stretch to say that they may be set up at a higher level to reach a negative turning points resulting from transitions. That, in turn, leads their trajectory towards that of a more life course persistent offender (or at least one stuck in the age-crime curve, regardless of legal age), rendering potential persistent heterogeneity effects as less important, given they are effectively being set up for failure. For this reason, transitional processes during the formative years and adolescence as it relates to crime should be examined for race effects, to test whether or not we are truly putting a historically and currently disadvantaged group in America (Omi & Winant, 1985; Steele, 2003;

Alexander, 2012) up against cumulative disadvantage and effects within this specific context.

Outside of these life course events, race and historical considerations, the courtroom workgroup and their dynamics greatly impact the results of a disposition. There is a growing body of evidence that there are a number of concerns taken into consideration when it comes to decision making in the juvenile court (Feld, 1990; 1998). The reality is that prosecutors and judges are tasked with making difficult and predictive decisions about the likelihood of juveniles committing future offenses (Champion, 2001), while not neglecting the idea that juveniles "can be saved" (Chaney, 2014). Thus, to provide an empirical framework to address these considerations, focal concerns theory will be discussed.

2.8 Focal Concerns Theory

Focal concerns serves as the theory being tested on these data. While other theories may also be suited to explain this data, focal concerns serves as the most adequate theory to test in the author's estimation. In particular, the racial threat hypothesis, social disorganization, and Manski & Nagin's (1998) skimming and outcome maximization all serve as great competitors to focal concerns; however, I will outline why focal concerns provides a better explanation and is most appropriate for these data.

Beginning with the racial threat hypothesis originally developed by Hubert Blalock (1967), this theory posits that a racial hegemony exists which is maintained by a dominant group, who have no interest in turning power over to, or sharing power, with those outside of the dominant culture. While Blalock (1967) did not discuss crime

directly, he was primarily concerned with "threatening" aspects of minority groups to the dominant culture, which was adapted into criminal justice research, as well as juvenile justice research (Bishop, Leiber & Johnson, 2010; Carmichael, 2010; Freiburger & Jordan, 2011). Recall as well that Section 2.6 calls for an inclusion of how race has historically been inexplicably tied to justice system experiences, which provides an argument for the use of racial threat.

However, two major issues led to the use of focal concerns rather than racial threat. First, racial threat was not developed to address crime and justice, particularly juvenile justice, directly, whereas focal concerns was designed to be tested in the courts. Focal concerns also addresses various situational relevant to the offender, courtroom workgroup, and community as a whole. Particularly for judicial decision making, a racial threat explanation requires much more extrapolation than that of focal concerns. For focal concerns however, the variables under consideration fit neatly in the categories of focal concerns. Thus, focal concerns won out over racial threat for the purpose of this research.

Social disorganization was also considered, given the large amount of attention social disorganization and race has received (Bowen, Bowen, & Ware, 2002; Hallett, 2002; Sampson & Groves, 1989; Sampson & Wilson, 1995). Broadly speaking, social disorganization argues that ecological characteristics of the neighborhood are better explanations for crime and deviance than individual characteristics (Shaw & McKay, 1942). Noting this, many of the measures in this study fit neatly with the social disorganization literature (e.g., concentrated disadvantage, median household income, percent single parent household). However, there are flaws that have excluded social disorganization in favor of focal concerns. Social disorganizations is largely a

neighborhood based theory, while this study is concerned with county level differences. Focal concerns can, and has, addressed county level differences in sentencing (Demuth & Steffensmeier, 2002; Johnson 2005; 2006; Maloney & Miller; 2014; Ulmer & Johnson, 2004), which serves as a large portion of the analysis and is replete within the dataset. For this reason, focal concerns also triumphed over social disorganization.

Finally, Manski & Nagin (1998) proposed a perspective on how judicial decision making should be modeled, via skimming or outcome maximization. Both models assume judges are concerned with recidivism, how treatment affects recidivism and blameworthiness (p. 118). However, there are differences. The skimming model assumes that judges sentence only high risk offenders to residential treatment, and low risk offenders to nonresidential treatment (p. 119). This is done to maximize apparent rather than the actual effectiveness in sentencing, or because they align with the normative view that "good" juveniles should be treated, "bad" juveniles should be punished (p. 120). The outcome optimization model operates under the understanding that decisions made under uncertainty are made to minimize expected loss, and to maximize expected utility (p. 119). More broadly speaking than the "good" or "bad" juvenile in the skimming model, the outcome optimization model argues that a judge chooses the option that is expected to yield the best outcome (p. 119).

Manski & Nagin's (1998) paper provides perhaps the best challenge to focal concerns, but there are some minor issue that made focal concerns a bit more of an attractive theoretical framework. First, Manski & Nagin (1998) do not take into account the "loose coupling" aspect of focal concerns for juveniles, which suggest that various actors (e.g., prosecutor, defense, probation) influence judicial decision making at various

juvenile justice stages (Bishop et al., 2010). The developments of focal concerns for juveniles in the literature do take this into account (Bishop et al., 2010; Erickson & Eckberg, 2015; Leiber & Peck, 2012). While Manski & Nagin (1998) share similar concerns to Steffensmeier et al. (1998) in that blameworthiness is taken into account, as are concerns about community protection. In fact, Manski & Nagin (1998) seem to even make a more compelling argument as it relates to treatment decisions. However, there are two important considerations that put focal concerns as the leader.

First, consider the "empirical treatment" of both Steffensmeier et al. (1998) and Manski & Nagin (1998). Manski & Nagin (1998) were primarily concerned with the effects of recidivism on placement in a facility of secure confinement. Scholars have tapped into their bounding approach and also primarily focused on recidivism, be it for adult domestic violence (Wooldredge & Thistlethwaite, 2002), recidivism relative to prison diversion (Bales & Piquero, 2012), as well as imprisonment and recidivism at it relates to the life course (Loeffler, 2013). These are all important considerations for treatment matching and recidivism, but focal concerns takes into account a bit more broad range than just this. For example, focal concerns examines: the interplay of sex, race and ethnicity for defendants (Steffensmeier & Demuth, 2006), victim sex (Curry, Lee, & Rodriguez, 2004), judge sex (Steffensmeier & Hebert, 1999), judge race (Johnson & DiPietro, 2012), the interplay of judge and county characteristics (Johnson, 2006), county characteristics and their differences between races (Demuth & Steffensmeier, 2004), as well as how focal concerns manifests at different stages of the juvenile court process (Ericson & Eckberg, 2015). Given the empirical works on both approaches, I contend that focal concerns encompasses a bit more of the courtroom process compared

to Manski & Nagin (1991) and other scholar's empirical tests of their works. Moreover, the variables available for the present study align very well with the empirical works on focal concerns.

Second, one of the primary concerns of this project is race and extra-legal factors creating disparities in the juvenile court. While one could not dismiss Manski & Nagin (1998) for not discussing race, perhaps other scholars working under Manski & Nagin's (1998) framework may incorporate or pay close attention to race; however, this was not the case (c.f., Bales & Piquero, 2012; Loeffler, 2013; Wooldredge & Thistlethwaite, 2002). As noted above, there are a number of focal concerns works that take race and other extra-legal factors into account, given Steffensmeier et al. (1998) initially discussed a "perceptual shorthand," suggesting unconscious biases may play an effect in creating sentencing disparities (p. 768).

Particular to the initial work of Manski & Nagin (1998) and the outcome optimization model, there is an assumption that a judge selects a treatment outcome which provides the lowest chance of recidivism, similar to the practical constraints aspect of focal concerns. But how might this address sentencing disparities, and how might this intertwine with, for example, a judge who may operate under the skimming model and has more of a negative predisposition towards non-white defendants (Spohn, 2007; Steffensmeier & Demuth, 2006)? Or, whether or not female or minority judges are more inclined to favor the outcome optimization or skimming model (Steffensmeier & Hebert, 1999)? Under Manski & Nagin's (1998) arguments, as well as later empirical tests of their work, it is unclear. Under Steffensmeier et al.'s (1998) argument, as well as later research on the subject (c.f., Johnson, 2006), this would be explained by who a judge and

the community believes is dangerous or not, based on extralegal factors rather than legal factors (p. 767). Overall, given the focus on recidivism and the later empirical tests of Manski & Nagin (1998) [17] as well as the focus on extra-legal factors, focus on the broader process of the juvenile court and the later empirical tests of Steffensmeier et al. (1998), focal concerns ultimately serves as the theoretical framework for this dissertation[18].

Focal concerns developed initially from research undertaken by Steffensmeier, Kramer & Streifel (1993), who were observing that the sentencing practices of judges are based on two primary things (which they refer to as focal concerns): blameworthiness and practicality. For example, blameworthiness takes into account one's prior record or the remorse of the offender while practical considerations may address whether jails or prisons that might house the offender are full, thus making probation a more attractive and reasonable sentence (Steffensmeier, Kramer & Streifel, 1993).

These two considerations ultimately and officially formed the basis for Steffensmeier, Ulmer & Kramer's (1998) focal concerns theory, a term borrowed from Walter Miller (1958). This theory posits that there is, in addition to blameworthiness and practicality, a third consideration that is important for criminal justice actors: the protection of the community. These three key concerns allow us to predict the sentencing behaviors of judges and prosecutors. Furthermore, focal concerns is grounded in assumptions of Herbert Simon's (1972) bounded rationality, where the decision making of prosecutors and judges is characterized by uncertainty avoidance such that they utilize

[17] With this in mind Manski & Nagin (1998) seem to take into account the treatment considerations from judges moreso than Steffensmeier et al. (1998), who are more concerned with extralegal factors leaking in. However, as noted later in this section, the "loose coupling" aspect discusses this and how treatment/practical constraints are addressed by focal concerns.

[18] Notwithstanding, the limitations of focal concerns will also be addressed in this section.

all available information at their disposal to achieve successful decisional outcomes (Albonetti, 1986; Albonetti, 1991).

Broadly stated, blameworthiness encompasses several factors that have legal significance. These considerations include, but are not limited to, the type of crime committed, the amount of harm caused, and the prior record of an offender. Steffensmeier et al. (1998) argue that this concern is manifested from the retributive philosophical concept of "just desserts." Largely, this consideration of blameworthiness is predicated on western notions of proportionality to "balance the scales of justice" (Tonry, 1996). Furthermore, Steffensmeier et al. (1998) note that sentencing research shows that the culpability of the defendant and the seriousness of the offense are very significant as it relates to sentencing decisions. To use an example, a judge may be more willing to grant probation to an offender who was cajoled into petty theft with friends as opposed to an offender who severely battered another individual over a trivial dispute (Frohman, 1997). Literature surrounding this theory confirms that these manifestations of blameworthiness are important considerations for judges (Lanza-Kaduce, Frazier, & Bishop, 1999; Podkopacz & Feld, 2001; Jordan & Myers, 2007).

Second, the focal concerns perspective emphasizes protection of the community. Here, it is argued that judges and prosecutors focus on factors such as the perceived dangerousness of the offender and the perceived probability of recidivism or prior recidivism (Steffensmeier et al., 1998). As previously stated, prosecutors and judges generally make educated guesses about the future criminality of an offender. More often than not, sentencing occurs in the realm of bounded rationality, where sentencing is based on the most accurate information about the offenders' future criminal propensity

(Albonetti, 1991). Therefore, it follows that sentencing outcomes may be predicated upon both legal and extralegal factors based on select case information that includes a history of recidivism and other relevant factors related to containing an offender and protecting the community (Steffensmeier & Demuth, 2000). For example, an offender with drug and/or alcohol problems, a criminal history and low levels of educational attainment may be an attractive candidate for incarceration due to a perception from the judge that they may fail to stay away from crime if allowed to remain in the community (Bishop et al., 1996). Conversely, an offender without drug and/or alcohol problems, a criminal history and high levels of educational attainment may not be an attractive candidate for incarceration, given that the judge may view that offender as somebody who can be "reformed" (Spohn, 2007).

Third, the focal concerns perspective posits that the decision making of judges and prosecutors may be influenced by organizational constraints and practical consequences. Arguably, one of the most important considerations that judges face relates to the offender and his or her ability to "do time" in secure confinement (Kurlychek & Johnson, 2004; Steffensmeier & Demuth, 2000). These actors are sensitive to not only the ability of an offender to do time, but also disruptions in the family, health considerations, community characteristics and special needs of the offender (Champion, 1987; Freiburger & Burke, 2010).

This is also a balancing act for judges. First, some judges take into account the needs of the offender and options for treatment (Ray & Dollar, 2013). They may want to, in effect, punish the bad and forgive the good, while also looking at a juveniles' unique circumstances and amenability to treatment, in line with the traditional "best interests"

approach to juvenile justice (Manski & Nagin, 1991; Singer, 1996) Outside of offender specific concerns, courtroom actors are also cognizant of local and state correctional resources and crowding and they must maintain working relationships with other courtroom actors and the community (Ulmer, 1995; Ulmer & Kramer, 1996).

Therefore, judges are likely to take into consideration local politics and the norms of the community when sentencing an offender (Steffensmeier et al., 1998) To use an example, a judge may be willing to grant an offender probation rather than jail or prison due to it being one's first offense (forgiving who they perceive as good), because of jail or prison overcrowding or because of one's appearance (punishing one they perceive as bad). Further, it is plausible that both judges and prosecutors are aware of the consequences of exposing some offenders to incarceration that may exacerbate future criminality.

Outside of the three postulates provided by Steffensmeier and colleagues (1998) about judicial decision making, one should consider the real life practicality and consequences of focal concerns. Judges and prosecutors utilize their discretion, and sometimes stereotypes, in ways that not only benefit themselves but also other courtroom actors (Fischman & Schanzenbach, 2012; Hartley, Maddan & Spohn, 2007). In other words, it is entirely possible the judges and prosecutors base their sentencing decisions on extralegal factors, such as race, sex, socioeconomic status, age, and or other concerns outside of the boilerplate of the law.

Indeed, Steffensmeier et al. (1998), and others, have found that race, gender, and age affect sentencing decisions. While research findings for race and sentencing has been somewhat inconsistent, there is some evidence that race combined with other variables

has resulted in less favorable sentencing outcomes for African American defendants (Freiburger & Burke, 2010; Spohn, 1990; Steffensmeier & Britt, 2001). Furthermore, race appears to play a role in harsher sentencing for young defendants and it becomes more consistent as the age of the defendant increases (Steffensmeier, Kramer & Ulmer, 1995; Steffensmeier et al., 1998).

As it relates to age, Steffensmeier et al. (1998) argues that much of the research treats age as a continuous, control variable and assume a linear effect. Further, a number of studies have reported negligible effects on age (Guevara, Herz & Spohn, 2007; Harris, 2009; Leiber & Johnson, 2008). However, where the research has treated age as a categorical variable (ie- "young" versus "old"), there is evidence that older offenders receive more lenient sentences compared to younger offenders (Cutshall & Adams, 1983; Champion, 1987; Kurlychek & Johnson, 2004). This disparity may exist because older offenders may have family that they support or health issues, which would place a larger burden on the system than a younger individual without a family (Sanborn, 1996). Thus, it is possible that organizational constraints and practical considerations may influence the sentencing of older offenders.

However, because focal concern was developed to describe the adult system, some minor modifications are needed (Feld, 1999). Bishop, Leiber & Johnson (2010) also incorporated the concept of "loose coupling" as it relates to the juvenile justice system, in order to provide a link between increased discretion and greater control over disadvantaged groups[19]. Bishop et al. (2010) argue stereotypes often involve sex, race, class and intersectional considerations, but are different in the juvenile justice system

[19] Consider Bishop & Frazier (1996), which found judges viewed non-white single parent families as more "broken" than comparable white counterparts (see also: Leiber & Mack, 2003).

because organizations and representatives are different at different parts of the decision making process, and therefore are best understood through a "loose" group consensus, or a chain of consequential decisions. Under this framework, the juvenile justice "system" is effectively a "non-system," where multiple, separate, and bureaucracies come together only in the juvenile court to "work together" (Bishop et al., 2010).

Consider the stages of the juvenile court process: intake, adjudication, and disposition. At intake or assessment, "risk factors" (e.g., neighborhoods, friends, family) are weighed in with the traditional parens patriae considerations that may have contributed to delinquency (Bishop & Frazier, 1996; Bridges, Conley, Enge & Price-Spratlen, 1995). These decisions, therefore, are often times premised under treatment needs perceptions, but also ripe with biases focal concern biases (Feld, 1999; Leiber, 2004). At adjudication, the judge has incredible decision making responsibility, which takes place after a finding of guilt or innocence and an evaluation of the weight of evidence. Therefore, biases under focal concerns or the loose coupling mechanisms are thought to be non-existent or minimal at best (Bishop et al., 2010). At disposition, while a judge ultimately makes a decision, various actors also contribute to the recommendation, including but not limited to, prosecution, the defense, and the probation officer, reflecting various interests and biases (Bishop et al., 2010; Sanborn, 1996; Gaarder, 2004).

As a result, disposition also reflects a jockeying process where biases, organizational, practical, and community, factors, juvenile characteristics and importantly, the consideration of best interests, play an important part in a dispositional decision (Bishop et al., 2010; Harris, 2007). At this stage, decision makers are attempting to do what they perceive are in the best interests of youth (Leiber, Fox, & Lacks, 2007).

For example, a youth from a single parent home or from an area with high levels of poverty may require enhanced sanction provisions, due to the practical constraints of parenting and poverty not serving as a deterrent to juvenile delinquency (Bishop & Frazier, 1996; Bridges et al., 1995). Thus, a judge may take seriously the service matching needs of their occupation, but biases from outside forces within the process may paint a more negative image of certain juveniles.

Although these considerations are not necessarily new, Bishop and colleagues (2010) noted the juvenile justice system often lets extra-legal factors seep in to promote rehabilitation, which can also go back to the original perceptual shorthand of focal concerns, allowing for stereotyping when decisions are made between various actors (Erickson & Eckberg, 2015). These practical concerns, especially as it relates to "best interests," are important. They demonstrate that legal and extralegal considerations may be tainted by the position of race in society; further, these factors may contribute to minority overrepresentation in detention throughout the juvenile court process.

Of course, this project would be remiss if it did not discuss the limitations of focal concerns, both as a matter of methodology and empirical evidence suggesting otherwise. Methodologically, it may be argued that there are issues of conflation between concepts. For example: number of prior offenses may serve as both a blameworthiness and community safety aspect. This is an issue, given these concepts share a variable. Steffensmeier et al. (1998) and other focal concerns researchers have not been able to adequately address this, either, merely stating their relationship is complex; hardly a finite or acceptable answer.

Second, there are not an established list of "guidelines" for creating focal concerns, merely a list of suggestions for what variables may tap into focal concerns (Hartley et al., 2007). Testable hypotheses have been developed from focal concerns, but vague suggestions about what should be measured may create a body of research examining many different things, certainly affecting the generalizability of these works. Thus, it may be contended that a major limitation of focal concerns is that it is not developed enough to call it a "complete" theory in explaining the decision making processes of judges. This is because it does not fully articulate what the mechanisms are that connect to the processes and outcomes to create focal concerns.

Empirically as well, there has been evidence contrary to focal concerns. For example, Steffensmeier & Demuth (2000) noted that there was consistency in the sentencing of criminal defendants. Shortly thereafter, Steffensmeier & Demuth (2001) found results consistent with the previous study which found consistency in sentencing. Particular to extra-legal factors, there is an assumption in focal concerns that non-white defendants are, by default, more likely to receive punitive sentences. Yet, various works under this framework reject this assumption. For example, Wooldredge & Thistlewaite (2004) noted black defendants were less likely to receive to be charged or prosecuted, and receive shorter jail terms, controlling for SES and other relevant factors. As another example, Kingsnorth, MacIntosh & Wentworth (1999) failed to find evidence of bias at any of the decision points in the courtroom process. Noting this, it is evident that focal concerns is not yet an unequivocal or a concrete theoretical framework.

