

THE TIES THAT BIND

Historical Trends of Racism in the Juvenile Justice System

BY EZRA GRAHAM LINTNER

Ezra Graham Lintner is a third year J.D. candidate at DePaul University College of Law. So far, Ezra has focused in areas of the law wherein historically marginalized people are at further risk of oppression by the legal system. This has primarily led them to poverty law and criminal defense. Ezra is currently interning with Chicago Coalition for the Homeless. At school, they serve as a Co-President for their school's Public Interest Law Association, the Selection Editor for DePaul Law's Journal for Social Justice, and a board member for the National Lawyers Guild. Ezra looks forward to a postgraduate career partnering with communities to use the law as a tool to pursue social justice.



Author's Note: This piece is dedicated to Professor Christopher Cox and Dr. Russel Arias, because of whom my eyes are open.

INTRODUCTION

The United States criminal justice system has a long and excruciating history of perpetuating white supremacy. The juvenile justice system, while distinct from the adult criminal justice system in some ways, parallels this history of racism. Numerous violently racist beliefs about juveniles of color have existed in this country since its inception. Following these racist beliefs throughout American history reveals that they are not bygone cultural attitudes and practices, but rather the foundation for current racist trends in the juvenile justice system. In this piece, I argue that by following the threads of specific racist ideologies, one can observe the ways in which racism has consistently mutated, ultimately taking the form of modern racist practices and prejudices in the current American juvenile justice system. Such analysis seeks to reframe the conversation around the racism that plagues the juvenile justice system. This reframing helps the juvenile justice system's racist

practices of today come into focus for what they are: modern iterations of tools used by white colonizers and slave owners. In essence, it calls on practitioners within the juvenile justice system to recognize that the current trends in the juvenile justice system are part of a larger history of white supremacy.

In particular, this paper follows two racist ideological threads, and a third underlying racist belief, that have been perpetuated tangibly throughout American history. First, there is an underlying belief that communities of color and children of color are "irredeemable." This belief has a unique interplay with the other ideologies discussed in this paper, in that it has often served as their underlying justification. As such, this belief should not be viewed as a discrete historical ideological trend, but rather as an inseparable, interwoven belief. Next, there is the belief that white people are more fit to raise black and brown children than their own communities and families. Finally, there is the belief

that black and brown children are undeserving of the protections and leniency of adolescence.

The remainder of this introductory section provides a brief overview of the two racist ideologies so that they may be examined as cohesive historical concomitants. This paper then progresses through four eras in American history: American Colonization; Manifest Destiny, the end of the Antebellum South and beginning of Jim Crow; the Juvenile Court Era; and the Tough on Crime and "Superpredator" Era. In doing so, it reveals how both racist ideologies, and the third underlying racist belief, have intertwined and perpetuated one another throughout history.

The first racist idea that has repeatedly surfaced throughout the juvenile justice system's history is the notion that white parents are better suited to properly raise children of color than black and brown families or communities. This horrifically destructive concept draws its roots from colonization, where the Puritans determined that

Indigenous families could not be redeemed when they refused to convert to Christianity.[1] As such, the colonizers felt they had to "save" the Indigenous children by kidnapping and raising them.[2] This forced removal of children was devastating to tribal communities as well as the children themselves.

The trend of removing Indigenous children continued in the era of Manifest Destiny, wherein Indigenous children were forcibly removed from their tribes and sent to assimilation-focused boarding schools with the goal of raising children in conformity with white ideals and social structures.[3] This trend appears again in the Juvenile Justice Era, where courts often held not only that misbehaving black and brown children were delinquent, but that the child's entire community was also delinquent and therefore incapable of raising the offending youth.[4] In so holding, a judge could determine that the child was not to return home, thereby forcibly removing the child from their family and

community.[5] In these instances, black and brown children were often sent to reformatories or housed in adult prisons.[6]

Currently, this trend surfaces as a selectively punitive child and family services system, wherein children of color are forcibly removed from their homes until their parents comply with what the American government has determined is the correct or safe way to parent.[7] This practice has been consistently criticized as having a disproportionately negative effect on families of color.[8]

