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The disparate treatment of Black youths involved in the criminal legal system persists today at every critical discretion point in the system. At the beginning of a case, Black children are more than twice as likely to be arrested than white children, even though the data shows that Black children are not committing more crimes. At the end of the case, Black children are more than four times as likely to be detained or committed in juvenile facilities as their white peers. Forty-one percent of youths in placement are Black, even though Black Americans comprise only 15% of all youth across the United States.

As it turns out, these disparities are baked into our criminal legal system. They are the product of history, not happenstance. In the late nineteenth century, the “Child Savers,” a group of Progressive reformers, championed the establishment of separate juvenile courts based on the belief that children were less culpable and more amenable to rehabilitation than adults. The United States Supreme Court’s recent pronouncements about youth and its unique characteristics read like something the Child Savers’ might have written. Like the Court, the Child Savers intuitively understood the common sense reality that “youth is more than a chronological fact.” Like the Court, they understood youth as “a moment and ‘condition of life when a person may be most susceptible to influence and to psychological damage,’” and that youth’s “signature qualities” are all “transient.” And, like the Court, they were persuaded that these differences required that children receive treatment that recognizes their potential for rehabilitation.

But for all its persuasive force, this idea that “children are different” has serious limitations. Chief among these was the fact that the rehabilitative ideal in late nineteenth-century juvenile court was, in practice and in rhetoric, reserved for white children. As the result of an unspoken “cross-class alliance,” in which “upper-middle-class, native stock, urban whites would try to reform poorer whites” to help them assimilate into American society, the “proper objects” of the Child Savers’ solicitous care and concern were commonly understood to be poor white and European immigrant children. Meanwhile, racial practices relegated black children to whippings, convict leasing, lynchings, executions, and juvenile justice under Jim Crow, the United States’s form of apartheid that, until the 1950s, legally allowed Black people to be treated as second-class citizens. In other words, black children were Black first, and children second. The fact of their race took precedence over their age. Because they were Black, they were exempt from the presumption that they were amenable to rehabilitation. All across the country, youths of color were overrepresented in the juvenile justice systems in jurisdiction after jurisdiction. Even though the enlightened juvenile justice system rhetoric applied to “children,” at every stage, the system’s treatment of black youths was separate and unequal. The disparities we see today descend from that original criminal legal system. They are a feature, not a bug.

Given this history, it isn’t surprising that Black children are treated more harshly in the adult criminal legal system as well. In the United States, we entertain a shameful legal fiction that allows children who are accused of committing very serious crimes and who are a certain minimum age, usually the age of 15 or 16, to be treated by the criminal legal system as though

they are adults. “Adult time for adult crime,” was the slogan politicians used to show they were tough on crime. Beginning in the 1960s, Media-stoked fears about the threat to public safety from juvenile offenders of color, general disillusionment about the efficacy of rehabilitation, victims’ rights campaigns, and public cries for a legislative response that emphasized youth accountability all colluded to erode the focus on rehabilitating youths.

Juvenile arrests for violent crimes and homicides increased sharply between 1986 and 1994. But in spite of appearances, “there never was a general pattern of increasing adolescent violence in the 1980s and 1990s.” Instead, the juvenile crime rates were more accurately explained by “narrower bands of behavior,” specifically “a thin band of highly lethal gun attacks . . . and garden variety assaults.” Although juvenile crime rates had fallen consistently since 1993,²⁸⁹ the media’s coverage of juvenile crime was unrelenting, even sensationalist. Some media portrayed juvenile offenders as depraved, violent, and of color.²⁹⁰ Media depictions of youthful offenders were laced with “silent, racially charged messages” that linked criminal behavior and race.²⁹¹ showed that throughout the 1990s, the media had “misrepresent[ed] crime, who suffer[ed] from crime, and the real level of involvement of young people in crime,” so that whites were underrepresented as violent offenders and African Americans and Latinos were overrepresented as violent offenders.²⁹² These false stories “reinforce[d] the erroneous notion that crime [wa]s rising, that it [wa]s primarily violent, that most criminals [we]re nonwhite, and that most victims [we]re White.”²⁹

