

# Spotlight on Juvenile Justice: How Did We Get Here?

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Structural racism and inequity permeate the juvenile justice system. The earliest delinquency programs were developed at a time when slavery was still legal in the United States and Indigenous Americans were considered “savages,” representing dehumanizing systems and beliefs which left lasting structural racism.<sup>1</sup> Nearly 200 years later, racism continues to shape and structure our juvenile justice system both directly and indirectly. This article will underscore the historical legacy of structural racism in the juvenile justice system, an understanding necessary to address systemic change.

**Structural racism is defined as “A system in which public policies, institutional practices, cultural representations, and other norms work in various, often reinforcing ways to perpetuate racial group inequity.”<sup>2</sup>**

Think about the last headline or article you read of a crime perpetrated by a youth. The case may have read similar to this: *A 16-year-old male has been charged with armed robbery after entering a fast-food restaurant with two 20-year-old males and pointing a loaded handgun at the cashier while demanding money.*

When we summarize a person based primarily on the crime they committed, we lose sight of all the factors contributing to the individual’s legal involvement, including the impact of racism. Structural racism informs every stage of the legal process from risk of entry to likelihood of dying within the criminal justice system. For example, as a Black youth in the United States, the youth from the case example—Julian—is nearly 8 times more likely to be arrested for robbery and nearly 6 times more likely to be detained than a White youth. As a minoritized youth, he is 1.4 times more likely to be transferred to criminal court than White youth. Alarming

disparities exist for other minoritized youth. An Indigenous American youth is 3.2 times more likely to be detained, and a Latinx youth 1.7 times more likely to be detained than a White youth.<sup>3</sup>

While this initial article will focus on understanding structural racism involving the juvenile justice system through a historical lens, this spotlight series will follow Julian’s pathway into the juvenile justice system, examining the factors contributing to his legal involvement such as racism, age, trauma exposure, and substance use. This series will review evidence-based interventions for diversion and to reduce recidivism, as well as opportunities for advocacy.

## Historical Overview

The cornerstone of juvenile justice philosophy in the United States has been the English common law doctrine of *parens patriae*, Latin for “parent of the nation.” Under this doctrine, the state is empowered and authorized to act as the “parent” in the best interest of a child and provide care and protection equivalent to that of a parent. With this authority, and in the context of industrialization and urbanization, the first juvenile reformatory in the nation, the New York House of Refuge, opened January 1, 1825.

Juvenile reformatories were designed to minimize court proceedings, house juveniles away from adults, rehabilitate youth offenders, and prevent recidivism.<sup>4</sup> However, early disparities were apparent. Black youth in the North were initially excluded from reformatories and then later segregated into inferior facilities with inequitable opportunities following release. Black enslaved youth in the South were considered property, and treatment was thus denied. Following the Emancipation Proclamation, the justice system became a tool to re-enslave Black citizens. Legislation and an exception clause in the Thirteenth Amendment served to criminalize the behaviors

of Black citizens. Convict leasing was a legal practice to exert control over Black individuals, whereby a leaser would use Black convicts as cheap labor. Notably, Black youth made up over 18% of Black convicts.<sup>1</sup>

**The Thirteenth Amendment, Section 1, reads, “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, or any place subject to their jurisdiction.”<sup>28</sup> The exception clause effectively legitimized subjecting incarcerated Black citizens to slave-like conditions.<sup>1</sup>**

In 1899, the Illinois Juvenile Court Act removed jurisdiction over juveniles under age 16 from the criminal court and established the first juvenile court in the United States. The new court focused on rehabilitation, and early juvenile judges could investigate the backgrounds of predelinquent and delinquent youth, seeking to “identify the moral reputation of problematic children.”<sup>5</sup> By 1940, Black youth were overrepresented in delinquency cases and cases were less frequently dismissed when compared with White youth.<sup>1</sup>