The second ideological thread highlighted in this paper is that black and brown children do not deserve the experience or protection of adolescence. Society often recognizes adolescence as a distinct developmental time in a person's life, warranting special protections and understanding. Black and brown children do not always receive this protection and understanding, despite their age. That deprivation results in black and brown children being barred from the lenient and rehabilitative goals of the juvenile justice system. This ideology finds its roots in the colonial belief that people of color are "irredeemable," and therefore undeserving of the juvenile justice system. During colonization and slavery, black children were thought of as less than human. Their youth was considered only in terms of its monetary worth and potential for manipulation.[9]

Next, during the Jim Crow Era, this ideological thread surfaced through whites barring children of color from the early juvenile houses of refuge, which focused on rehabilitation rather than punishment.[10] Consequently, children of color involved with the juvenile justice system were often forced into slave-like apprenticeships, punished through deadly convict leasing programs, and sent to adult prisons.[11]

This trend was continued in the Juvenile Court Era by white court administrators who allowed children of color unequal access to the services offered by the juvenile justice system. A child of color's access to services was directly linked to whether or not they came from a "redeemable" community.[12] If a judge decided the child was from a redeemable community, they were considered to be deserving of the rehabilitative model

of the juvenile justice system. If not, they were often taken from their homes.

The trend of children of color being labeled as undeserving of the rehabilitative aspects of the juvenile justice system resurged during the "Superpredator" Era. Being labeled as a "superpredator" insinuated that the child of color was inherently beyond saving.[13] As such, it was believed that the juvenile justice system could do no good for them, and their status of being "irredeemable" meant that any resources spent on them were wasted.[14] The superpredator label was a justification to send children of color to adult court, and later to adult prison, *en masse*. [15] This pattern of children of color being treated as "irredeemable" endures today in the overrepresentation of children of color being transferred to adult court.[16]

I

THE ERA OF AMERICAN COLONIALISM

The history of children of color experiencing brutality at the hands of white people and white justice systems began with the arrival of European colonizers to the Americas. Indigenous tribes were seen by American colonizers as an "irredeemable race" of people.[17] Tribal family structures, religious systems, and expressions of sexuality horrified the Puritan colonizers.[18] The Puritans, new to an unfamiliar land, felt that God would not allow their survival if they were not surrounded by piety.[19] This religious philosophy was used, among other reprehensible justifications, to colonize the Indigenous inhabitants.[20] This effort sometimes included Puritan families kidnapping Indigenous children in an attempt to raise them in conformity with white ideals.[21] According to attorney James Bell, founder and president of the W. Haywood Burns Institute:

The most notable of these [kidnappings] occurred in 1675 in the "Great Swamp Fight" or "Great Massacre" between settlers and the Narragansetts. In this historic encounter, settlers attacked a Narragansett village, setting fire to 500 lodges and claiming the lives of almost 1,000 men.[22]

Mr. Bell goes on to note the parallels to the current era's child and family welfare system: "Today, the

Puritan narrative regarding "good families" survives, with tribes fighting to keep their children in adoption and other proceedings." [23]

Black children and adolescents also faced excruciating violence during this era due to legalized slavery.[24] An enslaved child's worth was determined entirely by their monetary value.[25] Enslaved children were an especially valuable commodity.[26] According to Professor Geoff Ward, although "...slave owners and their

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contemporaries lacked a willingness to recognize the full humanity and social standing of black children *and* adults," they had an "appreciation of black childhood as a stage of human development." [27] This "appreciation" to which Professor Ward refers was not founded in an understanding that children and adolescents need a patient and nurturing environment to transform into successful members of society. Rather, their development was used as a malevolent tool of manipulation. Professor Ward writes, "Slaveholders commonly viewed enslaved children as young commodities that, if properly controlled and nurtured, would yield more docile and productive pools of adult labor." [28] Furthermore, the transgression of enslaved children was not legally adjudicated; punishment was instead handled by their white owners.[29] What a slave owner did with the children they owned was considered their prerogative, as the children were their property above all else.[30]

This era of American history is significant because it set the groundwork for the beliefs and ideological trends that this paper follows.

Indigenous and black children who were formally adjudicated experienced harsh treatment from the criminal justice system during the colonial era.[31] At this time, there was no juvenile justice system, and children brought to court entered the adult criminal justice system.[32] Children of color had to face a court system that was not only ignorant of their age, but also specifically designed to perpetuate white supremacy.