Notwithstanding these considerations and limitations of focal concerns, it is apparent that focal concerns should continue to be tested in different arenas. Notably,

there are still a number of questions that remain unanswered that are derived from the fact that there have been few empirical tests of this perspective as it relates to serious and violent juvenile offenders who have pled down (Kurlychek & Johnson, 2004). Given the understanding that there is something "different" about juveniles (Gordon, 2007; Scott, 2002), there needs to be a much fuller investigation of how the outcomes of this group of offenders may be shaped by the focal concerns perspective may. Similarly, the "loose coupling" proposition of focal concerns was only proposed by Bishop and colleagues a few years ago, and therefore is ripe for additional testing.

Under this framework of loose coupling focal concerns for juveniles, blameworthiness may manifest in the form of a juvenile who was in the wrong place, at the wrong time, and with the wrong crowd. The same may not be said of adults who are assumed to have more agency (Griffin, Torbet, & Szymanski, 1998). Second, factors such as the perception of dangerousness, how dangerousness relates to community protection, and the chances of recidivism are frequently considered by judges (Ericson & Eckberg, 2015; Harris, 2009; Steffensmeier & Demuth, 2000). Steffensmeier & Demuth (2000) also note these considerations are guided by the contents of a juveniles' case file, but can also be guided by their "potential," such as community characteristics, employment history, and criminal history characteristics. Finally, organizational constraints, practical consequences the "perceptual shorthand" may lead judges to rely on stereotypes or other cognitive shortcuts. While it is true the traditional approach to juvenile justice is to take into account treatment needs, of which some judges take seriously, it is also possible the perceptual shorthand may override this (Spohn, 2007). This, potentially, can be harmful towards a juveniles' future if their unique story in not

taken into account and stereotypes are relied upon; in fact, it may even exacerbate future negative behaviors such as recidivism (Bishop, 2000; Jordan, 2014).

Among other things, the literature is equivocal with regards to whether the gender or race of the judge matters insofar as sentencing outcomes. For example a minority judge may "see themselves" in a minority offender and for a female judge, there may be an element of maternalism or compassion which impacts sentencing outcomes (Van Slyke & Bales, 2013; Steffensmeier & Hebert, 1999; Songer, Davis, & Haire, 1994).

As it relates to the judicial decision making process, Mears & Field (2000) cautioned criminologists to take into account legal and extralegal factors as it related to juvenile offending, as well as the interaction of judge characteristics and offender characteristics to test for punitive or crime control effects. These can be done with the in conjunction with the considerations of plea bargains, adjudication decisions within the courtroom setting. So too consider the consequences of pleas and what occurs beyond immediate adjudication (Burgess-Proctor, Holtrop, & Villarruel, 2008). For example, with less pleas or offers to probation or alternative sanctions, use of secure confinement and transfer to adult court are more likely (Chessman, Waters, & Hurst, 2010; Feld, 1999).

This is important to the focal concerns perspective, in light of racial considerations, because a focus on "numbers" (practical consideration) may create unwanted or unplanned disparities (Osbun & Rode, 1984). Yet, from the focal concerns perspective, blameworthiness and community protection may take a back seat. Or, given evidence of extra-legal factors creeping into decisions as it relates to race (Mears & Field, 2000; Kupchik, 2006; Rodriguez, 2003), blameworthiness and community protection

may be more important if the courtroom perceives a juvenile more along the lines of a "super predator." Whether or not this holds true in a large body of literature that examines serious and violent juvenile offenders that have pled down and who find themselves adjudicated delinquent, and are met with different considerations, is at the moment is more conjecture that unequivocal. Furthermore, how these, and previous concerns affect sentencing for juveniles, requires further exploration.

2.9 Gaps in the Literature

The philosophical and procedural operations, as well as the organizational goals, of the juvenile justice system in the United States has been substantively changed since its' inception. There exists some evidence that would suggest that these changes have affected non-white offenders more than white offenders. Additionally, there may be mediating factors beyond race, including but not limited to age, prior offenses, and courtroom as well as community characteristics that impacts juveniles. This research seeks to explore how serious and violent juvenile offenders are constructed and treated in juvenile court from a focal concerns perspective.

The issue of judicial decision making in the juvenile court among serious and violent offenders has been studied fairly extensively in the literature (Bishop, 2000; Bishop et al., 1996; Burrow, 2005; DeJong & Merrill 2008; Fagan, 1996; Feld, 1987, 1991; Frazier et al., 1998; Jordan & Myers, 2011; Leiber, 2003; Mears et al., 2007). Youthful offenders (legal adults) have also garnered some attention from scholars (Barnes, Dukes, Tewksbury, & De Troye, 2009; Flexon, Stolzenberg, & D'Alessio, 2009; Miller & Miller, 2011). Additionally, studies of racial disparities (Burrow & Lowery,

2014; Engen, Steen, & Bridges, 2002; Kareem & Jordan, 2007) age (Albonetti, 1991; Bridges & Steen, 1998; Mears et al., 2014) and focal concerns (Freiburger & Burke, 2010) are not without their place in the literature. Yet interestingly, very few of these studies tie the theoretical concerns of focal concerns with the historical and structural-processual considerations about race. An even more limited amount of research applies these concerns to serious and violent juvenile offenders who have pled down, much less in a setting with a history of racial animus (Lau, 2006). The literature would be aided by this understanding of how racial, courtroom and community characteristics operate and may create dispositional disparities in one southern states juvenile court, guided by the empirical framework of focal concerns.

Failure to do so has the potential to magnify already existing disparities that negatively affect black youth while simultaneously providing society with the argument that justice is increasingly "colorblind" (Engen, Steen, & Bridges, 2002; Feld, 2003; Morris & Tonry, 1991; Tonry; 1996). This may be observed in the extant literature. For example, take into account the focal concerns work of Spohn (2007) and Freiburger & Burke (2010): some of the few pieces to use focal concerns for serious and violent juvenile offenders. Both authors do not begin to even touch upon race from a socio-historical or structural-processual lens, which, for example, critical race scholars make take issue with. Additionally, nor are a host of dispositional outcomes and considerations (pleas, probation, alternative sanctions, secure confinement, and days in confinement) all taken into account with this approach. Due to concerns about not only about judicial decision making, but also how youth are constructed in the socio-legal realm of the courtroom to be redeemable or not, and the consideration that prosecutors and judges are

tasked with making "educated guesses" about various aspects of a juveniles future, focal concerns theory will serve as the theory to be tested in this project and provide empirical verification or falsification to the considerations.

Overall, this study will examine the effects of race, age, the courtroom, and community characteristics context from this unique perspective, something previous research has examined scantily, at best. To accomplish this task, I collected data on serious and violent juvenile offenders from the Department of Juvenile Justice in South Carolina. While focal concerns will serve as the empirical test, the conclusion (Chapter V) will be guided by a critical race approach that takes into account the legal and historical trends in America to discuss (not test) the results of the quantitative analysis, which was constructed via focal concerns. This point is significant to the extent of the previous discussion about something "different" manifesting itself when race comes into play, the historical understanding that the dominant culture may use the rule of law to maintain their position in society, our more nuanced understanding of age through neuroscientific-criminological literature and how that may change age and culpability based differences. Thus, born from these considerations are the major research questions to be answered in this dissertation:

How do focal concerns affect the dispositions of adjudicated delinquents in the juvenile

courts of South Carolina?

How are black and white youths treated differently in the courtroom context?

How does age mediate these factors?

What aggravates or mitigates these factors?

Are there judge or courtroom characteristics that affect outcomes?

Does ones' community context play into dispositional decisions?

At the end of this project, I seek to provide a complete answer to these questions through quantitative data analysis, as well as an in depth explanation of how the findings of the analysis answer these research questions.

CHAPTER THREE

METHODOLOGY

The current study examines the differences in sentencing outcomes for serious and violent juvenile offenders under DJJ supervision[20] during the years 2007-2012. More specifically, the present study proposes to examine the extent to which judges make sentencing decisions that are consistent across offenders coming from various social and legal backgrounds. This research is informed by the focal concerns theory as conceptualized by Steffensmeier and colleagues (1993; 1998; see also Johnson, 2003; Kramer & Ulmer, 2002; Ulmer, 2012). Furthermore, this study attempts to address the extent to which differences may exist across different types of offenders (e.g., black versus white, type of offenses, etc.) and different contexts (courtroom and community). In the chapter that follows, a description of the methodology, the analytic plan, and the justification for the methodology will be provided.

3.1 Sample, Data Collection Procedure and Defining Juveniles

Data were collected from the Department of Juvenile Justice in South Carolina from 2007-2012. In this state, juvenile court jurisdiction extends to persons less than seventeen years old (§63-19-20). During the years included in this study, approximately 11,440 serious and violent offenses were committed by juvenile offenders statewide

(South Carolina Department of Juvenile Justice, 2013). In light of the fact that this research as interested in case attributes rather than individual incidents of serious and violent juvenile crime[21], a number of restrictions were employed. First, cases were excluded if: the offenders were not detained, the Solicitor dropped the charges, cases were nolle prosequi/dismissed, offenders were diverted out of the system, and cases resolved prior to adjudication. Second, the offenders used in this research were restricted to juveniles who committed serious and violent offenses as defined by the state statute (§16-1-60)[22] that are class A – D felonies (see: §16-1-10 for felony classification); however, I purposefully excluded juveniles who were waived to adult court (§63-19-1210)[23] and all juveniles charged with status offenses (§63-1-40(6)). Third, only offenders who were adjudicated delinquent in juvenile court and also under DJJ supervision were included in the study. In this manner, a total of 1,436 juvenile offenders were selected[24]. However, the final sample was further reduced to 1,164 after the removal of 272 offenders who appeared multiple times, as well as offenders who were under the age of fourteen. These restrictions were implemented to ensure that the actual youth as the unit of analysis at the case level.

[21] All juvenile offenders were equally likely to be selected into the sample provided that they received an adjudication of secure confinement, probation, or some other alternative sanction.
[22] For purposes of this research, the following offense categories were utilized: robbery (Section 16-11-330(B)); criminal sexual conduct (Section 16-3-655; assault (Section 16-3-600(B)); and burglary, 1st and 2nd (Section 16-11-311; 16-11-312(B)).
[23] See Figure 3.1.
[24] The analysis includes only juveniles who committed serious and violent offenses. I purposefully excluded any juvenile who may have been sentenced to DJJ supervision for status offenses or any non-violent offenses with the exception of major property offenses such as burglary 1st and burglary 2nd degree. Importantly, this projects' primary interest was those juveniles who met the requirements of §63-29-1210 that would have potentially exposed them to adult criminal court (General Sessions). To be clear, DJJ supervision means that all juveniles in the sample have been adjudicated and they have received a term either of secure confinement, probation, or "other" sanction (house arrest, community service, etc.).

As a result, the final sample met rather narrow criteria: serious and violent juvenile offenders who committed their crimes between the ages of 14 and 17[25], received a plea concession in the form of a lesser offense, and/or were adjudicated delinquent in the juvenile court – a total of 1,164 juveniles[26]. The overall breakdown of cases per year may be seen below:

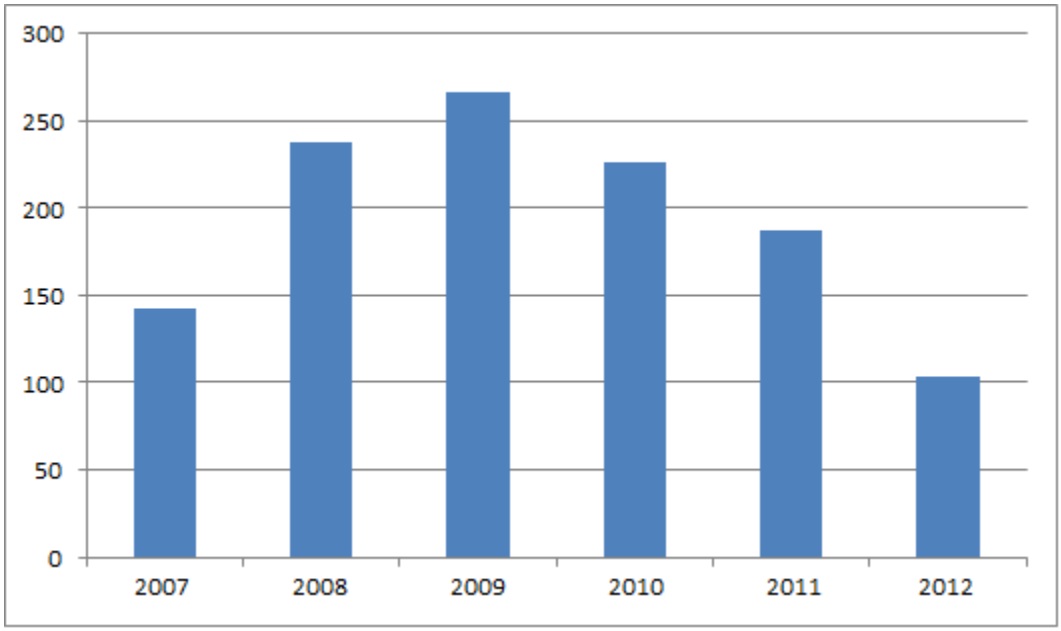

Figure 3.1: Case Breakdown by Year

[25] Note that there were only 15 cases of those who were age 17 at the time of referral. These cases account for those whose referral date and offense date did not match up very timely. For example, one youth in this data committed burglary in late 2007, but was not referred to the court until late 2008 when they were then 17 years of age.

[26] Data including case processing information with offender and offense characteristics were extracted from the DJJ case files. Sensitive information (social security numbers, addresses, birth dates, and names) was redacted and not coded to maintain the confidentiality of the juvenile offenders.

The exclusion of some juvenile offenders, especially those who were sentenced in adult court, could conceivably affect the overall results of the analysis, given they may likely be the "worst of the worst." Similarly, the exclusion of younger offenders (e.g., under 14) and status offenders could produce inverse results (i.e., resulting in more "child-saving" oriented findings), given they are likely the ones who are most likely to be "saved." While potentially a limitation, it can be posited that there is still sufficient latitude for judicial discretion and other disparities to manifest in a number of ways, a concern consistent with the literature (Fagan & Deschenes, 1990; Harris, 2009; Steiner, 2005; 2009).

For the purpose of the juvenile justice system, a "juvenile" or "child" is defined by the Juvenile Justice Code § 63-19-20(1) as follows:

1. "Juvenile" or "child" means a person less than 17 years of age[27].
2. "Juvenile" or "child" does not mean a person 16 or older who is charged with an A, B, C, or D class felony, or felony that provides a maximum term of imprisonment of 15 years or more (statutory exclusion).
    a. Notwithstanding, a 16 year old charged with an A, B, C or D class felony or a felony that provides a maximum term of imprisonment of 15 years or more may be remanded to the family court for disposition of the charge at the discretion of the Solicitor (automatic jurisdiction in general sessions court).

Most juvenile cases that are brought before the Solicitor are not waiver-eligible cases. Cases that are waived to the adult court are quite rare in South Carolina (see:

[27] Seventeen year olds are in this dataset because there are some juveniles that were under DJJ supervision prior to their seventeenth birthday.

Figure 3.2 on the following page). Based on available data, waiver cases only made up about 3% of the total juvenile cases brought by the Solicitors. Thus, the likelihood that the excluded cases would have a significant effect on the data if included is marginal.

Figure 3.2: Cases Waived to Criminal Court

Source: Children's Law Center - University of South Carolina School of Law

Note that the largest number of waived juveniles occurred in the year 2009, with 17 cases. Also note that the total number of waived offenders seen in this chart do not include cases that originated in the adult court due to statutory exclusion. Unfortunately, reliable data on how many statutory exclusions cases occurred (specifically, South

Carolina) by year is difficult to obtain[28]. Thus, while it can be acknowledged that waiver happens relatively infrequently in South Carolina, the actual number is simply unknown to the author and thus, it must be acknowledged as a limitation.

3.2 Independent Variables

A discussion of the key demographic, offense, courtroom, and community variables is provided. The methods of measurement for these variables are also included.

Race. Race was dichotomized to reflect two groups – white offenders (= 0) and non-white offenders (= 1). Black offenders (n = 654) and white offenders (n = 486) made up the majority of the sample. Because racial and ethnic groups other than black and white made up such a small portion of the sample (4.1% of offenders, 48 in total)[29], they were coded as non-white offenders (see Perea; 1997; Reimers, 1983).

Sex. The sex of the defendant was dichotomized and measured as female (= 0) or male (= 1).

Age. Age was computed by subtracting respondents' date of birth from the date of offense. It is measured as a continuous variable, where age sixteen serves as the reference category.

Criminal Sexual Misconduct. Pursuant to South Carolina Code of Law (§ 16-3-655), this variable measures whether or not the defendant was adjudicated delinquent for a criminal sexual misconduct offense in the first, second or third degree (0 = no, 1 = yes). Criminal Sexual Misconduct is also referred to as "CSC."

[28] The author was unable to obtain these data from the state Department of Corrections (DOC).
[29] Specific breakdown by Race/Ethnicity: 35 Hispanic defendants, 10 "other" defendants, 2 Asian/Pacific Islander defendants, 1 American Indian/Native American defendant.

Robbery. Pursuant to South Carolina Code of Law (§ 16-11-330), this variable measures whether or not the defendant was adjudicated delinquent for a homicide[30] or robbery based offense (0 = no, 1 = yes).

Major Assault. Pursuant to South Carolina Code of Law (§ 16-3-600), this variable measures whether or not the defendant was adjudicated delinquent for a major assault (first degree, second degree, great bodily harm) offense (0 = no, 1 = yes).

Burglary. Pursuant to South Carolina Code of Law (§ 16-11-312), this variable measures whether or not the defendant was adjudicated delinquent for a burglary I or II based offense (0 = no, 1 = yes).

No Priors. This measure reflects whether the defendant had been convicted, not charged, with any prior offenses. This variable was coded as a dichotomous outcome: no prior conviction (= 0) and prior conviction (= 1).

Chronic Offender. A measure for whether the juvenile was a chronic offender, defined as having 3 or more offenses prior to the current offenses. This serves as a dichotomous variable (0 = no, 1 = yes). Turning to the literature for support in this measure, Wolfgang et al. (1972) defined a chronic juvenile offender as youth arrested five or more times. However, past arrest information is not available in these data. Thus, this definition of a chronic offender as three or more prior offenses is borrowed from

[30] Many important things must be noted here. First, no juvenile in this sample was adjudicated of a homicide based offense. Second, at adjudication, all of those who were originally charged with a murder based offense (7 in total), all received an lower adjudication sentence compared to the homicide based charge. As an example, one juvenile was charged with attempted murder, but adjudicated of Accessory After Fact of Category II – Felony (§ 16-1-55). For the purpose of the data analysis section, I will refer to this offense as "robbery," "robbery offense," or "a robbery based offense." The reason that homicide was acknowledged is because one may argue that exclusion of these homicide based arrests may produce a "Newark Effect" (Harcourt, 1998), where the exclusion of these offenses may produce different results, suggesting the models in Chapter 4 are fragile. A sensitivity analysis was conducted with the exclusion of these seven cases, yielding no significant changes. The aforementioned suggests the models to be examined are not fragile, and there is no convincing reason to exclude these cases, as they were still adjudicated in the juvenile court and fit the sample criteria.

Jones, Harris, Fader & Grubstein's (2001) paper, aptly titled "Identifying chronic juvenile offenders," which they suggest is the "cut point" for juvenile delinquency becoming a serious problem.

