Introduction

The juvenile court lies at the intersection of two domains—youth policy and crime policy. How should the legal system respond when the kid is a criminal and the criminal is a kid? This raises another question: how and why do we think about children and criminals as we do? To further complicate these questions, how do race, ethnicity, and gender affect the ways we think about children and crime control? Moreover, how and why have these ideas changed over the past century and affected juvenile and criminal justice policies? Finally, how should the lessons of the recent past affect the justice system we design for youth going forward?

Since the juvenile court’s creation more than a century ago, it has evolved though four periods—the Progressive Era, the Due Process Era, the Get Tough Era, and the contemporary Kids Are Different Era. These historical periods reflect larger social processes, do not divide neatly, and features from one era continue into and overlap with those of the next. But in each period, juvenile justice policies have reflected different views about children, crime control, race and gender, and appropriate ways to address youths’ misconduct. In the midst of the current era in which we recognize again that children are not miniature adults, we have an opportunity to reimagine a policy and legal foundation for a more effective justice system for youth. This book examines the relationship between social structural factors and changes in juvenile justice policy, especially the complex changes that have occurred over the past half century.

Ideas about childhood, crime control, race, and gender are socially constructed. Social constructions assign meaning to objects or events and to people’s relationships or understanding of them. Although these ideas appear natural or obvious to the people within a society who accept and internalize them, they are cultural artifacts and change with social conditions. In this analysis, I treat the juvenile court as the dependent variable—an institution whose meaning and practices change.
in response to other factors. Our ideas about children and crime control are intervening variables that influence the structure and function of juvenile courts. Changes in the economy, cities, families, and racial and ethnic demography affect our ideas about youth, crime, and the juvenile court. These societal factors operate through political processes in which legislators enact and courts apply laws that shape juvenile justice. Juvenile courts are statutory entities and state legislatures have considerable latitude to define their jurisdiction, procedures, and jurisprudence.

Over the past century, two competing social constructions or visions of adolescents have influenced policies toward young offenders. On the one hand, judges and law makers may characterize them as children—immature, vulnerable, and dependent. In this view, the state would take a protectionist stance to nurture and promote their welfare. On the other hand, law makers may characterize young people as quasi-adults—mature and responsible. In this view, the state would endorse a liberationist perspective, emphasize their autonomy and self-determination, and hold them accountable for their misbehavior. Despite the seeming contradiction between these characterizations, I argue that judges and legislators selectively choose between the two constructs—immature versus responsible—to maximize social control of young people. States treat juveniles like adults when formal equality results in practical inequality and use special juvenile court procedures that prove an advantage to the state.

Strategies of crime control mark the second idea shaping juvenile justice. When people violate the criminal law, legal scholars and criminologists typically differentiate between retributivist and utilitarian sanctions—deterrence, incapacitation, or rehabilitation. Theories of punishment reflect assumptions about whether peoples’ behavior is deliberately chosen or the product of antecedent forces—free will versus determinism. Juvenile courts’ historic claims to rehabilitate young offenders elicit the traditional dichotomy between treatment and punishment. Treatment focuses on offenders—what antecedent forces caused them to act as they did and how can we reform them and improve their life chances. Punishment focuses on the offense committed and imposes sanctions to denounce the act, alter the offender’s calculus, or prevent its reoccurrence. Juvenile courts’ founders believed that children were not autonomous, more dependent than adults on their families and com-
munities, their behavior more determined than chosen, and that they should be treated rather than punished.

Although Progressive reformers proffered rehabilitation as the main justification for a separate juvenile court, diversion from criminal courts provided a second rationale at its inception and remains its primary virtue today. Regardless of juvenile courts’ ability to rehabilitate children, simply deflecting them from criminal courts avoids their destructive consequences. Diversion constitutes a passive alternative that does less harm. Although juvenile courts then and now seldom achieve their rehabilitative goals, they shield youths from far worse life-altering punishment and collateral consequences.

