

Adultification Bias Against Black Justice-Involved Children

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I. INTRODUCTION

Since the inception of the juvenile court in the United States, various competing theories and perspectives have been used to justify the existence of a separate court for youth. One justification proponents have returned to throughout its history is the idea that youth are less culpable and more amenable to treatment than adults are. The juvenile court's mission, therefore, has always been predicated to some degree on the increased possibility of rehabilitation for youth, as compared to adults. Modern research supports the idea that youth are developmentally distinct from adults, and therefore should not be held to the same standards.

Because the juvenile court adopts this rehabilitative message, as opposed to the adult system's more punitive stance, various actors in the juvenile court have historically had broad discretionary power to decide subjectively how and which juveniles to thus rehabilitate and, by extension, how and which juveniles to punish further by pursuing legal action outside the scope of the juvenile court. The demographic makeup of youth tried in juvenile court versus youth tried as adults is indicative of a systemic bias against minority youth, and especially against African American children and adolescents.

The troubling relationship between race and the decision to try in juvenile court or waive to the adult system supports the idea that our society values childhood differently for children of different races. The implication is that white children are more childlike and innocent, while Black children cannot afford to be children. While the devaluation of Black childhood is a phenomenon that began much earlier in U.S. history than the juvenile court and has its own set of implications for African Americans more broadly, it is interesting to trace the effects of

adultification on Black youth involved in the justice system specifically. Doing so reveals crucial shortcomings of the juvenile justice system stemming from the differential and subjective application of the social class “child” to children of different races.

This paper seeks to shed light on the detrimental effects of adultification, defined as “adults’ generalized perception of Black [children] as more adult” than white children (Epstein et al. 2017: 17), on Black justice-involved youth. In particular, this paper will focus on the relationship between the adultification of Black youth and the disproportionate use of the waiver system against them.

II. HISTORY

The Juvenile Court as a Service for “Other People’s Children”

From the creation of the first juvenile court in Cook County, Illinois in 1899, the juvenile justice system has been disproportionately reserved for the children of minorities. Early in the system’s history, the court almost exclusively saw the children of European immigrants—and especially Eastern European immigrants—come before it (Feld, 2017: 29 – 33). The early juvenile court served several functions concurrently; in addition to its explicit mission of rehabilitation for wayward youth, the court served as a hub of assimilation for children whose cultural differences were perceived to be threatening to American ideals (Feld, 2017: 22). The doctrine of *parens patriae*¹, which expanded state power to supersede parental authority in the best interest of children, emerged at this time to justify the disparate treatment of immigrant youth.

¹ Super-parent (Feld, 2017: 19)

At this point in history—the Progressive Era of juvenile justice—Black children were kept out of the juvenile court entirely. When African American youth had contact with the justice system, it was as adults in the adult system, as Feld makes clear in stating, “Southern states tried Black youth in criminal court, committed them to adult prisons, subjected them to chain gangs and convict leasing, and executed them” (Feld, 2017: 36). Thus, by the simple act of denying jurisdiction over Black youth, the early juvenile court began the process of systematically adultifying them that continues today.

The early juvenile justice system effectively established a hierarchy of youth, with some (white) children seen as more innocent than others, and as more supported by morally-upright parents or guardians than others. The court was not intended for all juveniles equally; it was designed to serve “other people’s children” (Feld, 2017: 35), not white, Protestant, middle-and-upper-class, U.S.-born children with upstanding parents. It was also not designed to serve Black children, whose childhood and innocence emerged as the most relatively devalued.

Black Children are (Kind of) Children, Too: Induction to the Juvenile Court

Black children began to be introduced to the juvenile justice system during and after the Great Migration, which began early in the twentieth century. Prior to this period in U.S. history, more than 90 percent of African Americans lived in the South, where “white Southerners did not expect Black children to become economically self-sufficient or political equals and excluded them from juvenile courts’ citizen-building mission” (Feld, 2017: 36). Feld goes on to trace how this migration north and west gave rise to the Civil Rights movement and to the Due Process Era of juvenile justice (Feld, 2017: 48 – 56). A landmark case in this era was *In re Gault* (1967), in which Gerald Gault was sentenced to confinement in the State Industrial School in Arizona for

six years for allegedly making a prank phone call to a neighbor. During the case, “The judge did not advise Gault or his parents of the right to remain silent or to counsel and did not provide an attorney” (Feld, 2017: 58). The Court examined this sentence and subsequently established the right, among others, to an adversarial hearing with the presence of an attorney for youth tried in the juvenile court “to protect delinquents from *the state*” (Feld, 2017: 59; emphasis added).