Academics chimed in with the dire forecast that a new generation of juvenile “super-predators” was on the horizon.³⁰² According to academics, sociologists, and criminologists, superpredators were a new and vicious breed of youths who would “kill, rape, maim, and steal without remorse.”³⁰³ Professor John DiIulio coined the term in repeated and explicitly racist predictions of a wave of juvenile crime.³⁰⁴ DiIulio harbingered that crime stemmed from moral poverty, or the “poverty of being without loving, capable, responsible adult” role models and “growing up surrounded by deviant, delinquent, and criminal adults in abusive, violence-ridden, fatherless, Godless, and jobless settings.”³⁰⁵ Moral poverty created superpredators, who, Professor DiIulio and his colleagues claimed, were more likely to be African American children and other children of color, because they were growing up in “criminogenic communities.”³⁰⁶ According to Professor DiIulio, “My black crime problem, and ours, is that for most Americans, especially for average white Americans, the distance is not merely great but almost unfathomable, the fear is enormous and largely justifiable, and the black kids who inspire the fear seem not merely unrecognizable but alien.”³⁰⁷ Professor DiIulio projected that “as many as half of these juvenile super-predators could be young black males.”³⁰⁸ Professor DiIulio also adumbrated that “the trouble will be greatest in black inner-city neighborhoods” and that “the demographic bulge of the next [ten] years will unleash an army of young male predatory street criminals who will make even the leaders of the Bloods and Crips . . . look tame by comparison.”³⁰⁹

DiIulio’s jeremiad spread like a fever. Politicians looking to score points with voters clamored for increased youth offender accountability.³¹⁰ In 1993, prominent civil rights activist Jesse Jackson remarked, “There is nothing more painful to me at this stage of my life than to walk down the street and hear footsteps and start thinking about robbery—then look around and see somebody white and feel relieved.”³¹¹ In 1996, then presidential candidate Bob Dole announced

that “[a] violent teenager who commits an adult crime should be treated as an adult in court and should receive adult punishment,”³¹² adding that “[u]nless something is done soon, some of today’s newborns will become tomorrow’s super-predators—merciless criminals capable of committing the most vicious acts for the most trivial of reasons.”³¹³ In that same year, Senator John Ashcroft, who would later become the U.S. Attorney General, testified before the Senate Subcommittee on Youth Violence that “[i]n America today, violent juvenile predators prowl our businesses, schools, neighborhoods, homes and parking lots, leaving in their wake maimed bodies, human carnage and desecrated communities.”³¹⁴ Carol Moseley-Braun, the first African American woman elected to the Senate, warned that the “new category of [youthful] offender” had “no respect for human life [and were] arming themselves with guns and roaming the streets.”³¹⁵ In 1997, President Bill Clinton labeled juvenile crime “our top law enforcement priority,” adding that “we’ve got about six years to turn this juvenile-crime thing around or our country is going to be living in chaos.”³¹⁶

Juxtaposing the federal legislative response to the superpredator predictions with the federal response to the rash of school shootings in predominantly white, suburban schools brings the racialized aspect of the superpredator hysteria into specific relief. Researchers conducted a study of sixteen congressional hearings on youth violence between 1995 and 2001.³¹⁷ While gang violence resulted in “‘get-tough’ legislation, punitive political rhetoric, and racialized media imagery that promote[d] fear of the urban [African American and Latino] male,” school violence required “the attention and therapeutic, disciplinary, and benevolent resources of state power” to intervene in the lives of children and prevent such incidents from happening again.³¹⁸

State legislators took up the call. States hastened to enact legislation that jettisoned the rehabilitative goals of the Child Savers’ juvenile justice system through “the broadest and most sustained legislative crackdown ever on serious offenses committed by youth within the jurisdictional ages of American Juvenile Courts.”³¹⁹ As of 1997, seventeen states had changed the purpose clauses of their juvenile codes to incorporate goals of punishment, accountability, and public safety—goals traditionally reserved for the criminal justice system.³²⁰ And although many jurisdictions still include language safeguarding rehabilitation as a goal in their purpose clauses, only three states prioritize the best interests of the child as the central aim of the juvenile court.³²¹ New juvenile codes also allow youths to be tried as adults at younger ages for more offenses,³²² at the risk of serving procrustean sentences in state adult correctional facilities.³²³ Juvenile offenders, previously shielded from the long-term stigmatizing effects of conviction, are now subject to sex-offender registration, fingerprint and DNA data banking, eviction from public housing, disqualification from military service, and exclusion from public schools.³²⁴

With the rise of the superpredator myth came a dramatic increase in the reliance on life without parole as a sentencing option for youths convicted of very serious crimes. In 2005, Human Rights Watch and Amnesty International published *The Rest of Their Lives: Life Without Parole for Child Offenders in the United States*, the first and most comprehensive examination of juvenile life without parole sentences.³²⁵ Researchers discovered that, at the time of the report, at least 2,225 people in the United States had been sentenced to life without parole for crimes they committed when they were children. Approximately 59 percent of youths sentenced to life without parole received the sentence for their first-ever criminal conviction.³²⁶ Sixteen percent were between thirteen and fifteen years old at the time they committed their crimes.³²⁷