The competing conceptions of childhood—immaturity and incompetence versus maturity and competence—and differing strategies of crime control—treatment or diversion versus punishment—affect the substantive goals and procedural means that juvenile courts use. Substantive law defines rights, obligations and duties, and how members of society are to behave. Procedural law defines the process for making, administering, and enforcing substantive law. Juvenile courts’ ends and means—substance and procedure—represent the purposes of intervention and the process to achieve them when children break the law. How has the child become what he is, what can be done to change him, and how and who makes these determinations? These questions involve judgments about adolescents’ culpability and competence. Culpability focuses on youths’ mental state at the time of the crime and criminal responsibility. To what extent is a youth responsible for his actions and his conduct blameworthy? Substantive goals raise issues of treatment and punishment, diminished responsibility, and deserved consequences. Substantive questions—such as what should be done with this youth—arise when juvenile courts detain and sentence delinquents, transfer them to criminal court, and sentence them as adults. Competence involves the ability to do something successfully or efficiently. It focuses on youths’ capacity to employ rights and ability to understand and participate in the legal process. Procedural issues involve youths’ competence to stand trial, ability to exercise *Miranda* rights, right to counsel, and right to a jury trial.

Historical variations in juvenile courts’ substantive goals—delinquency dispositions, transfer, and criminal sentencing—reflect
lawmakers’ and judges’ ambivalent assessments of youths’ culpability, criminal responsibility, and treatment or punishment. Juvenile courts’ procedural means reflect conflicted appraisals of their developmental characteristics, decision-making capacities, and ability to exercise legal rights. Competing characterizations of youths’ culpability and competence—immature or responsible, treatment/diversion or punishment, capable or inept—influenced juvenile courts’ procedure and substance from their inception.

What independent factors account for changes in ideas about youth, crime control, and juvenile courts? Figure I.1 depicts some structural factors—economy, urbanization, family, ethnicity/race, and politics—that shape ideas and epochs of juvenile justice. These, as well as other, independent factors interact with and influence each other. Figure I.1 represents a generic way to think about these associations rather than a causal model. In each era, changes in economy affected the organization of cities, for example, during the transition from a rural agricultural to an urban industrial society or more recently from an industrial to an information/service economy. In each period, structural changes affected the configuration of cities, the structure and function of families, and how the state and parents socialized and controlled children, for example, earlier through integration into the work force versus current prolonged dependency. Structural economic changes contributed to urban demographic transformations as earlier waves of European immigrants and subsequently internal African American migrants flooded into and altered cities, and posed different problems of assimilation and integration. Finally, juvenile courts are legislative creations and political processes determine their institutional contours. Policy makers—legislators, judges, youth advocates, and others—contest ideas about children and crime control in the guise of debates about juvenile courts’ age of jurisdiction, transfer methods, delinquency, and criminal sanctions. These debates change in response to social and political forces that affect youth and crime policy.

Youths’ ethnicity, race, and gender mark another social construction around which juvenile justice policies have changed over the past century. In the early twentieth century, waves of immigrants from Southern and Eastern Europe entered the United States. Juvenile courts were one of several institutions Progressive reformers created to assimilate, accul-
turate, and prepare them for citizenship. A half century later, the Great Migration of African Americans from Southern farms to Northern and Western cities posed challenges of integration in a society deeply divided by race.

The legal and political responses to African Americans during the second half of the twentieth century have had two distinct manifestations. During the 1950s and 1960s, the Supreme Court imposed equality norms on Southern states that embraced a segregated Jim Crow legal system and sought to bring Blacks into full participation as citizens. The decisions reflected a shift in constitutional jurisprudence to protect individual and civil rights. The Great Migration of African Americans in the decades before and after World War II increased their urbanization, placed racial equality and civil rights on the national political agenda, and motivated the Court to address racial discrimination and criminal and juvenile justice administration. The Court’s desegregation decisions in *Brown v. Board of Education*, criminal procedure decisions like *Mapp v. Ohio* and *Miranda v. Arizona*, and juvenile court opinions like *In re Gault* share the common but unstated goals of protecting minority rights, limiting states’ coercive powers, and bringing Blacks into the legal and cultural mainstream.
An almost immediate backlash to Blacks’ civil rights gains began in the 1960s as Republican politicians pursued a Southern strategy, used crime and welfare as wedge issues to appeal to white voters’ racial animus, and advocated get tough policies that affected juvenile and criminal justice administration. These repressive strategies had a disparate impact and disproportionately excluded Blacks from civil society. For adult offenders, it led to the era of mass incarceration. For younger offenders, get tough policies exacerbated racial differences in juvenile justice administration.

