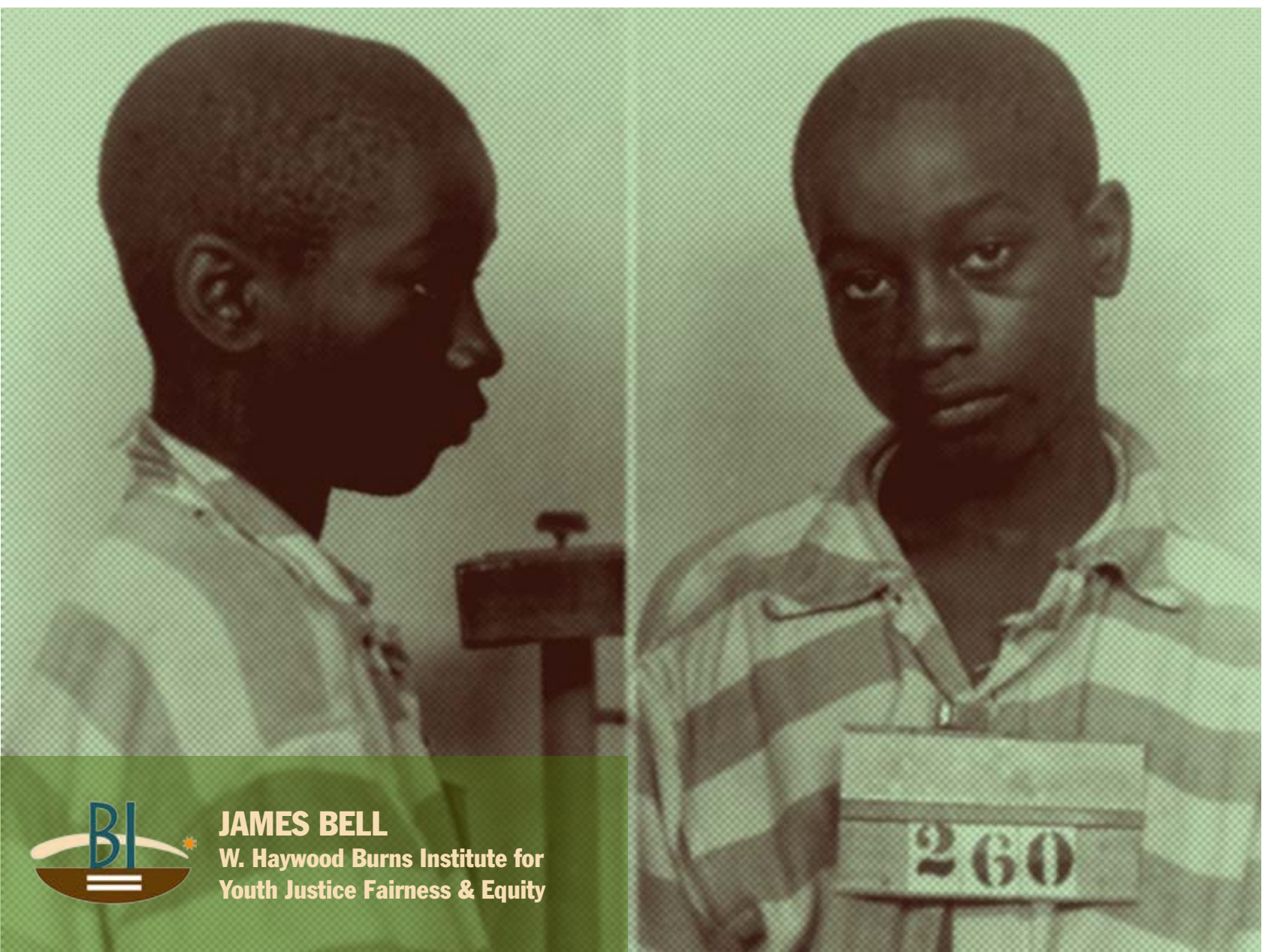


# REPAIRING THE BREACH

**A Brief History of Youth of Color in the Justice System**



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The Burns Institute eliminates racial and ethnic disparities by building a community-centered response to youthful misbehavior that is equitable and restorative. We are a grassroots to grasstops organization. We believe innovation comes from the bottom and influences those at the top. That's why we work with decision makers at the local level to affect change that transforms youth justice systems near and far.

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## REPAIRING THE BREACH: A BRIEF HISTORY OF YOUTH OF COLOR IN THE JUSTICE SYSTEM

### Introduction

At the time of this essay's writing, more than 2 million people are incarcerated and more than 7 million are on probation, parole, or other supervision in the United States. Similarly, we have nearly 1 million young people involved in the youth justice system. The overwhelming majority in both systems are people of color. The national reaction to these numbers covers a wide range of commentary, scholarship, and punditry. However, too much of the analysis about how we arrived at this situation and what should be done about it is ahistorical.

Trying to meaningfully address the unacceptable levels of racial and ethnic disparities in our youth justice system without an understanding and knowledge of the historical roots that drive it will not bring about sufficient engagement strategies. As you will see from this essay, there are deeply held beliefs and social norms from this nation's earliest days that are embedded into youth justice administration, which create and exacerbate racial and ethnic disparities. It is a largely untold story that should be known by every youth justice professional, service provider, and practitioner as well as families and communities.

Through their research and analysis, academics like Geoff Ward and Miroslava Chávez-García have enriched our understanding of the impacts the youth justice system has on children of color. Our essay draws on their research and that of others to accentuate important historical events that constitute the cornerstone of today's youth justice machinery.

Enduring themes are present throughout this work. The first is the societal underpinnings buttressing the ideas of children's appropriate behaviors in general. A look at the historical record reveals that when "children" are referenced, this term discounted youth of color. Indeed, children of color were excluded from these narratives because they were considered the "other" and therefore inferior, or not even people. This is no minor point. Essentially, we have constructed legal and social norms that are premised on the beliefs that young people of color were historically considered feebleminded, savages, incapable of normal function, or not human.