During this period, the Civilization Fund Act also ushered in an era of assimilationist policies leading to the Indian Boarding School era, which lasted from 1860 to 1978. Indigenous families were coerced by the federal government and Catholic Church officials to send their children to boarding schools. The belief was that separation from the tribe was necessary for children to achieve true assimilation into American culture. The systematic removal of generations of Indigenous American children has had a profound and lasting impact on Indigenous American culture. Many Indigenous Americans who attended boarding schools suffered from mental health and substance use problems, and struggled to transition to parenthood due a lack of nurturing role models during their youth.<sup>6</sup> Today, Indigenous American youth are overrepresented in the juvenile justice system. From

2010 to 2016, an estimated 13% to 19% of youth involved with the federal justice system were Indigenous Americans, even though they account for just 1.6 percent of the national population under age 18.<sup>7</sup>

In the juvenile courts under a rehabilitative framework, youth received minimal due process protections until the US Supreme Court addressed the legal rights of minors in a series of cases (see *Kent v United States* (1966),<sup>8</sup> *In re Gault* (1967),<sup>9</sup> *In re Winship* (1970),<sup>10</sup> and *Breed v Jones* (1975)<sup>11</sup>) that exemplified the potential for injustice under the *parens patriae* model which left little room for individual constitutional rights. While due process protections were necessary, juvenile courts became increasingly adversarial.

During the 1980s and 1990s, the juvenile justice system expanded its punitive approach towards juvenile offenders.<sup>12</sup> The rise in juvenile crimes at this time garnered significant media attention, sensationalizing images of Black youth gun violence and reinforcing historical stereotypes of Black people as dangerous “superpredators.”<sup>13</sup> This led to legislation that was significantly tougher on crime, reflected in the dramatic rise in the number of juvenile arrests, offenders transferred to criminal courts through prosecutorial direct file or automatic transfer,<sup>12,13</sup> and increased racial and ethnic disparities, with 28% youth of color representing detained youth in 1985, growing to 63% and 71% in 1997 and 2010, respectively.<sup>14</sup>

In tandem, key legislature (eg, Gun Free Schools Act of 1994) increasingly criminalized the school system through harsh and punitive school policies that made it more likely for Black and Latinx youth<sup>13,15</sup> as well as youth receiving special education services to enter the juvenile justice system.<sup>16</sup> This is commonly referred to as the “School-to-Prison Pipeline.” Schools adopted “zero tolerance” policies, punishing by school removal any degree of misconduct equally (eg, from firearms on campus to cafeteria food fights), effectively criminalizing even typical adolescent misbehavior.<sup>16,17</sup> These policies also led to the expansion of police presence on school grounds especially in racially minoritized communities.<sup>13</sup> Increased police presence transferred authority

and discretion of handling adolescent misconduct from school officials to school police. These policies were more heavily enacted and enforced in lower academic performing schools, which were in lower income, urban areas.<sup>13</sup> The consequences of these policies led to disproportionate increases of in-school arrests, suspensions, and expulsions of minoritized youth.<sup>13,15,16</sup>

Following the rush to punish juveniles that characterized the 1980s and 1990s, advances in neuroscience facilitated increased understanding of adolescent development which underpinned a shift that emerged in the 21st century. The US Supreme Court highlighted that juveniles are inherently different from adults. In 4 strongly worded opinions, the Court referenced scientific evidence that discussed the culpability of juvenile offenders and held that juvenile culpability is mitigated by their youth and immaturity, even for the most serious offenses. The rulings between 2005 to 2016 abolished for juveniles the death penalty,<sup>18</sup> life without parole for non-homicide offenses,<sup>19</sup> and mandatory life without parole sentences for homicide offenses.<sup>20,21</sup>

With these decisions, the Court reshaped juvenile justice policy across the nation. Under *Miller v Alabama*,<sup>20</sup> the Court held that while life without parole may still be imposed on juvenile homicide offenders, the sentence should consider mitigating characteristics of youth. The 5 mitigating factors from the *Miller* ruling include: the juvenile's age and immaturity; family home environment; circumstances of the offense, including the role the juvenile had in the offense and any influence of peer pressure; the incapacities of youth that may have disadvantaged the juvenile dealing with the justice system; and the juvenile's potential for rehabilitation.