I focus primarily on the experience of African American children in the juvenile justice system. The justice system’s response to various groups—African Americans, Latinos, Native Americans, Asians, ethnic Europeans, and others—unfolds against the centrality of whiteness in defining race relations. But all racial and ethnic groups did not share the same history or face equally destructive discrimination. The legacy of American racism is rooted in the original constitutional compromise that allowed slave-holding Southern states to count Blacks as “three fifths of all other persons” for legislative apportionment purposes, to increase their representation in the House and electoral votes and to enable them to exercise disproportional political power until the Civil War. Despite some racial progress, the integration and inclusion of Blacks remains what Gunnar Myrdal described three-quarters of a century ago as the unresolved American Dilemma: The Negro Problem and Modern Democracy. The Supreme Court’s civil rights and due process decisions explicitly or implicitly addressed issues of inequality and injustice toward Blacks. The Get Tough Era of juvenile justice unfolded against the backdrop of the deindustrialization of urban America, the emergence of a Black underclass living in concentrated poverty, and the confluence of crack cocaine and gun violence.

Because of the unique experience of African Americans, there is more extensive research on Black children in the juvenile justice system than of young Hispanics, Native Americans, Asians, or members of other ethnic groups. Some analysts have examined other groups’ encounters with systems of social control. David Adams’s Education for Extinction: American Indians and the Boarding School Experience describes the boarding schools for Native American youth designed to acculturate and “civilize” them. Miroslava Chávez-García’s States of Delinquency:
Race and Science in the Making of California’s Juvenile Justice System examines the experiences of Hispanic youth in California. Other scholars can, should, and will write books about other racial and ethnic groups’ encounters with juvenile justice. But that is not my goal in this book. No other group bears the legacy of slavery and the savage dominion of Jim Crow. No other group has been the direct target of criminal justice policies with deliberate disparate impact. Moreover, the political and legal responses to African Americans provide the connection between the Warren Court’s emphases on civil rights and procedural justice and subsequent efforts to get tough on youth crime. Only the unique social and political status of African Americans can account for Republicans’ Southern strategy to exploit urban crime and politicize juvenile and criminal justice policy.

Historically, juvenile courts’ responses to girls have differed from the ones to boys. Industrialization brought young women to cities and exposed them to the hazards of prostitution and sexual exploitation. During the Progressive Era, Victorian sensibilities and concerns about female sexuality encouraged regulation of teenage girls for waywardness, incorrigibility, and sexual precocity. More recently, policy makers have recast girls’ acting-out behavior as violent misconduct. Despite changes in practices, juvenile courts’ responses to girls continue to differ from those to boys and reflect differences in the social construction of gender.

I divide this book into four parts corresponding with the four eras of juvenile justice—the Progressive Era, the Due Process Era, the Get Tough Era, and the Kids Are Different Era. Part I (Chapter 1) provides an overview of the early juvenile court—its structural origins, philosophical underpinnings, historic mission, and discriminatory practices. Part II (Chapter 2) examines the Warren Court’s due process revolution of the 1960s—its response to racial inequality, its decisions to grant delinquents some procedural safeguards, and its intended and unintended consequences. Part III examines some causes and consequences of the Get Tough Era. Chapters 3 and 4 examine why and how perceptions of youth and crime changed during the Get Tough Era of the 1980s and 1990s. Chapter 3 examines macro-structural forces and political processes that created segregated areas of concentrated poverty. In the 1970s, factory closures produced massive layoffs that disproportionally affected minority workers. In the 1980s, crack cocaine and gun violence devas-
tated inner cities reeling from deindustrialization and led to an increase in Black youth homicide. Chapter 4 examines the politics of race and crime. Conservative politicians used racial appeals, manipulated and exploited public fears, and waged a succession of wars on crime, drugs, and youth that disproportionately affected Black residents of inner cities. Chapter 5 examines punitive shifts in juvenile justice policies—transfer, detention, and sentencing—during the 1980s and 1990s that produced substantial racial disparities. Chapter 6 focuses on changing responses to females that reframed status offenders as violent girls. Chapter 7 examines the school-to-prison pipeline that paralleled punitive changes in juvenile justice and had a disproportionate impact on minority students. Part IV examines adolescent culpability and competence through the lens of Supreme Court decisions reaffirming that “children are different.” Chapter 8 reviews the trilogy of Court decisions—Roper, Graham, and Miller—that emphasized youths’ diminished responsibility. The Court relied on developmental psychology and neuroscience research to limit the most severe sentences states inflict on youths. Recognizing that children are different also implicates juveniles’ competence to exercise rights and the quality of justice in juvenile courts. Chapter 9 examines research on adolescents’ compromised competence, legal standards that treat juveniles like adults, juvenile courts’ procedural deficiencies, and the heightened risks of wrongful convictions. The Epilogue draws on contemporary understanding of adolescent culpability and competence to envision a justice system for children. But juvenile courts do not directly cause delinquency and can do little to ameliorate its root causes—child poverty—which require more fundamental change.