This era of American history is significant because it set the groundwork for the beliefs and ideological trends that this paper follows. We can begin tracking the concept of “redeemability” with the arrival of the Puritan colonizers. In determining that entire races of people were inherently irredeemable because of their refusal to convert to Christianity, the Puritans created a binary. In creating this binary, white colonizers essentially demanded that indigenous people be active participants in their own colonization. Indigenous tribes had two options: conform to Puritan ideals and religion, or be viewed as unsavable in the eyes of their colonizers. Choosing the latter option was akin to a strict liability crime in the minds of the Puritans. This unwillingness for white society to take in other points of view, styles of parenting, or familial structures set the stage for much of the ongoing mentality around redeemability.

The arrival of Puritan colonizers also marks the beginning of white people acting on the ideology that white society’s methods of raising children were superior to all others, and that therefore, children of color should be raised in line with these methods. The above-mentioned beliefs about redeemability laid the groundwork for this ideology. When Indigenous communities were determined to be irredeemable, the European colonizers sometimes kidnapped children from their tribes and placed them with white Puritan families, as discussed. This perhaps points to the idea that Puritans felt the

children themselves might still be redeemable, but only if they were removed from their communities.

Slave owners introduced the ideology of black children being undeserving of the protections and leniency of adolescence through the very practice of slavery. This ideology led to a systematic deprivation of adolescence.[33] Through slavery, whites summarily deprived enslaved people of all stages of life, adolescence included. As Professor Ward discussed, while enslaved children were sometimes viewed with special attention to their age, this attention was not given to ensure the child grew and developed in a healthy manner. Instead, slave owners recognized that adolescence provided an opportunity to brainwash and control the people they had enslaved. This recognition helped create the foundation for the ideology that children of color are undeserving of the protections that should come with adolescence. The slave owner’s view of childhood was an utter subversion of the respect for development given to white children.

II

MANIFEST DESTINY, THE END OF THE ANTEBELLUM SOUTH, THE BEGINNING OF JIM CROW

The first juvenile detention center, which opened in 1825, aimed to provide children accused of petty crimes a humane alternative to incarceration in adult prison.[34] Black children were systematically excluded from juvenile detention centers and instead housed in adult jails for the same crimes their white counterparts committed.[35] It was not until a decade later that these so-called “houses of refuge” created segregated housing for black children.[36] When black children were eventually given access to houses of refuge, they were “on average, one-and-a-half to two years younger than whites of the same gender while enduring longer sentences and harsher treatment.”[37] Violence was a common experience for children of color at houses of refuge, with Bell noting that they “suffered a disproportionately high death rate” in comparison to their white counterparts.[38]

Black children experienced harsh conditions in the absence of humane intervention. Convict leasing was a horrific alternative for black children involved in the legal system.[39] The system allowed for convicts to be “leased” for manual labor.[40] While slave owners had an incentive to keep enslaved people alive, no such incentive existed for those simply leasing black laborers.[41] Indeed, it has been reported that no enslaved person under Mississippi’s convict leasing system lived for more than seven years.[42] The 1890 census, which showed that about twenty percent of all black prisoners were children, proves that children were not spared this terrible fate.[43] It is important to note that the convict leasing program was made legal through the Thirteenth Amendment, which allows for people to be enslaved “as punishment for a crime” to this day.[44]

During the Manifest Destiny Era, Indigenous children also faced awful treatment at the hands of the state. Many Indigenous children were subject to forced assimilation, wherein they were forcibly removed from their homes and sent to American boarding schools focused on “integrating” them into the American way of life.[45] The government’s goal in developing these boarding schools was “to separate native children from their tribal communities, strip them of their tribal customs, mores, and languages, and “prepare [them] for never again returning to [their] people.”[46] Prior to colonization, Indigenous tribes frequently practiced restorative justice and followed unwritten codes of values.[47] This stood in stark contrast to life at a boarding school, which used strict corporal punishment in an effort to “civilize” and “Americanize” Indigenous youth.[48] The consequences were devastating for Indigenous life and culture as a whole.[49]

One such consequence of forced assimilation was the destruction of Indigenous justice systems.[50] This has had major ramifications for contemporary tribal life. In 2015, the Department of Justice found that Indigenous youth were three times more likely to be incarcerated than white youth.[51] It is particularly ironic that the American juvenile justice system is integrating concepts of restorative justice—a practice attributed

to Indigenous tribes—while at the same time, Indigenous children in this country are over-incarcerated—a concept that did not exist prior to colonization. This appropriation of legal ideology is a poignant example of how colonization and white supremacy have devastated tribal justice systems.