Accomplices. This variable measures whether or not the juvenile committed the offense with the assistance of other juveniles. Given the interest in culpability and whether or not accomplices mitigate culpability, accomplice(s) presence (no = 0, yes = 1) was included.

Minority Bench Presence. Whether or not the individual case took place in a circuit (total SC judicial circuits = 16) which had at least one minority judge on the bench during the study time period (2007-2012). Minority bench presence was measured as a dichotomous variable (0 = no, 1 = yes), gathered from the South Carolina Judicial Department Family Court. Literature has noted minority judges have a significant impact on service matching (D'Angelo, 2002) and adhere to the more tradition "child saving approach" (Mears, 2003). However, these findings are far from concrete (Keenan, Rush & Cheeseman, 2015). Given this conflicting information, it was important to measure minority bench presence.

Female Bench Presence. Whether or not the individual case took place in a circuit (total SC judicial circuits = 16) which had at least one female judge on the bench during the study time period (2007-2012). Female bench presence was measured as a dichotomous variable (0 = no and 1 = yes), gathered from the South Carolina Judicial Department Family Court. Some research has suggested that female judges decide differently than their male counterparts; specifically, in a more treatment oriented manner (Coontz, 2000; Steffensmeier & Hebert, 1999; Songer, Davis, & Haire, 1994). But, much

like minorities on the bench, these findings are not yet definitive. Noting the inchoate nature of these findings, especially within the juvenile court, there is justification for including this variable in the analysis.

Court Size. Defined as the number of judges serving on the bench within the sixteen circuits in South Carolina, gathered from the South Carolina Judicial Department Family Court[31]. This variable is a trichotomous measure - small (one to three judges, = 0), medium (four to five judges, = 1), large (six or more judges, = 3). Steffensmeier et al. (1998) have noted that court size is quite influential in sentencing outcomes. This finding not unique to their work, as it is also found in the extant literature (Eisenstein, Fleming, & Nardulli, 1988; Nelson, 1992; Steffensmeier et. al, 1995; Ulmer & Johnson, 2004). Because court size is suspected to be associated with organizational and cultural features of a courtroom, it likely impacts judicial decision making (Eisenstein et al., 1998; Ulmer, 1997; Ulmer & Johnson, 2004). As a result, the size of the court has been included in the analysis.

White-to-Black Income Ratio. The median household income for white residents in each county compared to the median household income of each African American resident in each county. This measure is used to tap into the practical considerations of focal concerns in counties, in lieu of constraints of the juvenile justice system. Additionally, it may aid in explaining how this form of inequality may manifest in sentencing decisions (Caravelis et al., 2011; Crawford, 2000). This measure is derived from the American Community Survey, which takes the white-to-black income ratio per year during the study period (2007-2012) in any given county. An average was computed

[31] Family court judges (juvenile court judges) are elected by members of the state legislature (General Assembly). Minimum qualifications are based on age (32 or older); residency (resident of circuit); and experience (licensed attorney for 8 years).

from these yearly totals and linked to the county where the individual juvenile committed their crime.

Percent Single Mothers. The average percentage of single parent households for each county during the study time period (2007-2012). This measure is derived from the American Community Survey, which takes the percent of single parent households per year during the study period (2007-2012) in any given county. An average was computed from these yearly totals and linked to the county where the individual juvenile committed their crime. While technically a misnomer to consider all single households headed by mothers, this operates under the assumption of the mother as primary caregiver, where a significant number of these households are likely female-headed (Brown & Lichter, 2004). This measure is used to tap into the dimension of practical considerations of focal concerns in counties, in lieu of constraints of the juvenile justice system. From the focal concerns perspective, a single parent household may not be able to adequately monitor a delinquent youth for community protection purposes, which may in turn affect dispositional decisions (Parrotta, 2006; White, 2015).

Concentrated Disadvantage. The concentrated disadvantage scale is comprised of a four items: the percentage of the county population with less than a 9^{th} grade education (Rocha & Espino, 2009; Wodtke, Harding & Elwert, 2011), the percent of the county which is unemployed (Kubrin & Weitzer, 2003; Wang & Mears, 2010), the percentage of households with incomes less than $10,000 within counties (Eitle, D'Alessio & Stolzenberg, 2002; Wen, Browning, Cagney; 2003) and the percent of persons under the age of 50 within a county (Browning & Cagney, 2002; Kubrin & Weitzer, 2003 -- 4 items, Cronbach's $\alpha = .74$, eigenvalue = 4.21 suggesting that these

items load on a single latent construct). Each component is standardized as a percent within a county, resulting in a calculation that yields an overall standardized measure of concentrated disadvantage. Conceptually, this concentrated disadvantage measure represents a well-defined snapshot of the conditions of poverty and disadvantage at the community level, with a pattern of factor loadings consistent with other measures (Ross 2000; Sampson, Raudenbush & Earls, 1997).

Violent Crime Rate. The six year average by the South Carolina Law Enforcement Division of violent crimes in each county (per 10,000 population) was included as a continuous measure (min = 21.38 , max = 141.54) over the study time period (2007-2012). Feld (1999) has argued that rates of crime, perceived or real, often serve as a catalyst in the call for more punitive punishments; an argument supported by the literature (Levitt, 1997; Roberts, 2004; Warr, Meier, & Erickson, 1983). Particular to violent crimes, I argue that this draws upon the historical notion of "super predators," which still remains in public discourse, although no longer under that particular title (Richardson, 2015). Given that rates of crime have been found to alter attitudes towards punishment, which in turn may put public pressure on judges (Warr, Meier, & Erickson, 1983), there is justification for the inclusion of violent crime rates within counties in the analysis.

Percent Urban. The average percentage of the county living in an urban area (< 500 residents per square mile). This measure is derived from the American Community Survey, which defines an urban area as a census tract within a county that encompasses at least 2,500 people. From this, the overall number of "urban" census tracts within a county may be divided by the overall number of census tracts within a county to calculate

"percent urban" within a county for each year. Specifically, this measure takes the "percent urban" within a county for each year during the study period (2007-2012). Empirical evidence suggests that delinquency types (Farrell et al., 2005; Laub, 1983) and sentencing (Austin, 1991; Feld, 1991) vary between urban and rural areas. To that point, available services (rural practical constraints) or perceptions of an urban juvenile "predator" (blameworthiness) may manifest, which makes this a worthwhile variable to be included in the analysis. An average was computed from these yearly totals and linked to the county where the individual juvenile committed their crime.

Teenage Population. Whether or not the teenage population (ages 15-17) within the county made up more than 5% of the population (0 = no, 1 = yes). This operates under the community context aspect of focal concerns, in light of research, which suggests a large teenage population is associated with perceptions of dangerousness and threat (Eitle et al., 2002; Stolzenberg et al., 2004). 5% was chosen as the cut-point in light of 4.17% serving as the mean value of average teenage population within counties during this time period (Standard Deviation =.42), suggesting counties with a teenage population higher than 5% may not look like the average county in South Carolina (e.g., perhaps marked by more frequent/serious delinquency). Stolzenberg et al. (2004) note that higher levels of youth are often associated with perceptions of crime and danger. This perception of danger and delinquent teens may result in judges attempting to exercise higher levels of formalized control over the juvenile delinquent population. This measure is derived from American Community Survey data. Specifically, this measure takes the aforementioned definition of "teenage population" within a county for each year during the study period (2007-2012). An average was computed from these yearly totals,

dichotomized as 0 or 1, and linked to the county where the individual juvenile committed their crime.

Percent Black. The percentage of black residents for each county during the year an individual was adjudicated delinquent, as derived from the American Community Survey for each year of the study period (2007-2012). Scholars have noted that higher black populations are associated with perceptions of higher crime (Helms & Jacobs, 2002; Quillian & Pager, 2001; Weitzer & Tuch, 1999). When this exists, criminal sanctions increase for all offenders, not necessarily just minorities (Britt, 2000; Steiner, 2009; Wang & Mears, 2010a)[32]. Because sanctions are meted out across all groups, potentially as a form of community protection, this variable is included in the present study.

Black Population Change. The change in black residents within counties over the study time period from the beginning of the study time period (2007) up until the end of the study time period (2012), and was gathered from the American Community Survey. As noted above, higher black populations are associated with a variety of perceptions; one of these perceptions which is an increase in crime. As the black population increases, there is a concomitant call from the public to use more punitive sanctions (Kubrin & Weitzer, 2003). For this reasoning percent black is included, as is the population change as a matter of attempting to find out how changing black populations affect adjudication decisions.

[32] Wang & Mears (2010a) also note that even though sanction severity increases for all groups, African American defendants still fare worse compared to their white counterparts.

3.3 Dependent Variables

A number of outcomes at the time of disposition were included for the purpose of this analysis:

Plea Concession. Plea bargains make up a very significant number of dispositions at both the state and federal level for adults (Kyckelhahn & Cohen, 2008; Teeter, 2005). Mears (2003) suggests that in the juvenile court, pleas function as "unofficial waivers" wherein juveniles rejecting plea concessions may lead to threats of longer sentences or more severe charges. For purposes of this analysis, the plea concession refers to whether or not a charge was reduced through some action by the Solicitor, and is dichotomized as follows: (1 = yes) and (0 = no plea concession).

Probation. Probation is generally assumed to be a less severe outcome, allowing an offender to stay in the community, and is the oldest and most widely used disposition within the juvenile court (Sanborn & Salerno, 2005; Torbet, 1997). The categories are as follows: (1 = probation, 2 = alternative sanction, 3 = secure incarceration).

Alternative Sanctions. This variable encompasses dispositions that fell along the "least severe" end of the sentencing spectrum (i.e, house arrest, community supervision). Various types of alternative sanctions are becoming attractive sentencing options for juvenile court judges (Johnson & DiPietro, 2012). However, where exactly they fall on the disposition scale is still subject to debate (Frase, 2000; Tonry, 1997; Tonry & Lynch, 1996). Given concerns over the social inequities associated with intermediate sanctions (Byrne, Lurigo, & Petersilia, 1996; Morris & Tonry, 1990; Padgett, Bales, & Blomburg, 2006; Petersilia, 1998; Petersilia & Turner, 1993; Tonry & Lynch, 1996), "alternative sanctions" in this research are treated as a "middle ground" between probation and secure

confinement, but no judgment is made regarding its' place on the scale between those two options. The categories are as follows: (1 = probation, 2 = alternative sanction, 3 = secure incarceration).

Secure Confinement. This variable encompasses whether or not a juvenile was sentenced to a period of secure confinement under the supervision of the Department of Juvenile Justice. Secure confinement is regarded as the most severe sanction a juvenile may receive and it is typically reserved for those whom judges perceive as the either more culpable for their offense (Bishop et al., 1998). The categories are as follows: (1 = probation, 2 = alternative sanction, 3 = secure incarceration).

3.4 Research Hypotheses

The present study seeks to determine whether juvenile dispositions vary across race, age, community, and courtroom contexts. To this end, the selection of the predictors will be guided by the focal concerns perspective. Focal concerns encompass three primary factors: blameworthiness of the offender, the need to protect the community, and practical considerations. There is reason to suspect that juvenile sentencing disparities may exist in the courtroom context, where judges are tasked with making difficult decisions based partially on these concerns, among others. This belief is born from the empirical literature suggesting a number of different variables influence disparities, such as race, sex, offense, courtroom characteristics, and community characteristics (Alexander, 2010; Feld, 1990; Myers, 2003; Podkopacz & Feld, 1995, 2001; Singer & McDowall, 1988). This courtroom context matters because equitable uses

of sanctions should be consistent across legal, secondary legal, and extra-legal factors, but the aforementioned literature suggests it is not.

Courtroom context in unequitable sentencing practices because the juvenile justice system was originally designed as a therapeutic alternative to the adult court that would serve the child's best interest. While the juvenile court and justice system have experienced many changes, one may still argue that some of the same guiding principles and goals, such as the belief that juveniles can "be saved," still exist (Moon, Sundt, Cullen, & Wright, 2000; Merlo & Benekos, 2010). However, the idea of who can and cannot be saved often varies from person-to-person and offender-to-offender (Pickett, Chiricos, & Gertz, 2014). Thus, the following hypotheses are proposed:

Hypothesis #1: Non-white juvenile offenders will receive fewer plea concessions and more punitive sanctions than their white juvenile counterparts. While the literature is scarce regarding the negative influence of race on plea bargaining decisions in juvenile court (Mears, 2001), research does exist examining the adult criminal court (Albonetti, 1991; Rousseau & Pezzullo, 2014). Moreover, there is a fair amount of evidence on racial sentencing disparities in the juvenile court (Bishop, 2005; Engen et al., 2002; Guevara, Hertz, & Spohn, 2006; Leiber & Johson, 2008). Given the focus on race in this project, it is important to examine the effects race on plea concessions and sentencing; particularly, whether or not race affects the perception of blameworthiness (see Spohn, 2000 for a review of race based extralegal characteristics affecting sentencing).

Hypothesis #2: First time offenders are more likely to receive a lenient sentence (e.g., probation versus secure confinement) as compared to repeat offenders. Judges and prosecutors may consider first time offenders as less culpable than a repeat offender and

thus, first time offenders may not merit the most extreme punishments, such as secure confinement or waiver (Bishop, 2000; Burrow, 2008; Podkopacz & Feld, 1996). Instead, a first time offender is better suited for a lower level sanction, such as probation (Von Hirsch, 1985; Ryan, Abrams & Huang, 2014). Conversely, those with prior offenses may be perceived as more blameworthy or culpable in their actions (Kurlychek & Johnson, 2004; Scott & Grisso, 1997; Spohn, 2007) To this point, Steffensmeier et al. (1998) note that prior history is an important aspect in not only blameworthiness, but also community safety, making this an important testable proposition.

Hypothesis #3: Juveniles who commit their offenses with the help of an accomplice are less likely to receive especially harsh or punitive sentences (e.g., probation versus secure confinement). This observation is driven by the ideas embedded in the focal concerns aspect of blameworthiness. A number of things are thought to mitigate a juvenile's participation in a crime: for example, an offender may be in the wrong place with the wrong people (Steffensmeier & Demuth, 2000) such that he/she is not viewed as the mastermind of the delinquent act, but rather, a follower. In addition, an offender may show remorse or responsibility, so as to suggest another defendant may be the most blameworthy for the crime (Kramer & Ulmer, 2009). Alternatively, if a juvenile acts alone or appears to be the "ring leader" of crime, he/she may be given a more punitive sentence, given that they are perceived to be the most responsible party for the crime (Steffensmeier et al., 1998; Ulmer, 1997). These are important considerations as it relates to constructing blameworthiness, and given the difficulties associated with constructing juvenile culpability (Walkover, 1984), it is important to consider the effects of an accomplice on adjudication decision.

Hypothesis #4: Where there is a strong minority presence on the bench, juvenile offenders are more likely to receive more lenient sentences (e.g., probation versus secure confinement). There are competing perspectives on how, if at all, minority judges influence sentencing outcomes. On the one hand, minority judges may serve as "tokens" who are cognizant of this position, and punish as harshly (or more harshly) as their white counterparts; but, they may also punish more harshly because they are sympathetic to black victims who are disproportionately the victim of crimes (Steffensmeier & Britt, 2001). On the other hand, it may be that minority judges "see themselves" in other minority defendants, or they may be aware of systemic challenges faced by black youths (Steffensmeier & Hebert, 1999; Songer, Davis, & Haire, 1994). As such, it can be argued that being a minority judge serves as a proxy for "liberal" beliefs (i.e., concern for due process, empathy/sympathy for those who are or are perceived as the disenfranchised group in society) (Johnson, 2006; Spohn, 1990a; Steffensmeier & Britt, 2001). These competing perspectives seek to tap into the practical constraints aspect of focal concerns.

Hypothesis #5: In jurisdictions where more female judges have a presence on the bench, juvenile offenders are more likely to receive less severe dispositions (e.g., probation versus secure confinement). The extant literature on this subject is mixed. Some research suggests that female judges are more likely to incarcerate (Steffensmeier & Hebert, 1999) while other research notes no significant differences in their sentencing patterns as compared to their male counterparts (Johnson, 2006). A competing perspective suggests that being a female judge, like a minority judge, is a proxy for liberal attitudes (Gruhl, Spohn & Welch, 1981; Spohn, 1990b). Both competing perspectives arguably tap into the practical constraints aspect of focal concerns. It should

be noted that Van Slyke & Bales (2013) suggests that female judges influence decision making in the juvenile court, arguably due to an element of maternalism[33]. Due to inchoate and mixed nature of this hypothesis, this project seeks to examine how female judges on the bench may affect adjudication outcomes.

Hypothesis #6: Compared to younger juveniles (age 14), older juvenile offenders (age 16) are more likely to receive more severe sanctions at disposition (e.g., secure confinement versus probation). The research literature suggests older offenders, when compared to their younger counterparts, are more culpable for acts of crime (Steinberg & Scott, 2002; Jordan, 2014; Monahan & Steinberg, 2015). There is also evidence which suggests that age is an extralegal factor that has an influence on sentencing (Burrow & Koons-Witt, 2003; Spohn & Holleran, 2000; Steffensmeier et al., 1998), and is also important as it relates to testing blameworthiness and focal concerns (Steffensmeier et al., 1995; 1998). Just how blameworthy an offender may be, and at what point a juvenile transforms from a child who may be saved versus a culpable criminal is vital concern that requires this projects' attention.

Hypothesis #7: Juvenile offenders who commit criminal sexual misconduct offenses are more likely to receive more punitive sanctions (e.g., secure confinement versus probation) as compared to offenders convicted of major assault or burglary. This hypothesis is predicated on the understanding that juveniles committing these offenses are very often perceived as the "worst of the worst" who are the best candidates for secure confinement. Thus, this hypothesis may tap into the practical concerns aspect of focal concerns (Bishop et al.; 1996; 1998; Kurlychek & Johnson, 2004) in view that

[33] As defined by Elizabeth Clapp (1998), maternalism refers to a woman's "traditional" skills extending beyond the family and their own homes. Particularly to juvenile justice and this study, maternalism exists in the form of compassion, social welfare, and more lenient/rehabilitative sentencing practices.

offense seriousness weighs heavily in the decision to place blame (Kramer & Ulmer, 2009; Steffenesmeier et al., 1995; 1998).

Hypothesis #8: Compared to females, males will be most likely to receive secure incarceration, but females will be more likely to be given alternative sanctions compared to probation. This hypothesis is guided by the patriarchal notion that girls should be shielded from some of the harsher aspects of the criminal justice system and thus, they should be treated more leniently than boys (Bishop & Frazier, 1992; Johnson & Scheuble, 1991). Notwithstanding this belief, girls are often treated more harshly for status offenses (Morash, 1984), suggesting that they may be in greater need of social and rehabilitative services (practical considerations). Yet, there is a gap in the literature when it comes to explaining whether or not this same pattern holds true for serious and violent female offenders. Most of this literature is found at the "back end" of the system rather than in the juvenile court (Odgers et al., 2007; Puzzanchera et al., 2003). Therefore, this research seeks understand whether girls who have committed serious and violent offenses are indeed treated differently than their male counterparts.

Hypothesis #9: Juvenile offenders who live in areas of high concentrated disadvantage are more likely to receive punitive sentences (e.g., secure confinement versus probation). A number of scholars have pointed out the importance of ferreting out how concentrated disadvantage affects juvenile court dispositions (Feldmeyer et al., 2015; Leiber et al., 2013; Stewart, Martinez, Baumer, & Gerts, 2015; Rodriguez, 2007; Wu & D'Angelo, 2014). Given the concerns and findings in this body of research, it is possible that concentrated disadvantage may serve as a proxy measure for the practical considerations that many judges use in their decision making. This is notable in light of

the fact that communities of concentrated disadvantage are oftentimes viewed as areas high in criminal threat and as such, offenders residing in these areas warrant higher levels of punishment (Bontrager, Bales, & Chiricos, 2005; Sampson & Laub, 1993).