As the Declaration of Independence was a document expressing a philosophical and aspirational truth, the on-the-ground notions of racial superiority were a part of our nation's DNA. While "all men are created equal," according to Thomas Jefferson, Black people were not legally considered human in large parts of the colonies. The infrastructure needed to maintain people as chattel—or, in the case of Native Americans, savages—has not been dismantled, and any attempts to achieve equity in the youth justice system must confront this reality.

These fundamental, deeply ingrained principles are not easily discarded in the seemingly modern, global, and high-tech world we currently inhabit. The core values have been with us for hundreds of years and are not easily shaken off, if at all. Therefore efforts to engage mass incarceration and the equitable administration of justice must internalize these truths, own them, and respond accordingly.





## The Period of First Contact and Youth of Color

Among the variety of early settlers to this land, the Puritans exerted the most influence on early notions of childhood. In Europe during the early 1600s, an important shift in the perceptions of children occurred. Traditionally, children had relatively low life expectancy and parents became conditioned to losing children before they could grow and mature.<sup>1</sup> However, beginning in the early 17th century, mortality rates for children decreased, resulting in parents having a new sense of hope and promise for their children's future.<sup>2</sup> As children were increasingly viewed as society's future, parents and other societal figures took a vested interest in the moral and social development of youth.



In the outward migration from Europe, Puritans coming from England had the largest influence on cultural and legal norms in the Americas. When they made first contact, Puritans arrived with the belief that children were born with sin and needed intense discipline and obedience to please God. This belief guided child-rearing practices and parental responses to childhood conduct considered antisocial or in violation of God's will. The *Book of Nurture*<sup>3</sup> encouraged parents to

dutifully stomp out behaviors that are thought to be typical, and even healthy, today. Children could be chastised for behaviors as minor as fidgeting or pointing.

It is no accident that the axiom "spare the rod and spoil the child" still has potency today, as evidenced by the numerous states that legislate paddling in schools.<sup>4</sup>

Puritans believed that a parent's failure to properly instruct a child in the ways of the Lord would result in the child's damnation to hell forever.<sup>5</sup> At this time, parents were primarily responsible for children's behavior and social control, which was reflected in the earliest-known legislation aimed at childhood misbehavior called the "Stubborn Child Law." This statute was enacted in 1646 by the General Court of Massachusetts Bay, making child disobedience toward a parent a capital offense.<sup>6</sup> It is no coincidence that parents whose children are in the youth justice system TODAY are often viewed negatively and incapable of proper child rearing. For families of color, the code words include "no father in the home" and "teenaged parent." While these phrases reflect some realities, the deficit-based approach to families of color in these circumstances rarely supports positive life outcomes.







## The Clash over Family Structure with Northern Tribes

The Puritan idea of healthy families and the Native American family structure could not have been more of a study in contrasts. Many Puritans viewed tribal families as “devilish and sinful” and living in the howling wilderness.<sup>7</sup> Native Americans had a broad concept of family relations, so the term “relatives” did not necessarily indicate someone related by blood.<sup>8</sup> The community of extended relatives considered part of its “family” involved elders providing a valuable service to the children. Elders “passed on traditions and culture, acted as religious and political advisors, promoted and encouraged cultural pride and identity among the young.”<sup>9</sup>

The Puritans viewed themselves as “unified, visionary, disciplined and dynamic,” while Native American society was considered “divided, self-satisfied, undisciplined and static.”<sup>10</sup> As the Puritans encountered aggressive resistance to Christianity by most tribes, they began to view Native people as “an irredeemable race.”<sup>11</sup> These differences in worldview and suspicion over territory inevitably led to tension, displacement, and, in some instances, war.



The most notable of these 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.<sup>12</sup> As a result, many Narragansett children were bound out to settler families. Today, the Puritan narrative regarding “good families” survives, with tribes fighting to keep their children in adoption and other proceedings.



## Black Children during the Early Settlement Period

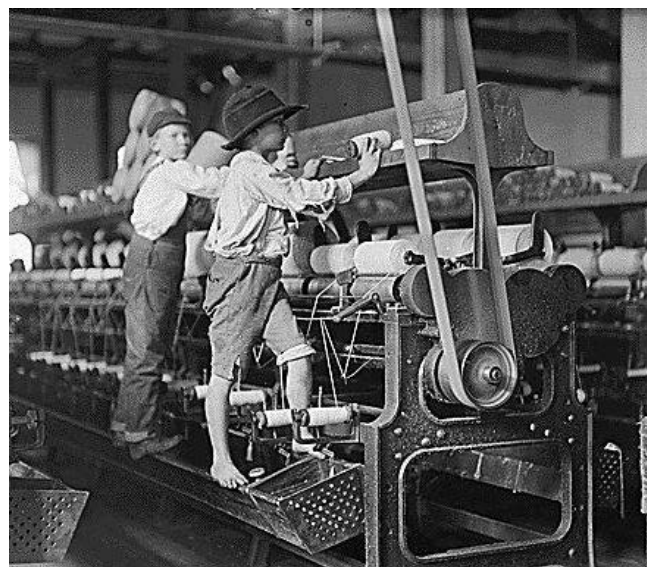
During this period, most of the Black population was located in the South, living as enslaved people. Black children were the human property of slaveholders and therefore not the beneficiaries of whatever rights “human beings” were afforded. As Geoff Ward importantly emphasizes in his book, *The Black Child-Savers*, Southern society objectified and viewed Black children as valuable commodities. Therefore, most of the societal views regarding treatment of children were not applied to enslaved children. Black youth were property, and they were governed and treated as such.