This era in American history, for all its innovation and perceived altruism, did not provide an equitable foundation on which a fledgling juvenile justice system could develop. From its earliest days, children of color did not have the same access to the rehabilitative efforts the system was designed to provide. Moreover, some of the early system's efforts at "rehabilitation" translated into the practice of removing children of color from their homes to be raised by whites. Boarding schools provide a stark example of a white paternalistic state attempting to raise children of color in accordance with its ideals. It is important to note that the dominant actor involved in forcibly removing Indigenous children from their homes was the United States government itself. The process of kidnapping children from their homes and entering them into assimilation-based institutions became legalized during this era. Children were raised how the United States government saw fit. This legalized kidnapping and forced assimilation set the stage for all formal removals of children of color from their homes and communities.

This era of juvenile justice also saw white-dominated institutional reformatories refusing to integrate black children into their rehabilitative programming. This refusal was rooted in the idea that "black youth were 'undeserving subjects of the white-dominated parental state.'" [52] Whites felt that it was a waste to spend valuable resources on black children. [53] Moreover, there was a shared sense that the recent reforms in the fledgling juvenile justice system were singularly intended to benefit white children. [54] Even when black and brown children were allowed into the early houses of refuge, their experiences there were significantly more brutal and violent. This implies that the children of color held in these houses of refuge were not receiving the same levels of rehabilitation that white children were enjoying. This can again

be attributed to the overall belief that black and brown children were irredeemable, and therefore undeserving of the benefits available at rehabilitation-focused institutions.

Black and brown children faced horrific violence as a result of not being able to access the early houses of refuge available to white children. With little opportunity to access humane alternatives designated to white children, black and brown children

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were forced to accept adult punishments for childhood crimes. While this was also true during the era of colonization, the Manifest Destiny Era reveals that this trend was not just a colonial practice, but a legalized American practice as well. The convict leasing system, discussed above, provides a nightmarish example of this violence.

III

THE JUVENILE COURT AND JIM CROW ERA

The Juvenile Court Era saw radical reform to the American court system. [55] Juvenile courts were pioneered by groups of female activists who desired to change the punitive nature of the system to a more understanding, rehabilitative model for children. [56] Despite its altruistic intent, the juvenile justice system was fraught with racism and classism from its inception. [57] By the early 1900s, two truths about racism in the juvenile court system were widely acknowledged. [58]

First, it was established that there was a clear overrepresentation of children of color being hauled into court and placed in jail. [59] One report conducted in Cook County in 1913 noted, "although the colored people of Chicago approximate one-fortieth of the entire population, one-eighth of the

boys and young men and nearly one-third of the girls and young women who had been confined to the jail during the year were Negroes." [60]

Second, it was acknowledged that black and brown children were not offered the same rehabilitative opportunities that affluent white children were offered. [61] Services offered were largely based on the court's belief about whether the child was "redeemable." In this context, the idea of redeemability was based on the child's family and community rather than the children themselves. [62] When determining redeemability, the court would weigh variables such as crime levels, ethnic makeup, and socioeconomics of the child's community. [63] Courts judging the child's family would consider whether the child's mother worked, how many children were in the house, and whether the child's parents were married. [64]

Ultimately, the court would determine not just whether the child was delinquent, but whether their *community and families* were also "delinquent." [65]

This era provides an example of the close interaction between beliefs surrounding irredeemability and the ideologies of white society being better-suited to raise children of color than their own communities. Redeemability was once again leveraged against entire communities, with children bearing the brunt of that determination. Indeed, the determination had chilling effects on a child's prospects for success in the system.

The court's solution to perceived community irredeemability was to withhold release of the child back into their community and home. [66] While white children would have an opportunity to go to rehabilitative institutions if separated from their families, black and brown children rarely had the same option. Legalized segregation made it incredibly difficult to place children in rehabilitative institutions or with individual white families. As a result, children of color were sent to harsh and discriminatory boarding houses, institutions, or adult prisons. [67]

This practice of removing children from "delinquent" communities was

the Juvenile Court Era's manifestation of whites believing that families of color were not able to properly parent their children. During this era, the juvenile court system became active in making the removal of children of color from their homes a legal punishment for juvenile delinquency. It used simple childhood transgressions as a justification to remove children from their communities. Similarly to the Manifest Destiny Era, children stolen from their communities were not often placed with white families, as they were during colonization, but rather were raised by state institutions.[68]