Hypothesis #10: Juvenile offenders who live in jurisdictions that are characterized by high rates of violent crime are more likely to receive punitive sanctions (e.g., secure confinement versus probation). As noted in the research, judges may ascribe these poor living conditions to a juvenile living in a "culture of poverty" (i.e., violence and laziness). Therefore, judges are led to believe that areas with high crimes rates may require higher levels of formal social control (Eitle et al., 2002; McNulty & Bellair, 2003). As a result of these concerns, a judge may be imputing the community characteristics to an individual juvenile, regardless of whether or not he or she truly aligns with their community characteristics (Arvanites, 2014; McCall & Parker, 2005).

Hypothesis #11: In jurisdictions characterized by juvenile courts comprised of a small number of judges, juvenile offenders are more likely to receive punitive sentences as compared to juveniles who are sentenced in jurisdictions where there are a larger number of judges. This hypothesis is premised on Steffensmeier et. al's (1998) observation that judges with higher caseloads and less resources are far more likely to exercise a perceptual shorthand. Given the finite amount of time and resources available to judges, especially in smaller jurisdictions, it is believed that they will be less likely to consider service matching and instead focus more consideration on extralegal factors, where race and class take the place of the perceptual shorthand (Johnson, 2005; Spohn, 2007).

Hypothesis #12: Juvenile offenders who live in counties characterized by large African American populations are more likely to receive punitive sanctions as compared to offenders who live in counties that are less racially/ethnically diverse. This observation is born from the understanding that negative attitudes about African Americans are more prevalent in communities with a higher African American population, and due to this, official responses from the justice system to deal with perceived or real crime increase (Andersen, 2015; Blau, 1977; Caravelis, Chiricos, & Bales, 2011; Helms & Jacobs, 2002; Wang & Mears, 2010a;b). With this observation in mind, it is expected that courts in counties with a higher percentage of minorities will be more likely to sentence minority offenders more punitively compared to white offenders (Wang & Mears, 2010a;b)

3.5 Analytic Strategy

The present study seeks to determine whether juvenile dispositions vary across race, age, community, and courtroom contexts. The statistical analyses that will be used are designed to help uncover the degree to which differences may exist among offenders who possess a myriad of individual and offense-level characteristics which bring them into the juvenile courts of South Carolina. Prior to beginning the multivariate analysis, diagnostics were run to uncover potential issues with multicollinearity through the use of the variance inflation factor (VIF) and tolerances for individual variables.

For the first step of the analysis, the descriptive statistics for all of the dependent and independent variables were run to provide an overview of the characteristics of the data. To test the hypothesis under consideration, a series of regression analyses were conducted. First, binary logistic regression was used to examine how and who was

offered plea concessions from judges within the data. Afterwards, interaction terms were included to explore possible interaction effects among covariates in the binary logistic regression analysis. Next, multi-level modeling was used to examine sanction types as a trichotomous variable, given the nested nature of the data (juveniles nested within counties). Cross-level interactions were added, in order to provide a more in depth look at county level differences that OLS regression does not adequately address (Bryk & Raudenbush, 1999). Results of the analysis are presented in Chapter 4.

CHAPTER 4

RESULTS

In this chapter, the results of the analyses are presented. The major goal of this chapter is to explore, the adjudication decisions for serious and violent juvenile delinquents (ages 14-17) in the state of South Carolina during the years of 2007-2012 who are under DJJ supervision. As mentioned in Chapter III, the outcomes that are to be explored are plea decisions, probation, alternative sanctions and secure confinement. Thus, this chapter seeks to provide a comprehensive description of these outcomes and how various characteristics ascribed to the case may influence outcomes.

4.1 Descriptive Statistics and Diagnostics.

Table 4.1 provides the descriptive statistics for study variables. Specifically, this table presents the frequencies, means, standard deviations, minimum and maximum, where applicable, for each variable. Table 4.1 shows that 241 juvenile offenders received a plea concession (20%), while 923 juvenile offenders did not receive a plea concession of any kind. As it relates the adjudication decisions, 413 juveniles received probation, 345 received alternative sanctions, and 406 juveniles received secure confinement.

Table 4.1 Descriptive Statistics (n = 1,164).

Outcome Variables	**N**	**Frequency**
Plea Concession	241	20.65
Probation	413	35.5
Alternative Sanctions	345	29.6
Secure Confinement	406	34.9

Individual Predictors	**N**	**Frequency**
Race	678	58.2
Sex	995	85.5
Age		
Fourteen	347	29.8
Fifteen	422	36.2
Sixteen	395	34.0
Criminal Sexual Conduct	145	12.5
Robbery	73	6.3
Major Assault	245	21.1
Burglary	316	27.2
No Priors	469	40.3
Chronic Offender	672	57.7
Violent Onset	394	33.8
Accomplices	183	15.8
Minority Bench Presence	641	55.1
Female Bench Presence	881	76.1
Court Size		
One – Three Judges	447	38.4
Four – Five Judges	361	30.9
Six+ Judges	356	30.7

County Predictors	**Mean**	**SD**	**Min**	**Max**
White-to-Black Income Ratio	1.787	.298	1.342	2.666
Percent Single Mothers	8.5	1.75	5.19	13.92
Concentrated Disadvantage	0.445	1.000	-1.362	2.666
Violent Crime Rate	65.36	25.49	21.38	141.54
Percent Urban	61.29	20.78	0.00	87.16
Teenage Population	0.508	.500	0	1
Percent Black	29.959	1.89	6.8	71
Black Population Change	-0.830	1.895	-7.6	2.7

The majority of juvenile offenders in this sample were non-white (n = 678) and male (n = 995). As it relates to age, 29.8% of the sample was fourteen years old, 36.2% was fifteen years old, and 34% was sixteen years or older. Looking at specific offenses,

145 juveniles were adjudicated for criminal sexual misconduct, 73 for robbery[34], 245 for major assault, and 316 for burglary. Approximately 40% percent of the juvenile offenders in the sample had no prior offenses, while 57.7% of the offenders were considered chronic offenders. Additionally, about one-third (n =394) of juveniles had a prior offense that was of a violent nature. Finally, very few juveniles in the sample had the help of accomplices during the commission of their crimes (n = 183).

In 641 out of the total 1,164 cases in these data, at least one minority judge was present in the circuit a case was being decided. In 881 out of the total 1,164 cases in these data, at least one female judge was present in the circuit a case was being decided. As for the size of the court, 38.4% of cases took place in a small-sized circuit (between one and three judges), 30.9% of cases took place in a medium-sized circuit (between four and five judges), and 30.7% of cases took place in a large-sized circuit (six or more judges).

Turning to county level characteristics in South Carolina, the estimated white-to-black income ratio at its' lowest was 1.342 and 2.666 at its' highest. The estimated single mother population was 5.19% at its' lowest, and 13.92 at its' highest. The estimate of concentrated disadvantage was also quite low with -1.362 being the lower bound and 2.666 being the upper bound. For property crimes, the lowest estimate was 167.92 (per 100,000 residents) and the highest estimate was 640.98 (per 100,000 residents). The violent crime estimate at its' lowest was 21.38 and 141.54 at its' highest. South Carolina's estimated least urban area was completely without urban makeup (0.00) and its' estimated most urban county was significantly urban (87.16).

[34] Again, it is important to note that no adjudications in this sample were for homicide based offenses but that there were seven offenders in this sample arrested on homicide-based charges. The very few amount of those juveniles in this sample (7) pled down to a lesser offense.

As noted in the previous chapters, there are a number of variables that may adequately explain focal concerns. The main purpose of the follow chapter is to determine which of these focal concerns variables influence adjudication decisions. To do so, several statistical methods were used. As there are a number of independent variables in the regression equation, multicollinearity may be an issue in that is can cause unstable estimates and also inflate variances (Midi, Sarkar, & Rana, 2010). According to Menard (1995), multicollinearity is present with very small tolerance values (less than .10) and very large VIF values (greater than 10). Hoffmann (2004), however, suggests the conservative cut off point for these values are around .40 for tolerance values and 4.0 for VIF values. Regardless, a low tolerance value indicates that one or more predictors in the data is redundant, and a high VIF factor suggests variables may be highly correlated, leading to multicollinearity issues (Freedman, 2009).As one may view in Appendix B, the smallest tolerances values found within the models was .40, and the largest VIF value was 2.51, suggesting that there are no significant problems with collinearity within these models.

4.2 Results of the Binary Logistic Regression on Plea Decision.

A series of binary logistic regressions were utilized to examine plea decisions within the juvenile courts of South Carolina. The relationship between the predictors may be specified using the following equation:

$$Logit(Y) = \ln(odds) = b_0 + b_1x_1 + b_2x_2$$

Where odds refer to the odds of Y (outcome) = 1 with several hypothetical predictor variables following on the other side of the equation. Binary logistic regression

makes several assumptions. First, given the dichotomous nature of the dependent variable, binary logistic regression predicts the probability that one observation will appear in one category (plea bargain) versus the other (adjudication) (Menard, 2002). This, additionally, is useful in determining which measures are stronger or weaker predictors of a dependent variable, wherein one may exponentiate the resulting log-odds to easily interpret odds ratios (DeMaris, 1992; Kahane, 2008). Second, logistic regression assumes that for every independent variable, one must have at least 10 data points (Kahane, 2008). Given there are over 1,000 cases in this data and 17 independent variables, this key assumption is not violated.

Prior to utilizing logistic regression, the use of hierarchical logistic regression models were considered and estimated. Given the nested structure of the data, multilevel modeling appears to be appropriate (Raudenbush & Bryk, 1999). However, there are three primary reasons why binary logistic regression was used over hierarchical logistical regression models.

First, the logistic models are primarily interested in individual-level characteristics rather than equal attention paid to both individual-level and county-level predictors. As Austin, Tu, & Alter (2003) note, if this is a researchers' objective, one may "safely ignore the hierarchical structure of the data." (p. 33). Second, in HLM, there are three types of interaction effects: between two level-1 predictors, between two level-2 (or 3) predicators, and cross-level interactions between level-1 and level-2. As Preacher, Curran, & Bauer (2006) note, the third HLM interaction tends to be the most common: the reason behind this being that interactions at level-1 run the risk of producing a poorly defined regression line at level-2. Given the theoretical component of focal concerns

(e.g., blameworthiness), there are some interaction effects at the individual level that would this I would be remiss to ignore (e.g., race x no priors). Third, the results of the hierarchical logistic regression models did not vary significantly from the single level logistic models (see Appendix C for an example), and the ICC values produced suggest that: a.) most of the variance was found at level-1 and b.) to the second point, the reliability of the model may be questionable. As a result, traditional logistic regression models were used.

In this analysis, the plea decision was analyzed in three distinct models: 1.) with no interaction terms (Table 4.2 – Model I), 2.) with defendant based variables interacted with race (Table 4.3 – Model II), and 3.) with courtroom based variables interacted with race (Table 4.4 – Model III). Note that in these models, percentage likelihood was calculated using the "listcoef, percent" command in STATA following the computation of the logistic equations. The results are discussed below.

Beginning with Model I (no interaction terms), a number of important findings emerged. With regards to race, African American defendants were less likely ($b = -.288$, $p < .05$) to be offered a plea concession compared to their white counterparts. When examining offense types, those who were charged with criminal sexual conduct ($b = -1.126$, $p < .001$) or robbery ($b = -.893$, $p < .01$) offenses were less likely to receive a plea concession. First time offenders were significantly much more likely to receive a plea concession ($b = 1.026$, $p < .001$); notably, first time offenders were 179% more likely to receive a plea concession, compared to those with one or more prior offenses. Conversely, chronic offenders were significantly less likely to receive a plea concession ($b = -.562$, $p < .05$).

Outside of defendant based variables, some variables relevant to the judge played a significant role in this model. When there was minority judges on the bench, defendants were significantly less likely to be offered a plea concession (b = -.451, p < .05). When there was a female presence on the bench (female judges), however, defendants were more likely to be offered a plea concession. Results of this model indicate a female bench presence (female judges) increased the likelihood of a concession by 107% (b = .730, p < .01).

Table 4.2: Logistic Regression: Plea Decision With no Interaction Terms.

	Model I		
Variable	b	SE	Exp(B)
Plea Decision			
Race	-.288	.143	.750*
Sex	-.161	.206	.435
Age	.021	.083	.800
CSC	-.1.126	.287	.324***
Major Assault	-.245	.199	.783
Robbery	-.893	.385	.410**
Burglary	-.235	.201	.488
No Priors	1.026	.167	2.790***
Chronic Offender	-.562	.194	.570*
Accomplices	.248	.232	1.281
Minority Bench Presence	-.451	.220	.637*
Female Bench Presence	.730	.239	2.074**
Violent Crime Rate	.002	.004	1.002
Concentrated Disadvantage	.335	.133	1.398**
Percent Single Mothers	-.094	.078	.910
Court Size	.344	.267	.515
White-to-Black Income Ratio	-.339	.288	.712
Constant	.135		
Nagelkerke R^2	.139		
Cox and Snell R^2	.198		

† p < .10. * p < .05. ** p < .01. *** p < .001

Among the county-level predictors, concentrated disadvantage was significant in this model and it was associated with the increased likelihood of being granted a plea

concession. The concentrated disadvantage coefficient of .335 indicates that a unit change in concentrated disadvantage would increase the expected number of granted plea concessions by 40%. The other county-level variables included in this model did not achieve significance. Overall, this model explained between .139 (Nagelkerke R^2) and .198 (Cox and Snell R^2) percent of the variance in whether or not plea concessions were granted.

Model II (Table 4.3) provides introduces race as an interaction term. To begin, all three of the interaction terms (race and concentrated disadvantage, race and no priors, race and percent single mothers) were significant. The interaction of race and concentrated disadvantage significantly impacted whether a plea concession would be granted. In other words, a unit change in concentrated disadvantage for African American defendants increased the likelihood of a plea concession by 138%, holding all else constant. The interaction of race and no priors was also significant in that plea concessions were more likely to be granted to African American defendants with no priors. However, the interaction of race and percentage of single mothers revealed a negative association with regards to plea concessions. For each unit change in the percent of single mothers, African American defendants were 9.3% times less likely to be granted a plea concession, a somewhat unexpected finding, given the results of the first model.

Among the offense-based variables, the findings were consistent with Model I, with the notable exception being that burglary now emerged as significant in this second model. Minority representation was again a significant predictor of a prosecution rather than a plea concession ($b = -.656$, $p < .01$).

Table 4.3: Logistic Regression: Plea Decision With Defendant Interaction Terms.

	Model II		
Variable	b	SE	Exp(B)
Plea Decision			
Race x Concentrated Disadvantage	.327	.153	1.387*
Sex	-.262	.204	.770
Age	-.200	.162	.819
CSC	-.919	.277	.399**
Major Assault	.265	.198	.767
Robbery	-.698	.197	.498***
Burglary	-.908	.381	.403**
Race x No Priors	.689	.204	1.991**
Chronic Offender	-.208	.115	.425
Accomplices	.315	.228	1.370
Minority Bench Presence	-.656	.201	.568**
Female Bench Presence	.665	.239	1.944**
Violent Crime Rate	.003	.003	1.003
Race x Percent Single Mothers	-.074	.021	.929***
Court Size	-.271	.136	.763
White-to-Black Income Ratio	.268	.280	1.307
Constant	-.417		
Nagelkerke R^2	.174		
Cox and Snell R^2	.220		

† p < .10. * p < .05. ** p < .01. *** p < .001

Female representation on the bench (female judges) was significantly associated with plea concessions (b = .665, p < .01). The likelihood of being granted a plea concession increased by 94% when there was a female bench presence. No additional predictors achieved significance. This model, with interactions, explained approximately .174 (Nagelkerke R^2) and .220 (Cox and Snell R^2) percent of the variance.

Model III (Table 4.4) presents the results of the binary logistic regression with interaction terms for race and court context (race x female judges, race x minority judges, race x court size). Beginning with offender-level characteristics, males were significantly less likely to receive a plea concession in this model (b = -.723, p < .05). Consistent with

the first two models, first time offenders were significantly more likely to be granted a plea concession. Findings of the model revealed that first time offenders were 181% more likely to be granted a plea concession, compared to those defendants with one or more prior offenses. Similarly, chronic offenders were less likely to be granted a plea concession (b = -.512, p < .05).

Table 4.4: Logistic Regression: Plea Decision With Courtroom Interaction Terms.

	Model III		
Variable	b	SE	Exp(B)
Plea Decision			
Sex	-.723	.322	.485*
Age	-.187	.207	.829
CSC	-1.145	.288	.318***
Major Assault	-.300	.201	.741
Robbery	-.890	.387	.412**
Burglary	-.677	.201	.508**
No Priors	1.034	.168	2.812***
Chronic Offender	-.512	.223	.599*
Accomplices	.242	.232	1.274
Race x Minority Bench Presence	-.361	.262	.697
Race x Female Bench Presence	.787	.315	2.197*
Violent Crime Rate	.002	.004	1.002
Concentrated Disadvantage	.291	.115	1.398†
Percent Single Mothers	.365	.138	1.440**
Race x Court Size	-.029	.246	.971†
White-to-Black Income Ratio.	-.396	.282	.673
Constant	-.417		
Nagelkerke R^2	.185		
Cox and Snell R^2	.227		

† p < .10. * p < .05. ** p < .01. *** p < .001

Criminal sexual conduct (b = =.1.145, p < .001), robbery (b = -.890, p < .01), and burglary (b = -.677, p < .01) were all significantly related to prosecution rather than a plea concession, while major assault was insignificant in either direction. Outside of these

findings, there was only one significant interaction term (race x female bench presence). A female bench presence was significantly associated with plea concessions. In fact, the interaction of race with female bench presence improved the likelihood of a plea concession by 120%. No other interaction terms were significant in either direction.

Finally, the "percent single mothers" variable was significant in this model. Importantly, the analysis showed that percent single mothers increased the likelihood of receiving a plea concession ($b = .365$, $p < .01$) by 44%. Overall, Model III explained approximately .185 (Nagelkerke R^2) and .227 (Cox and Snell R^2) of the variance. Compared to the other models, it explained more of the variance than Model I, but less of the variance compared to Model II.

4.3 Results of the Multi-Level Models on Adjudication Decision.

In this section, the relationship between juvenile defendant characteristics and county-level characteristics are examined using multilevel multinomial logistic regression, in which juveniles are nested within counties. This structure specifically calls for multi-level or hierarchical linear modeling; in these designs, traditional approaches to modeling may not be appropriate because the observations are not independent, which in turn produces incorrect standard errors (Raudenbush & Bryk, 2002; Hedeker, 2004; Singer & Willett, 2003). In these data, the outcome Y_{ij} is modeled as a function of an intercept and independent variables that vary within and between individuals. This is shown below:

$$Yij = b0i + b1iAij + \ldots + b10iJ + \varepsilon ij$$

Seen above are the predictors at level 1 (without the substantive predictors in the equation). The level 2 models incorporate conditions ascribed to counties to predict change between individuals. The level1 model is generally used to determine the shape of the growth curve, as well as an examination of how variance components are partitioned between and within the individuals, with the intra-class correlations providing a clustering estimate between level 1 and level 2 (Raudenbush & Bryk, 2002; Lee & Bryk, 1989). In other words, an intra-class correlation value that is too high or too low would suggest that multilevel modeling is inappropriate, as the majority of the variance exists on either level 1 or level 2 (Raudenbush & Bryk, 2002; Woltman, Feldstain, MacKay & Rocchi, 2012). It is also noteworthy that some scholars have observed that it is important to account and correct for correlated error when pooling defendants from different counties (Britt, 2000; Ulmer & Johnson, 2004). Therefore, this analysis adjusts for the correlated error across defendants processed in the same county and controls for the cross-county differences for the outcome variable.