Unfortunately, the same era that saw historic and necessary protections brought to youth involved in the justice system was characterized, paradoxically, by a marked racial bias against Black youth. Feld asserts,

“A study of institutionalized delinquents found that Black youths were younger, had fewer prior appearances, committed fewer and less serious crimes, but received probation less often than their white counterparts. Although they were less seriously delinquent, a lack of community alternatives contributed to higher rates of commitment” (Feld, 2017: 60).

This lack of alternatives for African American youth is indicative of a lack of commitment to rehabilitation for them, which is just one of the several implicit contradictions of the juvenile justice system of this time. By extension, this lack of alternatives indicates that Black children were perceived as less worthy of the protections that were almost simultaneously being established for justice-involved children generally.

III. FEATURES OF JUVENILE JUSTICE

Convergence with the Criminal Court

In addition to *In re Gault*, a few other cases during the Due Process Era helped shape the system we see today. In 1970, *In re Winship* held that “the state must prove delinquency *by the criminal standard*—beyond a reasonable doubt—rather than by the lower civil standard of proof—preponderance of the evidence” (Feld, 2017: 63; emphasis added). Five years later, *Breed v. Jones* held that “the double jeopardy protection of the Fifth Amendment barred *criminal*

prosecution of a youth whom a juvenile court found *delinquent* for the same crime” (Feld, 2017: 64; emphasis added). These decisions draw clear parallels between being found guilty in criminal court and being found delinquent in juvenile court. Nonetheless, in 1971 *McKeiver v. Pennsylvania* “asserted that juvenile courts were not criminal prosecutions” (Feld, 2017: 64). Despite its lack of a clear rationale, this decision was used to deny youth in the juvenile justice system the right to a jury trial. And at the same time, *Gault* and *Winship* paved the way for the juvenile system to converge with the criminal court. Feld clarifies the link thus:

“Prior to *Gault*, probation officers presented delinquents’ cases in court and recommended dispositions. After *Gault* gave delinquents a right to counsel, states introduced prosecutors to offset defense lawyers’ presence. Prosecutors socialized in criminal courts to maximize convictions and punishment began to import those norms into juvenile courts” (Feld, 2017: 67).

The Waiver System and Discretionary Power

A host of factors crystallized in the next decade, including a growing preference for deserts-based sentences and a focus “on the effects of crime rather than its causes and on crime control rather than social welfare” (Feld, 2017: 107), to produce a swing towards get tough policies. Feld explains, “In the 1980s and 1990s, states amended their juvenile codes to expedite transfer of youths to criminal courts, where they faced substantial sentences as adults” (Feld, 2017: 107). In his estimation, this strategy reflects “an inversion of juvenile justice jurisprudence and practice—from rehabilitation to retribution, from offender to offense, and a shift of discretion from judges to prosecutors” (Feld, 2017: 107). Unsurprisingly, these shifts coincided with the rise in “mass incarceration, disproportionate minority confinement, and harsher delinquency sanctions” (Feld, 2017: 107)—all of which affected Black youth more than other juveniles.

There exist today three methods by which a youth may be waived to the criminal justice system: “judicial waiver laws, statutory exclusion laws, and prosecutorial discretion (also referred to as concurrent jurisdiction or direct file laws)” (Thomas, 2016: 7). Judicial waiver laws refer to those that fall within the judges’ domain. 45 states currently have discretionary waiver laws for judges in effect (Thomas, 2016: 7). Statutory exclusion laws “define types of cases that are completely excluded from juvenile court jurisdiction” and can exclude “certain offenses or age/offense/prior record combinations” from the juvenile court entirely (Thomas, 2016: 8). Finally, prosecutorial discretion laws grant the prosecutor the power to file in either the adult or juvenile court. In some states where prosecutorial discretion is in effect, “there may not be formal guidelines to govern a prosecutor’s discretion” (Thomas, 2016: 8). This has led to groups such as the Campaign for Youth Justice (CFYJ) to argue that prosecutorial discretion lacks oversight, transparency, and accountability (Campaign for Youth Justice). Although currently only 12 states have prosecutorial discretion laws in place, those that do see a heavy usage of the system. In Florida, for example, prosecutorial discretion cases “account for 98% of all waiver cases” (Thomas, 2016: 10).