IV

THE TOUGH ON CRIME AND "SUPERPREDATOR" ERA

Juvenile Justice in the 1970s, 1980s and 1990s can be defined by the following concepts: the "War on Drugs," politicians vowing to restore "law and order" by getting "tough on crime", and fear of the "superpredator".[69] Each concept has been criticized as thinly-veiled racism.[70] Additionally, this era marked the rise of the current social work and family services model, which has been critiqued as punishing black and brown families, especially mothers, for not conforming to white notions of how to properly raise children.[71]

The 1960s and 1970s saw an explosion of crime and unrest in the United States.[72] The crack epidemic of the 1980s only added to the chaos.[73] The media focused endlessly on the rise of violence and drug addiction.[74] While America certainly needed to reckon with the rise in crime, conservatives used the crime rate as a tool to further divide the populus.[75] It is well-documented that national Republican politicians promised to restore "law and order" as an appeal to racist southern whites, many of whom still felt deep-seated anger about integration and civil rights.[76] In essence, the Republican party, joined by the media, placed the blame for America's rising crime on people of color.[77] Children were not spared.[78]

This concept, introduced in the early 1990s, was "[i]nfluenced by a national shift towards the political right and the declaration of the War on Drugs during the Reagan administration, a combination of political leaders, social policy 'experts,'

and media organizations." [79] While the inception of the "superpredator" myth was the effort of many parties, the concept is often attributed to Professor John Dilulio of Princeton University, who stated that superpredators were a "new breed" of 'fatherless, Godless ... radically impulsive, brutally remorseless youngsters' that would soon terrorize all of society." [80] The idea of the superpredator allowed conservative politicians to give the public a targeted enemy: children of color.[81]

The concept of the superpredator mapped onto a larger shift in the juvenile justice system during the 1970s through the 1990s. During this time, the pendulum of the juvenile justice system swung from a rehabilitative attitude toward encouraging punitive measures for youth.[82] The "get tough" mentality found a home in the juvenile justice system in a variety of forms, each of which continued the practice of treating black and brown children as adults.[83] This practice was most apparent in the revamping of transfer and sentencing laws.[84] Phrases like "adult crime, adult time" and "old enough to do the crime, old enough to do the time" stripped the concept of rehabilitation from the juvenile justice system.[85] Indeed, these ideas run contrary to the very foundation of the juvenile justice system.

This era of juvenile justice is significant for two reasons. First, it helps explain the current state of affairs of the juvenile justice system, wherein black and brown children are significantly more likely to be imprisoned than their white counterparts for similar crimes.[86] Second, it exposes the current iteration of multiple ideological threads this paper has followed: children of color being viewed as "irredeemable," children of color being forcibly removed from their homes by white people in power, and children of color being deprived of the protections and experience of adolescence.

The label of "superpredator" provided the newest iteration of black and brown children being viewed as irredeemable.[87] Black and brown children labeled as "superpredators" were incapable of being saved by the juvenile justice system, according to those who perpetuated this myth. The answer was clear: there was to be no attempt at rehabilitation for children of

color committing crime. Instead, they were to be sent to adult criminal court, followed by adult prison if found guilty.[88]

The Superpredator Era's manifestation of the ideology that black and brown families and communities are not adept to raise their own children takes the form of an unforgiving and punitive child and family services system. America's child and family services have been critiqued

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as being hyper-controlling of black and brown parents, especially mothers.[89] When involved with such a system, black and brown parents are often confronted with a choice: comply with the mandates of the system, or risk losing their child.[90] Parents of color face formidable barriers in trying to get their children back, according to those who study the system:

In addition to being more likely to become ensnared in the child protection system, families of color tend to fare much worse than white families once a case has been opened. Studies have shown that minority children are more likely than white children to be placed in foster care, even when they have the same characteristics as white children. An initial placement in foster care greatly increases the risk that parents will have their custodial rights permanently terminated. Once in foster care, black children suffer worse consequences--they remain in foster care longer, are moved from home to

home more often, and receive less desirable placements than white children. Black children who are removed from their homes stay in care for an average of nine months longer than white children do. Increased lengths of stay in foster care are particularly significant because the chances a child will reunify with his or her parent begin to decrease rapidly after the first five months of placement. Although the intention of the child protection system may not be to dissolve poor families and, in particular, poor families of color, the families most surveilled and most often destroyed by the system are almost always poor and disproportionately African American. . .[91]