As laws changed over time, slavery ended and Blacks were granted status as “human beings.” Yet they were still considered less capable than Whites in almost every way. This would evolve into Jim Crow justice for Black youth—denying them access to White institutions of reform—rooted in the belief that Black youth were “undeserving subjects of the White-dominated parental state.”<sup>13</sup>

## The Industrial Age and Youth of Color

The early 1800s saw enormous change in many aspects of civil society. One of the most fundamental changes was the transition from a subsistence agrarian economy to a more urban economy and dependency on wages for labor. Increased industrialization demanded more workers living in concentrated urban centers. Between 1800 and 1900, the number of city dwellers doubled as a result of immigration and industrialization. The family structure as conceived by the Puritans was placed under tremendous social and economic stress.<sup>14</sup>

Large families were a legacy of the agrarian period; however, providing food and necessities proved more difficult in the new burgeoning urban environments. In desperate need of financial support, many children turned to activities deemed criminal in order to survive on the streets.<sup>15</sup> Exploitation of child labor became commonplace, as unskilled children were readily available and deemed expendable.







## Detention Centers for Youth Are Created, Excluding Blacks

In 1824, the Yates Report, commissioned in New York City to address the influx of poor and ragged children, recommended that institutional options were best to avoid cruel treatment, idleness, and inadequate moral and educational development in the youth.<sup>16</sup> One reaction to the report included a raft of legislation that permitted the government to hold children against their will, often causing them to be apprehended for “soliciting charity.”<sup>17</sup> One New York journalist reported that the city jail was filled with (among others) “young boys and girls who have been caught asleep on cellar doors or are suspected of the horrible crime of stealing junk bottles and old iron!”<sup>18</sup>

The other reaction was the opening of the nation’s first youth institution, the New York House of Refuge in 1825. At the time, the House of Refuge was seen as a humane approach to the children it served. It should be noted that Black children were excluded from this reform effort.

A decade later, houses of refuge added special sections for “colored children.”



Black children admitted to the houses of refuge were, on average, one-and-a-half to two years younger than Whites of the same gender<sup>19</sup> while enduring longer sentences and harsher treatment. They also suffered a disproportionately high death rate and, upon discharge, could look to fewer opportunities for advancement than their White counterparts.<sup>20</sup>

Elisha Swinney, superintendent of the colored department at the House of Refuge in Philadelphia, explained, “In this department, we have difficulties to meet that are not found among the White children ... We cannot say, you may attain to such a high calling

or position in life; to that of a physician, lawyer, legislator, governor.... There are few opportunities given them whereby they might prove themselves.”<sup>21</sup> As evidence of the low regard in which Black children were held by White officials at the Philadelphia House of Refuge, they sought “placing out” programs that would send Black youth back to Africa rather than integrating them into programs created for White youth.<sup>22</sup>

## Parens Patriae Arrives

As more children were being placed in institutions because of the poor living conditions in the rapidly growing cities, the Supreme Court decision of *Ex Parte Crouse* in 1838 was a seminal case in determining the state’s ability to intervene in the lives of families.

In the case, Mary Ann Crouse was sent to the Philadelphia House of Refuge by her mother because her “vicious conduct rendered her control beyond [her mother’s] power.” Outraged, Mary’s father challenged the constitutionality of her detention without court order. The court refused to release Mary Ann, stating, “The House of Refuge is not a prison, but a school.” The significance of this ruling is the court established that youth fare better under state supervision rather than the supervision of “unsuitable” parents. The court then introduced the doctrine of *parens patriae*. This new ruling gave the state legal authority to determine the fate of children and families that came to its attention. This is the authority used today for the entire youth court apparatus and its surrounding cottage industries.



## John Augustus and Alternatives to Incarceration

In 1841, John Augustus, a boot maker, convinced a Boston police court to release a “common drunkard” into his custody, promising to return the man for his sentencing date. Augustus took the man home, found him a job, and had him sign a pledge to stop drinking. When the offender appeared for his court date three weeks later, his appearance and demeanor had changed so dramatically that the judge imposed a small fine in lieu of the normal 30 days of incarceration. John Augustus would continue to secure the release of offenders into his supervision for the next 18 years until his death in 1859. By his own account in 1852, he had bailed out “eleven hundred persons, both male and female.”<sup>23</sup>

Today, probation is considered an integral part of both the youth and the adult justice systems. It is important to note that Augustus’s probation programs began as a community-initiated effort to reform adults and youth by keeping them in their home communities and helping them develop a positive, law-abiding lifestyle. This approach was rarely available for people of color in the Northern states for reasons mentioned above regarding the prevailing beliefs of the inferiority of Blacks and Native Americans.



## The Antebellum South and Black Children

Prior to the Emancipation Proclamation,<sup>24</sup> Black enslaved children were not able to avail themselves of the benefits offered by John Augustus and other reformers, as slaves were property and courts would not deprive an owner of a valuable laborer. Thus, slave owners typically punished the children for most infractions without judicial intervention unless they were of a particularly grievous or threatening nature.

The Freedmen’s Code of 1866, passed after the Emancipation Proclamation of 1865, applied to the children of newly freed slaves. The code enabled former slaveholders to force free Black children into apprenticeships and made them guardians of the youth until adulthood.<sup>25</sup>



Black Codes allowed Black citizens to be incarcerated for behaviors that would not be criminal had the citizens been White.<sup>26</sup> Once Black citizens were incarcerated, the state used an exception provided in the 13th Amendment to re-enslave Blacks. “Neither slavery nor involuntary servitude, *except as a punishment for crime whereof the party shall have been duly convicted*, shall exist within the United States....”<sup>27</sup> In short, the justice system became a willing vehicle to legitimize slave-like conditions. One of the clever devices used to essentially extend control over Black bodies was the convict leasing system.