Given the dichotomous nature of the level-one variables and their meaningful zero values, they were added as uncentered (Daun-Barnett, 2008; Huttenlocher. Haight, Bryk, & Seltzer, 1991). Additionally, a random coefficient model including only the individual-level measures was estimated, allowing these effects to vary across counties. This model revealed that outcomes varied significantly across counties ($p \leq .05$, reliabilities $\geq .3$), suggesting that some counties provided stronger effects than others. Establishing these differences is a necessary part in estimating cross-level interactions (Raudenbush & Sampson, 1999). In addition, because of the centering decision on these variables, and the understanding that using age as a continuous variable is effectively

"throwing away" the between group variance on the predictor (Cronbach, 1976), age was broken down into separate dichotomous categories (age 14, age 15, age 16+). Theoretically, this was also done to see more precisely where is the "tipping point" for culpability.

Thus, the level 1 model is a within-individual model. At level 2, the between-individual model, growth parameters from level 1 serve as to model as a function of the sample statistic. Error terms may be included to the intercept and/or slope to allow the intercept and age coefficients to vary between individuals (Raudenbush, 2001). This is often referred to as a random coefficient or "mixed" model, which is given by the following equation:

$$b0i = \beta 00 + v0i$$

$$b1i = \beta 10 + v1i$$

Where, for example, individuals' adjudication decisions are modeled to be a function of both individual characteristics and county level characteristics. The error terms in each line suggest that effects can vary across individuals. At this level, given the continuous nature of these variables and their largely non-meaningful zeroes (e.g., percentages and rates, not indicators of "yes" or "no"), they were centered with the exception of the teenage population above 50% variable, given its dichotomous nature (Daun-Barnett, 2008). Additionally, centering these variables allows for an easier interpretation of the results. This is because centering variables at level-2 can produce unstable/inaccurate results, and because un-centered variables at level-2 are relatively unaffected by cross-level interactions (Raudenbush & Sampson, 1999). Finally, given the nested nature of this data and interest in county level differences, previously unused

county level variables are now present in these models. These county level characteristics conform to focal concern considerations of poverty, and they also tap into dimensions of racial inequality[35].

Table 4.5 present the results of the multilevel multinomial logistic regression models predicting the log-odds of secure confinement versus probation. Three models were estimated for this portion of the analysis. First, the Standard Model (Model IV) focuses on the main effects of the variables with no cross-level interactions. Second, the Black Offender Model (Model V) focuses on the assumption that race may play a part in adjudication decisions, and thus provides defendant race as a cross-level interaction with the level-2 variables. Third, the First Time Offender Model (Model VI) assumes first time offenders from disadvantaged communities (practical constraints) may face more punitive adjudication decisions.

In the "Standard Model" (Model IV), note that the odds of receiving secure confinement versus probation were 1.63 times greater for males than for females ($b = .488$, $p < .05$). Juveniles with no prior offenses ($b = -1.094$, $p < .001$) and one or more accomplices ($b = -.584$, $p < .05$) were also significantly less likely to receive secure confinement versus probation. Additionally, all of the offense categories were significant with the exception of major assault.

[35] Arguably, these hit multiple dimensions. For example, Model VII provides interactions of county-level characteristics with being a first time offender, tacitly looking at the "blameworthiness" of being poor, or concerned with the practical consequences and constraints of the juvenile justice system, the community, and parents/legal guardians.

Table 4.5. Multilevel multinomial logistic regression models predicting the log-odds of secure confinement vs. probation (standard errors in parentheses).

	Standard Model Model IV	**Black Offender Model** Model V	**First Time Offender Model** Model VI
Individual Level			
Race	-.034 (.139)	---	-.059 (.178)
Sex	.488 (.203)*	.515 (.206)*	.574 (.206)**
No Priors	-1.094 (.183)***	-.985 (.189)***	---
Chronic Offender	.833 (.191)	.907 (.126)*	---
Accomplices	-.584 (.226)*	-.277 (.058)	-.411 (.164)*
Referral Age 14	-.533 (.199)*	-.477 (.198)*	-.464 (.205)*
Referral Age 15	-.421 (.183)*	-.355 (.181)	-.400 (.215) †
Robbery	.977 (.322)**	.865 (.286)**	.990 (.358)**
Criminal Sexual Conduct	1.629 (.301)***	.910 (.336)**	1.366 (.228)***
Major Assault	.421 (.132) †	-.138 (.062)	.315 (.246)
Burglary	.524 (.205)*	-.131 (.058)	.225 (.121)
Minority Bench Presence	-593 (.469)	-.634 (.200)*	-.333 (.288)
Female Bench Presence	-.122 (.130)	-.311 (.073) †	-.457 (.250) †
Court Size	.156 (.097)	-.519 (.144)*	.213 (.126)
County Level			
Percent Urban	.049 (.011)***	.012 (.003)***	.020 (.009) †
Teenage Population	-.113 (.349)†	.326 (.125)**	-.294 (.337)
Percent Black	.041 (.011)	.015 (.004)***	.024 (.335)*
Black Population Change	.289 (.071)**	.078 (.026)***	.258 (.077)**
White-to-Black Income Ratio	.665 (.534)	.189 (.259)	.820 (.657)
Percent Single Mothers	.155 (.210)	.064 (.072)	.368 (.125)**
Concentrated Disadvantage	-.542 (.211)***	.562 (.068)***	-.517 (.226)**
Violent Crime Rate	.012 (.004)	-.004 (.002)	-.005 (.004)
Intercept	-1.399*	-2.209***	-1.732**
ICC	.470	.554	.483
F	7.441***	6.208***	8.519***

Note: *** $p < .001$, ** $p < .01$, * $p < .05$, † $p < .10$, robust standard errors in parentheses.

With regards to a juvenile's age, compared to sixteen year olds, both fourteen year olds (b = -.533, p < .05) and fifteen year olds (b = -.421, p < .05) were significantly less likely to be placed in secure confinement versus probation.

Turning to the county-level predictors in this model, a number of important findings emerged. To begin, the percent urban was a significant predictor in this model (b = .049, p < .001), and its coefficient indicates that a percent change in urban population would increase the expected odds of receiving secure confinement versus probation by 1.05. Black population change also emerged as significant in this model (b = .289, p < .01). One may note that for each percentage change in the black population, the odds of receiving secure confinement versus probation increased by 1.335 times. Finally, concentrated disadvantage was also a significant predictor of adjudication decision (b = -.542, p < .001). Each unit increase in concentrated disadvantage decreased the odds of receiving secure confinement versus probation by 0.582 times. Overall, this equation provided a significant explanation (good model fit) of secure confinement versus probation decision making (F-Test: 7.441, p < .001) and slightly more of the variation (noting which level of the equation provided an overall better fit) existed at level-1 (ICC: .470).

Turning to Model V, the "Black Offender Model," which examines the cross-level interactions of county-level variables with being a black offender, somewhat of a different story emerged. Consistent with Model IV, males were significantly more likely to be given secure confinement versus probation (b = .515, p < .05), while those with no prior offenses were significantly less likely to be given secure confinement versus probation (b = -.985, p < .001). Chronic offenders were significant as it relates to predicting secure confinement adjudication decisions versus probation, as they were 2.48 times more likely to be placed in secure confinement (b = .907, p < .05). As it relates to

age, compared to sixteen year olds, fourteen year olds were less likely to be placed in secure confinement versus probation ($b = -.477$, $p < .05$).

Only the offense categories of CSC ($b = .910$, $p < .01$) and robbery ($b = .865$, $p < .01$) were significant predictors of receiving a secure confinement placement versus probation, as major assault and burglary were not significant predictors. Minority bench presence was also significantly related to a lessened likelihood of being placed in secure confinement versus probation ($b = -.634$, $p < .05$). In addition, court size also influenced adjudication decisions ($b = -.519$, $p < .05$). Compared to larger court circuits, getting adjudicated delinquent in a small court circuits increased the odds of receiving secure confinement versus probation by 0.602 times.

Turning to the county level characteristics in Model V, all of which are interacted with being a black defendant, some curious results were found. To begin, percent urban was again a significant predictor in this model ($b = .012$, $p < .001$). For each percent increase in the urban makeup of a county, there was a concomitant increase in the expected odds (1.011 times) of receiving secure confinement versus probation. A large teenage population within a county was also a significant predictor as it increased the odds of receiving secure confinement versus probation ($b = .326$, $p < .01$). The black population of a county was also a significant predictor of adjudication decision making, insofar as counties with higher black populations were associated with an increased odds of receiving secure confinement versus probation ($b = .015$, $p < .001$).

Black population change within counties also emerged as significant in this model ($b = .078$, $p < .001$). To be more precise, for each percentage change in the black population, the odds of receiving secure confinement versus probation increased by 1.082

times. Finally, concentrated disadvantage was also a significant predictor of adjudication decision (b = .562, p < .001). For each unit increase in concentrated disadvantage increased the odds of receiving secure confinement versus probation by 1.754 times. Overall, Model V provided a significant explanation (good model fit) of secure confinement versus probation decision making (F-Test: 6.208, p < .001). Additionally, slightly more of the variation existed at level-2, meaning the second level in the equation provided a better fit for the model (ICC: .554).

The "First Time Offender" model, Model VI, provides interactions between having no prior offenses and the county-level (level-2) characteristics, and there were a number of noteworthy findings in this model. The analysis shows that compared to females, males were 1.775 times more likely to be sentenced to secure confinement versus probation (b = .574, p < .01). Those offenders who had one or more accomplices were significantly less likely to be placed in secure confinement versus probation (b = -.411, p < .05). Consistent with Model IV and V, age effects were found: compared to sixteen year olds, fourteen year olds were significantly less likely to be placed in secure confinement versus probation (b = -.464, p < .05) Similar consistent with Model V was noted as it relates to offense categories, as offenders who were adjudicated for CSC offenses (b = .990, p < .01) and robbery offenses (b = 1.366, p < .001) were significantly more likely to be placed in secure confinement versus probation.

In this model, percent black was also significant predictor variable in this model (b = .024, p < .05). Importantly, a percentage change in the black population between counties corresponded with an odds increase of being placed in secure confinement versus probation; the odds of this were 1.024 times greater for each percent increase.

Black population change was also significant (b = .253, p < .01). Of note, for each percentage change in the black population, the odds of receiving secure confinement versus probation increased by 1.288 times.

Percent single mothers played an important explanatory role in this model as well, as higher levels of a single mothers within a county was associated with an increased odds in receiving secure confinement versus probation (b = .348, p <. 01). Finally, concentrated disadvantage was also a significant predictor of adjudication decision (b = -.517, p < .05). Each unit increase in concentrated disadvantage decreased the odds of receiving secure confinement versus probation by 0.596 times. Overall, this equation provided a significant explanation (good model fit) of secure confinement versus probation decision making (F-Test: 8.519, p < .001) and very slightly more of the variation existed at level-1 (ICC: .483), meaning level-1 was a better in explaining the data compared to level-2.

Table 4.6 provides a multi-level analysis of the logs-odds predicting alternative sanctions versus probation. Again, three models are provided: Model VII, the "Standard" model; Model VIII, the "Black Offender" model; and Model IX, the "First Time Offender" model. Beginning with the Standard Model (Model VII)[36], the analysis shows that males were significantly more likely to receive an alternative sanction versus probation (b = .511, p < .05). In this model, one may ascertain that males were 1.667 times likely to receive an alternative sanction compared to probation in this model. Offenders who had no prior offenses were significantly less likely to receive an alternative sanction versus probation (b = -.647, p < .001).

[36] This model has no cross-level interactions and it examines alternative sanctions versus probation adjudication decisions.

Table 4.6. Multilevel multinomial logistic regression models predicting the log-odds of alternative sanctions vs. probation (standard errors in parentheses).

	Standard Model Model VII	**Black Offender Model** Model VIII	**First Time Offender Model** Model IX
Individual Level			
Race	-.079 (.172)	---	-.240 (.182)
Sex	.511 (.222)*	-.128 (.163)	-.313 (.148)†
No Priors	-.647 (.178)***	.239 (.211)	---
Chronic Offender	.522 (.155)**	-.439 (.150)**	---
Accomplices	-.282 (.170)	.248 (.212)	.231 (.202)
Referral Age 14	-.527 (.177)*	-.271 (.205)	-.598 (.184)*
Referral Age 15	-.347 (.163) †	-.303 (.184) †	-.260 (.204)
Robbery	1.558 (.375)***	.544 (.504)	.443 (.528)
Criminal Sexual Conduct	.669 (.214)**	-1.089 (.311)***	-.989 (.289)**
Major Assault	.651 (.152)***	.004 (.199)	-.031 (.260)
Burglary	.374 (.228)***	.292 (.277)	.229 (.263)
Minority Bench Presence	.384 (.410)	.698 (.336)*	.731 (.311)*
Female Bench Presence	-.558 (.427)	-.138 (.305)	-.277 (.278)
Court Size	.563 (.341)	-.724 (.194)*	-.653 (.234)
County Level			
Percent Urban	.013 (.011)	.012 (.019)	.017 (.008)**
Teenage Population	.474 (272) †	1.188 (.316)***	.528 (.297) †
Percent Black	-.015 (.013)	.194 (.084)*	-.012 (.011)
Black Population Change	-.159 (.061)**	-.073 (.078)	-.179 (.055)**
White-to-Black Income Ratio	-.362 (.511)	.271 (.703)†	-.353 (.458)
Percent Single Mothers	-.199 (.156)	.125 (.178)	-.256 (.126)*
Concentrated Disadvantage	.208 (.185)	.122 (.211)	.442 (.194)*
Violent Crime Rate	.008 (.004)	.004 (.004)	.019 (.005)*
Intercept	-1.496*	-2.168***	-1.963***
ICC	.452	.538	.511
F	6.040***	5.886***	5.874***

Note: *** $p < .001$, ** $p < .01$, * $p < .05$, † $p < .10$, robust standard errors in parentheses.

Conversely, chronic offenders were significantly more likely to receive an alternative sanction versus probation (b = .522, p < .01). Age effects were found in this model as well. Compared to sixteen year old offenders, offenders who were fourteen years old were 0.590 times less likely to receive an alternative sanction versus probation

(b = -.574, p < .05). As seen in Table 4.6, all of the offense categories were significantly associated with receiving an alternative sanction.

Turning to the county-level variables, black population change was associated with a decrease in odds of receiving an alternative sanction. For each percentage increase in the black population within a county, the odds of receiving an alternative sanction versus probation decreased by 0.853 times (b = -.159, p < .05). Overall, this equation provided a significant explanation (good model fit) of alternative sanction versus probation adjudication decision making (F-Test: 6.040, p < .001) and level-1 (noting which level of the equation provided an overall better fit) explained more of the variation (ICC: .452).

Turning to the "Black Offender" model[37] (Model VIII), some key findings emerge. First, chronic offenders were significantly less likely to receive an alternative sanction versus probation (b = -.439, p < .01). Those offenders who were adjudicated delinquent of criminal sexual conduct offenses significantly less likely to receive an alternative sanction versus probation (b = -1.089, p < .001). Minority bench presence (minority judges) also played a role in adjudication decision. Where there was a minority bench presence (minority judges), juveniles were 2.009 times more likely to receive an alternative sanction versus probation (b = .698, p < .05). Additionally, court size (circuit size) also played an important role in this model (b = -.724, p < .05). Compared to large courts (circuits), the odds of receiving an alternative sanction versus probation increased by 0.485 when offenders were adjudicated in small courts (circuits).

[37] This model contains the cross-level interactions between being a black defendant, county-level predictors and alternative sanction versus probation.

Turning towards level-2 of this model, one may see that the presence of a large teenage population had a significant effect on the adjudication decision ($b = 1.188$, $p < .001$). The results of this model revealed when there was a large teenage population, the odds of receiving an alternative sanction versus probation were increased by 3.059. Percent black was also significant predictor in this model ($b = .194$, $p < .05$). More specifically, the odds of receiving an alternative sanction versus increased by a factor of 1.214 for each percentage change in the black population between counties.. In sum, this model was significant in explaining (good model fit) alternative sanction versus probation adjudication decisions (F-Test = 5.886, $p < .001$) and more of the variance existed at level-2 in this equation (ICC = .538), meaning the level-2 variables provided a better explanation of the variance in this model.

The third and final model, "First Time Offender" model (Model IX), which examines the cross-level interactions of having no prior offenses with the county level characteristics relative to alternative sanction and probation, also provides some noteworthy findings. Some important age effects were also uncovered. Compared to sixteen year old juveniles, fourteen year old juveniles were significantly less likely to be given an alternative sanction versus probation ($b = -.598$, $p < .05$). CSC was also significant in this model, in that those adjudicated delinquent of CSC offenses were significantly less likely to be given probation versus an alternative sanction ($b = -.989$, $p < .01$). Minority bench presence (minority judges) also was an important explanatory variable, as it was associated with a 2.077 increase in the odds of being given an alternative sanction versus probation ($b= .731$, $p <.01$).

At level-2, percent urban was a significant predictor of adjudication decision (b = .017, p < .01) where offenders adjudicated in counties with significant urban populations were more likely to receive an alternative sanction (Odds= 1.017). Black population change was also significant in this model (b = -.179, p < .01). More specifically, for each percentage change in the black population, the odds of receiving an alternative sanction versus probation decreased by 0.836 times. Also, percent single mothers was a significant predictor, as higher levels of single mothers within a county was associated with a decreased odds in receiving an alternative sanction versus probation (b = -.256, p <. 05). Concentrated disadvantage was also a significant predicator of the use of alternative sanctions versus probation (b = .442, p < .05). Finally, the violent crime rate was significant in this model. The odds of receiving some type of alternative sanction were increased for those juvenile offenders who resided in counties with higher violent crime rates (b = .019, p < .05).

The equation used in Model IX provided a significant explanation (good model fit) of alternative sanction versus probation decision making (F-Test: 5.874, p < .001) and slightly more of the variation existed at level-2 (ICC: .511), meaning the level-2 variables explained more of the variance than the level-1 variables.

CHAPTER FIVE

DISCUSSION AND CONCLUSION

5.1 Overview of the Study: Debriefing and Project Goals.

Our understanding of childhood and adolescence has vacillated since its "creation" around the 16th century (Aries, 1962). Particularly, the history of childhood is guided by an understanding of children existing on a scale between innocent and amenable to treatment versus culpable and evil; of course, this also depends on the time period and circumstances (economic and social) ascribed to that particular juvenile (Feld, 1999; Mennel, 1973; Omi & Winant, 2014). Regardless, if we turn our attention to America at the turn of the 19th century, the idea that children need to be treated differently in the court of law quickly gained popularity (Fox, 1970b). The idea that children should be treated differently in the eyes of the law resulted in the creation of the first juvenile court in Chicago, Illinois in 1899. This new juvenile court was designed to fit in the "best interests" of the child and as put by Judge Julian Mack (1909), a place where a judge could be compassionate without losing his (or her) judicial dignity.

Other like-minded reformers joined these sentiments. For example, Ben Lindsey proposed the creation of more playgrounds for children, while the "child savers" such as Jane Addams promoted the values of education and safe spaces away from adult criminals (Clapp, 1998). These ideas quickly caught on and by 1945 every state within

the United States had its own juvenile court distinct from the adult criminal justice system. However, in the early stages of the juvenile court, many of the non-judicial actors were volunteers and it became clearer over time that professional staff was needed in the courtroom (Fox, 1970a).