Understanding a youth's family home environment highlights the importance of understanding childhood trauma both in and out of the home and opens the door to recognize the social determinants of mental health that fundamentally impact justice-involved youth. Differential rates of poverty and the social conditions associated with it may be one of the major contributors to the levels of racial inequity seen in the juvenile justice system.<sup>22</sup> Further, racism impacts associated

systems such as the child welfare system, a system with its own disproportionate minority representation. Compounding the effects of structural racism within child welfare, youth involved in the child welfare system are at increased risk for delinquency, further increasing risk for juvenile justice entry.<sup>16</sup> Given that the system was structured when slavery was legal and Black and Indigenous American youth were dehumanized, these historical events also highlight the undercurrent of racism contributing to the overrepresentation, disparity, and disproportionate number of minoritized youth entering the juvenile justice system.

Specific attention has been brought to this issue in the 1970s and 1980s through legislature such as the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA). However minoritized youth were still incarcerated at rates 3 to 4 times greater than White youth.<sup>16</sup> In 2001, Kenneth B. Nunn wrote:

One day, when the current crisis is over, when the public's lust for punishment has been satiated, and when the public realizes that far too many White children have been swept along by punitive policies intended for Blacks, the rehabilitative focus of the juvenile justice system will return. When it does, African American children may benefit to some degree. But, by and large, most African American children will not notice the difference. They will still be arrested, detained, and incarcerated at higher rates. As children of the other, they will be feared and controlled, rather than valued and loved.<sup>23</sup>

Two decades later, despite significant reductions in youth arrests,<sup>3</sup> racial inequity persists within the juvenile justice system. In fact, race and ethnicity negatively affect minoritized youth groups at all decision-making points of the juvenile justice system as compared to White people,<sup>22</sup> with effects leading to cumulative disadvantage<sup>24</sup> and lifetime adverse health effects.<sup>25</sup> Minoritized youth are more likely to be arrested, detained in secure confinement, adjudicated, and receive more punitive sentences/disposition.<sup>22</sup> Disproportionate minority contact (DMC)<sup>22</sup> is best examined while consid-

ering how various complex factors and processes influence each other and are impacted by social injustice.<sup>26</sup> Addressing structural racism within the juvenile justice system will require a comprehensive approach, and true reform cannot be most effective without corresponding changes in adjacent systems such as the education system, child welfare system, and mental health system.

### Moving Forward

Child and adolescent psychiatrists can play a critical role in moving the juvenile justice system forward by advancing race and health equity through reflection, education, and intervention. With an understanding of the juvenile justice system historical background and factors contributing to disparities, child psychiatrists can educate other mental health providers, families, systems of care, and institutions (eg, through education and advocacy). We can identify and aggressively intervene using evidence-based practice to address individual needs/risks (eg, trauma, substance use, mental illness, developmental disability) for those juveniles at risk for or involved in juvenile justice. Finally, we can identify, address, and be mindful of our own biases as providers. For example, oppositional defiant disorder (ODD) and conduct disorder (CD) are diagnosed more frequently and attention-deficit/hyperactivity disorder (ADHD) is diagnosed less frequently in racial and ethnic minoritized youth when compared with White youth, and unconscious bias of the provider likely contributes to this diagnostic disparity.<sup>27</sup> Labeling children with ODD or CD can have significant implications for treatment options and interventions and may further contribute to risk for educational disparities and juvenile justice involvement. However, given that robust evidence-based interventions are available for ODD and CD, ensuring equitable access for such interventions is another critical opportunity for advocacy. Regardless, child and adolescent psychiatrists must take active roles in systemic change.

Returning to our case, while statistically Julian was more likely to be involved in the juvenile justice system, we do not yet know much about his narrative – his specific life story that preceded and contributed to his criminal involvement. And what might happen to Julian? Are effective interventions possible and will they be

meaningful? This article represents the first in a multi-part series where we will follow Julian through the legal process, learn about his childhood, and work together towards meaningful change.

### Take Home Summary

Racism continues to shape and structure our juvenile justice system both directly and indirectly. Child and adolescent psychiatrists should understand the history contributing to continued racial and ethnic disparities and must take active roles in systemic change.

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