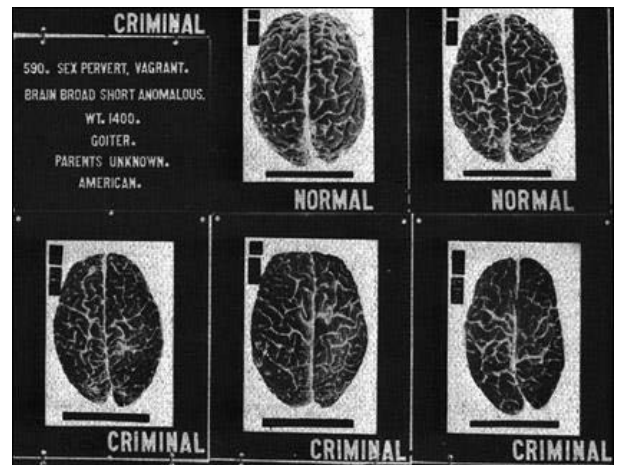
Convict leasing is sometimes described as being “worse than slavery”<sup>28</sup> because, as miserable as slavery was, owners had an interest in keeping their property alive and productive.<sup>29</sup> Conversely, leasers could easily and cheaply replace any convict that died of malnutrition or disease, so they had little incentive to care for the lessees.<sup>30</sup> It was a deadly but profitable enterprise. No convict in Mississippi ever lived beyond seven years.<sup>31</sup> Children were not spared from this system of enforced misery. An 1890 census analysis revealed that more than 18 percent of all Black prisoners were youth at this time.<sup>32</sup>

As the population of the country moved west as part of the “Manifest Destiny” doctrine, the Whittier State School in southern California institutionalized a system informed by the emerging belief that one could predict criminal behavior by race and body type. This structurally racist pseudo-science had devastating results for Mexicans and Filipinos. Results differentiated between “normal” youth—those able to be rehabilitated—and “feeble-minded” youth—those youth perceived as unredeemable.<sup>33</sup> Under this construct, youth of color were disproportionately labeled “feeble-minded,” thereby justifying institutional confinement and, in many instances, sterilization.

Lewis Terman, the superintendent of Whittier State School, discussed in his publication, *Measurement of Intelligence*, the need to sterilize Mexicans and Blacks due to feeble-mindedness.

He explained:

[Feeble-mindedness was] very, very common among Spanish-Indian and Mexican families of the Southwest and also among negroes. Their dullness seems to be racial.... [T]he whole question of racial differences in mental traits will have to be taken up anew and by experimental methods.<sup>34</sup>



Based on their data, school officials labeled more than 60 percent of their Mexican-American wards as “feeble-minded” or “unable to develop beyond the intellectual level of an average twelve-year old.”<sup>35</sup> As mentioned above, many of these young people were sterilized as a preventive way to protect public safety.



## Tribal Families and Boarding Schools

During this same time period, expansion was affecting Native American tribes and families in profound ways. Tragically, as noted by Professor Ward Churchill of the University of Colorado, the North American Indian population was reduced from roughly 12 million in 1500 to barely 237,000 in 1900.<sup>36</sup>

While it is difficult to generalize about different tribal cultures, it appears that, historically, incidents of physical discipline of children were rare.<sup>37</sup> Rules of behavior were enforced by a strong, unwritten set of values passed down by elders.<sup>38</sup> Thus, instead of punishing misbehaving youth, tribes utilized restorative justice practices to reconcile the youth and the victim.<sup>39</sup>



The tribal approaches to justice were seen as unworkable to the growing number of settlers moving west. Congress passed the Major Crimes Act in 1885, which imposed the majority culture’s jurisprudential values, stripped away tribal sovereignty, and uprooted the principal role of elders in administering justice. This type of social upheaval has ramifications that continue today regarding tribal sovereignty in the administration of justice in Indian country. The complex system of criminal jurisdiction between tribes and federal agencies such as the Federal Bureau of Investigation, Bureau of Indians Affairs, the United States Attorney, and the Bureau of Prisons makes tribal justice administration significantly more difficult.

The Civilization Act Fund of 1819 was used to establish Indian boarding schools based on the assumption that to save tribal children from genocide associated with westward expansion, tribes needed to adopt the values and mores of the majority population. During this time period, the U.S. federal government established 60 schools with 6,200 Indian students.<sup>40</sup>





The first and most famous of these off-reservation boarding schools was the Carlisle School in Pennsylvania, established in 1879 by Captain Richard Pratt.

Pratt, whose infamous motto was “kill the Indian, save the man,” felt it necessary to remove children from the reservation to destroy their knowledge of their native language and traditions, which he believed would otherwise hinder their assimilation into the White culture.<sup>41</sup>

Assimilation had a generational impact on the Native American family structure:

“Almost immediately our names were changed to those in common use in the English language ... I was told to take a pointer and select a name for myself from the list written on the blackboard. I did, and since one was just as good as another, as I could not distinguish any difference in them, I placed the pointer on the name Luther.”

—Luther Standing Bear, *My People, the Sioux*, 1928, concerning his first experiences at Carlisle Indian Industrial School in 1879

When asked by her children why she was so cold and never hugged them, Ida Amiotte, who attended a Roman Catholic boarding school in Pine Ridge, South Dakota, replied, “I never learned how.”<sup>42</sup> The effects of such purposeful familial disruption constitutes historical trauma that informs youth justice on reservations and in counties close to reservations to this day.





## The Juvenile Court Era and Youth of Color

The expansion of houses of refuge described earlier and reports documenting their abusive and exploitive methods of discipline created a sense of urgency for reform in large cities in the North and Midwest.