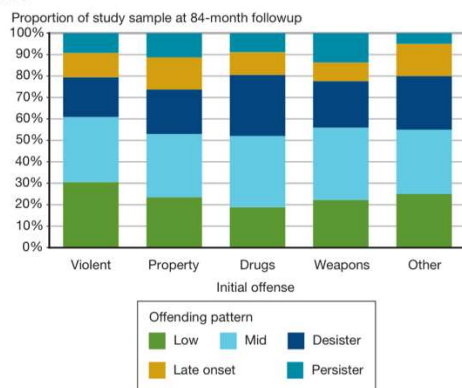
The practice of transferring children to the jurisdiction of the criminal court is of particular interest because it is a decision that is made wholly or almost wholly not just by one interest group, but by one individual within one interest group. Over time, the interests these individuals have represented have shifted, as noted above by Feld, from the interests of the judicial office to the interests of the prosecutorial office. What has remained constant through this shift is the juvenile justice system’s tendency towards an insular decision-making process by which a single party decides whether a particular youth should be tried in juvenile or in criminal court. It cannot be overstated how hugely consequential such a decision is; studies have found

that, when compared to youth sent to juvenile facilities, “children who are sentenced as adults are twice as likely to be assaulted by a correctional officer, five times as likely to be sexually assaulted, and eight times as likely to commit suicide” (Goff et al., 2014). At the same time, statistics show that the vast majority of youth grow out of crime—they simply desist as they get older. Further, the individual deciding where to try the youth cannot rely on offense type to predict their likelihood of reoffending, as Figure 1, sourced from the Office of Juvenile Justice and Delinquency Prevention’s (OJJDP) 2014 National Report, illustrates.

Figure 1

Source: OJJDP’s Juvenile Offenders and Victims: 2014 National Report (page 84)

Youth’s initial offenses do not predict whether they will be persisters or desisters



■ A similar mix of offending patterns was found across all offense categories. This finding means that offense alone is not a good predictor of which youth are good candidates for diversion.

With all of this to consider, it is almost inevitable that the system has produced great disparity. With no clear guidelines that can reliably produce results and the potential for so much harm to youth tried as adults, first predominantly judges and then predominantly prosecutors found themselves making

decisions that were impacting youth for the rest of their lives subjectively.

Gabrielle Thomas explains the argument used to rationalize this trust specifically in prosecutors, and also offers a counter argument:

“prosecutors were vested with this authority because they were believed to be “more neutral and balanced than judges (who may be seen as soft on crime) and legislators (who may be trying to maintain an image of being tough on crime).”¹²⁹ However, some have argued that prosecutors are placed in an even tougher position because they “may be under pressure to appear tough on crime with the additional burden of lacking experience in and knowledge of dealing with juveniles” (Thomas, 2016: 19).

This highlights a fundamental tension between the traditional mission of the juvenile justice system of rehabilitation and the method of its administration, but a closer inspection of history shows that this is a pattern that has continued from the days in which judges who were largely undereducated and unqualified for their roles held more sway (Feld, 2017: 60). The ability to almost single-handedly waive juveniles to adult courts has existed for some figure or another in the juvenile court since its beginning, with the de facto waiver of Black children occurring through the beginning of the twentieth century.

IV. THE LINK BETWEEN ADULTIFICATION AND DISCRETIONARY WAIVERS

Adultification is a type of implicit bias that affects Black youth disproportionately. It involves the subjection of children from certain racial or other cultural groups to stereotypes that make them seem older than they actually are. Studies have shown that authority figures regularly adultify Black children. A study conducted by Goff and colleagues in 2014, for example, found that “for every age group after the age of 9 (i.e. 10 – 13 through 22 – 25), Black children and adults were rated as significantly less innocent than white children and adults or children and adults generally” (Goff et al., 2014: 529). Details of Goff et al.’s findings can be found in Figure 2 below.

Figure 2

Source: Goff et al.’s 2014 study

Ratings of Innocence for White Children, Black Children, and Children Without Race Specified

Age range	White	Black	Race unspecified
0–4	6.19 (.56)	6.15 (.45)	6.05 (.42)
5–9	5.31 (.63)	5.38 (.60)	5.30 (.57)
10–13	4.50 (.68)***	3.31 (.59)	4.39 (.61)***
14–17	3.33 (.71)*	2.99 (.71)	3.42 (.61)**
18–21	2.91 (.83)**	2.33 (.81)	2.74 (.83)*
22–25	2.77 (.85)***	2.03 (.86)	2.61 (.91)**
Aggregated	3.97 (.56)***	3.57 (.54)	4.08 (.52)***

Note. Age is in years. Data in parentheses are standard deviations.
 * $p < .05$ (Significantly different from ratings of Black children. There are no differences between White and children whose race was not specified.)
 ** $p < .01$. *** $p < .001$.