Considering that the child and family services system, like all systems in the United States, is primarily staffed by white social workers[92], parents of color must struggle with a system run by notions of “proper parenting” constructed by white people. The child and family services model is the current iteration of the ideology that whites are best suited to raise black and brown children. It shows no sign of changing.[93]

Lastly, the overarching mentality of the juvenile justice system during the Superpredator Era provides the newest iteration of children of color being deemed undeserving of the protections and leniency the juvenile justice system is intended to provide. The very idea of the superpredator is one not far removed from eugenics. Black and brown children regarded as super predators were thought to be inherently less likely to be redeemed through rehabilitation, and therefore undeserving of any attempt to intervene on their behaviors. Moreover, phrases like “adult crime, adult time,” and “old enough to do the crime, old enough to do the time,” removed the very essence of rehabilitation and leniency from the juvenile justice system. This era rocked the very foundation of the juvenile justice system. The current system has not yet settled; black and brown children are still transferred to adult courts at disproportionately high rates.[94]

V

CONCLUSION

Anyone familiar with the American juvenile justice system, whether in theory or in practice, knows that it is plagued by racist beliefs. These are not new views, but rather current manifestations of long-ranging ideologies that are as old as America itself. The positions that children of color are irredeemable, that white people are better-suited to raise children of color than their own families, and that children of color are undeserving of the protections and experience of adolescence have taken various forms throughout United States history. In any form, they have proved to be deeply destructive beliefs that have wreaked havoc on children and communities of color in this country.

Practitioners and academics attempting to analyze current trends in juvenile justice must reckon with this harrowing history if there is to be any genuine attempt at change. Indeed, historical context is a powerful lens through which we can understand the present issues that adversely affect youth of color in the juvenile justice system. Only when we fully acknowledge the entrenched history of racism within the juvenile justice system will we be able to remedy it.



[1] James Bell, *Repairing the Breach: A Brief History of Youth of Color in the Justice System*, W. Haywood Burns Institute for Youth Justice Fairness & Equity, at 3 (December 5, 1:36 PM),

https://www.burnsinstitute.org/wp-content/uploads/2015/09/Repairing-the-Breach_BI.pdf, archived at <https://perma.cc/EW2T-QKB9>.

[2] *Id.*

[3] Addie C. Rolnick, *Untangling the Web: Juvenile Justice in Indian Country*, 19 N.Y.U. J. Legis. & Pub. Pol'y 49, 63 (2016).

[4] Cheryl Nelson Butler, *Blackness As Delinquency*, 90 Wash. U.L. Rev. 1335 (2013).

[5] *Id.* at 1360.

[6] *Id.* at 1366.

[7] Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. Rev. 1474 (2012).

[8] See Amy Mulzer & Tara Urs, *However Kindly Intentioned: Structural Racism and Volunteer Casa Programs*, 20 CUNY L. Rev. 23, 26 (2016); see also Wendy Jennings, *Separating Families Without Due Process: Hidden Child Removals Closer to Home*, 22 CUNY L. Rev. 1, 6 (2019); Emma S. Ketteringham, et al., *Healthy Mothers, Healthy Babies: A Reproductive Justice Response to the "Womb-to-Foster-Care Pipeline"*, 20 CUNY L. Rev. 77 (2016).

[9] Kenneth B. Nunn, *The Child as Other: Race and Differential Treatment in the Juvenile Justice System*, 51 DePaul L. Rev. 679 (2002); Geoff K. Ward, *The Black Child Savers: Racial Democracy and Juvenile Justice*, 35 (2012).

[10] Bell, *supra* note 1, at 5.

[11] Bell, *supra* note 1, at 7.

[12] Butler, *supra* note 4, at 1362-1363.

[13] Barry C. Feld, *Race, Politics, and Juvenile Justice: The Warren Court and the Conservative Backlash*, 87 Minn. L. Rev. 1447 (2003).

[14] *Id.*

[15] Perry L. Moriearty, *Framing Justice: Media, Bias, and Legal Decision making*, 69 Md. L. Rev. 849, 850, 854 (2010).

[16] Patricia Soung, *Social and Biological Constructions of Youth: Implications for Juvenile Justice and Racial Equity*, 6 Nw. J. L. & Soc. Pol'y 428 (2011).