The creation of the juvenile court was made possible through the labors of Julia Lathrop and philanthropist Lucy Flower.<sup>43</sup> Eventually the two women came together to begin drafting “An Act for the Treatment and Control of Dependent, Neglected and Delinquent Children” on April 14, 1899, and subsequently the nation’s first juvenile court opened in Chicago, IL.<sup>44</sup>

Soon after passage of the legislation, the juvenile court opened on July 3, 1899 with the aim of addressing “the child’s need and not the deed.”<sup>45</sup> Pursuant to the Juvenile Court Act, youth in conflict with the law below the age of sixteen would now have their case heard in a court designed solely for youth cases. The court operated in an informal fashion under the direction of a judge, who was ideally a “flexible, humanistic, legalistic, and sympathetic” man.<sup>46</sup> The judge involved police, social workers, and other youth-serving professionals who would provide input, and then the judge would make the ultimate determination.

The first case heard by the juvenile court in Chicago was that of Henry Campbell, who was accused of larceny. Campbell’s parents pleaded before a packed courtroom to have the judge send their son to live with his grandmother, arguing improper peer influence had caused his misbehavior. Judge Tuthill, the court’s first justice, agreed that removing Campbell from his current environment would have a positive effect on his future behavior.

Campbell’s case exemplified a positive approach to youth misbehaviors that offered alternatives to the houses of refuge. Henry had been spared from institutionalization and was placed with a family member. Tuthill rejected the Puritan idea of original sin, exclaiming, “Born criminals? Stuff! There are no born criminals. If I believed that, I should lose my faith in God. Society makes criminals; environment and education make criminals, but they are not born so.”<sup>47</sup>

Following the opening of the country’s first youth court, the first quarter of the 20th century saw tremendous growth in the formation of youth court systems. By 1912, the federal Children’s Bureau was established, and youth courts had been created in 22 states.

From the juvenile court’s inception, Black youth were overrepresented in court caseloads compared to the greater population. They were substantially underserved by the community-based agencies and services contracted to assist youthful offenders. The Cook County chief probation officer explained that one of the court’s greatest challenges was to provide adequate care for dependent and neglected children of color, since few community services existed for them.<sup>48</sup>

While services in the North for Black youth were paltry, they were considerably better than what was available in the segregated South. The juxtaposition of White and Black youth justice facilities in Memphis, TN, vividly captures the structural differences between the two distinctly different systems. White facilities were rich with resources, including a modern courtroom, several classrooms for educational and vocational training, a gymnasium, a garden, housing, and more.<sup>49</sup>





FOR WHITE CHILDREN

To the white Juvenile Court, the city has just turned over a disused public school building. It houses the court, separate detention rooms for delinquent and dependent children, special school rooms for backward and truant children, a large gymnasium, a model cottage and manual training rooms. Memphis has in this building one of the best equipped juvenile courts and detention homes in the country. Until now the white Juvenile Court has been housed in a dingy and inadequate building.



FOR COLORED CHILDREN

Memphis houses its Juvenile Court in two buildings in different parts of the city—one each for colored and white children. The colored court is in an old house, badly equipped, its sewer connection in the back yard. But Julia Hook, the colored probation officer in charge, keeps it clean as a whistle, with plants in pots here and there. Mrs. Hook has been a paid probation officer for three years. Before that, beginning as far back as 1876, she did volunteer work for children.

In contrast, the Black youth facility was a small cottage devoid of resources.<sup>50</sup> Due process was also nonexistent. Black juvenile court was presided over by a police officer because the county's juvenile court judge refused, as a matter of course, to leave White court.<sup>51</sup>

Despite the growing trend of separating youthful law violators from adults, Black children continued to be confined in adult prisons and excluded from protections extended to White youth in the South.



Armed with the goal of "racial uplift," a group of Black "child savers" began organizing at the close of the 19th century in an attempt to end the harsh treatment of Black children at the hands of the youth justice system. Black child

savers faced a greater challenge than what White child savers faced: a racialized justice system unwilling to invest in the rehabilitation of Black youth.

The reform efforts of civil rights activist Julia Britton Hooks and her husband Charles are examples of child savers working in Memphis.



The Hookses oversaw the detention facility for Black youth and brought forth Julia Britton Hooks's rehabilitative vision written in her influential essay, "The Duty of the Hour":

"[C]haracter should be considered the 'Duty of the Hour'.... There is in every child [this] divine principle awaiting development, [this] precious germ awaiting unfolding."<sup>52</sup>



Similarly, civic leaders such as W.E.B. DuBois and Ida B. Wells embodied a new Black consciousness as the "New Negro."<sup>53</sup>

As discussed by Geoff Ward, during the period of 1920–1940, Midwestern and Northern cities experienced an influx of more than 1 million Black individuals as they escaped from the convict leasing system and Jim Crow laws in the South.<sup>54</sup>

The New Negro challenged stereotypes of inferiority in White, mainstream society by presenting Blacks as "thinking, creative human beings."<sup>55</sup> As eloquently stated by Geoff Ward, "Toppling Jim Crow juvenile justice meant that the dominant



parental state formally adopted black youths and communities in a legal sense ... [but] did not guarantee a lasting love or civic embrace of black delinquents.”<sup>56</sup>

Proof of this is evidenced by Mary Huff Diggs’s report issued in 1940 that documented the already well-recognized phenomenon we now call disproportionate minority contact (DMC) in youth court cases. In her review of 53 courts across

the country, she identified “that Negro children are represented in a much larger proportion of the delinquency cases than they are in the general population.”<sup>57</sup> Additionally, she noted “cases of Negro boys were less frequently dismissed than were White boys. Besides, they were committed to an institution or referred to an agency or individual much more frequently than were White boys.”<sup>58</sup> Indeed, Diggs’s DMC findings highlight the deep-rooted disproportionality problem that continues to plague the youth justice system today.

The changing demography of urban areas caused increasing numbers of Black youth to make contact with the court system.<sup>59</sup> This migration is not dissimilar to the influx of Latinos and Asians occurring in our country today. Justice systems should learn from history that these changing populations are not going away and therefore should seize the opportunity to be proactive in preparing for and assuring equity.