As society progressed towards the middle of the 20th century, American society began to question the vitality and validity of the juvenile court as it related to the informal court processes that operated without regard for the due process that is afforded to adults (Ainsworth, 1990; Feld, 1990; Greene, 2003; Platt, 1969a). Concerns about this informality spawned numerous cases that were eventually ruled upon by the Supreme Court. A number of these rulings by the Supreme Court concluded that "kangaroo court" proceedings were inapposite to fairness (In re Gault, 387 U.S. 1 1967, p. 28). Other decisions sought to assure juveniles and the states that the "best interests" ideology did not morph into more punitive punishment for juveniles than if they were to be convicted in the adult criminal court (Faust & Brantingam, 1979; In re Gault, 387 U.S. 1 1967; Kent v. United States, 383 U.S. 541, 1966).

While the Warren Court aimed to reshape how we think about juveniles, its decisions ultimately laid the framework for the "get tough" movement of the 1980's and 1990's (Bernard & Kurlychek, 2010). To this end, a number of new laws and statutes were passed at the state level targeting what was perceived as a serious and violent juvenile crime epidemic. In particular, there were changes regarding the confidentiality of juvenile proceedings, an emphasis on punishment rather than treatment, an expansion of waived mechanisms to the adult criminal court, and a shift towards an ideology of "negative rights." (Bishop et al., 1989; 1996; Feld, 1987; Holland & Mlyniec, 1995;

Lawrence & Hemmens, 2008; Tannenhaus, 2000). That is, juveniles were defined less by the rights that they possessed and more in terms of their obligations and responsibilities to the community and state.

These changes in how we approach juvenile delinquency signaled a shift away from the justice system originally envisioned by that of Ben Lindsey (1906) and Julian Mack (1910). Some scholars, such as Barry Feld (1991; 1997; 1999), even argue that due to the procedural deficiencies of the juvenile court, its complete abolition would eliminate many of the troubling shortcomings that surfaced since the Due Process Revolution. Feld, for example, would argue that an "age discount" would provide juvenile offenders with the most justice. Other scholars such as Janet Aisnworth (1996) argued that the elimination of the juvenile court would not only prevent perfunctory trials, but also send a clear message that we have given up trying to "save" juveniles.

Ainsworth's (1996) cautionary tale has largely been heeded, given some of the recent case law suggesting we are moving back towards child saving (Graham v. Florida, 2010, 130 S. Ct. 2011; Jackson v. Hobbs, 2012, 132 S. Ct. 1733; Miller v. Alabama, 2012, 132 S. Ct. 2455; Roper v. Simmons, 2005, 543 U.S. 551). These decisions have been guided in part by the neuro-scientific research on adolescent brain development and decision making as it relates to age and culpability (Grisso et al., 2003; Steinburg & Scott, 2003; Steinburg et al., 2009). Ainsworth's (1996) caution may also be reviewed in light of the positive, modern, public opinions on the amenability of juveniles offenders (Applegate & Davis, 2006; Applegate, Davis, & Cullen, 2008; Moon et al., 2000; Piquero, Cullen, Unnever, Piquero, & Gordon, 2010). Presently, our ideas of what it truly means to be young have again changed (Vann, 1982; Feld, 2013). Since the inception of

the juvenile court, and especially given what transpired during the "rights revolution," the changes that have occurred in the juvenile justice system have created uncertainty, indeterminacy, and inconsistency with regards to our attitudes about juvenile offenders and the appropriate response to juvenile offending.

Moreover, contemporary discussions about juvenile justice are rarely framed in a manner that permits us to discuss issues of race. That is, what does juvenile justice mean for African Americans juveniles both past and present? One may argue that black childhood and adolescence has been framed differently from the dominant cultural definition; particularly in America (King, 2011; Omi & Winant, 2014)[38]. Not so surprisingly, black childhood has been also largely a foreign concept in juvenile justice: black children were denied access to Houses of Refuge, proper access to the juvenile court, positive rights during the Rights Revolution, and were sentenced more harshly compared to their white counterparts, which DMC has sought to resolve. But, because black childhood has been shaped differently in America, it is not surprising that treatment in juvenile justice was also different. Long before the creation of the juvenile court and up until the present day, socially constructed images of youth have places black youth in a different category than white youth: that of being less deserving of an amenable to rehabilitation (Bush, 2010; Ward, 2012). Indeed, as Bush (2010) and Ward (2012) have observed, black youth are viewed as less malleable, and more so that of "hardened clay."

[38] Others, such as Derrick Bell (1995), as well as Richard Delgado & Jean Stefancic (2012) argued that this was the case with racism and dominant western culture as a whole, not necessarily just for juveniles: late enlightenment and classical liberal figures realized their rhetoric about equality and fraternity was at odds with their own economic privileges, and used law and rhetoric accordingly to preserve said privileges. This, these critical scholars argue, has trickled down and remains, though in a different form, in contemporary society that places non-white in a "lesser" category. Critical race theory will be discussed in more depth later as it relates to these considerations and this project.

Perhaps this suggests that reported progress towards racial equity in the juvenile justice system, and as a whole, should be viewed critically. Specifically, when progress is presented, the question of "how far have we truly come towards equality?" should be truthfully and critically examined. Most recent studies suggest that there are still racialized views of child saving. Pickett & Chiricos (2012) note that white support of getting "tough" on crime is in part tied to racialized views of youth crime, and Pickett et al. (2014) note that racial resentment is associated with more punitive attitudes, where the effects of this resentment is not moderated by specific context. These recent findings may suggest that although progress has been made, there is still much left to be done.

The uncertainty over whether or not the juvenile justice system provided equity across the socio-legal spectrum of juveniles provided the basis for this current research project. Specifically, the present studied examined adjudication decisions within this sample of juveniles using the lens of focal concerns to critically evaluate just how important are issues of race and other community contexts. It is also worthy to note that significant differences were found between white and non-white defendants, more precisely, non-white defendants coming from areas associated with poverty. In some cases, non-white defendants were significantly disadvantaged at adjudication decision compared to their white counterparts. Age, community, sex, offense, and courtroom contextual factors were also significant explanatory factors.

This chapter will discuss the findings from the present study as well as their larger implications in terms of juvenile, racial, and economic justice. Furthermore, it will discuss the findings and how they fit within the extant literature. Next, there will be a discussion of what these findings mean for public policy, race and justice, and directions

for future research. Last, there will be a discussion of the limitations and shortcomings of the present study followed by a brief conclusion.

5.2 Discussion of Findings.

The impetus for this research lay in what were thought to be gaps in our knowledge regarding juvenile justice in South Carolina. Generally speaking, there has not been much juvenile justice research capable of telling us what is happening at the state-level in South Carolina (but see Hill 2014; McManus, 2013). Perhaps more importantly, there is scare research that has attempted to use focal concerns as a potential explanation for juvenile disposition patterns. This research provides us with but one piece of a much larger puzzle of juvenile justice in this state. Among other things, the present research sought to provide answers to the following questions: 1) How do focal concerns impact the dispositions of adjudicated delinquents in the juvenile courts of South Carolina? 2) Are black and white youths treated differently in the juvenile courts? 3) Does age mediate any of the relationships that we have seen between offenders and dispositions? 4) What aggravating and mitigating factors influence the disposition decision? 5) Are dispositions influences by characteristics of judges or courtroom characteristics? and 6) How does the community context impact dispositions?

The first hypothesis stated that non-white juveniles would receive less plea concessions and more punitive sanctions compared to their white counterparts. This research found that African American defendants, on average, were disadvantaged at both the plea bargaining stage as well as at adjudication, consistent with the literature that examines juveniles, race, and plea bargaining (Freiburger & Hilinski, 2013; Jordan, 2014;

Ulmer & Laskorunsky, 2016). In some of the plea bargaining models, African American defendants either alone, or as an interaction term with either courtroom factors (e.g.: race and court size, though a weak relationship) or community factors (e.g., race and percent single mothers) were significantly more likely to be prosecuted rather than offered a plea concession. However, in some instances (Model II: race and concentrated disadvantage, race and no priors, Model III: race and female bench presence), African American defendants were more likely to receive a plea concession.

With this finding in mind, there is some evidence to support Hypothesis #1. The findings regarding the impact of race on pleas have further implications. If Mears (2000, 2003) is correct that the plea process may be regarded as an unofficial use of waiver to the extent that juveniles may be coerced into accepting a plea out of fear of a more punitive decision then, the juvenile justice system may need to reconsider the utility of pleas as a whole. Would removing the plea apparatus be a net benefit to juveniles? While we do not yet know the answer to this question, this research does seem to suggest that there are some problems that require some much needed attention, especially as it relates to race. For example, consider the strange juxtaposition of race serving as a disadvantage alone, yet the interaction of race and high levels of concentrated disadvantage serving as an advantage in the plea bargaining process. Why are these sanctions meted out in a fashion that does not appear consistent with the literature on racial biases? Future research should consider this question[39].

Still, if minority youths are being disadvantaged in the plea bargaining process, it follows then, that they are at an increased likelihood of being placed in secure

[39] A discussion of these other plea related findings (e.g., race x females, race x no priors) will be discussed further in their relevant hypotheses.

confinement and/or transferred to adult court (Chessman, Waters & Hurst, 2010; Feld, 1999; Torbet & Thomas, 1997). Going beyond just juvenile justice concerns, there may be cumulative consequences of juvenile incarceration that may affect individuals' crime trajectories (Bishop & Frazier, 1996; Feld, 2003; Rodriguez, 2010). Indeed, these cumulative consequences could affect black children in many different ways (future employment, familial strain, educational opportunities, etc.) As a result, there may be even more reason to be concerned about the use of pleas in the juvenile justice system (see: Bishop & Frazier, 1988; 1996; Cochran & Mears, 2014; Rodriguez, 2010).

Plea bargaining has faced scrutiny at the adult level recently (Work, 2014), but much less attention is paid to what occurs with plea bargaining at the juvenile level. Is there reason to believe that legal scrutiny and reform will make their way into the juvenile justice system as well? As Johnson, Spohn, King, & Kutateladze (2014) note "the time is ripe for criminologists to take plea bargaining seriously," insofar as focusing on potential inequities in the plea negotiation process. Notwithstanding these concerns, most of the renewed efforts to gain a broader understanding of plea bargaining is concentrated at the adult level. An equal and sustained effort to understand the plea bargaining process is also needed at the juvenile court level.

In the multi-level models where the interaction of black defendants and county factors were taken into consideration, African American defendants (particularly those from areas of high concentrated disadvantage) were significantly more likely to be placed in secure confinement rather than placed on probation. This finding should make one consider whether or not the extra-legal factor of race is making its way into the judicial decision making process. Findings of this research do indicate that juvenile court officials

may be relying on their perceptions of minority youth as "dangerous" or more in need of formal social control compared to their white counterparts (Steffensmeier et al., 1998).

There was also evidence that first time offenders were less likely to receive a punitive sanction (Hypothesis #2). First time offenders were significantly more likely to be granted a plea concession. Similarly, the multi-level models showed that defendants with no priors were more likely to receive probation versus secure confinement, although the opposite was true for offenders who lived in jurisdictions with a high percentage of single mothers. As compared to offenders with prior offenses, there was evidence that juveniles with no priors were significantly less likely to receive an alternative sanction versus probation.

These findings suggest that first time offenders, as was also true for black offenders, can “be saved.” That is, juvenile court judges seemed to have a willingness to be more lenient when it came to adjudication decisions for first time offenders. The literature on first time juvenile offenders has discussed the importance of prior contact with the juvenile justice system (Cauffman, 2007; Kupchik, 2006; Mears & Field, 2000; Podkopacz & Feld, 2001). In practical terms, aspects of the focal concerns framework- dangerousness and blameworthiness- seem to come into play within the counties. While more than just dangerousness is taken into account, a prior record certainly may serve as a tool for judges to use in order to assess the best needs of the juvenile and the community (Podkopacz & Feld, 2001). For juvenile court judges, juveniles with a long history of offending send the message that they are less amenable to treatment and may pose more concerns for “public safety” (Krisberg, 2005).

Similarly, these juvenile court judges may also be cognizant of juveniles' blameworthiness in light of the fact that offenders with an extensive criminal history increase perceptions that they will continue down a destructive path rather than change (Feld, 1987). On the other hand, it has also been noted that one non-verbal way through which juveniles can show remorse is through the absence of a prior record (Steffensmeier et al., 1998). These findings in the current research seem to be consistent with this observation and other literature which suggests that these first-time, perhaps remorseful, offenders, are better candidates for lower level sanctions (Fader et al., 2001; Ryan et al., 2014; Sanborn, 1996).

Hypothesis #3 sought to uncover whether accomplices may play a role in juvenile court dispositions. While the descriptive statistics suggest that few juveniles had an accomplice with them during the crime (15.8% in total), there was nevertheless some support for this hypothesis to the extent that when offenders had an accomplice they were more likely to be adjudicated at less serious levels than their counterparts who did not have accomplices. This was particularly true in the multilevel model (Table 4.5) where it was shown that having an accomplice was quite a significant predictor of receiving a more lenient sentence (e.g., probation versus secure confinement).

Juvenile court judges, in their deliberations may believe that an accomplice was the actual leader, suggesting the juvenile was in the wrong place, at the wrong time, with the wrong person/people (Kramer & Ulmer, 2009; Steffensmeier & Demuth, 2000). This observation perhaps suggests that there is less maturity on the part of the juvenile offender him/herself and more maturity on the part of the ring leader. Indeed, some research suggests that being the "ring leader" may be associated with more punitive

sanctions (Ulmer, 1997). The results of the present study suggest this may be true in some instances, given that those with accomplices were significantly less likely to be placed in secure confinement versus probation. However, this was not true for plea bargains as accomplices played no significant role either way. Interestingly, much of the focal concerns research suggests that having an accomplice influences perceptions of blameworthiness and positions the offender to be viewed a better candidate for rehabilitation (Kramer & Ulmer, 2002; Steffensmeier et al., 1993; 1998). Ultimately, it may be a difficult task for courtroom actors to truly identify who the "ring leader" is when multiple parties are involved, thus, future research should endeavor to more closely examine the role that accomplices play in adjudications and dispositions.

Hypothesis #4 presented the issue of whether the presence of minority judges on the bench resulted in more lenient sentences for offenders and an increased use of pleas. There was some support for this hypothesis. Minority bench presence in the logistic models was associated with prosecution rather than plea concessions (e.g., female bench presence affecting plea decisions for not white youth). The multilevel models also revealed that minority bench presence was related to the decreased use of secure confinement versus probation and an increased use of alternative sanctions versus probation. This hypothesis (H4) was predicated on concerns about practical constraints, courtroom context, and perceptions on blameworthiness. More specifically, there was reason to believe that concerns about practical constraints would be prominent in areas where racial minorities have historically been underrepresented. Perhaps these concerns about practical constraints may be explained by the observation that political actors may by responding to "black interests" (Yates & Fording, 2005). Similarly, Ward, Farrell &

Rousseau (2009) argue that minority judges are more likely to offer probation because they may seek to lower black and white sentencing disparities.

However, Steffensmeier & Britt (2001) suggest the contrary in that minority judges may feel more sympathy for black victims of crime (often times more likely to be victims of crime), and sentence offenders more harshly as a different manner of acting in favor of black interests. Broadening Steffensmeier & Britt's (2001) point, consider the arguments of Randall Kennedy's (1997) as well as Risse & Zeckhauser's (2005) regarding racial profiling. These scholars contend that while racial profiling exists, essentially, black residents of communities are the net beneficiaries of racial profiling, as black criminals are being taken out of the public sphere. In a juvenile justice context, the same logic may be applied in that black judges may be acting in the interests of the black community at large by taking juveniles off the streets. Of course, this may have a negative effect as well, where black communities express outrage over their children who are treated as more violent and criminal compared to their white counterparts and call for leniency and change in policy.

Indeed, it is also noted that despite some of the leniency afforded to some offenders at the time of adjudication, a minority bench presence was also significantly associated with prosecution versus pleas. These two findings may both be a matter of black judges acting in what they perceive to be the interests of the black community. As argued by D'Angelo (2002), minority judges are often more inclined to take into account extra-legal, service matching and amenability of juvenile defendants when it comes to this decision. If true, rather than using an "unofficial" waiver via plea (Mears, 2003), it is possible that minority judges are merely adhering more to the traditional model of the

juvenile court where the child's best interests are paramount. Thus, judges may be more sympathetic to these youths and they are more apt to buy into a philosophy grounded in second chances rather than adopt wholesale notions of blameworthiness (Johnson, 2006; Spohn, 1990a; Steffensmeier & Britt, 2001). While these findings do seem to suggest that the race of judges on the bench plays some role in adjudication decisions (Freiburger, 2009; Keenan, Rush & Cheeseman, 2015; Van Slyke & Bales, 2013) substantially more research is needed on this subject, although this research shines a light on this otherwise dark aspect in the literature.

Building on the prior hypothesis, Hypothesis #5 predicted that a female judge presence would be associated with more lenient outcomes for juveniles. This hypothesis was confirmed, as female judge presence was significantly associated with the decision to offer pleas in the first two logistic models (Tables 4.2: Model I and Table 4.3: Model II), and significantly associated with the likelihood of offering pleas to African American defendants. In a similar light, the multilevel models revealed that female judges were somewhat more likely to default to probation rather than secure confinement when it came to first time offenders.

These data suggest female judges may view focal concerns through a different lens as compared to their male counterparts on the bench. Like minority judges, a female judge may serve as a proxy for more "liberal" juvenile philosophies, e.g., forgiveness, second chances (Gruhl et al., 1981; Spohn, 1990b). In light of the fact that female judges were associated with the increased use of plea concessions and a decreased likelihood of using secure confinement versus probation for first time offenders it can be argued, based on this research, that female bench presence is important within the juvenile courts.

Moreover, the judicial outlook of female judges, compared to their male counterparts, may be more understanding and sympathetic to the plight of young, black men (Spohn, 2007). Having noted this, significantly more research is needed in this area in order to confirm that there are real and fundamental differences in how male and female judged view juvenile offenders.

Hypothesis #6 examined whether age played a role in adjudication decision. This hypothesis was confirmed in every model with the exception of the binary logistic regression models examining the plea decision. The HLM models revealed two expected, but important, findings: 1) fourteen year olds were more likely to be given probation, compared to sixteen year old offenders who were more likely to be placed in secure confinement and 2) fourteen year olds were more likely to be given alternative sanctions compared to sixteen year olds who were more likely to be given probation.

A few observations may be made regarding these results. First, the fact that fifteen year olds were no more or less likely to receive any type of adjudication decision in the HLM models provides an interesting point of discussion. It is possible that the age of fifteen may be seen as the midway point between redeemable and irredeemable. In other words, blameworthiness becomes a more important consideration to the extent that once a juvenile has reached fifteen years of age, it is possible that they are perceived as having reached a point in the juvenile justice system where the merits of rehabilitation are debatable and it may no longer be a reasonable solution to their delinquency (Kupchik, Fagan, & Liberman, 2003; Podkopacz & Feld, 1996).

It is rather interesting that age fifteen seems to be the "cut point" for blameworthiness in these data. Some empirical literature on the subject suggests that

there are no age effects for black defendants (DeJong & Jackson, 1998; Leiber & Johnson, 2008; Ghetti & Redlich, 2001); however, there is more evidence of age having an effect for white defendants. As a few examples, Frazier et al. (1992) identified age sixteen as the cut point, while Kurlychek & Johnson (2004) found that there was increased sentence severity for every year increase after the age of fourteen. Also, Mears et al. (2012) identified age fourteen as the cut point, and consistent with this project, Morrow, Dario & Rodriguez (2015) found age fifteen to be the cut-point for increased focus on blameworthiness. The implications from these studies, as well as the present study, suggest that defining a "true juvenile" is a very difficult task. The age of fifteen appears to be the cut-point for this project, but the extant literature suggests there is nowhere near a uniform consensus on the matter.