[17] Bell, *supra* note 1, at 5.

[18] John D'Emilio & Estelle B. Freedman, *Intimate Matters: A History of Sexuality in America*, 6-8 (2d ed. 1997).

[19] *Id.*

[20] *Id.*

[21] Bell, *supra* note 1, at 3.

[22] *Id.*, citing, G. E. Thomas, *Puritans, Indians, and the Concept of Race*, 48(1) The New Eng. Q., 5 (1975).

[23] *Id.*

[24] Bell, *supra* note 1, at 4, 6.

[25] Feld, *supra* note 13.

[26] Bell, *supra* note 1, at 4.

[27] Geoff K. Ward, *The Black Child Savers: Racial Democracy and Juvenile Justice*, 35 (2012).

- [28] *Id.* at 36.
- [29] *Id.*
- [30] Nunn, *supra* note 9.
- [31] Bell, *supra* note 1.
- [32] *Id.*
- [33] Nunn, *supra* note 9, at 680-681.
- [34] Bell, *supra* note 1, at 5.
- [35] *Id.* See also, Christopher Mallett & Miyuki Tedor, *Juvenile Delinquency: Pathways and Prevention*, 28 (2018); Cynthia Conward, *There Is No Justice, There Is "Just Us": A Look at Overrepresentation of Minority Youth in the Juvenile and Criminal Justice System*, 4 Whittier J. Child & Fam. Advoc. 35, 39 (2004).
- [36] Bell, *supra* note 1, at 5.
- [37] *Id.*
- [38] *Id.*
- [39] Ward, *supra* note 27, at 67-68.
- [40] *Id.*
- [41] *Id.*
- [42] Bell, *supra* note 1, at 6-7.
- [43] *Id.*
- [44] U.S. Const. amend. XIII, § 1.
- [45] Rolnick, *supra* note 3, at 63.
- [46] Preston Sanchez & Rebecca Blum Martinez, *A Watershed Moment in the Education of American Indians: A Judicial Strategy to Mandate the State of New Mexico to Meet the Unique Cultural and Linguistic Needs of American Indians in New Mexico Public Schools*, 27 Am. U. J. Gender Soc. Pol'y & L. 317, 330 (2019).
- [47] Bell, *supra* note 1, at 8.
- [48] *Id.* at 10. For first hand accounts of this punishment and abuse lasting into the mid-20th Century, see Jon Reyhner, *American Indian Boarding Schools: What Went Wrong? What Is Going Right?* 57(1) Journal of American Indian Education, 66 (2018).
- [49] Rolnick, *supra* note 3, at 80-82.
- [50] *Id.*
- [51] Native Disparities in Youth Incarceration, The Sentencing Project, (2017) <https://www.sentencingproject.org/wp-content/uploads/2017/10/Native-Disparities-in-Youth-Incarceration.pdf>, archived at <https://perma.cc/6LVR-BTWQ>.
- [52] Bell, *supra* note 1, at 4.
- [53] *Id.* at 7.
- [54] Butler, *supra* note 4, at 1359.
- [55] Miriam Stohs, *Racism in the Juvenile Justice System: A Critical Perspective*, 2 Whittier J. Child. & Fam. Advoc. 97, 99 (2003).
- [56] Butler, *supra* note 4.
- [57] *Id.* at 1369. See also Cynthia Conward, *There Is No Justice, There Is "Just Us": A Look at Overrepresentation of Minority Youth in the Juvenile and Criminal Justice System*, 4 Whittier J. Child & Fam. Advoc. 35, 37-39 (2004).
- [58] Butler, *supra* note 4, at 1369.
- [59] *Id.* at 1369-1370.
- [60] *Id.* at 1370, quoting Louise De Koven Bowen, *The Colored People of Chicago: An Investigation Made for the Juvenile Protective Association*, 3 (1913).
- [61] Butler, *supra* note 4, at 1365-68.
- [62] Butler, *supra* note 4, at 1362-1363.
- [63] *Id.*
- [64] *Id.*
- [65] Butler, *supra* note 4, at 1361.
- [66] Butler, *supra* note 4, at 1360.
- [67] Butler, *supra* note 4, at 1365.
- [68] The Juvenile Justice revolution is often credited to the campaigning of white women. This re-writing of history undermines the tremendous achievements of black women during the Juvenile Justice Era. From its beginning, black women began making noteworthy improvements in the way black children were treated by the juvenile system. In particular, they focused their energy on two things: ensuring that black children were included in the rehabilitative model of the juvenile justice system, and doing community-based work to decrease the number of black children entering into the juvenile justice system. Disregarding resistance is a tool of oppression. As such, it is important to note the contributions of these women. See Butler, *supra* note 4, at 1346, 1365, 1350, 1375.
- [69] Soung, *supra* note 16.
- [70] *Id.*
- [71] Roberts, *supra* note 7.
- [72] Feld, *supra* note 13.
- [73] Beverly Xaviera Watkins & Mindy Thompson Fullilove, *The Crack Epidemic and the Failure of Epidemic Response*, 10 Temp. Pol. & Civ. Rts. L. Rev. 371-372 (2001).
- [74] *Id.* at 375.
- [75] Feld, *supra* note 13, at 1451.
- [76] *Id.* For a deplorable example of the narrative surrounding this strategy, see Alexander P. Lamis, *Southern Politics in the 1990's*, 7-8 (1999).
- [77] *Id.*
- [78] *Id.*
- [79] Clinton Lacey, *Racial Disparities and the Juvenile Justice System: A Legacy of Trauma*, The National Child Trauma Stress Network (December 4, 8:44 PM), https://www.nctsn.org/sites/default/files/resources/racial_disparities_and_juvenile_justice_system_legacy_of_trauma.pdf, archived at <https://perma.cc/WES3-CTQ6>.
- [80] Bell, *supra* note 1, at 15.
- [81] Feld, *supra* note 13, at 1451.
- [82] Feld, *supra* note 13, at 1506.
- [83] *Id.*
- [84] *Id.* For more information about the disproportionate effect the War on Drugs had on youth of color, see Christina