## Latinos and Youth Justice

As discussed above, the Whittier State School labeled many Mexican-Americans as feeble-minded and sterilized them as a result. The attitudes and stereotypes about Brown folks persisted during the upcoming years of the 20th century.

America’s entry into World War II engendered changes in the labor force, as the fighting force was overwhelmingly White and soldiers needed for the war effort were leaving their jobs accordingly. In 1942, the Bracero program was created to bring in workers from Mexico as the result of an agreement allowing temporary Mexican workers into the United States.

As a result, the numbers of Latinos in the western United States increased rapidly and significantly. The children of the Braceros were treated as less deserving of equity in the youth court system due to lingering attitudes from the “feeble-minded” period of the Whittier State School.

In addition to experiencing discrimination from the youth court, Mexican-American youth in southern California also experienced hostility from the public and law enforcement as they developed their own youth subcultures in cities. Pachuquismo, or Pachuco culture, was illustrated by clothing, hairstyles, and a language called “Caló.” Caló was slang combining English, Spanish, and Nahuatl. Latino youth



Figure 14. A description of the demand for Mexican laborers (Source: Northwest Farm News, September 9, 1943).







distinguished themselves by wearing “zoot suits,” which were typically “wide-brimmed hats, broad-shouldered long coats, high-waisted peg-legged trousers, and long dangling chains.”<sup>60</sup>

Los Angeles newspapers negatively portrayed Mexican-American youth as “bloodthirsty and spurred on by the ancestral Aztec desire to let blood.”<sup>61</sup> This depiction of the Pachucos bred notions of a Mexican crime wave. For example, during the Sleepy Lagoon trial in 1942, 17 Latino youth were wrongly convicted for the murder of José Diaz. During the trial, an “expert witness” testified that their “Indian or Aztec heritage naturally shaped their need to draw blood.”<sup>62</sup>

On June 3, 1943, sailors accused Mexican Pachuco gangs of robbing and beating up military personnel in Los Angeles.<sup>63</sup> That same evening, approximately 200 sailors drove to East Los Angeles to retaliate against the Pachucos for their alleged attacks.<sup>64</sup> It was a bloody affair that made national headlines.

The violence against Mexican-American youth continued for several days and ended with police arresting and charging 500 Latino youth for rioting and vagrancy.

## Riot Alarm Sent Out in Zoot War

**Servicemen Strip and Beat 50;  
Five Youths Treated at Hospital**



Military authorities eventually ordered their personnel out of Los Angeles and calm returned. However, the legacy of Latinos participating in gangs, and therefore needing more scrutiny, is a part of today's difficulties in dealing with equity in the administration of justice.



As the youth justice system matured, it seemed to be drifting farther from its original mission, and youth of color were being especially ill treated as a result. For many, a pivotal episode evidencing this change involved the arrest, trial, and execution of 14-year-old George Stinney in 1944 in South Carolina. Stinney was the youngest known person to be executed in the United States since World War II.<sup>65</sup>

George had “confessed” to murdering two young White girls, ages 8 and 11, and was tried roughly one month after his arrest. George’s parents left town, fearing reprisal. Additionally, his counsel inadequately represented him, contributing to the trial lasting only a few hours; jury deliberation took only 10 minutes. He was sentenced to death and not informed of his right to appeal.

George was executed in the electric chair six weeks after his trial. His frame was too small and because the guards could not properly secure him in the chair, the executioner’s first round of electricity caused his mask to fall from his face.

In 2014, after a long battle, the pleas of the Stinney family were finally answered when the South Carolina court reexamined his case and granted him a “writ of coram nobis”—a legal doctrine rarely used, since, according to the family, George never committed a crime for which he needed to be pardoned.



George Stinney’s case led many youth advocates to believe the emphasis on punishment was occurring without the protections afforded those in the adult criminal justice system. These concerns were partially addressed by the Supreme Court in the case of *In re Gault*.<sup>66</sup> In the case, Gerald Gault, a 15-year-old boy, was arrested by police after making allegedly obscene prank telephone calls to his neighbor.

When Gault was placed under arrest, the police failed to notify his parents of his detention. During Gault’s trial, no record was made, no witnesses were sworn in before testifying, and Gault’s accuser never attended trial. Gault was convicted and sentenced to six years in a long-term youth incarceration facility. The facts and procedures of the *Gault* case were clear evidence of how far the youth justice system had strayed from its original purpose. Gault’s parents appealed to the U.S. Supreme Court after exhausting their state court options.

Ultimately, the Supreme Court reversed, noting that the due process concerns that arose in the case would not have





occurred if Gault was an adult. The Supreme Court established that “while there are legitimate reasons for treating youth and adults differently, youth facing an adjudication of delinquency and incarceration are entitled to certain procedural safeguards under the Due Process Clause of the Fourteenth Amendment.”<sup>67</sup>



After *Gault* and other cases granting rights to children in youth courts, the youth justice system struggled to implement due process rights and fulfill its rehabilitative mandate. During the 1980s, the youth justice system was confronted with issues involving the capacity of children to appreciate the nature of their acts. This problem was the result of the youth justice apparatus having to deal with school shootings, crack cocaine, and the invention of the “superpredator” myth. The impact of the policy and practice decisions made during this time in history still have youth of color reeling from its effects.

The superpredator, according to Professor John Dilulio of Princeton University, was a “new breed” of “fatherless, Godless ... radically impulsive, brutally remorseless youngsters” that would soon terrorize all of society.<sup>68</sup>



While this description seems race-neutral, it includes all the buzzwords of the time that implicated youth of color. The images and fear produced by this media and academic assault on youth of color make it hard to this day to create an environment where racial and ethnic disparities in the justice system can be engaged rationally.