Also important to the present study, when juveniles are fourteen years of age (prior to reaching the cut point of these data), retributive disposition decisions are less attractive compared to rehabilitative ones. When coupled with culpability or the ability for a juvenile to "do time" in secure confinement (practical constraints), juvenile court judges are likely more conscious of the fact that these youngest offenders can still be reached through a myriad of services available in the community (Cauffman, Woolard, Reppucci, 1998; Steffensmeier & Demuth, 2000). Thus, it could be argued that "child saving" is not totally dead, especially in South Carolina (see Applegate & Davis, 2006). It seems, at least preliminarily, that child saving is embedded in focal concerns to the extent that there is an unwillingness by judges to totally write off juvenile offenders notwithstanding their past history of offending. Of course, the question remains: do these findings apply equally for both black and white children? This project did not address

black and white differences in "cut-points" for blameworthiness and future research should more closely investigate this issue given its' long standing historical and social importance.

In the current study, Hypothesis #7 addressed the offenses for which the offenders were adjudicated. Particular focus for H7 was on whether CSC-based offenses would be treated more punitively by judges. There was strong evidence in support of this hypothesis. Offenders adjudicated for CSC-based offenses were significantly more likely to receive secure confinement. They were also significantly less likely to receive a plea concession. Given that many consider these offenses to be among the "worst of the worst" (Schiavone & Jeglic, 2009) and the research that suggests juveniles with sex based offenses have continued involvement with the justice system, (Harris, 2013), this finding may not be altogether too surprising. Although a meta-analysis suggests that sex based offense recidivism is quite low (Hanson & Bussiere, 1998), there may be other things bringing them back into the juvenile justice system, such as their perception in society, or violating terms of probation (Ravitz; 2015; Stevenson, Malik, Totton, & Reeves, 2015). Scholars should consider investigating these concerns in the future. Racial disparities were also tested among CSC offenders to ascertain if the data could offer additional insight about stereotyping black male "predatory behavior" by interacting race with CSC. This interaction did not emerge as significant.

Hypothesis #8 examined whether female offenders were less likely to receive secure confinement and whether they are more likely to receive alternative sanctions. Importantly, this hypothesis was grounded in ideas about judicial paternalism (see: Chesney-Lind, 1977; Daly, 1989) which posits that judges will utilize harsher sanctions

for girls who violate the “norms” of femininity when they participate in serious and violent offending. There was some evidence in support of Hypothesis #8 in that female offenders were far less likely to be placed in secure confinement. At the same time, female offenders were more likely to receive an alternative sanction compared to probation.

On this latter point, it was expected that there would be more use of alternative sanctions for girls, given the extant literature which suggests that violating traditional "moral" codes regarding femininity can oftentimes result in sanctioning by the courts. Arguably, the more deeply entrenched the moral/norm/legal violation, the more control one would expect to be used by the state to shape the violator into a "traditional" girl (Chesney-Lind, 1989; Odem & Schlossman, 1991). Thus, a serious and violent female offender should receive an array of alternative sanctions if she is not placed into secure confinement. This was not the case given the result reported here. While this is often true of status offending girls and/or policing the sexual morality of girls (Chesney-Lind, 1977; Chesney-Lind & Sheldon, 2004; Freedman, 1981), a thought may be offered about the girls in these data. It is plausible that when female offenders are adjudicated for serious offenses, they effectively join the “boys club” yet do not necessarily for status offenses. There is an exceedingly high price to be paid by female offenders to the extent that normal concerns about their welfare now take a backseat to considerations of community safety which is normally reserved for their male counterparts. Additional research is needed to more fully explore this finding; studies should continue to examine the treatment of serious and violent juvenile girls.

Hypothesis #9 focused on whether defendants who lived in areas of high concentrated disadvantage would be disadvantaged in both plea concessions and disposition decisions. The results offer support for this hypothesis. The logistic models suggest that concentrated disadvantage played a significant role in whether or not a judge offered a plea concessions, as were plea concessions less likely to be offered to juveniles when race was interacted with concentrated disadvantage. Turning to the multi-level models, the "Standard" Model (Model IV) and "First Time Offender" Model (Model VI) showed that concentrated disadvantage played a mitigating role as it related the decision to place juveniles in secure confinement versus giving them probation. The same was not true, however, for the cross-level interaction of race and concentrated disadvantage, where black defendants from areas with higher levels of concentrated disadvantage were more likely to receive secure confinement. This suggests that black juveniles from poor areas, given hypothesis #1, face a double burden when they enter the juvenile justice system. The multi-level models for alternative sanctions versus probation revealed no significant results for concentrated disadvantage.

These findings, in part, accord with the research which suggests that concentrated disadvantage plays a role in juvenile court dispositions (Feldmeyer et al., 2015; Leiber et al., 2013; Stewart et al., 2013; Rodriguez, 2007). In particular, some scholars suggest that where increased levels of concentrated disadvantage (i.e., inequality) exist, there should be a simultaneous increase in the use of punitive sanctions or other outcomes (Rodriguez, 2010, 2013; Sampson, Morenoff, & Earls, 1999). These concerns, born from the literature and strongly consistent with the present study, suggest that high levels of

concentrated disadvantage play a role in defining a juvenile as more culpable for their criminal behavior.

Perhaps this finding is not so surprising in light of the many ways concentrated disadvantage may affect poor youths. For example, Bishop & Frazier (1996) note that families who lack steady transportation may find difficulties in attending various youth services and juvenile court proceedings, leading the judge to believe that a juvenile needs more formal social control. Judges sometimes view the ability for an adult to get to court or get the child to these events as a "parenting deficit," despite of situational factors (e.g., multiple jobs) necessary to providing for their children preventing this (Goldson & Jamieson, 2002).

Another aspect that may add weight to the projects findings on concentrated disadvantage is Anderson's (1999) ethnographic work. Anderson's (1999) ethnography suggested that concentrated disadvantage was linked with both a "code of the street" and urban violence. Still others have suggested that concentrated disadvantage is associated with attenuated communities that are marked by higher rates of crime (Kubrin & Weitzer, 2003; Kubrin, Squires & Stewart, 2005). Overall, there are concerns that concentrated disadvantage, in the eyes of judges, may put youth in situations of extreme vulnerability to dangerous places and other negative influences (Miethe, McCorkle & Listwan, 2005). Given what we know about the impact of concentrated disadvantage, it can plausibly be argued that juveniles coming from areas of disadvantage are twice failed. First, by an economic system that deprives these juveniles of equal opportunity and second, by a juvenile justice system that seemingly transforms economic hardships into punitive justice policies.

Hypothesis #10 sought to test whether high rates of crime (particularly, violent and property) would be associated with more punitive sanctions. Overall, there was little evidence that the violent crime rate had an effect on dispositions or plea decisions. The violent crime rate only seemed to matter in the cross-level interaction models with first time offenders. Otherwise, the violent crime rate played an inconsequential role in explaining adjudication decisions. This finding is rather interesting in light of focal concerns. Some prior research has noted that as violent crime rates have risen, imprisonment rates for both blacks and whites (though more so for blacks) also increased (Myers & Talarico, 1996; Britt; 2000). Similarly, areas with high rates of violent crime are thought to require higher levels of formal social control (Eitle et al., 2002; McNulty & Bellair, 2003). In this research, it was hypothesized that the violent crime rates would align with concerns about protecting the community, yet the findings here provided scant support for this aspect of focal concerns.

Moreover, this research arguably does not align with other historical observations that as juvenile violent crime increases, there is a concomitant response from the juvenile justice system to get tough on crime, especially for African American involvement in crime (Blalock, 1967; Feld, 1987; Melli, 1996). On a national scale in the 1980's and 1990's, there were perceived and real concerns about crime, resulting in tough on crime measures (Zimring & Rushin, 2013). This research expected that as reported violent crime went up, so would the use of more punitive sanctions. As an example, in South Carolina, the violent crime rate peaked between the year of 1989 and 1997[40]. During this peak, in 1993, SC waiver statute 16-1-20 was broadened to include more waiver eligible

[40] See: South Carolina Department of Public Safety (2013) – Report on Juvenile Justice Trends (p. 8) - http://www.scdps.gov/ohsjp/stats/cjtrends/2013%20Crime%20Book%20V11%20electronic%20version-edited.pdf

offenses and to make it easier to waive a juvenile to the adult court. This occurred in a variety of other states during the 1990's, as well. Therefore, it was not unfounded to believe violent crime would be associated with more punitive measures. Yet, this prediction was inaccurate; there is little evidence to support Hypothesis #10 in this research.

Hypothesis #11 examined whether court size (the number of juvenile court judges in a circuit) affected disposition decisions. In particular, this research sought to uncover whether court size within circuits led to the greater use of a perceptual shorthand (such as the use of race, class variables, and black population influencing secure confinement decisions) by juvenile court judges. The results suggest minimal support for this hypothesis. For example, in the "Black Offender Model" (HLM Model V), the results showed that compared to larger courts within the circuits, smaller court were more likely to use secure confinement compared to probation. Additionally, the smaller juvenile courts in the circuits were more likely to use alternative sanctions compared to probation in multi-level models VIII and IX.

While the findings from Model V may suggest that black offenders are perhaps stereotyped via the perceptual shorthand (Crow, 2008; Johnson, 2003; 2006), there is nevertheless only tenuous support for such a conclusion. While it is peculiar that circuits with a small numbers of judges were more likely to use alternative sanctions compared to probation, there are two possible explanations. First, it may be that circuits with fewer judges are located in more rural areas, where focal concerns may be interpreted through a slightly more conservative lens (Austin, 1991; Feld, 1991). In this case, focal concerns,

namely community safety and even practical constraints, manifest in the form of an alternative sanctions.

Second, Mears, Cochran & Cullen (2015) note that for juveniles, there is a growing movement favoring the use of alternative sanctions. Mears et al. (2015) contend that the "business as usual" approach of incarceration versus probation fails to take into account the complicated variation of juvenile defendants that come before the court, as well as the available options for community treatment. Perhaps circuits with fewer judges are cognizant of this, and are more willing to make use of community based sanctions (e.g., private agencies) in order to alleviate some judicial burdens (Cochran, Mears, & Bales, 2014). Alternatively, a possible explanation is that because there are so few cases in these circuits, judges are able to give more attention to these juveniles due to lessened concerns about the practical constraints of the juvenile justice system[41]. Regardless, the results suggest that circuits with fewer judges are a bit more invested in the use of alterative sanctions.

Finally, Hypothesis #12 examined whether juvenile offenders who came from counties that were characterized by large African American populations were more likely to receive punitive sanctions compared to offenders living in less racially diverse areas. Importantly, the multi-level models for secure confinement versus probation found considerable strong effects and support for this hypothesis. Models IV, V (interacting this considerations with black offenders), and VI (interacting these considerations with first time offenders) all showed that when a county has a higher African American population,

[41] For example, Circuit Three (Williamsburg, Clarendon, Sumter, Lee) had the fewest amount of cases in these data (n = 25) and was codified as a small circuit. Compare to this the Thirteenth Circuit (Charleston), a large circuit, which saw significantly more cases during this time period (n = 182), which may make it more difficult to use alternative sanctions.

or when the African American population of a county is increasing, secure confinement is more likely to be used.

This finding is congruent with the literature which shows that an increase in minority population leads to harsher sentences meted out across all groups, but especially so for minority defendants (Blalock, 1967; Wang & Mears, 2010a; b). As noted by Wang & Mears (2010), the relative increase in minority population is important to sentencing decisions; a finding that was confirmed in this project. This aligns with prior literature on the subject, which note that a higher minority population tends to produce a "diffuse effect" (e.g., punitive sentencing applies to all offenders when minority populations increase, which may be seen in Models VII, VIII, and IX) and results in the increased use of incarceration (Britt, 2000; Kautt, 2002; Myers & Talarico, 1987; Wang & Mears, 2010a; Weidner et al., 2005). The significance of this finding may suggest that while there is some support for achieving racial balance through DMC, the commitment may not be as strong as it is articulated. This is especially concerning and important in light of research that finds increases in minority populations are tied to favorability of more punitive sentences (Johnson, Stewart, Pickett & Gertz, 2011; King & Wheelock, 2007).

5.3 Implications for Juvenile Justice Policy.

This section discusses how the research findings inform the discourse regarding the juvenile justice system, ideas about equity, and how focal concerns may help to inform juvenile justice policy. More importantly, this section addressed the "so what?" question that is often asked with regards to juvenile justice (and criminal justice more

broadly) research. Indeed, there are a number of important considerations that are derived from this research.

The results from the present study provided some, but not total, support for focal concerns theory. Had focal concerns shown weak or little support for these data, one would have simultaneously witnessed weak/non-existent relationships between the outcome and extra-legal variables (e.g., race), and a strong relationship between the outcome variables and offense categories (e.g., CSC). Yet, this research did show that minority juveniles were often subjected to more punitive forms of sentencing dispositions compared to their white counterparts, sometimes in conjunction with community-level or courtroom characteristics. Of course, race was not always correlated with more punitive sanctions, but the findings did indicate that there are some racial considerations at play.

Perhaps one of the most important findings of this research regards racial considerations, in that the race variable held as constantly significant across models. Broadly speaking, when a variable emerges as significant and more/different variables are added to the equation, the effects of said variable tend to "wash out" (Hoffmann, 2004). This holds true of race as well: Zuberi (2001) argues that residual effects of race tend to be "washed out" once (many) other variables are entered into the equation and/or modeled differently. In order to test this, a variety of models were estimated, yet the race finding held up across models and with the addition of different and more variables. Given this variable was consistently significant, this has important implications with regards to disproportionate minority contact.

Recall that that one of the most important national attempts to address racial inequalities in the juvenile justice system was Disproportionate Minority Contact (DMC),

enacted by Congress in the 1988 amendments of the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA) (Donnelly, 2015; Feyerherm, 1995). Originally, this mandate required states to reduce minority overrepresentation in its secure confinement facilities if minorities represented a greater proportion of its incarcerated population than their proportion of the general youth population (Feyerherm, 1995). In 2002, this DMC mandate changed to encompass minority youth contact with the juvenile justice system.

Though DMC is often hailed as a method of promoting racial equality (Johnson, 2007), its policy impact is poorly understood. For example, a number of states rely upon "relative rate indices," which compare the processing rates of white versus minority youth; or, in other words, descriptive statistics (Leiber, 2002). Yet, these metrics fail to control for other legal, social, community, and contextual factors that affect outcomes (Davis & Sorenson, 2013; Piquero, 2008). Given the strength of the race finding in this project, as well as its' connection to these aforementioned factors that affect outcomes, this suggests the DMC mandate may need to also focus on secondary factors related to racial inequality. This is not to say DMC has not produced racially equal outcomes (see: Davis & Sorenson, 2013; Leiber et al., 2011), but rather, to ask the question of whether or not some are truly committed to this outcome.

Overall, a number of policy implications may be drawn from this study. First, there is some evidence which would suggest that DMC is inspiring racial change (Davis & Sorenson, 2013; Leiber et al., 2011); however, this change may be uneven due to the capacity of some states, such as South Carolina, to meet the DMC mandate (Leiber, 2002). Racial disproportionality and tensions remain an issue in South Carolina, as witnessed by the recent Charleston shooting and the shooting of Walter Scott by a police

officer. Data from this study suggest that racial disproportionality in juvenile justice sentencing decisions presently exists, and the trend has been going on for years, given race failed to "wash out" as a significant predictor of adjudication decisions. To lend support to these data, as indicated in Figure 5.3, racial disproportionality in juvenile justice remains an issue in South Carolina.

	National **		South Carolina ***	
	Minority	Black	Minority	Black
Arrest rate	1.7	2.2	2.45	2.50
Referral Rate	1.2	1.2	0.96	0.96
Diversion Rate	0.7	0.7	1.02	1.02
Detention Rate	1.4	1.4	1.39	1.38
Petitioned Rate	1.1	1.1	1.07	1.06
Adjudicated Rate	0.9	0.9	0.90	0.90
Probation Rate	0.9	0.9	1.03	1.03
Placement Rate	1.2	1.2	1.22	1.23
Waiver Rate	1.3	1.3	no data	no data

* All RRIs are relative to Whites

** Based on 2008 data (Puzzanchera & Adams 2011 -- Online at http://www.ojjdp.gov/ojstatbb/dmcdb/)

*** Based on FY 2007-2008 report (SC Department of Public Safety, Office of Justice Programs/Online at http://www.scdps.org/ojp/dmc.asp)

Figure 5.3: Relative Rate Indices for Delinquent Offenses.

Following Johnson (2007), this research suggests that DMC as a mandatory and system-wide measure deserves to be bolstered as an important method in advancing racial equality for juveniles through public policy. South Carolina is attempting to meet these goals: by using RRIs, receiving grants from the state and federal government to better address DMC through community and University programs, through direct services,

training and technical assistance for justice officials, and system change efforts to modify juvenile justice policy (see: scdps.gov/ohsjp/dmc.asp). While these goals and directions are worthy, South Carolina is more financially conservative than most states, and as a result, there may be some roadblocks as it relates to state funding of public policy efforts to alleviate DMC. Thus, there may be some important financial constraints that prevent truly scaling down DMC in the juvenile justice system, given the context of the state. To better achieve racial justice in the juvenile justice system, efforts to produce and show a deeper commitment to DMC should be undertaken (e.g., precisely what is done in programs, long term goals for the programs, using evidence-based treatment, etc., rather than just reporting an RRI), thus showing the state is truly "doing something" rather than making lukewarm statements about achieving racial justice. In fact, given the strength of the race findings in these data, it may even be a charitable statement to refer to the DMC commitment as lukewarm.

On the other hand, this commitment cannot be untaken merely as a means of public policy, as the juvenile justice system may only do so much in alleviating the chronic problem of racial inequality. Without diverse and multiple opportunities for interventions at various life trajectories, as well as opportunities for increased economic opportunities, a DMC mandate would likely do very little. Evidence from this research suggests that some judges are willing to provide alternatives to secure confinement where such opportunities exist; however, a number of judges may not have the opportunity to consider such alternatives given that they preside in a system where practical constraints, and practical realities, of an underfunded juvenile justice system limit their available options in accomplishing the difficult task of scaling down racial disparities.

Race played a strong role in explaining adjudication decisions in this research; however, one cannot argue that it was the only consideration at work in the juvenile justice system in this state. As noted in this research, chronic offenders, percent black population, concentrated disadvantage, and percent single mothers were found to be associated with more punitive disposition decisions[42], while being a first time offender was very often a mitigating factor, as well as having a female and minority bench presence. As such, these findings would suggest that racial disparities in the juvenile justice system are just a symptom of a much larger issue related to racial and social equality. To this point, it is doubtful that the courtroom actors harbor strong racial (or class for that matter) prejudices, but there are many other factors coupled with race that are difficult to disentangle. These factors often serve as a proxy for race when it comes to sentencing decisions (e.g., concentrated disadvantage, single mothers, poverty, demeanor, manner of speaking).

Thus, initiatives should be put into place that are aimed at preventing and reducing the likelihood that juveniles will engage in serious and violent offending. These initiatives should use a multi-pronged approach that address community and family violence, target "at risk" youth, provide mentoring, offer multi-systemic therapy, provide skills training, and provide other early intervention strategies.. In many cases, the benefits of these programs will exceed their monetary costs[43] (see: Welsh, Farrington, & Sherman, 2001; Cohen & Piquero, 2009 specifically for serious and violent juveniles), but again, I caution that there must be true buy-in from the state rather than lukewarm

[42] Though not in all cases. For example, recall in Model IV that concentrated disadvantage was associated with a less disadvantaging adjudication decision.
[43] Similarly, given the bench presence finding, there should be increased awareness with regards to the presence of female and minority judges

support. For states concerned with spending, adopting such initiatives may ultimately pay off in terms of money saved that would otherwise have been used to pay for incarcerating these offenders in the future (Farrington, 2016).