A follow up study of just African American girls conducted by Epstein and colleagues in 2017 corroborates Goff et al.’s study, finding that “adults surveyed view Black girls as less innocent and more

adult-like than white girls of the same age, particularly between 5 – 14 years old” (Epstein et al., 2017: 5). The effects of adultification on Black girls specifically may be exacerbated by the fact that, on average, Black girls “mature physically at a faster rate than [w]hite girls and as a result can be perceived as older” (Epstein et al., 2017: 8). Interestingly, this leads not only to perceptions of Black girls’ behaviors as more adult than their counterparts; “Black girls are also often mistakenly perceived to be biologically older than they are” (Epstein et al., 2017: 9). Studies have found the same general pattern for African American youth of all genders.

Goff et al. argue that adultification is a form of dehumanization and point out that

“in contexts where individuals are dehumanized (defined as ‘the denial of full humanness to others’), social protections from violence can be removed or reduced....Consequently, in this article, we explore the possibility that, if human childhood affords strong protections against harsh, adult-like treatment, then in contexts where children are dehumanized, those children can be treated with adult severity” (Goff et al., 2014: 527).

Adultification, thus, emerges as a key—if unconscious—process through which African Americans become othered in the juvenile justice system. By viewing Black children as more adult, those in power are essentially robbing them of their childhood and innocence. As Epstein and colleagues assert, “mid-childhood and early adolescence [are] critical periods for healthy identity development” (Epstein et al., 2017: 11). Robbing children of these developmental periods—and especially doing so in a way that disproportionately affects youth of color—is dehumanizing; essentially, we are saying that Black children—the dehumanized other—are not equal to white children—our reference point for humanity. It is this dehumanization of children of color in general and Black children specifically that creates a juvenile justice system that can support the contradiction between its idealistic mission of rehabilitation and fairness and the realities of its administration.

V. THE DEMOGRAPHICS OF JUVENILE JUSTICE

The racial disparities produced by the practice of waiving (some) juveniles to criminal court are difficult to ignore. One illustrative example is the Sentencing Project’s 2017 Still Life Report, which reports that the vast majority of youth currently sentenced to virtual life sentences (terms of 50 years or more in prison) are young men of color, with 55.1% being African American (Still Life, 2017: 17). Even more striking is the fact that compared to adults serving life without parole, life with parole, or virtual life sentences, “youth of color comprise a considerably greater share of the total than their adult counterparts for each of the three types of life sentences (Still Life, 2017: 17) (Figure 3).

Figure 3

Source: The Sentencing Project’s 2017 Still Life Report (page 17)

	Percent Black			Percent Nonwhite		
	LWP	LWOP	Virtual	LWP	LWOP	Virtual
Juvenile	49.9%	63.4%	64.4%	81.9%	76.8%	79.1%
Adult	42.8%	55.2%	51.3%	66.8%	68.4%	65.0%

Further, according to OJJDP’s 2017 National Report Series Bulletin, juvenile arrests in 2017 were disproportionately comprised of Black

adolescents. While African American youth make up only about 16 percent of the population of juveniles in the United States, “more than half (52%) of all juvenile arrests for violent crimes in 2017 involved Black youth” (OJJDP, 2017: 8). It is the absence of clear guidelines for discretion and the ability of prosecutors to use arguably underhanded tactics—such as differentially selecting charges that would automatically result in a statutory exclusion waiver²—that produce these and other detrimental outcomes for Black youth, who constituted 62 percent of cases filed in adult court in 2008 (Thomas, 2016: 10).

² Franklin Zimring succinctly explains this with the following hypothetical: “If murder charges go directly to criminal court but manslaughter may be charged in juvenile court, the selection of the charge becomes the selection of the court” (Zimring, 2010: 9).

VI. CONCLUSION

The unconscious adultification—by which is meant the process of ascribing adult attitudes and behaviors to children through negative stereotyping—of youth in the justice system has emerged as a possible contributing factor in the disparate treatment of subsets of the juvenile justice-involved population. Adultification bias among prosecutors and judges can have especially detrimental effects for Black youth in the system because a key feature of the juvenile court is the broad discretionary power placed in the hands of these figures. The granting of such discretion to prosecutors and judges belies a trust in them to automatically seek a course of action that will serve the juvenile court’s rehabilitative mission wherever possible. As we gain a deeper understanding of the pressures within the system and the factors that can impact even the most impartial authority figure’s ability to remain objective—including implicit biases like adultification bias—it is becoming more clear that this is a faulty line of thinking and a dangerous assumption to make.

With a better understanding of adultification bias comes a call to action to combat this bias in our juvenile justice system. We cannot simply accept the presence of adultification in juvenile justice; doing so would effectively be accepting the idea that the ability to experience and enjoy childhood and innocence is a privilege, not a right. As we gain a deeper understanding of the importance of childhood and of the development we undergo as human beings in this period in our lives, we must push our juvenile justice system to protect the innocence of all children equally.

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