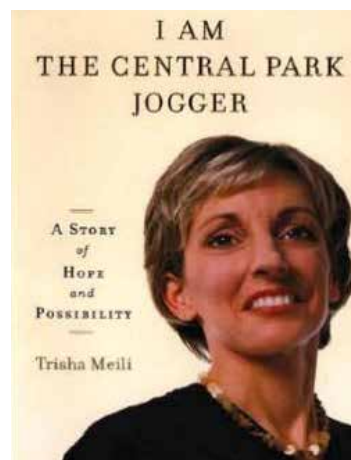
Armed with Dilulio’s supposed social science and increased violence on the ground, legislators at all levels took every opportunity to be “tough on crime.” The legislative agenda hit young people of color particularly hard and, in certain ways, were aimed directly at them. Indeed, the face of the superpredator as internalized by the larger society was deemed to be Brown or Black.



The Central Park Jogger case best exemplifies this. In 1989, a young woman was brutally sexually assaulted while jogging in New York’s Central Park.

Five boys of color between the ages of 14 and 16 were tried and convicted in a highly publicized trial despite an absence of physical evidence and incoherent recanted confessions.

A devastating narrative regarding young men of color and their proclivity toward senseless violence was conceived and endlessly repeated during this case that persists to this day. Young men of color were described as “animals” roaming in “feral packs.”



This gave permission to see youth of color as different and therefore deserving of harsher and more punitive treatment. The boys were incarcerated for nearly 13 years for a crime they did not commit. The five convictions were ultimately overturned in 2002 when the actual attacker confessed and was linked to the crime by DNA evidence.

There is little doubt that activities to provide an equitable justice system must understand how this and other similar cases inform how society and the justice system perceive Black and Brown youth today. In communities of color, these are not merely incidents that are tragic but serve as a part of the collective memory and narrative about how justice lives in the real world.

## School Discipline, Youth Justice, and Youth of Color



The tough-on-crime approach to youthful misbehaviors addressed above extended to schools as well. While zero-tolerance policies were initially aimed at eliminating weapons in school settings, they rapidly expanded to behaviors, dress codes, and other more subjective areas that fell hardest on youth of color.<sup>69</sup>

Disparities in suspension rates occur at middle and high schools. Compared to White boys of middle school age, Black boys are four times as likely and Latino boys twice as likely to be suspended or expelled from school.<sup>70</sup> Disparities also exist among girls of color as well, with Black girls being suspended at higher rates than girls of any other race or ethnicity.<sup>71</sup>

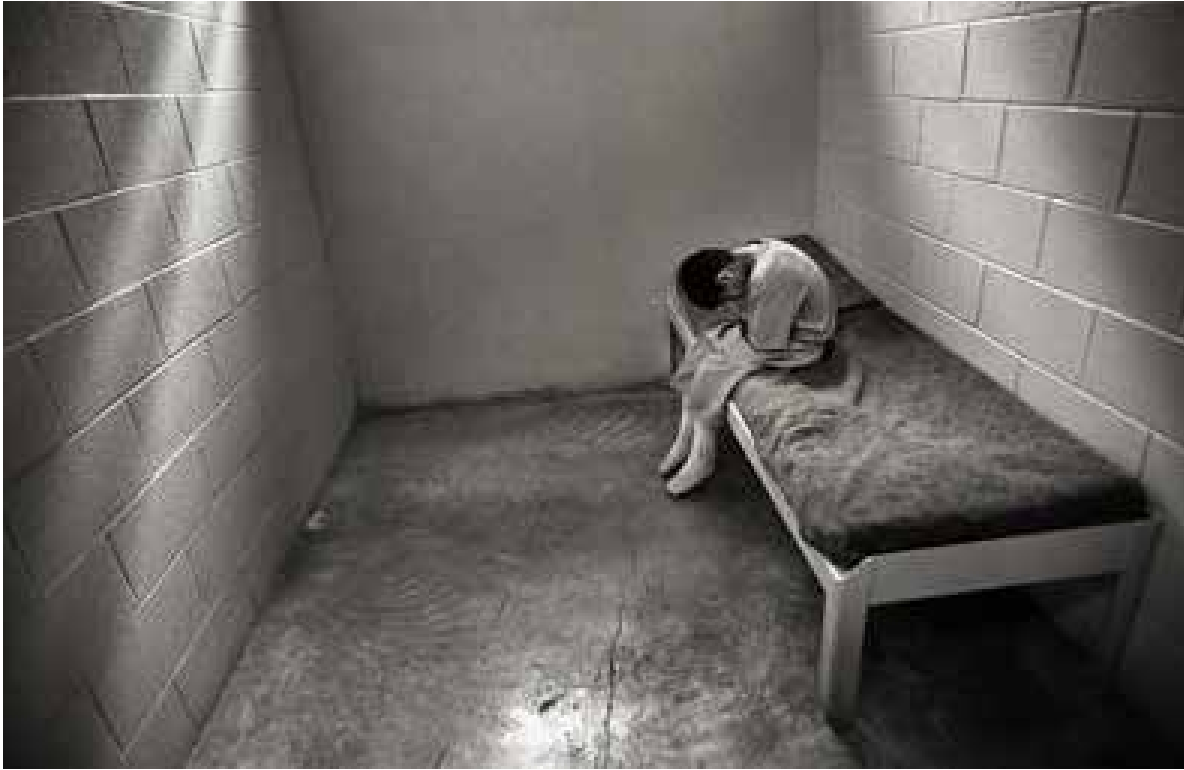
Sadly, the chance of a youth's misbehavior being dealt with at school has become increasingly unlikely with the strong presence of law enforcement at schools located in communities of color. Schools now are equipped with metal detectors and policed by school resource officers (SROs) to monitor behavior. Significantly, youth of color are most frequently reprimanded for subjective offenses such as disorderly conduct and public display of affection<sup>72</sup> rather than violent offenses.