Chapter 1. The Progressive Juvenile Court. At the end of the nineteenth century, the transition from an agrarian to a manufacturing economy increased immigration and fostered rapid urbanization. Industrialization attracted massive waves of European immigrants who crowded into urban ghettos and altered the structure of cities. Assimilating and acculturating people who differed in language, religion, and culture posed challenges for the Anglo-Protestant Americans who had preceded them. The shift from family farms and shops to factories altered the roles of women and children. During this period, upper- and middle-class child-savers promoted a social construction of children
as vulnerable, immature, and dependent, who required protection and supervision. Positivist criminology attributed criminal behavior to external antecedent forces and reformers adopted discretionary policies to rehabilitate offenders—probation, parole, indeterminate sentences, and juvenile courts. They created a separate justice system to shield children from criminal courts, jails, and prisons. Two goals animated juvenile courts’ creators: an interventionist rationale and a diversionary one. The more expansive interventionist vision expected juvenile courts to identify causes of youths’ misbehavior, to intervene, and to promote their development into responsible adults. Juvenile courts’ less articulated diversionary purpose was to minimize the harms the criminal justice system inflicted on young people. They could accomplish their diversionary goal simply by providing an alternative to criminal courts even if their rehabilitative goal proved more elusive. Juvenile courts melded the new ideology of childhood with the new theory of crime control, introduced a judicial-welfare alternative to remove children from the criminal justice system, and promised individualized treatment in a nonpunitive child welfare system. Juvenile courts’ rehabilitative mission envisioned a specialized judge trained in social work and child development whose empathy and insight would enable him to make dispositions in a child’s best interests. Progressives defined the court’s jurisdiction broadly to include youths accused of crimes, noncriminal-status offenders at risk to become delinquents, and abused and neglected children. Juvenile courts’ rehabilitative dispositions focused on youths’ future welfare rather than their past offenses and could continue for the duration of minority. The courts’ founders conceived of children as immature and irresponsible and opposed procedural safeguards that could impede open communication between judge and child. Progressive reformers intended juvenile courts to discriminate: to control poor and immigrant children, to assimilate and Americanize them, and to distinguish between their own children and other people’s children. They exhibited less solicitude toward Black youngsters, most of whom remained in the South. While probation was the disposition of first resort, the institutions to which judges disproportionately committed poor and immigrant children more closely resembled youth prisons than clinics. Reformers exhibited special concern about females exposed
to the corrupting influences of a rapidly industrializing society. Juvenile courts’ status jurisdiction enabled them to intervene and regulate girls’ noncriminal behavior such as sexual activity and immorality.⁷

