



The color of juvenile justice: Racial disparities in dispositional decisions



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ABSTRACT

Existing research on dispositional decisions typically models the outcome as merely placed or not placed. However, this does not accurately reflect the wide variation in residential options available to juvenile court actors. In this research, we combine data from *ProDES*, which tracks adjudicated youth in Philadelphia, with data from the Program Design Inventory, which describes over 100 intervention programs, to further examine the factors that influence court actors' decision making in selecting an appropriate program for a juvenile offender. We find that even after controlling for legal and needs-based factors, race continues to exert a significant influence, with decision makers being significantly more likely to commit minority youth to facilities using physical regimen as their primary modality and reserving smaller, therapeutic facilities for their white counterparts. Using focal concerns theory as an explanatory lens, we suggest that court actors in this jurisdiction employ a racialized perceptual shorthand of youthful offenders that attributes both higher levels of blame and lower evaluations of reformability to minority youth.

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1. Introduction

Since the birth of the American reformatory in 1825, the character of residential placements (i.e., their architecture, setting, size, and strategies for addressing delinquency) has been guided by evolving standards of how policy makers and the public define social constructs such as “children,” “crime,” and “punishment.” During eras in which children were conceived of as innately good and malleable and causes of delinquency were viewed as largely outside of their control, reform schools were generally guided by principles of moral education, hard work, and sentimental pastoralism (Bernard and Kurlychek, 2010; Platt, 1969; Schneider, 1993). Many took the form of rural cottages in which Christian husband and wife teams served to replace biological parents who were assumed to be unable or unwilling to properly socialize and supervise their children. Later this image of the youthful offender as a needy child was to be replaced with one of a sick child. As the field of child and adolescent psychology grew, so did the view that the juvenile delinquent could be “fixed” through therapeutic treatments. This new image of the delinquent then led to a reformulation of juvenile institutions from educational and home-like settings to treatment-oriented facilities (Bernard and Kurlychek, 2010).

More recently, the image of the juvenile delinquent shifted again, this time attributing to the youthful offender the *mens rea* (guilty mind) of an adult criminal. Indeed, during the 1990s, the image of the “superpredator” portrayed youthful offenders as cold, calculating, adult-like criminals who should be held responsible for their crimes. Residential placements that previously retained a medicalized therapeutic emphasis to reform delinquents were characterized as coddling vicious predators that needed to do adult, or at the very least, hard time (Bennett et al., 1996). According to Feld, the history of

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shifting conceptions of youthful offending has left behind a modern system of “schizophrenic formulations of youth – dependent and vulnerable or independent and responsible – [that] enable states to selectively choose between the two constructs to manipulate young people’s legal status, to maximize their social control, and to subordinate their freedom and autonomy” (1999, p. 9). The shifting imagery constructed in each of these eras has also left its mark on the landscape of residential placements, resulting in a hodgepodge of facilities and intervention modalities currently available for use by decision makers in the juvenile court. Yet, to date, little attention has been given to the differences in these interventions, specifically as they relate to court decisions regarding which youth are most appropriate for which facilities (e.g. which youth are in need of care, which youth are amenable to treatment, and which youth are simply small criminals).

Many scholars have argued convincingly that attributions of delinquent youth as more or less amenable to treatment have been raced, classed, and gendered (Feld, 1999; Grossberg, 2002; Platt, 1969; Schneider, 1993). Much, if not most, of the research on juvenile justice decision making has focused on whether and how these extra-legal factors affect sentencing outcomes at various stages of the process (Beger and Hoffman, 1998; Bridges and Steen, 1998; Leiber and Stairs, 1999; Sealock and Simpson, 1998; Wordes et al., 1994; Wu, 1997). The majority of studies conducted in the last several decades have found that youth of color are more likely than their white counterparts to receive harsher dispositions (Poe-Yamagata and Jones, 2000; Pope and Feyerherm, 1990; Pope et al., 2002), while gender effects have been less consistent (Belknap, 2001; Chesney-Lind and Shelden, 1992; Van Wormer and Bartollas, 2000). Although court actors are certainly less likely than ever to explicitly factor race and ethnicity into their decisions, recent research has identified a number of cognitive mechanisms by which decision makers develop a “perceptual shorthand” (Steffensmeier et al., 1998) that may cast minority youth as more adult like, culpable for their offenses, and less amenable to treatment (Bridges and Steen, 1998) or alternatively, could position class-privileged and/or white youth as exceptional cases which pose an even greater threat than their counterparts (Peterson and Hagan, 1984).

However, as previously noted, the body of research on dispositional decisions has not accurately reflected the variety of residential options available to juvenile court decision makers. Studies exploring sentencing in juvenile court either measure severity in terms of sentence length or whether the youth was referred to a residential placement versus a community-based program. This approach masks important differences in the settings, target populations, treatment modalities, and program activities across residential facilities. As previously noted, dispositional options include a variety of placement settings, ranging from traditional cottage-type facilities, to specialized treatment units, to secure institutional facilities. We hypothesize that these distinct differences in placement types are an additional avenue through which disparity may operate. For example, a 90-day boot camp is qualitatively different from a therapeutic substance abuse facility; locked facilities with razor wire surrounding them are meaningfully different from those with open campuses and small cottages. Decision makers undoubtedly recognize these distinctions, as well. However, existing studies treat all placements as monolithic in nature. This paper addresses this shortcoming and expands our understanding of the decision making process by exploring the role of race (if any) in matching juvenile offenders to a type of residential placement facility.

Before describing our study in greater detail, we explore two strands of literature that are essential to this undertaking: theoretical and empirical examinations of racial attributions in juvenile justice decision making, and factors predicting dispositional decisions in juvenile courts.

2. Literature review

2.1. Focal concerns and racial attributions

A growing literature demonstrates that racial and gendered stereotypes can trickle down into the court’s decision-making processes. This may be particularly true in the juvenile court, which was founded on the principle of individualized justice and thereby encourages greater discretion among decision-makers (Feld, 1995; Horowitz and Wasserman, 1980; Sampson and Laub, 1993). Moreover, decision makers, especially those in overburdened urban courts such as the one in this study, must make a rapid succession of decisions. Research has shown that in these circumstances court actors often apply patterned responses, or rely on “perceptual shorthand” to determine appropriate sentences (Steffensmeier et al., 1998; Steffensmeier and Demuth, 2006).

The primary theory that has been applied to understand what guides court actors’ decision making is focal concerns theory, which is based on empirical analyses of adult court decisions but has been extended by other scholars to the juvenile justice system (Bishop et al., 2010). According to this theory, in sentencing decisions, a judge (and/or other court room actors) is trying to balance three key concerns. First is the assessment of the defendant’s culpability and blameworthiness for the crime. In a juvenile court it is evident how this may be intertwined with assessments of maturity and “adult-like” behavior. A second concern is the need for community protection. This assessment necessarily requires the judge to make predictions about whether or not this particular youth will offend again in the future and how serious this offending might be. The inherent ambiguity in such prediction often leads court actors to rely on the aforementioned perceptual shorthand and stereotypes in making such assessment. The final concern is with the practical consequences of sentencing decisions (e.g. cost, existing resources, or the offender’s ability to “do time.”) In extending this notion to juvenile court, it might be that those youths seen as least blameworthy and less mature would be the most likely to benefit from an educational or

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