Adopting a strategy that focuses on the front-end treatment of juvenile offenders rather than back-end costs further shifts us away from some of the failed policies of the "get-tough" era. Recent litigation suggests that juvenile detention is far from rehabilitative and it may even be criminogenic (c.f. Hughes, et al. v. Sheriff Grady Judd, et al.; D.W., et al. v. Harrison County, Miss.; C.B., et al. v. Walnut Grove Correctional Authority, et al.). If the "best interests" goal of the juvenile justice system is to survive and thrive, then, more treatment, not less, should be the strategy that states such as South Carolina should pursue.

Of course, it should be noted that Barry Feld (1997; 1998), among others, have referred to the juvenile court as a second rate criminal court where juveniles receive the punitive dispositions saved for adults alongside fewer procedural safeguards. Indeed, some of the decisions and policy changes that occurred during the "get tough" era have done much to blur the lines between juvenile and adult court and widen the net for juvenile offenders (Feld, 2013; Merlo, Benekos, & Cook, 1997; Merlo et al., 1999). However, as a matter of policy, Professor Feld's prescription for the future of the juvenile court should be rejected.

First, Professor Feld's arguments are predicated on the juvenile court mirroring the adult court. If the juvenile court were to be abolished, the expected change would be to downplay the important points about juvenile differences compared to adults, articulated by Justice Kennedy in Roper v. Simmons (2005, 543 U.S. 551). Justice

Kennedy argued that: 1) juveniles lack maturity and are developing understanding, as well as responsibility, 2) juveniles respond easily to negative influences (peer pressure) and 3) juveniles do not have a fully formed character. Kennedy's jurisprudence in Roper, as well as recent Supreme Court cases, has been guided by an understanding of adolescent brain development (Grisso et al., 2003; Steinburg & Scott, 2003; Steinburg et al., 2009). It may be easy for judges and attorneys to forget about juveniles "coming of age" brains if we place juveniles in adult court where they may appear guiltier, simply by virtue of being in the adult court. Despite being offered a "youth discount," that should negate placement in a consolidated criminal court by sparring juveniles of the full penal consequences of immature decisions (Zimring, 2000), it is possible that juveniles would be viewed as more culpable (Morrow et al., 2015).

Second, some scholars question the "youth discount" as a matter of the criminal court deciding a juveniles' adolescence has ended, instead of their childhood ending naturally via their own physiological and psychological development (Steinburg & Scott, 2003). Certainly, as others have argued, this could also affect their life course trajectories towards more criminal behavior (Cauffman, 2012). Other juvenile justice scholars have also questioned whether or not this altered trajectory would apply equally between white and African American children (Leiber & Johnson, 2008; Leiber, Peck, & Beaudry-Cyr, 2016). Likewise, there are also concerns about youth in adult court under this system receiving a "juvenile penalty" (Kurlychek & Johnson, 2004), and questions of whether or not a sliding scale of culpability in sentencing in adult court is just "reinventing the wheel" (Slobogin, 2013). Consequently, there is mounting evidence that Professor Feld's prescription for the juvenile court would engender a number of negative and unintended

consequences. Given the findings of this current research regarding age "cut points," there may be reason to believe that the juvenile justice system as presently constituted should remain intact.

The final policy recommendations concern the plea bargaining process for juveniles. Results from this research suggest that extralegal characteristics may exert an influence on plea bargains. Though troubling, and there are serious misgivings about the coercive nature for plea bargains (Dripps, 2015), it is perhaps too early to call for an end to plea bargaining for juvenile offenders. Despite its' myriad issues, scholars note that the plea bargain process is indispensable to the system of justice and there remains the possibility for substantial reform (Barkow, 2006; Stuntz, 2004; Wright, 2005). Consequently, adopting the following changes may resolve some of the issues that we currently face with plea bargains at the juvenile court level. First, plea bargains should be limited to specific types of offenses so as to limit disparities. In constraining plea bargains to only this narrow band of offenses (the most serious offenses), it is likely that case dispositions for less serious offenses would more accurately reflect the actual seriousness of the defendant's crime(s) and thereby reflect the actual "going rate" for such offenses (Uviller, 2000). Second, we should encourage more involvement from the defense team so that the needs of the child are addressed in a more serious manner. Though Grisso (1997) has noted that juveniles with defense attorneys present in court actually find themselves with worse outcomes, Bibas (2004) and Devers (2011) argue that this is a result of defense attorneys not advocating enough for their juvenile defendants. Devers (2011) in particular argues that pleas should be handled separately from the cases, which would create more of a balance of power in the courtroom, and

provide more of an opportunity to focus on service matching. Further, this practice of enhanced advocacy by counsel would be in line with the original mission of the juvenile court (Devers, 2011; Slobogin, 2013).

Finally, and consistent with recommendation #2, the plea process should be guided by ideals of harm reduction, compassion, and treatment. Plea bargain reform is taking place in the United States. As quoted by Justice Kennedy, plea bargaining is not "some adjunct to the criminal justice system; it is the criminal justice system" (see Missouri v. Frye, 566 U.S., at 444, 2012); plea bargaining is not "some adjunct to the criminal justice system; it is the criminal justice system." Lafler v. Cooper (566 U.S. 209, 2012) also addressed the issue of plea bargaining in the United States, addressing the issue of deficient counsel advising one to reject a plea, allowing the petitioner to be entitled to relief.

Because plea bargaining is so entrenched in the U.S. for adults, it is likely similar reforms will also occur within the juvenile justice system. Courts would likely be in favor of plea bargaining for sentences, where the negotiation involves the sentence, not the charge. But it is doubtful that radical changes (such as the abolition of pleas in Japan) would likely be rejected (Work, 2014). Regardless of justice officials' receptiveness to changing how plea bargains are utilized, they are inextricably tethered to how justice is done in the criminal justice system. Consequently, there is a pressing need to revisit whether the juvenile justice system is indeed better or worse off because of plea bargain practices.

5.4 Limitations and Future Research.

This dissertation offered a unique look into the nature of the juvenile courts in the state of South Carolina and the myriad ways in which culpability and blame was constructed. The previous sections in this chapter have discussed the significance and importance of focal concerns as an explanation for some of the relationships that we see in how judges adjudicate offenders. Of course, it is equally important to discuss and acknowledge the limitations of the present study.

To begin, the measures used to test focal concerns should be reevaluated. Steffensmeier et al. (1998) noted that practical constraints and consequences may be both individual and organizational. Unfortunately, this researcher was not able to gather data on number of other possible measures of practical constraints of the juvenile justice system (e.g., available beds in juvenile detention facilities, courtroom relationships, per capita spending juvenile justice, judge caseload outside of this narrowly defined sample criteria, etc.). The measures used in this study largely reflect the practical constraints of individual households, but they fail to tap into the dimensions of organizational constraints (Dixon, 1995; Steffensmeier et al., 1993; Ulmer, 1995; Ulmer & Kramer, 1996). Similarly, some measures were not as explicit as they possibly could be: for example, female and minority bench presence. These measures focused on whether or not there was a female or minority judge present in a circuit during the study time period, not whether or not a female or minority served as a judge for any given case. While Nelken (2004) argues that the presence of female and minority judges has an influence on the "legal culture" and outcomes of a courtroom and circuit, this project did not have the necessary data to determine the sex and race of the presiding judge in each case. Thus,

these measures are better described as proxies rather than explicit measures. Because of these aforementioned concerns, there may be some questions about the internal and external validity of this study.

However, this shortcoming is not a fatal flaw. Many of the major dimensions of focal concerns are explored as is relates to adjudication decisions. Furthermore, it is quite an onerous (yet not insurmountable) task to fully operationalize all aspects of focal concerns, given that research that explores this topic requires many different data sources (Hartley et al., 2007). Similarly, Steffensmeier et al. (1998) noted this dimension of focal concerns (practical and organizational constraints) is perhaps the most difficult to operationalize given its complexity. Future research should endeavor to tap into the dimensions of organizational constraints that could not be included in the present analysis.

A second limitation of the present study is that it was constrained within very narrow criteria: serious and violent juvenile offenders who committed their crimes between the ages of 14 and 17[44], pled down to a lesser offense, and adjudicated in the juvenile court. It is quite possible that these cases are atypical of juvenile offenders in this state. It is likely the sample, at best, considers less than 2% of the cases presented to Solicitors (See Appendix A). This research just "scratches the surface" of juvenile offending in South Carolina. However, the purpose of this project was to provide a small window into juvenile justice in this state. With this in mind, future research should extend the present study methodology and data collection effort beyond the narrow criteria used in the present study. Perhaps the inclusion of offenses less serious than those under

[44] Note that there were only 15 cases of those who were age 17 at the time of referral. For example, one youth in this data committed burglary in late 2007, but was not referred to the court until late 2008 when they were then 17 years of age.

consideration here and juveniles waived to the adult court could provide additional insights into the issue of juvenile justice in this state.

This research project was unable to compare the juveniles in this sample to other offenders who were waived, reverse-waived, or designated as youthful offenders. The extant literature has suggested that it is important to examine the differences across various groups of young offenders in order to truly gauge the impact of juvenile policies and practices (Kupchik & Harvey, 2007; Kurlychek & Johnson, 2010). Perhaps using multi-state data or even data over a longer time period would allow such comparisons to be made.

Another limitation is that the results are likely not generalizable to juvenile courts nationwide. Recall that the data used here were derived from the Department of Juvenile Justice in South Carolina. It is possible that the findings would be quite different if data from juvenile courts in other jurisdictions (neighboring states) were also included. Judges in different states likely operationalize focal concerns very differently as compared to South Carolina. Future research should expand upon the number of states or regions from which the data is drawn in order to increase the representativeness of the results (Bryk & Raudenbush, 2002).

Additionally, these data cannot make any assumptions or generalizations about how other juvenile justice officials (e.g., juvenile correctional workers, juvenile probation officers, etc.) construct focal concerns and youthful offending. Future research should endeavor to examine the role played by these other actors and stakeholders in the juvenile justice system, as different courtroom actors conceptualize focal concerns in different ways (Johnson, Klahm, & Maddox, 2015). Ferreting out how these differences play out

and affect adjudication decisions may offer more insight into the operations of the juvenile court.

While this study included a number of different measures related to focal concerns, it should be noted that some of the models explained little of the variance for the dependent variable under study. To be clear, some of the models (Model III) explained, at most about 23% of the variance (Cox and Snell R^2 = .227) which suggests that other important predictor variables may not have been included in the models. In the future, research should consider looking at a broader range of variables that are considered important to focal concerns (for example, public defenders versus private attorneys as a proxy for practical constraints).

Model specification may also be an issue in these data. As seen in Chapter 4, the highest amount of explained variance in any regression equation was in Model III (22.7% using the liberal Cox and Snell R^2). Regardless, this indicates a number of predictor variables were not included and that these models may be mis-specified. Though mentioned previous with the issues of tapping into other aspects of focal concerns, a more concerted effort to tap into focal concerns should be taken, or other theoretical explanations (e.g., Manski & Nagin's, (1998) ideas about skimming and outcome maximization) should be used as the theoretical backbone to the study, with the data collection process closely aligning with their theoretical concerns.

Methodologically speaking, there are other limitations as it relates to operationalizing both plea bargains and alternative sanctions. In this research, "plea concession" was operationalized as a dichotomous outcome. Unfortunately, there is no consistent definition in the literature for what a plea means (Di Luca, 2005; Sanborn,

1986). Pleas can, in effect, be as simple as a reduction in counts or charges, or span the gamut of sentencing and/or treatment recommendations all the way to dismissal of some charges (McCoy, 2005). As such, future research should consider the many manifestations of the plea bargaining process that may not be fully captured in this research.

It is also noted that this research operationalized alternative sanctions along a continuum (e.g., house arrest, community service or supervision, etc.). Such a strategy may be problematic precisely because of the difficulty in determining which sanction is truly more or less punitive. For example, one could make the case that intensive probation may be a more punitive sanction than community service. Similarly, one could also make the argument that house arrest may be less punitive than a term of probation. To this end, this research cannot make any conclusive statements with regards to the use of alternative sanctions by judges in this state. Future research should more closely examine the intricacies associated with defining just what are alternative sanctions are in a more specific manner (Cochran et al., 2014).

5.5 Concluding Remarks.

Overall, the findings of this project may align with some of extant literature that has found evidence of biases in the juvenile justice system, some of which are motivated by race and/or community context (Engen et al., 2002, Rodriguez, 2010). Some of these findings in the extant literature include the impact of race on juvenile outcomes (Kupchik, 2006; Mears & Field, 2000; Rodriguez, 2003) generally, juvenile crime (Engen et al., 2002; Feld, 2003) and the juvenile plea bargain process (Burrow &

Lowery, 2015; Rodriguez, 2010). Furthermore, these findings lend credence to the belief that scholars should continue to address disproportionate minority contact (Kempf-Leonard 2007; Leiber 2003; McGarrell 1993).

More broadly speaking, we know that scholars have worked for decades to uncover whether race impacts juvenile justice decision making and juvenile justice as a whole. While this research has proven to be illuminating for current research, there are a number of deeper implications of race that are yet to be discussed. We now stand at a point in history marked by tremendous shifts in how we view juvenile justice. More importantly, we find ourselves at a critical juncture wherein concerns about race, class, and inequality impact not only how we view juvenile justice but also what we view as appropriate social and political responses. Perhaps more than ever, we need to develop new, critical frameworks that can be used to explain what is happening in the juvenile justice system, as well as beyond the system by focusing on the larger context of race in society.

While the shortcomings of focal concerns have been discussed in explaining this data, and it not to say the theory is milquetoast by any means, focal concerns does merely discusses the "complex interplay" of numerous social, economic, and political forces are not discussed (Hartley et al., 2007). Perhaps scholars studying race and juvenile justice should also take into account theories from disciplines beyond criminology, such as sociology or political science, to discuss race, juvenile justice, and society in a deeper and more nuanced manner. For example, we can utilize aspects of the critical race perspective to explain the shortcomings that we see in how counties and states respond to crime and

justice. One scholar to do so is Derrick Bell (1992)[45], who urges his readers to confront the likelihood of the permanence of racism.

While Bell (1992; 1993) provided a gloomy message, he is correct in stating that we need to "get real" about racism if we hope to effect meaningful and lasting change in society. Drawing upon the ideas of W.E.B. DuBois, Paul Robeson, and Malcolm X, Bell's (1993) message is that clinging to mainstream narratives about justice, and even crime, prevents us from examining the salience of deeply entrenched economic interests. This observation may or may not have merit but it does behoove researchers to more closely examine the role of economics in criminal and juvenile justice policy. It could be that perhaps we are unwittingly, or wittingly, reinforcing the message that poor juveniles, particularly those of color, should accept the conditions of their environment, rather than challenging the mechanisms that perpetuate and lead to more serious forms of juvenile delinquency.

It is doubtful that one policy or set of policies aimed at effecting change without truly addressing economic inequality will really combat serious juvenile crime, much less solve the issue of racial disparities manifesting in the juvenile justice. Nor is it likely that the economic structures that perpetuate inequality will respond to even modest changes. However, there is hope that researchers will begin to pay more attention to this issue, and similar issues, in order to continue acknowledging empirical evidence of equality issues within society. Yet, this hope is predicated on the assumption that criminologists will utilize more than traditional criminological theories (e.g., focal concerns), and move

[45] However, this raises the important question: to what degree? While many of Derrick Bell's arguments and critical race arguments are valid and important, Bell once remarked in an academic panel that "nothing really had changed for black Americans since 1865." Yet, it may be observed that a tenured African American, Full Professor of Law would be unheard of in the late 18th century.

towards including interdisciplinary and critical theories of race and society. Similarly, this hope is predicated on society at large and their willingness to engage in an intellectually honest discussion of race within the context of history, cumulative disadvantage, and society.

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APPENDIX A – WAIVER ELIGIBILITY IN SOUTH CAROLINA

WAIVER UNDER § 63-19-1210

CHARGE	UNDER AGE 14	14 YEARS OLD	15 YEARS OLD	16 OR OLDER
Class A Misdemeanor				
Class B Misdemeanor				
Class C Misdemeanor				
Class E Felony				
Class F Felony				
Felony - maximum of 10 years or less				
Class A Felony				
Class B Felony				
Class C Felony				
Class D Felony				
Felony - maximum of 15+ years				
Carrying Weapon on School Property § 16-23-430				
Unlawful Carrying of Handgun § 16-23-20				
Distribution of Controlled Substance within ½ Mile Radius of School § 44-53-445				
CSC				
Murder				
Offense which, if committed by an adult, provides for 10+ years, if child previously adjudicated or convicted for 2 prior offenses which, if committed by an adult, provide for 10+				

No Waiver Allowed

Waiver Allowed / Court's Discretion

Mandatory Waiver

Automatic Jurisdiction in General Sessions Court (may be remanded to family court at solicitor's discretion)

Source: University of South Carolina School of Law: Children's Law Center

APPENDIX B – COLLINEARITY DIAGNOSTICS

Variance Inflation Factor and Tolerances for Plea Decision

Independent Variable	VIF	Tolerance
Race	1.09	.92
Sex	2.40	.42
Age	1.06	.95
Criminal Sexual Conduct	2.42	.41
Major Assault	1.25	.80
Robbery	1.09	.92
Burglary	1.35	.74
No Priors	1.78	.56
Chronic Offender	1.68	.60
Accomplices	1.08	.93
Minority Bench Presence	2.21	.45
Female Bench Presence	2.20	.45
Violent Crime Rate	1.46	.69
Concentrated Disadvantage	2.12	.47
Percent Single Mothers	1.78	.56
Court Size	1.25	.80
White-to-Black Income Ratio	1.36	.73
Mean	1.62	.67

Variance Inflation Factor and Tolerances for HLM Adjudication Decisions

Independent Variable	VIF	Tolerance
Race	1.09	.92
Sex	2.40	.42
No Priors	1.79	.56
Chronic Offender	1.68	.59
Accomplices	1.08	.93
Referral Age 14	1.05	.95
Referral Age 15	1.05	.95
Robbery	1.09	.92
Criminal Sexual Conduct	2.42	.41
Major Assault	1.26	.79
Burglary	1.35	.74
Minority Bench Presence	2.22	.45
Female Bench Presence	2.25	.44
Court Size	1.51	.66
Percent Urban	1.97	.51
Teenage Population	2.02	.49
Percent Black	2.51	.40
Black Population Change	2.44	.41
White-to-Black Income Ratio	1.82	.55
Percent Single Mothers	2.12	.47
Concentrated Disadvantage	2.33	.43
Violent Crime Rate	1.66	.60
Mean	1.75	.63

APPENDIX C – HIERARCHICAL LOGISTIC REGRESSION ON PLEA DECISION

Variable	Coefficient	Standard Error
Plea Decision		
Level-1(Individual)		
Race	-.335*	.166
Sex	-.129	.087
Referral Age 14	.270 †	.172
Referral Age 15	-.095	.151
CSC	-.1.391***	.302
Major Assault	-.178	.148
Robbery	-.1.037***	.412
Burglary	-.432 †	.235
No Priors	1.296***	.190
Chronic Offender	-.618*	.224
Accomplices	.211	.176
Minority Bench Presence	-.559*	.241
Female Bench Presence	.705	.282
Level-2 (County)		
Violent Crime Rate	.003	.003
Concentrated Disadvantage	.308*	.140
Percent Single Mothers	-.126	.077
Court Size	.294	.219
White-to-Black Income Ratio	-.331	.274
ICC	.368	
F	4.642***	

† p < .10. * p < .05. ** p < .01. *** p < .001