**CHAPTER 2. THE DUE PROCESS REVOLUTION AND THE JUVENILE COURT.** In the decades prior to and after World War II, the Great Migration from the rural South to the industrial North and West increased the urbanization of Blacks, placed issues of racial equality and civil rights on the national political agenda, and provided impetus for constitutional and legislative reforms.⁸ The outbreak of World War I in 1914 curtailed European immigration and created a demand for southern Black laborers to work in northern factories. When Blacks left rural farms, they almost always moved to cities. In the post–World War II era, public policies and private practices forced them to live primarily in racially segregated ghettos. With the urban influx, whites moved from cities to suburbs in ever larger numbers. In the 1950s and 1960s, a more assertive civil rights movement initially challenged segregation in the South and emerged as a social movement against racism throughout the country. In the decade between *Brown v. Board of Education* in 1954 and the passage of the Civil Rights Act in 1964, the Court and Congress adopted norms of racial equality and eliminated the legal foundations of segregation. Youth crime increased in the 1960s as baby boom children reached adolescence. The increased urbanization of Blacks led to higher crime rates in minority areas. Race riots rocked many American cities between 1964 and 1968. These broader structural and demographic changes and their effects provided the backdrop for the Warren Court’s civil rights decisions, criminal procedure rulings, and juvenile court opinions. Its criminal procedure decisions reflected an attempt to protect minority citizens and to limit states’ authority. The 1967 President’s Crime Commission *Task Force Report on Juvenile Delinquency and Youth Crime* revealed juvenile courts’ procedural deficiencies, inadequate correctional institutions, and racial disparities. Drawing on its critique, *In re Gault* highlighted the disjunction between juvenile courts’ rehabilitative rhetoric—long used to justify the dearth of procedural safeguards—and the reality of court and correctional practices. Mandating procedural safeguards, the Court envisioned youths as competent to exercise legal rights and to participate in an adversarial system. Subsequent decisions further criminalized delinquency proceedings. *In
re Winship required states to prove delinquents’ guilt by the criminal law standard of proof beyond a reasonable doubt. Breed v. Jones applied the ban on double jeopardy based on the functional equivalence of criminal trials and delinquency proceedings. However, McKeiver v. Pennsylvania denied delinquents the constitutional right to a jury trial available to criminal defendants because it might adversely affect juvenile courts’ informality, flexibility, and confidentiality. Although granting delinquents some procedural rights might impair juvenile courts’ ability to intervene in children’s lives, safeguards would not impede their ability to divert youths and avoid the harms of the criminal justice system. But granting delinquents some safeguards legitimated increasingly punitive penalties that fell most heavily on minority offenders. The Court’s due process revolution coincided with a synergy of campus disorders, escalating crime rates, urban racial rebellions, dissatisfaction with the treatment model, and emerging politics of crime that prompted calls for a return to classical criminal law and paved the way for get tough policies.9

CHAPTER 3. THE GET TOUGH ERA I: STRUCTURAL CHANGE AND YOUTH CRIME. Structural, economic, and racial demographic changes in American cities during the 1970s and 1980s contributed to escalating Black youth homicide rates at the end of the 1980s and provided the context within which states adopted get tough policies.10 The Great Migration increased the concentration of impoverished African Americans consigned to inner-city ghettos. Federal housing, highway, and mortgage policies combined with bank redlining and real estate block-busting and related sales practices to create increasingly poor minority urban cores surrounded by predominantly white affluent suburbs. Unlike earlier European immigrants who provided valuable labor during the period of rapid industrialization, Black internal migrants arrived to face a shrinking manufacturing sector. Beginning in the early 1970s, the United States began to shift from a manufacturing to an information and service economy. The globalization of manufacturing and technological innovations eliminated many jobs of less skilled workers and produced a bifurcation of economic opportunities based on education and technical skills. The economic changes adversely affected Blacks more deeply than other groups because of their more recent entry into the manufacturing economy, their vulnerability in the social stratification system, their lower average educational attainment, and their spatial isolation
from sectors of job growth. In the 1980s, deindustrialization and white flight left an impoverished Black underclass trapped in urban ghettos.\textsuperscript{11} The introduction of crack cocaine and proliferation of guns sparked turf wars over control of drug markets. Black youth homicide rates sharply escalated and gun violence provided political impetus to transform juvenile justice policies.\textsuperscript{12}

**CHAPTER 4. THE GET TOUGH ERA II: POLITICS OF RACE AND CRIME.** Following *Brown v. Board of Education*, civil rights activists responded to Southern whites’ “massive resistance” to integration with direct action and civil disobedience. Southern politicians and law enforcement responded violently to disruptive strategies, described activists as “outside agitators,” and conflated civil rights protests with crime. In the 1960s, the baby boom rise in youth crime and urban racial disorders evoked fear of crime in the streets. National Republican politicians decried a crisis of law and order, pursued a Southern strategy to appeal to white Southern voters’ racial antipathy and resistance to school integration, and engineered a conservative backlash to foster a political realignment around race and public policy issues.\textsuperscript{13} Conservatives rejected structural root-cause explanations of crime and poverty and instead attributed them to individuals’ bad choices, personal character failings, and cultural shortcomings. Republicans’ Southern strategy appealed to various constituencies—white Southerners, suburbanites, socially conservative ethnic Catholics and blue-collar workers—by using coded anti-Black rhetoric. Political divisions about race and social policy enabled conservative politicians to advocate punitive crime and welfare policies for electoral advantage. In the 1980s and 1990s, those policies produced mass incarceration for adult offenders, fostered changes in juvenile courts’ transfer and sentencing laws, altered responses to female offenders, and fueled a school-to-prison pipeline.