A 2014 study revealed that police officer participants overestimated the age of Black and Latino youth, indicating that these young boys were being perceived as adults prematurely.<sup>73</sup> In the study, Black boys were perceived as older, less innocent, and more culpable than their peers of similar ages and are therefore not afforded the protections of childhood.<sup>74</sup>

These findings are also consistent with the work of MacArthur Genius Grant recipient Jennifer Eberhardt, who finds that Black youth in conflict with the law are perceived as being more similar to adults and more deserving of punishment and emphasizes the "fragility of protection" for Black youth.<sup>75</sup> The results of these studies illuminate that youth of color are still suffering adverse, unequal outcomes in the youth justice system after hundreds of years.







## Equity as the Preferred Strategy

Hopefully, this brief journey through the mostly untold story about the treatment of youth of color by our larger society and the youth justice system provides context for engaging racial inequity in these times. This essay provides historical information that offers a glimpse into why communities of color feel that justice has never been administered with race neutrality and are deeply suspicious of efforts to make it more equitable today.

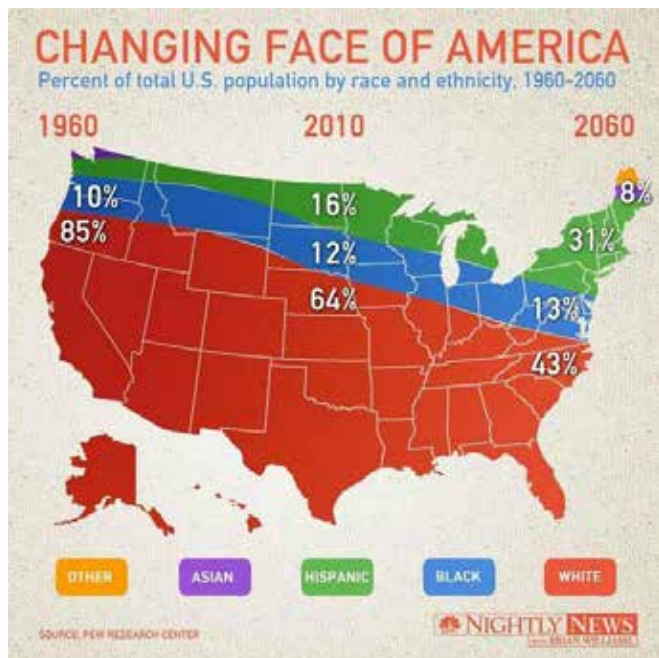
While incarceration rates have decreased significantly since their peak in 1996, the disparity gap, or the rate of incarceration for youth of color compared to White youth, remains significant. A one-day snapshot in 2013 of youth in residential placements revealed that Black youth were more than *four times* as likely as White youth to be in residential placement and prison; Native American youth were almost *three times* as likely and Latino youth *almost twice* as likely.<sup>76</sup> The challenge for our civil society is to construct a system of positive, service-oriented interventions and consequences for children in trouble with the law while maintaining public safety, healthy habits, and encouraging school participation.

It seems so simple, and, in some ways, it should be. Yet issues involving children and teenagers that violate prescribed societal norms clearly push deeply embedded buttons

constructed in the 1600s. These buttons are triggered by molecules deep in our structural Puritan DNA and values regarding social control, criminalization of poverty, and discrimination against youth of color. They touch religious beliefs, notions of good versus bad families, sexual mores, and cultural norms, all undergirded by the imperatives of “justice.” To this day, our justice system is driven by our addiction to relying on incarceration as a primary instrument of social control. Thus it is critical that our reform efforts target these structural and long-surviving ideologies and inequities.

Currently, all child-serving systems are in the midst of a huge demographic shift. At this writing, four states have a majority population of people of color. Similarly, the youth of color population is also quickly becoming a majority. Today’s youth justice and other child-serving systems must be reimagined to meet the demands of a complex and more diverse country.

The demographic shifts taking place today cause us to consider important choices. Will we as a society continue to employ the status quo by using retribution and incarceration? Or will we choose to redirect funds into proven public safety outcomes driven by authentic methods to change behaviors in favor of civic engagement?



Lessons learned from this history affect all manner of current policy and practice. This history should lead us to examine how achieving equity affects the rationales for our decisions to arrest, detain, and prosecute. Does an equity lens inform our alternatives to confinement, evidence-based practices and engagement with communities most affected by our decisions?

This essay raises issues that cannot be ignored when trying to create an equitable youth justice system locally. To overcome the structurally racist legacy outlined here and reduce racial and ethnic disparities, we must be focused and intentional. It is no accident that youth of color are overrepresented in our nation's justice systems, and the fix cannot be status quo and business-as-usual.

In addition to the technologies of using data, implementing objective decision making, and monitoring accountability by race, ethnicity, gender geography, and offense, we must do more. To be more equitable, we must provide tools for young people to participate in positive autonomous decision-making processes. We must work with them to become motivated from within by

promoting qualities such as creativity, leadership, altruism, and nonviolent conflict resolution.

Indeed, this essay should give us knowledge about our past to move forward differently and positively for children, families, and communities, regardless of status. Thus child well-being and the principles of equity attendant to this end should be the preferred way of overcoming the historical legacy outlined herein.

*"Repairing the Breach" is a precursor to an upcoming book that will be significantly more comprehensive including a broader focus on other ethnicities, girls and sexual orientation, and gender identity and expression.*

*If everything goes well, it should be released in early 2017.*



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**Our philosophy is simple.**

**Incarceration is harmful to the positive development of our children.**

**Data is key towards an understanding the complexities of racial inequity within the youth justice system.**

**Local communities can play a critical role in transformational change.**



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