M. Gaudio, *A Call to Congress to Give Back the Future: End the "War on Drugs" and Encourage States to Reconstruct the Juvenile Justice System*, 48 Fam. Ct. Rev. 212, 216-217 (2010).

[85] Feld, *supra* note 13, at 1564.

[86] Bell, *supra* note 1, at 17.

[87] Feld, *supra* note 13, at 1506.

[88] Soung, *supra* note 16, at 432.

[89] Roberts, *supra* note 7, at 1483-1484.

[90] *Id.*

[91] Emma S. Ketteringham, et al., *Healthy Mothers, Healthy Babies: A Reproductive Justice Response to the "Womb-to-Foster-Care Pipeline"*, 20 CUNY L. Rev. 77, 91-92 (2016).

[92] A 2017 report found that two-thirds of practicing social workers are white. Edward Salsberg, et al., *Profile of the Social Work Force*, The George Washington University Health Workforce Institute (2017), [https://www.cswe.org/Centers-Initiatives/Initiatives/](https://www.cswe.org/Centers-Initiatives/Initiatives/National-Workforce-Initiative/SW-Workforce-Book-FINAL-11-08-2017.aspx)

National-Workforce-Initiative/SW-Workforce-Book-FINAL-11-08-2017.aspx, archived at <https://perma.cc/PLP8-M7YA>.

[93] For a contemporary account of black and brown mothers being punished by the child welfare system, see Stephanie Clifford & Jessica Silver-Greenberg, *Foster Care as Punishment: The New Reality of "Jane Crow"*, N. Y. Times, July 21, 2017, archived at <https://perma.cc/JG2E-ZJQK>.

[94] Jeree Michele Thomas & Mel Wilson, *The Color of Youth Transferred to the Adult Criminal Justice System: Policy & Practice Recommendations*, (2018) [http://cfyj.org/images/pdf/Social_Justice_Brief_Youth_](http://cfyj.org/images/pdf/Social_Justice_Brief_Youth_Transfers.Revised_copy_09-18-2018.pdf)

[Transfers.Revised_copy_09-18-2018.pdf](https://perma.cc/CGN9-SBEL), archived at <https://perma.cc/CGN9-SBEL> ("Black youth are approximately 14% of the total youth population, but 47.3% of the youth who are transferred to adult court by juvenile court judges who believe the youth cannot benefit from the services of their court. Black youth are 53.1% of youth transferred for person offenses despite the fact that black and white youth make up an equal percentage of youth charged with person offenses, 40.1% and 40.5% respectively, in 2015." (citation omitted) (emphasis added)).