**CHAPTER 5. THE KID IS A CRIMINAL: TRANSFER AND DELINQUENCY SANCTIONS.** Progressive reformers created juvenile courts to divert youths from the criminal justice system and to provide an alternative rehabilitative welfare system. During the Get Tough Era, changes in state laws challenged both their diversionary and interventionist goals. Retribution, deterrence, and selective incapacitation displaced rehabilitation as sentencing policy rationales and states replaced indeterminate delinquency sentences with determinate ones. States passed laws to
transfer more and younger juveniles to criminal court for prosecution as adults. They emphasized offenses rather than offenders and shifted discretion from judges to prosecutors to decide youth’s juvenile or criminal status. Blended sentences further eroded the formal demarcation between juvenile and criminal courts. Studies consistently reported racial disparities in waiver decisions and get tough reforms exacerbated inequalities. Once transferred, criminal court judges often imposed harsher sentences on youths than on comparable young adult defendants. Transfer laws reflected legislators’ expressive condemnation of crime without regard to its instrumental impact on offending or appreciation of youthful mitigation.

Get tough policies affected juvenile courts’ detention and sentencing practices and eroded the always tenuous distinctions between treatment and punishment. Reflecting the politics of race and crime, juvenile courts detained minority youths at higher rates than white youths. States made delinquency sanctions tougher as well. They amended juvenile codes’ purpose clauses to endorse punishment and adopted offense-based sentencing guidelines or mandatory minimum sentences. Juvenile court judges’ sentencing practices increasingly resembled those of criminal courts. Institutional conditions of confinement often precluded effective treatment. Juvenile courts’ harsher sentences fell disproportionately heavily on minority youths. While these changes undermined juvenile courts’ traditional rehabilitative claims, delinquency sanctions were less harsh or life-course altering than those imposed in criminal courts. Juvenile courts fulfilled their diversionary mission—protecting youths from criminal punishment—even as their failure to achieve their rehabilitative goals became more evident.

CHAPTER 6. THE GIRL IS A CRIMINAL: THE IMPACT OF GET TOUGH POLICIES ON GIRLS. Historically, juvenile courts dealt with girls primarily for status offenses, often a euphemism for sexual activity or incipient prostitution. Federal and state policy changes in the 1970s limited judges’ authority to commit noncriminal girls to delinquency institutions. During the Get Tough Era, justice system personnel perceived a frightening upsurge in violence by girls. Police arrests of female juveniles for offenses such as simple and aggravated assault increased more or decreased less than those of their male counterparts and augured a closing of the offending gender gap. However, comparing boys’ and girls’
offical arrest data with self-report and victimization surveys suggests that the perceived increase in girl violence is a social construction rather than empirical reality. Changes in girls’ arrests likely reflect a greater propensity to charge less serious conduct as assaults, changing police responses to domestic violence, and parents’ diminished tolerance of females’ acting out. Policies to divert status offenders from secure confinement provided an impetus for court personnel to relabel girls as delinquents to place them in institutions and reflect historic paternalistic efforts to control young women.

**CHAPTER 7. THE STUDENT IS A CRIMINAL: GET TOUGH POLICIES AND THE SCHOOL-TO-PRISON PIPELINE.** From their inception, public schools served important social control and acculturation functions. Progressives’ passage of compulsory attendance and truancy laws enforceable by juvenile courts reflect schools’ roles as agencies of social control, assimilation, and acculturation of immigrant children. A century later, school disciplinary practices changed in tandem with get tough juvenile justice policies. The Court in *T.L.O. vs. New Jersey* authorized school officials to search students under a lower Fourth Amendment standard than that required to search adults—reasonable suspicion rather than probable cause. Since the 1990s, the presence of police in schools—school resource officers—has increased greatly and they search students under the lower Fourth Amendment standard. Schools rely increasingly on technology—metal detectors, cameras, and drug canines—and heightened surveillance increases the likelihood of detecting wrong doing. Schools have adopted zero-tolerance policies toward misconduct and respond to student deviance with punitive and exclusionary sanctions. High-stakes testing give schools financial incentives to exclude low-performing students. The confluence of laws and policies have fostered a school-to-prison-pipeline that disproportionately affects urban Black males.

**CHAPTER 8. THE CRIMINAL IS A KID: ADOLESCENTS’ DIMINISHED CULPABILITY.** During the Get Tough Era, states transferred more and younger juveniles for prosecution as adults without consideration of their criminal responsibility. In response to counterproductive punitiveness, the MacArthur Foundation sponsored a research network on developmental psychology and neuroscience that focused on adolescents’ judgment and self-control and provided a rationale
for youths’ diminished criminal responsibility.\textsuperscript{19} In 2005, the Court in \textit{Roper v. Simmons} categorically barred states from executing youths for crimes committed prior to eighteen years of age. \textit{Roper} offered three reasons—immature judgment, susceptibility to negative peer influences, and transitional personalities—to find that juveniles are categorically less criminally responsible than adults. Developmental psychological and neuroscience research supports the Court’s conclusion that juveniles’ immature decision making, impulsivity, and limited self-control reduced their culpability. \textit{Graham v. Florida} applied \textit{Roper}’s diminished responsibility rationale to youths convicted of non-homicide crimes and categorically prohibited judges from imposing life without parole sentences. \textit{Miller v. Alabama} prohibited states from imposing mandatory life without parole sentences on juveniles convicted of murder and required individualized culpability assessments. Despite \textit{Roper}, \textit{Graham}, and \textit{Miller}’s affirmation of adolescents’ reduced culpability, the Court provided the affected juveniles with limited relief and legislators with little guidance to implement its constitutional conclusion that “children are different.” State lawmakers and courts have adopted grudging and inconsistent responses to those opinions. I propose a categorical Youth Discount—shorter sentences for reduced culpability—as a straightforward approach to formally recognize youthfulness as a mitigating factor.

\textbf{CHAPTER 9. THE DEFENDANT IS A KID: ADOLESCENTS’ COMPETENCE TO EXERCISE PROCEDURAL RIGHTS.} Delinquency proceedings are much more formal than those envisioned a century ago. Their increased complexity makes greater demands on children’s ability to make legal decisions. Developmental psychologists have examined adolescents’ capacity to participate in legal proceedings, their ability to exercise \textit{Miranda} rights, and their competence to waive counsel. The research questions whether adolescents possess the cognitive ability, maturity, and judgment necessary to exercise legal rights. Many of the developmental features on which \textit{Roper}, \textit{Graham}, and \textit{Miller} relied—impaired judgment and self-control, impulsivity, short-sightedness, and susceptibility to social influences—contribute to their reduced competence to exercise rights. Despite developmental differences, most states do not provide additional safeguards to protect juveniles from their own immaturity and instead use adult legal standards that put them at a disadvantage. Despite juvenile courts’ increased punitiveness, the vast
majority of states deny delinquents the right to a jury trial. As a result, states convict them more easily than similarly situated adults. Collateral consequences of delinquency convictions amplify juvenile courts’ procedural deficiencies. States use prior delinquency convictions to transfer youths to criminal court and to enhance their sentences.\(^{20}\) Delinquency convictions may provide the predicate for sex offender registration, while drug convictions may bar youths and their families from public housing, and the like.

**EPILOGUE: OPPORTUNITIES AND OBSTACLES.** There is a window of opportunity to pursue juvenile justice reforms. The crime drop reduces public anxiety and its political salience. Advances in developmental psychology and neuroscience heighten understanding of children’s behavior and increase prospects to change it. Youth advocacy groups pressure courts and legislatures to implement reforms. The conclusion describes a justice system that reflects the founding principles of juvenile courts and increased appreciation that kids are different.

No justice system reforms can address the root causes of most delinquency—child poverty and its attendant consequences. Child poverty in the United States is two to five times higher than that of other Western democracies; poverty rates for children of color are quadruple those of white children. Other Western democracies successfully have adopted social policies—a children’s allowance, paid parental leave, and subsidized child care—to alleviate child poverty. The United States’ failure to reduce child poverty is rooted in political economy, racial and economic inequality, and a lack of political leadership or willingness to care for other people’s children.